



Department of
Environmental
Conservation

BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION TO AMEND BROWNFIELD CLEANUP AGREEMENT AND AMENDMENT

PART I. BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION

1. Check the appropriate box(es) below based on the nature of the amendment modification requested:

☒ Amendment to modify the existing BCA: [check one or more boxes below]

- ☐ Add applicant(s)
- ☒ Substitute applicant(s)
- ☐ Remove applicant(s)
- ☐ Change in Name of applicant(s)

☒ Amendment to reflect a transfer of title to all or part of the brownfield site

1a. A copy of the recorded deed must be provided. Is this attached? ☒ Yes ☐ No

1b. ☒ Change in ownership ☒ Additional owner (such as a beneficial owner)

If yes, pursuant to 6 NYCRR Part 375-1.11(d), a Change of Use form should have been previously submitted. If not, please submit this form with this Amendment. See <http://www.dec.ny.gov/chemical/76250.html>

☐ Amendment to modify description of the property(ies) listed in the existing Brownfield Cleanup Agreement [Complete Sections I and V below and Part II]

☐ Amendment to Expand or Reduce property boundaries of the property(ies) listed in the existing Brownfield Cleanup Agreement [Complete Section I and V below and Part II]

☒ **Sites in Bronx, Kings, New York, Queens, or Richmond counties ONLY:** Amendment to request determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit. Please answer questions on the supplement at the end of the form.

☐ Other (explain in detail below)

2. Required: Please provide a brief narrative on the nature of the amendment:

The current owners of the Site which is comprised of two lots located at 138 Bruckner Boulevard, Bronx, New York (Lots 19 and 10), with alternate addresses of 107 St. Ann's Avenue, Bronx, New York, 531-553 East 132nd Street, Bronx, New York, and 543 East 132nd Street, Bronx, New York, have entered into a purchase and sale agreement to sell the Site to 138 Bruckner Realty LLC. 138 Bruckner Boulevard Associates, LLC is the current owner of Lot 19 and Anjost Corporation is the current owner of Lot 10. This amendment is to reflect the change in ownership from Anjost Corporation (Lot 10) and 138 Bruckner Blvd. Associates, LLC (Lot 19) to the new ownership, and reflect a further transaction which was finalized on January 12, 2022 by means of which 138 Bruckner Realty LLC has assigned its right to purchase the Site (both Lot 10 and Lot 19) to 138 Bruckner Ground Lessor, LLC in return for 138 Bruckner Ground Lessor, LLC ground leasing the Site back to 138 Bruckner Realty LLC such that 138 Bruckner Realty LLC is the Ground Lessee and beneficial owner of the Site. In addition to the ownership change, 138 Bruckner Realty LLC will replace the current Brownfield Cleanup Agreement applicant, 138 Bruckner Owner LLC, as the sole applicant under the Brownfield Cleanup

Please refer to the attached instructions for guidance on filling out this application

Submission of a full BCP application will be required should this application be determined to be a major amendment. If the amendment involves a non-insignificant change in acreage, applicants are encouraged to consult with the DEC project team prior to submitting this application.

Section I. Current Agreement Information		
BCP SITE NAME: 138 Bruckner Boulevard	BCP SITE NUMBER: C203127	
NAME OF CURRENT APPLICANT(S): 138 Bruckner Owner LLC		
INDEX NUMBER OF AGREEMENT: C203127-02-20 DATE OF ORIGINAL AGREEMENT: February 18, 2020		
Section II. New Requestor Information (complete only if adding new requestor or name has changed)		
NAME 138 Bruckner Realty LLC		
ADDRESS 199 Lee Avenue, Suite 1088		
CITY/TOWN Brooklyn		ZIP CODE 11211
PHONE 718-701-5680	FAX	E-MAIL jschwimmer@jcsrealtyny.com
1. Is the requestor authorized to conduct business in New York State (NYS)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No • If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's (DOS) Corporation & Business Entity Database. A print-out of entity information from the DOS database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.		
NAME OF NEW REQUESTOR'S REPRESENTATIVE Jacob Schwimmer		
ADDRESS 199 Lee Avenue, Suite 1088		
CITY/TOWN Brooklyn		ZIP CODE 11211
PHONE 718-701-5680	FAX	E-MAIL jschwimmer@jcsrealtyny.com
NAME OF NEW REQUESTOR'S CONSULTANT (if applicable) Haley & Aldrich of New York		
ADDRESS 237 West 35th Street, 16th Floor		
CITY/TOWN New York		ZIP CODE 10123
PHONE 646-277-5686	FAX	E-MAIL jbellev@haleyaldrich.com
NAME OF NEW REQUESTOR'S ATTORNEY (if applicable) Frank V. Bifera, Barclay Damon, LLP		
ADDRESS 80 State Street		
CITY/TOWN Albany		ZIP CODE 12207
PHONE (518) 429-4224	FAX (518) 427-3487	E-MAIL FBifera@barclaydamon.com
2. Requestor must submit proof that the party signing this Application and Amendment has the authority to bind the Requestor. This would be documentation from corporate organizational papers, which are updated, showing the authority to bind the corporation, or a Corporate Resolution showing the same, or an Operating Agreement or Resolution for an LLC. Is this proof attached? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
3. Describe Requestor's Relationship to Existing Applicant: The Requestor is the contract vendee of the two previous owners of the Site, and at the completion of the contemplated transactions, Requestor is the ground lessee of the site and its beneficial owner while the two previous owners and the current applicant will have no further connection with the Site.		

Section III. Current Property Owner/Operator Information (only include if new owner/operator)
Owner below is: ☐ Existing Applicant ☐ New Applicant ☒ Non-Applicant

OWNER'S NAME (if different from requestor) 138 Bruckner Ground Lessor, LLC

ADDRESS c/o MSP Capital Investments, L.L.C., Woodlawn Hall at Old Parkland, 3953 Maple Ave., Suite 350

CITY/TOWN Dallas, Texas

ZIP CODE 75219

PHONE 214-545-5576

FAX

E-MAIL pak@mspcm.com

OPERATOR'S NAME (if different from requestor or owner) N/A (Requestor)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

Section IV. Eligibility Information for New Requestor. (Please refer to ECL § 27-1407 for more detail)

If answering "yes" to any of the following questions, please provide an explanation as an attachment.

1. Are any enforcement actions pending against the requestor regarding this site? ☐ Yes ☒ No
2. Is the requestor presently subject to an existing order for the investigation, removal or remediation relating to contamination at the site? ☐ Yes ☒ No
3. Is the requestor subject to an outstanding claim by the Spill Fund for this site? ☐ Yes ☒ No
Any questions regarding whether a party is subject to a spill claim should be discussed with the Spill Fund Administrator.
4. Has the requestor been determined in an administrative, civil or criminal proceeding to be in violation of i) any provision of the subject law; ii) any order or determination; iii) any regulation implementing ECL Article 27 Title 14; or iv) any similar statute, regulation of the state or federal government? If so, provide an explanation on a separate attachment. ☐ Yes ☒ No
5. Has the requestor previously been denied entry to the BCP? If so, include information relative to the application, such as name, address, Department assigned site number, the reason for denial, and other relevant information. ☐ Yes ☒ No
6. Has the requestor been found in a civil proceeding to have committed a negligent or intentionally tortious act involving the handling, storing, treating, disposing or transporting of contaminants? ☐ Yes ☒ No
7. Has the requestor been convicted of a criminal offense i) involving the handling, storing, treating, disposing or transporting of contaminants; or ii) that involves a violent felony, fraud, bribery, perjury, theft, or offense against public administration (as that term is used in Article 195 of the Penal Law) under federal law or the laws of any state? ☐ Yes ☒ No
8. Has the requestor knowingly falsified statements or concealed material facts in any matter within the jurisdiction of the Department, or submitted a false statement or made use of or made a false statement in connection with any document or application submitted to the Department? ☐ Yes ☒ No
9. Is the requestor an individual or entity of the type set forth in ECL 27-1407.9(f) that committed an act or failed to act, and such act or failure to act could be the basis for denial of a BCP application? ☐ Yes ☒ No
10. Was the requestor's participation in any remedial program under DEC's oversight terminated by DEC or by a court for failure to substantially comply with an agreement or order? ☐ Yes ☒ No
11. Are there any unregistered bulk storage tanks on-site which require registration? ☐ Yes ☒ No

THE NEW REQUESTOR MUST CERTIFY THAT IT IS EITHER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE WITH ECL §27-1405 (1) BY CHECKING ONE OF THE BOXES BELOW:

☐ PARTICIPANT

A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.

☒ VOLUNTEER

A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.

NOTE: By checking this box, a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site certifies that he/she has exercised appropriate care with respect to the hazardous waste found at the facility by taking reasonable steps to: i) stop any continuing discharge; ii) prevent any threatened future release; iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous waste.

If a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site, submit a statement describing why you should be considered a volunteer – be specific as to the appropriate care taken.

12. Requestor's Relationship to Property (check one):

☐ Prior Owner ☐ Current Owner ☐ Potential /Future Purchaser ☒ Other Beneficial Owner

13. If requestor is not the current site owner, **proof of site access sufficient to complete the remediation must be submitted.** Proof must show that the requestor will have access to the property before signing the BCA and throughout the BCP project, including the ability to place an easement on the site Is this proof attached? ☒ Yes ☐ No

Note: a purchase contract does not suffice as proof of access.

Notes: Volunteer status statement attached, access agreement attached

Section V. Property description and description of changes/additions/reductions (if applicable)

1. Property information on current agreement:

ADDRESS

CITY/TOWN

ZIP CODE

TAX BLOCK AND LOT (SBL)

TOTAL ACREAGE OF CURRENT SITE: _____

Parcel Address

Section No. Block No. Lot No. Acreage

2. Check appropriate boxes below:

☐ Addition of property (may require additional citizen participation depending on the nature of the expansion – see attached instructions)

2a. PARCELS ADDED:

Acreage
Added by
Parcel

Parcel Address

Section No. Block No. Lot No.

Total acreage to be added: _____

☐ Reduction of property

2b. PARCELS REMOVED:

Acreage
Removed
by Parcel

Parcel Address

Section No. Block No. Lot No.

☐ Change to SBL (e.g. merge, subdivision, address change)

Total acreage to be removed: _____

2c. NEW SBL INFORMATION:

Parcel Address

Section No. Block No. Lot No. Acreage

If requesting to modify a metes and bounds description or requesting changes to the boundaries of a site, please attach a revised metes and bounds description, survey, or acceptable site map to this application.

3. TOTAL REVISED SITE ACREAGE: _____

Supplement to the Application To Amend Brownfield Cleanup Agreement And Amendment - Questions for Sites Seeking Tangible Property Credits in New York City ONLY.

Property is in Bronx, Kings, New York, Queens, or Richmond counties.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Requestor seeks a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Please answer questions below and provide documentation necessary to support answers.	
1. Is at least 50% of the site area located within an environmental zone pursuant to Tax Law 21(6)? Please see DEC's website for more information.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
2. Is the property upside down as defined below?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<p>From ECL 27-1405(31):</p> <p>"Upside down" shall mean a property where the projected and incurred cost of the investigation and remediation which is protective for the anticipated use of the property equals or exceeds seventy-five percent of its independent appraised value, as of the date of submission of the application for participation in the brownfield cleanup program, developed under the hypothetical condition that the property is not contaminated.</p>	
3. Is the project an affordable housing project as defined below?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>From 6 NYCRR 375- 3.2(a) as of August 12, 2016:</p> <p>(a) "Affordable housing project" means, for purposes of this part, title fourteen of article twenty seven of the environmental conservation law and section twenty-one of the tax law only, a project that is developed for residential use or mixed residential use that must include affordable residential rental units and/or affordable home ownership units.</p> <p>(1) Affordable residential rental projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which defines (i) a percentage of the residential rental units in the affordable housing project to be dedicated to (ii) tenants at a defined maximum percentage of the area median income based on the occupants' households annual gross income.</p> <p>(2) Affordable home ownership projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which sets affordable units aside for home owners at a defined maximum percentage of the area median income.</p> <p>(3) "Area median income" means, for purposes of this subdivision, the area median income for the primary metropolitan statistical area, or for the county if located outside a metropolitan statistical area, as determined by the United States department of housing and urban development, or its successor, for a family of four, as adjusted for family size.</p>	

PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT

Existing Agreement Information	
BCP SITE NAME: 138 Bruckner Boulevard	BCP SITE NUMBER: C203127
NAME OF CURRENT APPLICANT(S): 138 Bruckner Owner LLC	
INDEX NUMBER OF AGREEMENT: C203127-02-20	
EFFECTIVE DATE OF ORIGINAL AGREEMENT: February 18, 2020	

Declaration of Amendment:

By the Requestor(s) and/or Applicant(s) signatures below, and subsequent signature by the Department, the above application to amend the Brownfield Cleanup Agreement described above is hereby approved. This Amendment is made in accordance with and subject to all of the BCA and all applicable guidance, regulations and state laws applicable thereto. All other substantive and procedural terms of the Agreement will remain unchanged and in full force and effect regarding the parties to the Agreement.

Nothing contained herein constitutes a waiver by the Department or the State of New York of any rights held in accordance with the Agreement or any applicable state and/or federal law or a release for any party from any obligations held under the Agreement or those same laws.

Statement of Certification and Signatures: New Requestor(s) (if applicable)
<p>(Individual)</p> <p>I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.</p> <p>Date: _____ Signature: _____</p> <p>Print Name: _____</p> <p>(Entity)</p> <p>I hereby affirm that I am (title <u>the Authorized Signatory</u>) of (entity <u>138 Bruckner Realty LLC</u>); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.</p> <p><u>Jacob Schwimmer's</u> signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.</p> <p>Date: <u>1/13/2022</u> Signature: _____</p> <p>Print Name: <u>Jacob Schwimmer</u></p>

Statement of Certification and Signatures: Existing Applicant(s) (an authorized representative of each applicant must sign)

(Individual)

I hereby affirm that I am a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: _____ Signature: _____

Print Name: _____

(Entity)

I hereby affirm that I am an Authorized Signatory (title) of 138 Bruckner Owner LLC (entity) which is a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. Ronen Haron's signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 1/13/2022 Signature: _____

Print Name: Ronen Haron

REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT

Please see the following page for submittal instructions.

NOTE: Applications submitted in fillable format will be rejected.

Status of Agreement:



PARTICIPANT

A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.



VOLUNTEER

A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the contamination.

Effective Date of the Original Agreement: February 18, 2020

Signature by the Department:

DATED: 3/14/2022

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By: Susan Edwards

Michael J. Ryan, P.E., Director
Division of Environmental Remediation

Site Code: C203127

SUBMITTAL INFORMATION:

- **Two (2)** copies, one hard copy with original signatures and one electronic copy in final, non-fillable Portable Document Format (PDF) must be sent to:

Chief, Site Control Section
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, NY 12233-7020

- **NOTE: Applications submitted in fillable format will be rejected.**

FOR DEPARTMENT USE ONLY

BCP SITE T&A CODE: _____ **LEAD OFFICE:** Albany

PROJECT MANAGER: Mike Sellecito

BROWNFIELD CLEANUP PROGRAM (BCP) INSTRUCTIONS FOR COMPLETING A BCP AMENDMENT APPLICATION

This form must be used to add a party, modify a property description, or reduce/expand property boundaries for an existing BCP Agreement. NOTE: DEC requires a standard application to request major changes to the description of the property set forth in the BCA (e.g., adding a significant amount of new property, or adding property that could affect an eligibility determination due to contamination levels or intended land use). The application must be submitted to DEC in the same manner as the original application to participate.

COVER PAGE

Please select all options that apply. Provide a brief narrative of the nature of the amendment requested. At the bottom of the page, please enter the site code. This field will auto-populate in the bottom left corner of the subsequent pages.

SECTION I CURRENT AGREEMENT INFORMATION

Provide the site name, site code and current requestor exactly as it appears on the existing agreement. Provide the agreement index number and the date of the initial BCA, regardless of any executed amendments.

SECTION II NEW REQUESTOR INFORMATION

Requestor Name

Provide the name of the person(s)/entity requesting participation in the BCP. (If more than one, attach additional sheets with requested information. If an LLC, the members/owners' names need to be provided on a separate attachment). The requestor is the person or entity seeking DEC review and approval of the remedial program.

If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's Corporation & Business Entity Database. A print-out of entity information from the database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.

Requestor Address, etc.

Provide the requestor's mailing address, telephone number; fax number and e-mail address. Representative Name, Address, etc.

Provide information for the requestor's authorized representative. This is the person to whom all correspondence, notices, etc will be sent, and who will be listed as the contact person in the BCA. Invoices will be sent to the representative unless another contact name and address is provided with the application.

Consultant Name, Address, etc.

Provide information for the requestor's consultant. Attorney Name, Address, etc.
Provide information for the requestor's attorney.

Please provide proof that the party signing this Application and Amendment has the authority to bind the requestor. This would be documentation from corporate organizational papers, which are updated, showing

the authority to bind the corporation, or a Corporate Resolution showing the same, or an Operating Agreement or Resolution for an LLC.

SECTION III CURRENT PROPERTY OWNER/OPERATOR INFORMATION

Only include if a transfer of title has taken place resulting in a change in ownership and/or operation of the site. Provide the relationship of the owner to the site by selecting one of the check-box options.

Owner Name, Address, etc.

Provide information for the new owner of the property. List all new parties holding an interest in the property. Attach separate pages as needed.

Operator Name, Address, etc.

Provide information for the new operator, if applicable.

SECTION IV NEW REQUESTOR ELIGIBILITY INFORMATION

As a separate attachment, provide complete and detailed information in response to any eligibility questions answered in the affirmative. It is permissible to reference specific sections of existing property reports; however, it is requested that such information be summarized. For properties with multiple addresses or tax parcels, please include this information for each address or tax parcel.

If a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site, submit a statement describing why you should be considered a volunteer – be specific as to the appropriate care taken.

If the requestor is not the current site owner, proof of site access sufficient to complete the remediation must be submitted. Proof must show that the requestor will have access to the property before signing the BCA and throughout the BCP project, including the ability to place an easement on the site. A purchase contract does not suffice as proof of access.

SECTION V PROPERTY DESCRIPTION AND DESCRIPTION OF CHANGES / ADDITIONS / REDUCTIONS (IF APPLICABLE)

NOTE: DEC requires a standard application to request major changes to the description of the property set forth in the BCA (e.g., adding a significant amount of new property, or adding property that could affect an eligibility determination due to contamination levels or intended land use). The application must be submitted to DEC in the same manner as the original application to participate.

1. Property Information on Existing Agreement

Provide the site address and tax parcel information exactly as it appears on the current agreement (or as it has been modified in previous amendments).

2a. Addition of Property

Provide the tax parcel information and acreage for each parcel to be added. Provide the total acreage to be added below the far-right column.

2b. Reduction of Property

Provide the tax parcel information and acreage for each parcel to be removed. Provide the total acreage to be removed below the far-right column.

2c. Change to SBL or metes and bounds description

Provide the new tax parcel information and attach a metes and bounds description.

All requested changes to this section should be accompanied by a revised survey or other acceptable map depicting the proposed new site boundary. Additionally, provide a county tax map with the site boundary outlined, as well as a USGS 7.5-minute quadrangle map with the site location clearly identified.

SUPPLEMENT TO THE APPLICATION TO AMEND BROWNFIELD CLEANUP AGREEMENT AND AMENDMENT – QUESTIONS FOR SITES SEEKING TANGIBLE PROPERTY CREDITS IN NEW YORK CITY ONLY

This page should only be completed if:

- a. The site is located in the five boroughs comprising New York City

AND

- b. The site does not currently have an eligibility determination for tangible property credits.

PART II

The information in the top section of page 7 should auto-populate with the information provided on page 2. If a new requestor is applying to enter the program, provide the required information and signature at the bottom of page 7 and the required information and signature on page 8.

If no new requestor is applying to the program but any other change has been made, provide the required information and signature on page 8.

CHANGE OF USE NOTIFICATION



**60-Day Advance Notification of Site Change of Use, Transfer of
Certificate of Completion, and/or Ownership**

Required by 6NYCRR Part 375-1.11(d) and 375-1.9(f)

To be submitted at least 60 days prior to change of use to:

Chief, Site Control Section
New York State Department of Environmental Conservation
Division of Environmental Remediation, 625 Broadway
Albany NY 12233-7020

I. Site Name: 138 Bruckner Boulevard **DEC Site ID No.** C203127

II. Contact Information of Person Submitting Notification:

Name: Haley & Aldrich of New York- James Bellew
Address1: 237 West 35th Street, 16th Floor
Address2: New York, New York 10123
Phone: (646) 277-2686 E-mail: jbellew@haleyaldrich.com

III. Type of Change and Date: Indicate the Type of Change(s) (check all that apply):

- ☒ Change in Ownership or Change in Remedial Party(ies)
☐ Transfer of Certificate of Completion (CoC)
☐ Other (e.g., any physical alteration or other change of use)

Proposed Date of Change (mm/dd/yyyy): 1/12/2022

IV. Description: Describe proposed change(s) indicated above and attach maps, drawings, and/or parcel information.

This change of use is to reflect the change in ownership from Anjost Corporation (Lot 10) and 138 Bruckner Blvd. Associates, LLC (Lot 19) to the new ownership, and reflect a further transaction which was finalized on January 12, 2022 by means of which 138 Bruckner Realty LLC has assigned its right to purchase the Site (both Lot 10 and Lot 19) to 138 Bruckner Ground Lessor, LLC in return for 138 Bruckner Ground Lessor, LLC ground leasing the Site back to 138 Bruckner Realty LLC such that 138 Bruckner Realty LLC is the Ground Lessee and beneficial owner of the Site.

If "Other," the description must explain and advise the Department how such change may or may not affect the site's proposed, ongoing, or completed remedial program (attach additional sheets if needed).

- V. **Certification Statement:** Where the change of use results in a change in ownership or in responsibility for the proposed, ongoing, or completed remedial program for the site, the following certification must be completed (by owner or designated representative; see §375-1.11(d)(3)(i)):

I hereby certify that the prospective purchaser and/or remedial party has been provided a copy of any order, agreement, Site Management Plan, or State Assistance Contract regarding the Site's remedial program as well as a copy of all approved remedial work plans and reports.

Name: _____

(Signature)

1/17/2022

(Date)

Anjost Corporation (Lot 10) and 138 Bruckner Blvd. Associates, LLC (Lot 19) by Michael Zaro, its Authorized Signatory
(Print Name)

Address1: 138 Bruckner Boulevard

Address2: Bronx, New York 10454

Phone: 718-993-5600

E-mail: michael@zaro.com

- VI. **Contact Information for New Owner, Remedial Party, or CoC Holder:** If the site will be sold or there will be a new remedial party, identify the prospective owner(s) or party(ies) along with contact information. If the site is subject to an Environmental Easement, Deed Restriction, or Site Management Plan requiring periodic certification of institutional controls/engineering controls (IC/ECs), indicate who will be the certifying party (attach additional sheets if needed).

☒ Prospective Owner ☐ Prospective Remedial Party ☒ Prospective Owner Representative

Name: 138 Bruckner Ground Lessor LLC by Luke Pak

Address1: Woodlawn Hall at Old Parkland

Address2: 3953 Maple Avenue, Suite 350, Dallas, Texas 75219

Phone: 214-545-5576

E-mail: pak@mspcm.com

Certifying Party Name: _____

Address1: _____

Address2: _____

Phone: _____

E-mail: _____

VII. Agreement to Notify DEC after Transfer: If Section VI applies, and all or part of the site will be sold, a letter to notify the DEC of the completion of the transfer must be provided. If the current owner is also the holder of the CoC for the site, the CoC should be transferred to the new owner using DEC's form found at <http://www.dec.ny.gov/chemical/54736.html>. This form has its own filing requirements (see 6NYCRR Part 375-1.9(f)).

Signing below indicates that these notices will be provided to the DEC within the specified time frames. If the sale of the site also includes the transfer of a CoC, the DEC agrees to accept the notice given in VII.3 below in satisfaction of the notice required by VII.1 below (which normally must be submitted within 15 days of the sale of the site).

Within 30 days of the sale of the site, I agree to submit to the DEC:

1. the name and contact information for the new owner(s) (see §375-1.11(d)(3)(ii));
2. the name and contact information for any owner representative; and
3. a notice of transfer using the DEC's form found at <http://www.dec.ny.gov/chemical/54736.html> (see §375-1.9(f)).

Name: _____

(Signature)

1/17/2022

(Date)

138 Bruckner Realty LLC by Jacob Schwimmer, its Authorized Signatory

(Print Name)

Address1: 199 Lee Avenue, Suite 1088

Address2: Brooklyn, New York 11211

Phone: 718-701-5680

E-mail: jschwimmer@jcsrealtyny.com

Continuation Sheet

☐ Prospective Owner/Holder ☒ Prospective Remedial Party ☐ Prospective Owner Representative
Name: 138 Bruckner Realty LLC
Address1: 199 Lee Avenue, Suite 1088
Address2: Brooklyn, New York 11211
Phone: 718-701-5680 E-mail: jschwimmer@jcsrealtyny.com

☐ Prospective Owner/Holder ☐ Prospective Remedial Party ☐ Prospective Owner Representative
Name: _____
Address1: _____
Address2: _____
Phone: _____ E-mail: _____

☐ Prospective Owner/Holder ☐ Prospective Remedial Party ☐ Prospective Owner Representative
Name: _____
Address1: _____
Address2: _____
Phone: _____ E-mail: _____

☐ Prospective Owner/Holder ☐ Prospective Remedial Party ☐ Prospective Owner Representative
Name: _____
Address1: _____
Address2: _____
Phone: _____ E-mail: _____

☐ Prospective Owner/Holder ☐ Prospective Remedial Party ☐ Prospective Owner Representative
Name: _____
Address1: _____
Address2: _____
Phone: _____ E-mail: _____

☐ Prospective Owner/Holder ☐ Prospective Remedial Party ☐ Prospective Owner Representative
Name: _____
Address1: _____
Address2: _____
Phone: _____ E-mail: _____



Instructions for Completing the 60-Day Advance Notification of Site Change of Use, Transfer of Certificate of Completion (CoC), and/or Ownership Form

Submit to: Chief, Site Control Section, New York State Department of Environmental Conservation, Division of Environmental Remediation, 625 Broadway, Albany NY 12233-7020

Section I

Description

Site Name

Official DEC site name.

(see <http://www.dec.ny.gov/cfm/externalapps/derexternal/index.cfm?pageid=3>)

DEC Site ID No.

DEC site identification number.

Section II

Contact Information of Person Submitting Notification

Name

Name of person submitting notification of site change of use, transfer of certificate of completion and/or ownership form.

Address1

Street address or P.O. box number of the person submitting notification.

Address2

City, state and zip code of the person submitting notification.

Phone

Phone number of the person submitting notification.

E-mail

E-mail address of the person submitting notification.

Section III

Type of Change and Date

Check Boxes

Check the appropriate box(s) for the type(s) of change about which you are notifying the Department. Check all that apply.

Proposed Date of Change

Date on which the change in ownership or remedial party, transfer of CoC, or other change is expected to occur.

Section IV

Description

Description

For each change checked in Section III, describe the proposed change.

Provide all applicable maps, drawings, and/or parcel information.

If "Other" is checked in Section III, explain how the change may affect the site's proposed, ongoing, or completed remedial program at the site.

Please attach additional sheets, if needed.

Section V Certification Statement

This section must be filled out if the change of use results in a change of ownership or responsibility for the proposed, ongoing, or completed remedial program for the site. When completed, it provides DEC with a certification that the prospective purchaser has been provided a copy of any order, agreement, or State assistance contract as well as a copy of all approved remedial work plans and reports.

Name	The owner of the site property or their designated representative must sign and date the certification statement. Print owner or designated representative's name on the line provided below the signature.
Address1	Owner or designated representative's street address or P.O. Box number.
Address2	Owner or designated representative's city, state and zip code.
Phone	Owner or designated representative's phone number.
E-Mail	Owner or designated representative's E-mail.

Section VI Contact Information for New Owner, Remedial Party, and CoC Holder (if a CoC was issued)

Fill out this section only if the site is to be sold or there will be a new remedial party. Check the appropriate box to indicate whether the information being provided is for a Prospective Owner, CoC Holder (if site was ever issued a COC), Prospective Remedial Party, or Prospective Owner Representative. Identify the prospective owner or party and include contact information. A Continuation Sheet is provided at the end of this form for additional owner/party information.

Name	Name of Prospective Owner, Prospective Remedial Party or Prospective Owner Representative.
Address1	Street address or P.O. Box number for the Prospective Owner, Prospective Remedial Party, or Prospective Owner Representative.
Address2	City, state and zip code for the Prospective Owner, Prospective Remedial Party, or Prospective Owner Representative.
Phone	Phone number for the Prospective Owner, Prospective Remedial Party or Prospective Owner Representative.
E-Mail	E-mail address of the Prospective Owner, Prospective Remedial Party or Prospective Owner Representative.

If the site is subject to an Environmental Easement, Deed Restriction, or Site Management Plan requiring periodic certification of institutional controls/engineering controls (IC/EC), indicate who will be the certifying party(ies). Attach additional sheets, if needed.

Certifying Party

Name Name of Certifying Party.

Address1 Certifying Party's street address or P.O. Box number.

Address2 Certifying Party's city, state and zip code.

Phone Certifying Party's Phone number.

E-Mail Certifying Party's E-mail address.

Section VII Agreement to Notify DEC After Property Transfer/Sale

This section must be filled out for all property transfers of all or part of the site. If the site also has a CoC, then the CoC shall be transferred using DEC's form found at <http://www.dec.ny.gov/chemical/54736.html>

Filling out and signing this section of the form indicates you will comply with the post transfer notifications within the required timeframes specified on the form. If a CoC has been issued for the site, the DEC will allow 30 days for the post transfer notification so that the "Notice of CoC Transfer Form" and proof of it's filing can be included. Normally the required post transfer notification must be submitted within 15 day (per 375-1.11(d)(3)(ii)) when no CoC is involved.

Name Current property owner must sign and date the form on the designated lines. Print owner's name on the line provided.

Address1 Current owner's street address.

Address2 Current owner's city, state and zip code.

DDEED

After recording, return to:

Jeffrey Zwick & Associates, P.C.
266 Broadway, Suite 403
Brooklyn, NY 11211
Attention: Jeffrey Zwick, Esq.

BARGAIN AND SALE DEED

THIS DEED made as of the 13th day of January, 2022

BETWEEN

ANJOST CORP., a New York corporation and **138 BRUCKNER BLVD. ASSOCIATES, LLC**, a New York limited liability company, each having an address at c/o Zaro's Family Bakery, Inc., 525 Executive Boulevard, Elmsford, New York 10523, the party of the first part

AND

138 BRUCKNER GROUND LESSOR, LLC, the party of the second part,

WITNESSETH, that the party of the first part, in consideration of ONE DOLLAR (\$1.00) and other valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, located at 138 Bruckner Boulevard and 107 Saint Ann's Avenue, Borough and County of the Bronx, City and State of New York, as legally described on Exhibit A attached hereto and made a part hereof (the "Premises").

BEING and intended to be the same premises as conveyed to Anjost Corporation by deed from Zaro's Bake Shop Inc. dated 08/11/2005 recorded 10/03/2005 in CRFN 2005000551127 as to Lot 10. Being and intended to be the same premises as conveyed to 138 Bruckner Blvd. Associates, LLC by deed from Joseph Zaro and Stuart Zaro recorded in Reel 1771 Page 1547 and in Reel 1771 Page 1550, as corrected in CRFN # 2019000149853 as to Lot 19.

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above-described premises to the center lines thereof; **TOGETHER** with the appurtenances and all the estate and rights of the party of the first part in and to said Premises.

AND TO HOLD the Premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

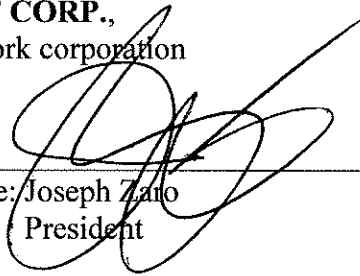
The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

[REMAINDER OF PAGE LEFT BLANK. SIGNATURE PAGE FOLLOWS.]

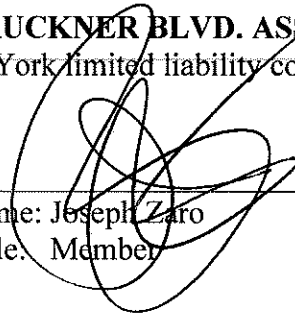
IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

GRANTOR:

ANJOST CORP.,
a New York corporation

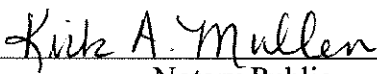
By: 
Name: Joseph Zaro
Title: President

138 BRUCKNER BLVD. ASSOCIATES, LLC,
a New York limited liability company

By: 
Name: Joseph Zaro
Title: Member

STATE OF CT)
COUNTY OF Fairfield) ss.: Greenwich

On the 11th day of January in the year 2022, before me, the undersigned personally appeared Joseph Zaro personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public



Schedule A Description

Title Number **EAG-4219**

Page **1**

As to Parcel 1:

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough and County of the Bronx, City and State of New York, bounded and described as follows:

BEGINNING at a point on the Northerly side of East 132nd Street, distant 100 feet Westerly from the corner formed by the intersection of the said Northerly side of 132nd Street with the Westerly side of St. Ann's Avenue;

RUNNING THENCE Northerly, parallel with the Westerly side of St. Ann's Avenue, 200 feet to the Southerly side of Southern Boulevard (now Bruckner Boulevard);

THENCE Westerly, along the said Southerly side of Southern Boulevard, (now Bruckner Boulevard), 175 feet;

THENCE Southerly again parallel with the said Westerly side of St. Ann's Avenue, 200 feet to the Northerly side of 132nd Street,

THENCE Easterly, along the said Northerly side of 132nd Street, 175 feet to the point or place of BEGINNING.

For Information Only:

Said premises is also known as 138 Bruckner Boulevard, Bronx, New York Block 2260 Lot 10

Continued On Next Page

Schedule A Description - continued

Title Number **EAG-4219**

Page **2**

As to Parcel 2:

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough and County of the Bronx, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly side of East 132nd Street with the westerly side of St. Ann's Avenue;

RUNNING THENCE northerly along the westerly side of St. Ann's Avenue 175.00 feet;

THENCE westerly along a line forming an interior angle of 89 degrees 58 minutes 00 seconds with the last mentioned line, for a distance of 75.00 feet;

THENCE southerly along a line forming an interior angle of 90 degrees 02 minutes 00 seconds with the last mentioned line, for a distance of 75.00 feet;

THENCE westerly along a line forming an exterior angle of 90 degrees 02 minutes 00 seconds with the last mentioned line, for a distance of 25.00 feet;

THENCE southerly along a line forming an interior angle of 90 degrees 02 minutes 00 seconds with the last mentioned line, for a distance of 100.00 feet to the northerly side of East 132nd Street;

THENCE easterly along the northerly side of East 132nd Street 100.00 feet to the point of place of BEGINNING.

For Information Only:

Said premises is also known as 107 St Anns Avenue, Bronx, New York
Block 2260 Lot 19

GROUND LEASE

GROUND LEASE

between

138 BRUCKNER REALTY LLC

as Tenant

and

138 BRUCKNER GROUND LESSOR, LLC

as Landlord

Dated: January 13, 2022

PROPERTY

138 Bruckner Boulevard
107 Saint Ann's Avenue
Bronx, New York
Block: 2260, Lots: 10, 19

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EXHIBITS:

Exhibit A – Legal Description of the Land

Exhibit B – Form of Owner’s Recognition and Non-Disturbance Agreement

Exhibit C – Work Letter

Exhibit D – Form of Environmental Indemnity

Exhibit E – Form of Completion Guaranty

Exhibit F – Example Calculations of Base Rent

Exhibit G – Form of Memorandum of Lease

Exhibit H – Permitted Encumbrances

BASIC GROUND LEASE INFORMATION

Ground Lease dated as of January 13, 2022

(Capitalized terms used herein shall have the meanings set forth in the Lease)

PARTIES

Landlord: 138 BRUCKNER GROUND LESSOR, LLC, a Delaware limited liability company, together with any successor or assign

Tenant: 138 BRUCKNER REALTY LLC, a New York limited liability company, together with any successor or assign permitted by this Lease

DATES

Effective Date: January 13, 2022

Expiration Date: January 12, 2121

FIXED RENT

From and after the Effective Date and continuing through the end of the fifth (5th) Lease Year, the annual Base Rent shall be \$2,000,000.00 (payable in accordance with Section 4(e) below at a rate of \$166,666.67 per month). Commencing on the first day of the twenty-first (21st) Lease Year and on every subsequent CPI Adjustment Year, Base Rent shall increase to the greater of (x) the Base Rent in effect during the immediately preceding Lease Year, increased by the Rent Escalation or (y) (A) in the case of the first CPI Adjustment Year, the Base Rent for the Lease Year occurring twenty (20) years prior to such Lease Year or, for all other CPI Adjustment Years, the Base Rent for the Lease Year occurring ten (10) years prior to such Lease Year, *multiplied by* (B) the CPI Increase Percentage; all as more particularly set forth in Section 4(c) (examples of which are further illustrated on Exhibit F attached hereto).

LANDLORD PAYMENT ADDRESS

Landlord Address for Payment by wire transfer to:

Bank Name: NexBank

ABA No.: 311973208

Acct. No.: 1632967

Account Name: 138 Bruckner Ground Lessor LLC

Address: 2515 McKinney Ave., Suite 1100, Dallas, TX 75201

Landlord may, by at least ten (10) Business Days' advance Notice pursuant to Section 23 hereof, designate a different address or account for payment at any time during the Term of this Lease.

[End of Basic Ground Lease Information]

THIS GROUND LEASE is made as of January 13, 2022 (the “Effective Date”) by and between 138 BRUCKNER GROUND LESSOR, LLC, a Delaware limited liability company, having an address at c/o MSP Capital Investments, L.L.C., 3953 Maple Ave., Suite 350, Dallas, Texas 75219 (together with its successors or assignees, “Landlord”), and 138 BRUCKNER REALTY LLC, a New York limited liability company, having an address of 199 Lee Avenue, Suite 1088, Brooklyn, NY 11211 (together with its successors or assignees permitted by this Lease, “Tenant”).

1. **Certain Definitions.** Capitalized terms used herein shall have the following meanings for all purposes of this Lease and shall be equally applicable to both the singular and plural forms of the terms herein defined.

“421-a Program” means the Affordable New York Housing Program (or its successor) pursuant to section 421-a(16) of the Real Property Tax Law and Chapter 51 of Title 28 of the Rules of the City of New York (or its successor or replacement program).

“421-a Commencement” means the date upon which the Tenant lawfully and in good faith begins excavation and construction of initial footings and foundation with respect to the Project.

“421-a Deadline” has the meaning set forth in Section 48.

“AAA” has the meaning set forth in Section 50(a).

“Additional Rent” means all amounts, liabilities and obligations other than Base Rent which Tenant assumes or agrees to pay under this Lease to Landlord or others, whether or not such amounts, liabilities and obligations are designated as Additional Rent hereunder.

“Adjustment Date” has the meaning set forth in Section 4(b).

“Affiliate” means, as to any Person, any other Person that (i) directly or indirectly owns twenty-five percent (25%) or more of all equity interests in such Person and/or (ii) directly or indirectly Controls, is Controlled by or is under common Control with, such Person.

“Alteration” or “Alterations” means any or all demolitions, constructions, changes, additions, expansions, improvements, alterations, reconstructions, repairs or replacements of any of the Improvements, both interior or exterior, and ordinary and extraordinary, whether voluntary or in connection with any restoration, repair, replacement or rebuilding, including any Material Alterations, other than the Construction Project.

“Applicable Standard” means the standard generally and customarily maintained from time to time during the Term to buildings utilized for the Permitted Use located in the Relevant Area that are (a) owned and managed by institutional landlords; and (b) of an age, size and quality comparable to the age, size and quality of the Improvements existing at the time this standard is being applied.

“Approved Accountant” has the meaning set forth in Section 32(a).

“Approved Bank” means a bank or other financial institution which has the Required Rating.

“Available Project Proceeds” means, as of the time of calculation, the sum of (A) the unadvanced balance of the Improvement Allowance yet to be advanced by Landlord pursuant to this Lease to the extent such unadvanced amounts are permitted to be advanced pursuant to the terms hereof, *plus* (B) the unadvanced balance of the Construction Loan yet to be advanced by Construction Lender pursuant to the Construction Loan Documents, to the extent such amounts are permitted to be advanced pursuant to the Construction Loan Documents for the applicable Project costs, *plus* (C) without duplication of clause (B) of this definition, the amount of any portion of the proceeds of the Construction Loan then held by the Construction Lender in any reserve or other account and which proceeds are permitted to be disbursed pursuant to the Construction Loan Documents for the applicable Project costs (including, without limitation, any deficiency collateral or balancing deposits required pursuant to the terms of the Construction Loan Documents).

“Bankruptcy Action” has the meaning set forth in Section 21(e).

“Bankruptcy Code” has the meaning set forth in Section 35.

“Base Rent” has the meaning set forth in Section 4.

“Base Rent Payment Date” has the meaning set forth in Section 4(e).

“BCA” has the meaning set forth in Section 7(h).

“Business Day” means any day other than a Saturday, Sunday or any other day on which commercial banks in the State of New York and/or the State of Texas are not open for business.

“Casualty” has the meaning set forth in Section 16(a).

“Casualty Repair Guarantor” has the meaning set forth in Section 16(c).

“Casualty Repair Guaranty” has the meaning set forth in Section 16(c).

“Code” means the U.S. Internal Revenue Code of 1986, as amended.

“Commercial Subleases” means one or more retail or other commercial Subleases (i) of, in the aggregate, up to ten percent (10%) the rentable square feet of the Improvements on the Leased Premises at market rates, on a form reasonably approved by Landlord and otherwise on arm’s length terms and consistent with the Permitted Use or (ii) as otherwise consented to by Landlord in its sole discretion.

“Completion of the Project” and “Complete” has the meaning set forth in the Work Letter.

“Completion Guaranty” means that certain Completion Guaranty dated as of the Effective Date, by Guarantor in favor of Landlord, in the form attached hereto as Exhibit E.

“Condemnation” means any permanent or temporary taking, condemnation or confiscation of all or any portion of the Leased Premises for any public or quasi-public purpose by any Governmental Authority, civil or military, whether pursuant to eminent domain proceedings pursuant to Legal Requirements, an agreement with such Governmental Authority in settlement of or under threat of any such taking, condemnation or confiscation, or otherwise.

“Condemnation Award” means the entire amount of any award paid or payable to Landlord and/or Tenant after the Effective Date on account of any Condemnation (as compensation for such Condemnation), including, without limitation: (1) any interest payable on account of such award; (2) any award made on account of any Improvements that are the subject of a Condemnation, whether or not the value of such Improvements is the subject of a separate award or otherwise separately determined by the applicable Governmental Authority; (3) the full amount paid or payable by such Governmental Authority on account of the estate that is the subject of the Condemnation, as determined pursuant to the applicable Condemnation proceeding; and (4) any other sums payable on account of such Condemnation.

“Condemnation Fair Market Value” means, as of any date, the cash price that the applicable estate (i.e., the Fee Estate or the Leasehold Estate, as the case may be) will command, if unencumbered by (x) the Fee Mortgage (in the case of the Fee Estate) (but encumbered by this Lease, in the case of the Fee Estate) and (y) any Leasehold Mortgage or other financing of the Leased Premises or any interest therein (in the case of the Leasehold Estate), in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently, knowledgeably and without coercion or duress, and assuming: (i) the price is not affected by undue stimulus and takes into account matters pertinent to and indicative of value, as applicable, including, without limitation, location, trends, market data, highest and best use, return on investment and other elements of value, (ii) buyer and seller are typically motivated and working in their own best interest, (iii) both parties are well informed or well advised, (iv) a reasonable time is allowed for exposure in the open market, and (v) the price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

“Condemnation Percentage” means, as to any Condemnation affecting any portion of the Improvements, a fraction, expressed as a percentage, the numerator of which is the rentable square footage of the portion of the Improvements taken or condemned as a result of the applicable Condemnation, and the denominator of which is the rentable square footage of the Improvements immediately prior to the date of such Condemnation.

“Condominium Act” means Article 9-B of the New York Real Property Law, as same may be amended, restated or replaced from time to time.

“Condo Sublease” shall have the meaning set forth in Section 8(d).

“Construction Consultant” has the meaning set forth in the Work Letter.

“Construction Lender” means S3 RE 138 BRUCKNER FUNDING LLC, a Delaware limited liability company.

“Construction Loan” means that certain construction loan made by Construction Lender to Tenant concurrently with the Effective Date, pursuant to the Construction Loan Agreement, in an aggregate maximum amount of up to \$105,000,000.00 Dollars, secured by a Leasehold Mortgage and evidenced and governed by the Construction Loan Documents.

“Construction Loan Agreement” means, collectively, that certain (i) Building Loan Agreement, and (ii) that certain Project Loan Agreement, each dated as of the Effective Date and by and between Tenant and Construction Lender.

“Construction Loan Documents” means all documents, agreements and instruments related to the Construction Loan, including, without limitation the Construction Loan Mortgage.

“Construction Loan Mortgage” means collectively, that certain (i) Building Loan Mortgage and (ii) that certain Project Loan Mortgage, each dated as of the Effective Date and by Tenant for the benefit of Construction Lender.

“Construction Project” means the construction and completion of the Project in accordance with the Work Letter.

“Construction Manager” has the meaning set forth in the Work Letter.

“Control” means, with respect to a Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through voting securities, contract or otherwise. “Controlled”, “Controlling” and “under common Control with” shall have correlative meanings.

“CPI Adjustment Year” shall have the meaning set forth in Section 4(c).

“CPI Escalation” shall have the meaning set forth in Section 4(c).

“CPI Increase Percentage” shall mean the increase in (A) the Index for the last full calendar month preceding the applicable Adjustment Date, *over and above* (B) the corresponding Index for the calendar month in which the preceding Adjustment Date occurred, expressed as a percentage. Notwithstanding the foregoing, the CPI Increase Percentage shall in no event exceed (i) for the first CPI Adjustment Year, 180.61% or (ii) for any subsequent CPI Adjustment Year, 141.06%.

“Default” means any condition or event that constitutes a breach by Tenant of its obligations under this Lease or any event or circumstance (not constituting a breach of Tenant’s

obligations under this Lease) that, with the passage of time or the giving of Notice, or both, or neither, would constitute an Event of Default.

“Default Rate” means an annual interest rate equal to the lesser of (i) the sum of (a) the Prime Rate *plus* five percent (5.0%) and (ii) the maximum interest rate permitted by Legal Requirements.

“DHCR” means the New York State Department of Housing Community and Renewal, or any successor agency thereof.

“Dispute” shall have the meaning set forth in Section 50(a).

“DOF” shall have the meaning set forth in Section 32(h).

“Draw Request” has the meaning set forth in the Work Letter.

“Effective Date” has the meaning given to such term in the Preamble to this Lease.

“Eligible Account” means an identifiable account which is separate from all other funds held by the holding institution that is (a) an account or accounts maintained with the corporate trust department of a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution, (b) a segregated account or accounts maintained with an Eligible Institution, (c) a segregated trust account or accounts maintained with the corporate trust department of a federal or state chartered depository institution or trust company acting in its fiduciary capacity which, in the case of a state chartered depository institution or trust company is subject to regulations substantially similar to 12 C.F.R. §9.10(b), having in either case a combined capital and surplus of at least \$50,000,000 and subject to supervision or examination by federal and state authority or (d) reasonably acceptable to Landlord. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other similar instrument.

“Eligible Institution” means any federal or state chartered bank or other depository institution or trust company insured by the Federal Deposit Insurance Corporation the short term unsecured debt obligations or commercial paper of which are rated at least A-2 by S&P, P-2 by Moody’s and F-2 by Fitch in the case of accounts in which funds are held for thirty (30) days or less or, in the case of accounts in which funds are held for more than thirty (30) days (including accounts in which the proceeds of any Letter of Credit are held if any such Letter of Credit is drawn upon in accordance with the terms of this Lease), the long term unsecured debt obligations of which are rated at least “A-” by Fitch and S&P and “A3” by Moody’s. At any time when there is a Leasehold Mortgagee, the institution serving as the Eligible Institution (at which the Eligible Account is held) shall be either (as elected by such Leasehold Mortgagee) (x) an institution satisfying the standards set forth in the first sentence of this definition that is selected by such Leasehold Mortgagee or (y) such Leasehold Mortgagee itself (but only if such Leasehold Mortgagee satisfies the standards set forth in the first sentence of this definition).

“Environmental Claim” has the meaning set forth in Section 28(a).

“Environmental Easement” has the meaning set forth in Section 28(a).

“Environmental Indemnity” means that certain Environmental Indemnity Agreement dated as of the Effective Date, by Tenant and Guarantor in favor of Landlord, in the form attached hereto as Exhibit D.

“Environmental Laws” has the meaning set forth in Section 28(a).

“Environmental Report” has the meaning set forth in Section 28(a).

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means any corporation or trade or business that is a member of any group of organizations (a) described in Section 414(b) or (c) of the Code, of which Tenant is a member, and (b) solely for purposes of potential liability or any lien arising under Section 302 of ERISA and Section 412 of the Code, described in Section 414(m) or (o) of the Code, of which Tenant is a member.

“Event of Default” has the meaning set forth in Section 21.

“Existing Improvements” means the Improvements located on the Land as of the Effective Date.

“Expiration Date” has the meaning set forth in Section 3.

“Fee Estate” means Landlord’s fee interest in the Land, the Improvements, and this Lease.

“Fee Mortgage” has the meaning set forth in Section 11(c).

“Fee Mortgagee” has the meaning set forth in Section 11(c).

“Financial Information” has the meaning set forth in Section 29(g).

“First Party” shall have the meaning set forth in Section 50(a).

“Fitch” means Fitch, Inc.

“Force Majeure” shall mean accidents, fire or other casualty, earthquakes, floods, hurricanes, other severe weather events, Acts of God, natural disasters, strikes, lockouts, labor disputes, civil commotion, explosion, sabotage, riot, inability to secure a proper supply of fuel, gas, steam, water, electricity, labor, or supplies, governmental regulations, laws or restrictions, war, state of emergency, local, national or global public health emergency or pandemic (including, without limitation, COVID-19) and any delays, backlogs, or slowdowns associated with or caused by same, government mandated quarantine, travel bans, or “stay-at-home” orders, the unanticipated closure of government buildings, airports, harbors, railroads, pipelines, or other

infrastructure, or any other event or cause whatsoever beyond the reasonable control of Landlord or Tenant, whether or not similar to the foregoing. Notwithstanding the foregoing, (a) Force Majeure shall not include (i) any inability or delay resulting from deterioration of general economic conditions, such party's insolvency or financial condition, or insufficient funds or any illiquidity or disruption affecting capital markets or other general economic conditions, nor shall any Force Majeure excuse or delay payment obligations under this Lease or (ii) any event that is the result of the gross negligence, illegal acts or willful misconduct of any party claiming an Force Majeure, (b) Tenant shall not have the right to contend that Force Majeure has occurred under this Lease unless Tenant notifies Landlord thereof, (c) if Tenant notifies Landlord that Force Majeure has occurred within five (5) Business Days after the date that Tenant actually becomes aware of the event or circumstance causing such Force Majeure, then Force Majeure shall be deemed to have occurred for purposes of this Lease commencing as of the date that such Force Majeure began, and (d) if Tenant does not notify Landlord that Force Majeure has occurred within five (5) Business Days after the date that Tenant actually becomes aware of the event or circumstance causing Force Majeure, then such Force Majeure shall be deemed to have occurred for purposes of this Lease only from and after the date Tenant notifies Landlord thereof.

"GAAP" means generally accepted accounting principles in the United States of America, consistently applied.

"Governmental Authority" means any governmental or semi-governmental authority, agency, department, commission, bureau, board, instrumentality, court or quasi-governmental authority having jurisdiction or supervisory or regulatory authority over the Leased Premises, Tenant, Landlord or any Affiliate of Tenant or Landlord, as applicable.

"Guarantor" means, Jacob Schwimmer, together with any other party approved by Landlord as a guarantor in accordance with this Lease from time to time and who has executed a guaranty to Landlord with respect to this Lease.

"Hard Cost Funding Condition Deliveries" is defined in the Work Letter.

"Hazardous Materials" has the meaning set forth in Section 28(a).

"ICAP" means the Industrial and Commercial Abatement Program, pursuant to Real Property Tax Law §§ 489-aaaaaa – 489-kkkkkk and Chapter 36 of Title 19 of the Rules of the City of New York, as amended.

"Improvement Allowance" has the meaning set forth in the Work Letter.

"Improvements" shall mean, collectively, the Existing Improvements (so long as existing), the redevelopment of the Leased Premises in accordance with the Construction Project (including any item of property now or hereafter located or installed in or on the Leased Premises that is an integral part of the improvements, including, without limiting the generality of the foregoing, heating, ventilating, and air-conditioning plants and systems, electrical and plumbing fixtures and systems and other like equipment and fixtures, if any (including, without limitation, all machinery, engines, dynamos, boilers, elevators, elevator shafts, radiators, air-conditioning

compressors, sprinkler equipment, electrical equipment, ducts, fire protection equipment, pipes, conduits and fittings and any other systems servicing or furnishing utilities to the Leased Premises at any time now or hereafter erected, constructed, affixed or attached to or placed in or placed upon the Leased Premises)), together with the other structures, fixtures and other improvements constructed and to be constructed on the Leased Premises in accordance with the Work Letter (or otherwise in accordance with this Lease from time to time), together with all Alterations, additions, and accessions thereto, substitutions therefor and replacements thereof permitted by this Lease, excepting therefrom the Personal Property.

“Indemnified Party” or “Indemnified Parties” means any of the following: (i) Landlord and (ii) its respective directors, officers, shareholders, partners, members, employees, agents, servants, representatives, lenders, Affiliates, subsidiaries, participants, managers, successors and assigns of any and all of the foregoing, including, without limitation, any successors by merger, consolidation or acquisition of all or a substantial portion of Landlord’s (or any Affiliate of Landlord’s) assets and business.

“Indemnified Liabilities” has the meaning set forth in Section 28(e).

“Index” means United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for all Urban Consumers (CPI-U) U.S. City Average All Items (1982-84 = 100), not seasonally adjusted; provided, however, if (a) such Index is discontinued or is no longer available, such calculation shall be made by use of another reputable index selected by Landlord and approved by Tenant (such approval not to be unreasonably withheld, conditioned or delayed), (b) if the base period for the Index (currently 1982-84 = 100) is modified after the Effective Date, the base period used in making the foregoing calculation shall be appropriately adjusted by Landlord, as approved by Tenant (not to be unreasonably withheld, conditioned or delayed) to reflect such modification, and (c) if the Index is published in such a manner that an Index figure is not available for a particular month (the “Relevant Month”) (such as, by way of illustration only and not by way of limitation, if the Index were only published every other month), then the Index figure published for the most recent month preceding such Relevant Month shall be used.

“Initial Environmental Report” has the meaning set forth in Section 28(a).

“Insurance Requirements” means the terms of each insurance policy required to be carried by Tenant under this Lease and the requirements of the issuer of such policy to maintain such policy in full force and effect.

“Land” means the real property described in Exhibit A attached hereto and any land lying in the bed of any existing dedicated street, road or alley adjoining thereto, all strips and gores adjoining thereto, and all rights, ways, easements, privileges and appurtenances thereunto belonging, including all of Landlord’s right, title, and interest in and to all other property rights, tangible or otherwise, arising out of or connected with Landlord’s ownership thereof.

“Landlord” has the meaning given to such term in the Preamble to this Lease.

“Late Charge” means a late charge of five percent (5%) of the delinquent amount of Base Rent or Additional Rent then due and payable to Landlord.

“Lease” means this Ground Lease, together with all exhibits, schedules and addenda attached hereto, including the Work Letter, as each may be amended, restated or otherwise supplemented from time to time after the Effective Date.

“Lease Year” means (a) with respect to the first Lease Year, the period commencing on the Effective Date and ending on (i) if the Effective Date is the first calendar day of a calendar month, the last calendar day of the calendar month immediately preceding the calendar month in which occurs the first (1st) anniversary of the Effective Date, or (ii) if the Effective Date is not the first calendar day of a calendar month, the last calendar day of the calendar month in which occurs the first (1st) anniversary of the Effective Date, and (b) with respect to each succeeding Lease Year through the expiration of the Term, the twelve (12) month period commencing on the first calendar day of the calendar month immediately following the expiration of the immediately preceding Lease Year.

“Leased Premises” means, collectively, the Land and the Improvements.

“Leasehold Estate” means the leasehold interest of Tenant in the Land and the Improvements pursuant to this Lease.

“Leasehold Mortgage” means (i) any Mortgage that encumbers any portion of the Leasehold Estate made and entered into in compliance with this Lease or (ii) any pledge of equity interests in Tenant or any direct or indirect owner of Tenant by a direct or indirect owner of Tenant, in each case, that (A) is held by a Person that is a Qualified Institutional Lender, (B) does not secure (and is also not cross-defaulted with) any indebtedness that is secured by any real estate or leasehold interests other than the Leasehold Estate and (C) provides that all casualty and condemnation proceeds, and all security and/or collateral for any and all Alterations received, shall be held in accordance with the applicable terms of the Lease (unless Tenant has posted the security required by this Lease).

“Leasehold Mortgagee” means any holder of a Leasehold Mortgage of which Landlord has received Notice thereof (including the holder’s address for receiving Notices), so long as such Leasehold Mortgagee is a Qualified Institutional Lender.

“Leasehold Mortgage Agreement” means that certain Leasehold Mortgagee Agreement executed, as of the date hereof, by and among Landlord, Tenant and Construction Lender.

“Legal Requirements” means any one or more of all then-current laws, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations and requirements, even if unforeseen or extraordinary, of every duly constituted Governmental Authority or agency, and all then-existing covenants, restrictions and conditions of record, that are applicable to Tenant or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of the Leased Premises, even if compliance therewith (i) necessitates structural

changes or improvements (including changes required to comply with the Americans with Disabilities Act or compliance with any Environmental Laws), (ii) results in interference with the use or enjoyment of any of the Leased Premises or (iii) requires Tenant to carry insurance other than as required by the provisions of this Lease.

“Letter of Credit” means an irrevocable, auto-renewing (if and to the extent commercially reasonably obtainable without material additional cost, but subject to the last two sentences of this definition), unconditional, transferable, clean sight draft standby letter of credit having an initial term of not less than one (1) year and with automatic renewals for one (1) year periods (unless the obligation being secured by, or otherwise requiring the delivery of, such letter of credit is required to be performed at least thirty (30) days prior to the initial expiry date of such letter of credit), in favor of Landlord (and/or a Fee Mortgagee) and entitling Landlord (and/or a Fee Mortgagee) to draw thereon in New York, New York, based solely on a statement that Landlord (and/or a Fee Mortgagee) has the right to draw thereon executed by an officer or authorized signatory of Landlord (and/or a Fee Mortgagee). A Letter of Credit must be issued by an Approved Bank. If at any time (a) the institution issuing any such Letter of Credit shall cease to be an Approved Bank or (b) if the Letter of Credit is due to expire prior to the termination of the event or events which gave rise to the requirement that Tenant deliver the Letter of Credit to Landlord, Landlord shall have the right to draw down the same in full and hold the proceeds thereof, unless Tenant shall deliver a replacement Letter of Credit from an Approved Bank within (i) as to (a) above, twenty (20) days after Landlord delivers written notice to Tenant that the institution issuing the Letter of Credit has ceased to be an Approved Bank or (ii) as to (b) above, within ten (10) days prior to the expiration date of said Letter of Credit. If an auto-renewing Letter of Credit is not commercially reasonably available without material additional cost, then not later than the date that is thirty (30) days prior to the stated expiration date of any non-auto-renewing Letter of Credit, Tenant shall either (i) cause the extension of such Letter of Credit or (ii) replace such Letter of Credit with a new Letter of Credit, failing which, Landlord shall, as its sole and exclusive remedy in respect of such failure, have the right to draw down on such Letter of Credit. If Landlord has drawn down on such Letter of Credit pursuant to the immediately preceding sentence, Tenant shall use commercially reasonable efforts to replace the cash collateral resulting from such drawdown with a Letter of Credit.

“Losses” means any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, losses, costs, expenses, fines, taxes, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement and damages of whatever kind or nature (including, without limitation, attorneys’ fees, court costs and other costs of defense).

“Market Sublease Letter” has the meaning set forth in Section 19(m).

“Material Alteration” means any Alteration (including any Restoration) that would result in (1) a material diminution of the market value of the Leased Premises based upon then prevailing market conditions, (2) a material reduction in the rentable square feet of the Improvements, (3) which would be reasonably expected to cost in excess of Five Million Dollars (\$5,000,000) adjusted for any increase in the Index every five (5) Lease Years, (4) which would

adversely impact or modify the structural integrity or building systems of the Improvements (including, without limitation, any roofs, load-bearing walls, structural beams, columns, supports, or foundations), (5) would alter the zoning compliance of the Leased Premises, and land use entitlements applicable to the Leased Premises, or (6) a material change in use from the then existing use of the Leased Premises as of date of such proposed Alteration.

“Material Alteration Security” has the meaning set forth in Section 13(c).

“Memorandum of Lease” means the Memorandum of Lease, in the form attached hereto as Exhibit G, dated as of the Effective Date, as executed by Landlord and Tenant with respect to this Lease.

“Moody’s” means Moody’s Investor Service, Inc.

“Mortgage” means a mortgage, deed of trust, security deed, deed to secure debt, or similar security instrument now or hereafter executed constituting a lien or encumbering the Leasehold Estate or the Fee Estate, as amended, modified, renewed, consolidated, increased, decreased, assigned or restated from time to time.

“Mortgagee Protections” means, as to any Leasehold Mortgagee or Fee Mortgagee, as applicable, all rights, protections, and privileges of such Person as expressly provided for under this Lease, including, without limitation, the following: (1) any right to receive Notices and/or to cure defaults; (2) any requirement for Leasehold Mortgagee’s consent to any matter; (3) in the case of a Leasehold Mortgagee, all provisions of this Lease relating to any New Lease and all rights of any new Tenant; and (4) all other rights, protections, and privileges of such Leasehold Mortgagee or Fee Mortgagee under this Lease.

“Net Award” means the entire award payable to Landlord by reason of a Condemnation (exclusive of any award payable with respect to the Personal Property or otherwise payable to Tenant), less any actual and reasonable costs and expenses incurred by Landlord or Tenant in collecting such award.

“Net Proceeds” means the entire proceeds of any property casualty insurance required under Section 15(a) attributable to restoration of the Improvements, less any actual and reasonable costs and expenses incurred by Landlord or Tenant in collecting such proceeds.

“Non-Curable Prohibited Person” shall mean a Person who is a Prohibited Person under clause (i), (ii), (iii), (iv), or (v) of the definition of “Prohibited Person”.

“New Lease” has the meaning set forth in Section 12(h).

“New Lease Option Period” has the meaning set forth in Section 12(h).

“Notices” has the meaning set forth in Section 23.

“NYSDEC” has the meaning set forth in Section 7(h).

“OFAC Laws and Regulations” means Executive Order 13224 issued by the President of the United States of America, the Terrorism Sanctions Regulations (Title 31 Part 595 of the U.S. Code of Federal Regulations), the Terrorism List Governments Sanctions Regulations (Title 31 Part 596 of the U.S. Code of Federal Regulations), the Foreign Terrorist Organizations Sanctions Regulations (Title 31 Part 597 of the U.S. Code of Federal Regulations), and the Cuban Assets Control Regulations (Title 31 Part 515 of the U.S. Code of Federal Regulations), and all other present and future federal, state and local laws, ordinances, regulations, policies, lists (including, without limitation, the Specially Designated Nationals and Blocked Persons List) and any other requirements of any Governmental Authority (including, without limitation, the United States Department of the Treasury Office of Foreign Assets Control) addressing, relating to, or attempting to eliminate, terrorist acts and acts of war, each as hereafter supplemented, amended or modified from time to time, and the present and future rules, regulations and guidance documents promulgated under any of the foregoing, or under similar laws, ordinances, regulations, policies or requirements of other states or localities.

“Out Of Balance Condition” means any time that Landlord determines in its sole but reasonable and good faith discretion that the Available Project Proceeds are less than the then-remaining Project costs set forth in the Project Budget.

“Permits” means any and all governmental licenses, permits (including building, demolition, alteration, use, and special permits), approvals, consents, certificates (including certificate(s) of occupancy), rulings, variances, authorizations, or amendments to any of the foregoing now or hereafter required pursuant to Legal Requirements or by Governmental Authorities or otherwise necessary for the performance and/or completion of the Construction Project or any Alteration.

“Permitted Encumbrances” means those covenants, restrictions, reservations, liens, conditions, encroachments, easements and other matters of title that affect the Leased Premises as of the Effective Date, which are set forth on Exhibit H attached hereto.

“Permitted Use” means the use of the Leased Premises for any use in compliance with all Legal Requirements, subject to all applicable zoning ordinances, the Insurance Requirements any all conditions, restrictions and other encumbrances, if any, pursuant to the Permitted Encumbrances, and for no other purpose other than those consented to by Landlord in writing pursuant to Section 8 hereof; provided in no event shall the Leased Premises be used for a Prohibited Use.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust (including a business trust), non-incorporated organization or government or any agency or political subdivision thereof or any other entity.

“Personal Default” means any non-monetary Default of Tenant that is not reasonably susceptible of cure by a Leasehold Mortgagee (whether or not such Leasehold Mortgagee has possession of the Leased Premises), including, without limitation (to the extent, if any, that any of the following may actually constitute a Default under this Lease) a Bankruptcy

Action affecting Tenant or any other Person; a prohibited transfer; failure to deliver financial information within Tenant's or Guarantor's control; and any other non-monetary Default that by its nature relates only to, or can reasonably be performed only by, Tenant or its Affiliates.

"Personal Property" means any and all any movable furniture, equipment, trade fixtures, office machines or other personal property (excluding the Improvements) located at the Leased Premises or used in connection therewith (it being understood that fixtures installed in the Improvements (other than trade fixtures) which cannot be removed without damaging or impairing the Improvements (other than to a *de minimis* extent) do not constitute Personal Property).

"PILOT" means payment in lieu of taxes.

"Plan Asset Regulations" means the regulations issued by the Department of Labor at Section 2510.3-101 of Part 2510 of Chapter XXV, Title 29 of the Code of Federal Regulations, as modified by Section 3(42) of ERISA, as the same may be amended.

"Prime Rate" means the rate of interest published in The Wall Street Journal from time to time as the "Prime Rate." If more than one "Prime Rate" is published in The Wall Street Journal for a day, the average of such "Prime Rates" shall be used, and such average shall be rounded up to the nearest 1/100th of one percent (0.01%). If The Wall Street Journal ceases to publish the "Prime Rate," Landlord shall select an equivalent publication that publishes such "Prime Rate," and if such "Prime Rates" are no longer generally published or are limited, regulated or administered by a governmental or quasigovernmental body, then Landlord shall select a comparable interest rate index. Notwithstanding the foregoing or anything herein to the contrary, in no event shall the Prime Rate, for purposes of this Lease, be less than zero percent (0%) per annum.

"Proceeds Trustee" means the holder of the Net Proceeds to the extent same are to be held by the Proceeds Trustee in accordance with Articles 14 or 16 of this Lease, as the case may be, which holder shall be (i) the Leasehold Mortgagee, if any, (ii) if there is no Leasehold Mortgagee, the Fee Mortgagee (provided same is not an Affiliate of Landlord), if any, or (iii) if there is no Fee Mortgagee which is not an Affiliate of Landlord and no Leasehold Mortgagee, an Eligible Institution (which is not an Affiliate of Landlord) selected by Landlord (and reasonably approved by Tenant).

"Prohibited Person" means a Person that (i) has been convicted in a criminal proceeding of a felony or any crime involving moral turpitude, (ii) is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure, (iii) is directly or indirectly Controlled by or under common Control with a Person described in clauses (i) or (ii) of this definition, (iv) has been identified on any list of specially designated nationals and blocked persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office of Foreign Assets Control and any other similar list maintained by the U.S. Treasury Department, Office of Foreign Assets Control pursuant to OFAC Laws and Regulations, (v) is a Person with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or

Executive Order of the President of the United States, including, without limitation, any Anti-Terrorism Laws, or (vi) would, by virtue of such Person's relationship with Landlord or any affiliate of Landlord, cause all or any portion of the Rent paid hereunder to be other than rents from real property pursuant to Section 856(d) of the Code, as determined in Landlord's sole discretion.

"Prohibited Use" means each of the following uses: (A) any use which emits an obnoxious odor, noise or sound which can be heard or smelled outside of any building on any adjacent parcel; (B) prisons, jails or other detention or correctional facilities; (C) a refining or smelting operation; (D) any mobile home park, trailer court, labor camp, junkyard, or stockyard; (E) any sanitary landfill or dumping, disposing, incineration or waste disposal plant; provided, however, this prohibition shall not be applicable to any garbage compactors serving the Improvements to the extent permitted by applicable Legal Requirements; (F) any used automobile, truck, trailer, or recreational vehicle business whose primary business is a body shop repair operation or any commercial truck, trailer, or similar equipment business whose primary business is a body shop repair operation; (G) sexually-oriented business such as, but not limited to, x-rated movie or video sales, theater or rental facility, lounge or club featuring nude or semi-nude entertainers or escort service; (H) slaughterhouse or facility for the rendering of animal substances or for the skinning or tanning of animal hides; or (I) the extraction or refining of minerals or hydrocarbons.

"Project" means the redevelopment of the Leased Premises into an approximately 12-story building comprised of the following (i) 447 residential units comprising approximately 282,000 net rentable square feet, (ii) 3 retail units comprising approximately 22,929 net rentable square feet of retail space, (iii) 2,262 net rentable square feet of community facility, and (iv) a parking garage structure with 90 parking spots, in accordance with the Work Letter.

"Project Budget" has the meaning set forth in the Work Letter.

"Project Plans and Specifications" has the meaning set forth in the Work Letter.

"Project Guaranties" means, collectively, the Completion Guaranty, the Environmental Indemnity, and such other guaranties delivered by Guarantor to Landlord in connection with the construction and completion of the Project in accordance with this Lease.

"Property BCA" has the meaning set forth in Section 7(h).

"Qualified Appraiser" means an independent Member Appraisal Institute (MAI) (or generally accepted replacement appraisal institute acceptable to Landlord) appraiser with at least ten (10) years of experience with respect to properties similar to the Leased Premises in the Relevant Area.

"Qualified Developer" means a reputable and experienced professional development organization that, during the five (5) years immediately preceding the date of replacement, has substantial experience in development projects substantially similar in nature, size, scope and quality to the Project.

“Qualified Institutional Lender” means one or more of the following (whether acting in its own capacity or as a fiduciary or representative):

- (i) a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan;
- (ii) an investment company, money management firm or “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, as amended, which regularly engages in the business of making loans secured by or owning investments of types similar to the Leased Premises;
- (iii) a trustee or servicer in connection with a securitization of a loan (or any portion of a loan) secured directly or indirectly by the Leased Premises (either in a single-asset securitization or together with other loans in a securitized pool);
- (iv) an institution, that is regularly engaged in the business of making or owning commercial real estate loans or operating commercial properties; or
- (v) an investment fund, limited liability company, limited partnership or general partnership (or other entity) where such Person is not a Prohibited Person and a Person that is otherwise a Qualified Institutional Lender under clauses (i), (ii), or (iv) of this definition is the parent entity of such Person, or otherwise acts as the general partner, managing member or fund manager of such Person,

so long as:

- (A) in all cases under the foregoing clauses (i), (ii), (iii), (iv) and (v) above: such Person is not an Affiliate of Tenant and neither Tenant nor any Affiliate of Tenant is an administrative or other agent for such Person, is a holder of a note or other evidence of indebtedness evidencing such Person’s loan secured by the Leasehold Mortgage or is a participant in or pledgee of any interest in such Person’s loan secured by the Leasehold Mortgage;
- (B) in all cases under the foregoing clauses (i), (ii), (iv) and (v) above: either (I) such Person (or the parent entity of such Person, or the general partner, managing member or fund manager of such Person, in the case of clause (v)) on the date when its Leasehold Mortgage is executed and delivered, or on the date of such Leasehold Mortgagee’s acquisition of its Leasehold Mortgage by assignment from the previous Leasehold

Mortgagee, has total assets of not less than the Qualified Institutional Lender Asset Threshold Amount calculated without regard to the value or cost of the Leased Premises, or (II) such Person has engaged a nationally or regionally recognized commercial servicer to administer and service the Leasehold Mortgage;

(C) in all cases under the foregoing clauses (i), (ii), (iii), (iv) and (v) above: such Person is (I) subject to the jurisdiction of the federal courts of the United States of America and the courts of the State of New York and (II) not entitled, directly or indirectly, to diplomatic or sovereign immunity; and

(D) in all cases under the foregoing clauses (i), (ii), (iii), (iv) and (v) above: such Person is not a Prohibited Person.

In addition, the Construction Lender shall also be deemed to be a Qualified Institutional Lender solely with respect to the financing of the Construction Project.

“Qualified Institutional Lender Asset Threshold Amount” means an amount equal to Five Hundred Million Dollars (\$500,000,000), as adjusted for any increase in the Index every five (5) Lease Years.

“Qualified Replacement Guarantor” shall mean a Person acceptable to Landlord, in its sole but reasonable discretion, that (A) has sufficient financial capacity to fulfill the obligations of the applicable guaranties and indemnities to Landlord (as evidenced by credit and background checks performed by Landlord, and such other financial statements and information reasonably requested by Landlord), (B) solely in respect of Section 19(b) has (i) a Net Worth (as defined in the Completion Guaranty) of not less than \$80,000,000 and (ii) Liquid Assets (as defined in the Completion Guaranty) of not less than \$5,000,000, (C) executes applicable guaranties (including the Environmental Indemnity) in the form attached to this Lease (or otherwise provided to Landlord during the term of the Lease), in each case, in its capacity as guarantor or indemnitor thereunder, (D) has not, at any time, been the subject of any bankruptcy, reorganization, insolvency, debtor-creditor or other similar proceeding, or made an assignment for the benefit of creditors, (E) is not a Prohibited Person, and (F) has a direct or indirect ownership interest in the Qualified Transferee proposed as a replacement Tenant hereunder.

“Qualified Transferee” means a Person (i) that has (or whose direct or indirect owners in such Person have, in the aggregate) a net worth (determined in accordance with GAAP consistently applied or other industry standard methods of accounting reasonable acceptable to Landlord) of not less than \$40,000,000, as adjusted for any increase in the Index every five (5) Lease Years, (ii) (A) if all or a significant portion of the Leased Premises are then being used for the rental of rent-regulated apartments, such Person (together with its Affiliates, in the aggregate) owns or operates not less than 500 individual rent-regulated apartment units in New York City during the 60-month period preceding any applicable assignment of the Lease to such Person or (B) if the Leased Premises is used for any other Permitted Use, is reputable and it (together with

its Affiliates, in the aggregate) has significant experience owning and operating projects similar to the Leased Premises in New York City, as reasonably determined by Landlord, (iii) is not a Prohibited Person, and (iv) is not directly or indirectly Controlled by or under common Control with any Prohibited Person. A Person who is not otherwise a Qualified Transferee due solely to the failure to satisfy clauses (i) and/or (ii) of this definition shall nonetheless be deemed to be a Qualified Transferee if, as of the date of assignment of this Lease to such Person, (x) such Person has retained an asset manager for the Leased Premises and such asset manager is a Person that satisfies the applicable condition(s) in foregoing clauses (i) and/or (ii) of this definition, as the case may be and (y) each of such Person and the asset manager retained by such Person for the Leased Premises satisfies the foregoing clauses (iii) and (iv) of this definition.

“Relevant Area” means, collectively, (i) the Mott Haven section of the Bronx, New York (as such neighborhood is generally bounded as of the Effective Date) and (ii) the East Harlem section of Manhattan, New York (bounded from East 116th Street to East 147th Street and from 5th Avenue to the East River).

“Relevant Month” has the meaning set forth in the definition of “Index”.

“REIT” means a real estate investment trust within the meaning of Section 856 of the Code and the regulations promulgated thereunder.

“REMIC Requirements” means any Legal Requirements applicable to any REMIC Trust (including, without limitation, any constraints, rules and/or other regulations and/or requirements relating to the servicing, modification and/or other similar matters with respect to the loan secured by a Fee Mortgage (or any portion thereof and/or interest therein)).

“REMIC Test” means, in the case of Alterations involving any demolition or removal of the Improvements at the Leased Premises (or any other release of the real property interests comprising the Leased Premises), evidence reasonably satisfactory to any Fee Mortgagee whose Fee Mortgage is subject to the REMIC Requirements that, upon (a) completion of such Alteration or (b) the release of such real property interests comprising the Leased Premises, as applicable, the aggregate value of the Land, Landlord’s reversionary interest in the Improvements and Landlord’s interest under this Lease shall be equal to an amount that is not less than eighty-percent (80%) of the outstanding principal balance of the loan secured by such Fee Mortgage at the time of commencement of such Alteration and shall otherwise satisfy the REMIC Requirements.

“REMIC Trust” means a “real-estate-mortgage investment conduit” within the meaning of Section 860D of the Code that holds the Fee Mortgage.

“Rent” means all Base Rent, Additional Rent and other sums due and payable by Tenant under this Lease.

“Rent Escalation” has the meaning set forth in Section 4(b).

“Rent Regulation Non-Curable Prohibited Person” shall mean a Person who is a

Prohibited Person under clause (iv) or (v) of the definition of “Prohibited Person”.

“Rent Regulation Program” has the meaning set forth in Section 8(c).

“Required Substantial Completion Date” has the meaning set forth in the Work Letter.

“Required Rating” means a rating of not less than “A-1” (or its equivalent) from each of S&P and Moody’s (or, if no longer issuing ratings, a reasonable replacement selected by Landlord) if the term of such Letter of Credit is no longer than three (3) months or if the term of such Letter of Credit is in excess of three (3) months, a rating of not less than “A” (or its equivalent) from each of S&P and Moody’s (or, if no longer issuing ratings, a reasonable replacement selected by Landlord).

“Residential Subleases” means (i) with respect to market rate units, leases of individual units in the Leased Premises at market rates, on a form reasonably approved by Landlord and otherwise on arm’s length terms and consistent with the Permitted Use and (ii) with respect to the rent-regulated units, leases of individual units in the Leased Premises, at rents required pursuant to the applicable Rent Regulation Program, on a form in compliance with the 421-a Program and reasonably approved by Landlord (with no renewal or extension options greater or less than those required under the applicable Rent Regulation Program) and otherwise on arm’s length terms and consistent with the Permitted Use and in full compliance with the applicable statutes under any applicable Rent Regulation Program and rules provided for thereunder (including, without limitation, serving any subtenant and filing with DHCR all rent registration statements as required by any applicable Rent Regulation Program).

“Restoration” (in verb form, “Restore” and “Restored”) means the repair, replacement, restoration and rebuilding of the Leased Premises after any Condemnation or Casualty as nearly as possible to their value, condition and character existing immediately prior to such Condemnation or Casualty, including, without limitation, any required demolition, planning, and permitting required to complete such Restoration; provided, however, if any Legal Requirements have changed since the date that the applicable Improvements were constructed, such that the applicable Legal Requirements in effect as of the date of Restoration do not permit the Leased Premises to be restored to its prior value, condition or character immediately prior to such Condemnation or Casualty, the scope and character of the Restoration shall be subject to Landlord’s prior written approval in accordance with Section 13 in connection with a Material Alteration.

“Restoration Fund” has the meaning set forth in Section 12(c).

“RGB” means the New York City Rent Guidelines Board, or any successor agency.

“RPIE” shall have the meaning set forth in Section 32(h).

“S&P” means Standard & Poor’s Rating Services, a division of The McGraw-Hill Companies, Inc.

“Second Party” has the meaning set forth in Section 50(a).

“State” means the State of New York.

“Subleases” means all subleases and lettings, written and oral, licenses, concessions, easements, occupancies or any other agreement for use or hire of all or any portion of the Leased Premises, including, without limitation, any Commercial Sublease or Residential Sublease.

“Substantial Completion” has the meaning set forth in the Work Letter.

“Successor Landlord” has the meaning given to such term in Section 11(a)

“Successor Tenant” means: (1) any purchaser, transferee, or assignee of the Leasehold Estate pursuant to a foreclosure or assignment in lieu thereof of any Leasehold Mortgage, including Leasehold Mortgagee or its successor, assignee, designee, or nominee (if applicable); and (2) such purchaser’s, transferee’s, or assignee’s, direct and indirect successors and assigns. Each Successor Tenant must be a Qualified Transferee and, if so, any such Successor Tenant shall also have all rights of Tenant hereunder.

“Taxes” means (a) all real estate taxes and assessments (including, without limitation, all business improvement district charges, if any) that are levied or assessed upon or charged with respect to the Leased Premises or any part thereof; (b) personal property taxes on the Personal Property (it being understood that Tenant shall pay personal property taxes on Personal Property whether or not properly allocable to the Term); (c) rent and occupancy taxes, and any other occupancy and rent taxes, imposed on this Lease or the Rent or Additional Rent payable by Tenant hereunder; (d) mortgage recording tax imposed on any Leasehold Mortgage; (e) water, water meter and sewer rents, rates, taxes and charges; (f) transit taxes and vault taxes levied or assessed upon or charged with respect to the Leased Premises; (g) sales taxes, excises and levies; (h) inspection, license and permit fees; (i) charges with respect to police protection, fire protection and street, bridge and highway construction, maintenance and lighting and sanitation supply, if any, levied or assessed upon the Leased Premises; (j) charges for public and private utilities and services (including, without limitation, gas, electricity, steam, light, heat, air-conditioning, power, cable, telephone and other communication, fire alarm and security services) levied or assessed upon the Leased Premises; (k) transfer taxes and recording taxes imposed in respect of the Leasehold Estate (including on any assignment or sublease of this Lease by Tenant); (l) all charges and taxes for any easement or agreement maintained for the benefit of any of the Leased Premises (excluding any easement entered into by Landlord after the Effective Date of this Lease in violation of this Lease); (m) any and all other governmental levies, fees, rents, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, and any interest or costs with respect thereto, that are assessed, levied, confirmed, imposed upon, or would grow or become due and payable out of or in respect of, or charged with respect to, or are encumbrances or liens upon (A) the Leased Premises or any part thereof, (B) any appurtenances of the Leased Premises, (C) any personal property, equipment or other facility used in the operation of the Leased Premises, (D) the Rent or Additional Rent payable

by Tenant hereunder, (E) this Lease or the Leasehold Estate, (F) any document to which Tenant is a party transferring an interest or estate in the Leased Premises or any part thereof, or (G) the possession, use, occupancy or operation of the Leased Premises or any part thereof by Tenant; and (n) interest, costs, fines, penalties and other similar or like governmental charges applicable to any of the foregoing (in each instance, whether foreseen, unforeseen or extraordinary, imposed upon or assessed, prior to or during the Term, against Landlord, Tenant or the Leased Premises as a result of or arising in respect of the occupancy, leasing, use, maintenance, operation, management, repair or possession thereof, or any activity conducted on the Leased Premises, or the Base Rent or Additional Rent, including without limitation, any sales tax, use tax, franchise tax, margin tax, or occupancy tax or excise levied by any governmental body on or with respect to such Base Rent or Additional Rent).

“Tenant” has the meaning given to such term in the Preamble to this Lease.

“Tenant’s Architect” has the meaning set forth in the Work Letter.

“Tenant’s Equity Contribution” means a \$5,611,093.00 of cash equity contributed to Tenant by its Affiliates and/or other investors in Tenant acceptable to Landlord.

“Tenant Key Person(s)” means Jacob Schwimmer.

“Tenant Key Person Event” means, at any time during the period beginning on the Effective Date and ending on the achievement of Substantial Completion of the Project, (i) the failure for any reason of Tenant Key Person to (A) Control Tenant, (B) to have own, free and clear of any lien or encumbrance (other than a Leasehold Mortgage), at least fifty percent (50%) of the direct and/or indirect ownership and beneficial interests in Tenant; or (C) to maintain 100% of the capital contributed by Tenant Key Person in Tenant (which capital (x) shall be no less than \$5,611,093.00 and (y) shall be invested in the Project), (ii) any withdrawal, redemption, or repayment of any capital invested by Tenant Key Person in Tenant, or (iii) any pledge or encumbrance by Tenant Key Person of all or any portion of his direct or indirect interest in Tenant, or any use by Tenant Key Person of his direct or indirect interest in Tenant as collateral for any loan or other borrowing by or on behalf of Tenant Key Person (other than to any Leasehold Mortgagee); unless such failure is due to the death or disability of a Tenant Key Person and within sixty (60) days after such death or disability Tenant has provided a permanent replacement Tenant Key Person approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed if such proposed replacement Tenant Key Person (1) has substantial experience in the development, ownership, operation and leasing of properties similar to the Leased Premises that are used for the Permitted Use in accordance with the Applicable Standard and (2) after giving effect to such replacement, Tenant would continue to qualify as a Qualified Transferee (to the extent that immediately prior to such death or disability Tenant was otherwise a Qualified Transferee). Provided however, Tenant Key Person Event shall not apply to Leasehold Mortgagee.

“Term” has the meaning set forth in Section 3.

“Total Loss” means (a) during the last five (5) Lease Years of the Term, (i) a Casualty where the cost of Restoration would exceed twenty-five percent (25%) of the pre-Casualty value of the Improvements (which percentage amount shall be reduced monthly on a pro-rata basis over the applicable five (5) Lease Year period and shall be deemed to be one-sixtieth (1/60th) of twenty-five percent (25%) in the last month of the Term) or (ii) a permanent Condemnation of twenty-five percent (25%) or more of the Land or twenty-five percent (25%) or more of the Improvements and/or (b) at any time during the Term, a permanent Condemnation of all or substantially all of the Land or Improvements.

“Total Project Costs” has the meaning set forth in the Work Letter.

“Toxic Mold” has the meaning set forth in Section 28(a).

“U.S. Publicly Traded Entity” means any Person other than an individual, the shares or other ownership interests in which are traded on a on at least one stock exchange or in the over the counter market in the United States.

“Work” has the meaning set forth in the Work Letter.

“Work Letter” means the work letter attached hereto as Exhibit C.

2. **Demise of Premises**. Subject to the terms of this Lease, Landlord hereby demises and leases to Tenant and Tenant hereby leases and rents from Landlord the Leased Premises, IN ITS “AS IS” CONDITION, SUBJECT TO THE EXISTING STATE OF TITLE (WITHOUT EXPRESS OR IMPLIED WARRANTY OF LANDLORD WITH RESPECT TO THE CONDITION, QUALITY, REPAIR OR FITNESS OF THE LAND FOR A PARTICULAR USE OR TITLE THERETO, ALL SUCH WARRANTIES BEING HEREBY DISCLAIMED BY LANDLORD AND WAIVED AND RENOUNCED BY TENANT). The foregoing disclaimer in this paragraph has been negotiated by Landlord and Tenant, each being represented by independent counsel, and is intended as a complete negation of any representation or warranty by Landlord, express or implied, with respect to the condition, quality, repair, or fitness of the Leased Premises for a particular use, or title thereto.

3. **Term**. The term (“Term”) of this Lease shall commence on the Effective Date and terminate upon the earlier to occur of (x) the day immediately preceding the ninety-ninth (99th) anniversary of the Effective Date (the “Expiration Date”) or (y) such earlier date as the Lease is terminated pursuant to the terms hereof.

4. **Rent**. Tenant shall pay to Landlord, as annual rent for the Leased Premises during the Term, the following annual base rent (“Base Rent”):

(a) From and after the Effective Date and continuing through the end of the fifth (5th) Lease Year, the annual Base Rent shall be \$2,000,000 (payable in accordance with Section 4(e) below at a rate of \$166,666.67 per month).

(b) On the first day of every fifth (5th) Lease Year, starting with the sixth (6th) Lease Year (i.e., on the sixth (6th) Lease Year, the eleventh (11th) Lease Year, the sixteenth (16th) Lease Year, and so on) (each such date, an “Adjustment Date”), the Base Rent shall increase to an amount equal to 110% of the Base Rent that was in effect for the prior Lease Year (each such increase, a “Rent Escalation”), subject to Section 4(c) below.

(c) Commencing on the first day of the twenty-first (21st) Lease Year and continuing every ten (10) Lease Years thereafter (i.e., on the twenty-first (21st) Lease Year, the thirty-first (31st) Lease Year, the forty-first (41st) Lease Year, and so on) (each such Lease Year, a “CPI Adjustment Year”), Base Rent shall increase to the greater of (x) the Base Rent in effect during the immediately preceding Lease Year, increased by the Rent Escalation or (y) (A) in the case of the first CPI Adjustment Year (i.e., the twenty-first (21st) Lease Year), the Base Rent for the Lease Year occurring twenty (20) years prior to such Lease Year (i.e., the first (1st) Lease Year) or, for all other CPI Adjustment Years, the Base Rent for the Lease Year occurring ten (10) years prior to such Lease Year, *multiplied by* (B) the then-applicable CPI Increase Percentage (any such increase, the “CPI Escalation”). Notwithstanding the foregoing, in the event the relevant Index figure for the month referred to in clause (A) of the definition of the CPI Increase Percentage is not available on the applicable Adjustment Date, Tenant shall continue to pay, monthly in advance, the same amount of annual Base Rent as was applicable for the month immediately preceding such Adjustment Date; however, within fifteen (15) days after Landlord gives Tenant Notice of any deficiency in Tenant’s payments of annual Base Rent for the current period due to unavailability of such relevant Index figures (which Notice shall be accompanied by the relevant Index figure and the calculation supporting Landlord’s statement of deficiency), Tenant shall pay Landlord the amount of such deficiency and shall thereafter pay Landlord, monthly in advance, the new annual Base Rent amount resulting from the calculation stated above. By way of illustration only, attached as Exhibit F are example calculations of the Base Rent for certain CPI Adjustment Years, each based on a hypothetical Index in effect for such Lease Year. Landlord shall provide Tenant with notice of Landlord’s calculation of the Base Rent for each CPI Adjustment Year (accompanied by the relevant information on which such calculation is based); provided, however, any failure to provide such notice and information shall not relieve Tenant’s obligation to pay Base Rent hereunder (but Tenant shall not be deemed to be in default under this Lease, nor incur any late charges, interest or penalty, for failure to pay any increase amount in the Base Rent based on such CPI Escalation, if Landlord has not sent such notice; provided, however, that within 5 Business Days following Tenant’s receipt of such notice, Tenant must pay to Landlord such back-due amounts owed to Landlord such that Tenant is current on all then-due obligations under this Lease). Notwithstanding the foregoing, Tenant shall, at all times, pay any increase in Base Rent derived from any Rent Escalation in accordance with the terms of this Section 4 regardless of whether Landlord has timely delivered its notice of calculation for the then-applicable CPI Escalation in accordance with this Section 4(c).

(d) The foregoing adjustments to the annual Base Rent shall never operate to reduce the annual Base Rent below the amount being paid prior to the most recent Adjustment Date.

(e) Base Rent shall be paid by Tenant in equal monthly installments in advance, commencing on the first day of the first month next following the Effective Date and continuing on the same day of each month thereafter during the Term (each such date, a “Base Rent Payment Date”), and Tenant will pay the same to Landlord by wire transfer at the information set forth above, or at such other place in the United States or to such other Person as Landlord may from time-to-time designate in writing, in immediately available funds. Pro rata Base Rent for the period from the Effective Date to the first Base Rent Payment Date shall be added to the Base Rent for the first Lease Year and must be paid in advance on the first Base Rent Payment Date (except that if the Effective Date occurs on the first day of a calendar month, the full monthly installment of Base Rent must be paid on the Effective Date).

(f) If any installment of Base Rent (or any portion thereof) is not paid within five (5) Business Days after the date due, Tenant will pay Landlord interest on such overdue payment at the Default Rate, accruing from the date such installment of Base Rent was due, and continuing until the same is paid. In addition, if such Base Rent is not paid within five (5) Business Days after the date due, Tenant shall pay to Landlord a Late Charge on such delinquent amount. No failure by Landlord to insist upon the strict performance by Tenant of Tenant’s obligations to pay any interest on amounts overdue or Late Charge pursuant to this Section 4(f) shall constitute a waiver by Landlord of its right to enforce the provisions of this Section 4(f) in any instance of non-payment of Rent thereafter occurring, and nothing contained in this Section 4(f) is intended in any way to reduce or extend the notice and cure periods, if any, provided for in this Lease for non-payment of Rent.

(g) In addition to Base Rent, Tenant shall pay or deposit, as the case may be, as Additional Rent, all other amounts and obligations which Tenant assumes or agrees to pay, deposit, or discharge pursuant to this Lease, together with every fine, penalty, interest and cost Tenant is obligated to pay the party to whom such payment is due. Landlord and Tenant each agree to cooperate with one another to have all invoices, bills and other statements sent directly to Tenant, and Landlord will forward to Tenant, promptly after Landlord’s receipt of same, any such invoices, bills and statements for which Tenant is liable hereunder. Any Additional Rent which is payable directly to Landlord according to this Lease shall be paid in the same manner as Base Rent. If pursuant to any provision of this Lease, Tenant is obligated to pay an item of Additional Rent to Landlord and no due date or payment period therefor is specified herein, then such item of Additional Rent shall be paid by Tenant to Landlord within thirty (30) days after Landlord delivers to Tenant a bill therefor.

5. Net Lease; True Lease.

(a) It is the intention of Landlord and Tenant that Base Rent, Additional Rent and all other sums payable by Tenant will continue to be payable in all events, and the obligations of Tenant will continue unaffected, unless the requirement to pay or perform the same are terminated or abated pursuant to an express provision of this Lease. Except as otherwise expressly provided in this Lease, this Lease is an absolute net lease and, notwithstanding any present or future law to the contrary, shall not terminate except as otherwise expressly provided herein, nor shall Tenant be entitled to any abatement, reduction, diminution, set-off, counterclaim, defense or

deduction with respect to any Base Rent, Additional Rent or other sums payable hereunder, nor shall the obligations of Tenant hereunder be affected, by reason of: any damage to or destruction of the Leased Premises or any portion thereof; any defect in the condition, design, operation or fitness for use of the Leased Premises or any portion thereof; any taking of the Leased Premises or any part thereof by Condemnation or otherwise; any prohibition, limitation, interruption, cessation, restriction or prevention of Tenant's use, occupancy or enjoyment of the Leased Premises, or any interference with such use, occupancy or enjoyment by any Person; any eviction by paramount title or otherwise; construction on or renovation of the Leased Premises; or any failure in the Leased Premises to comply with Legal Requirements, or any other cause whether similar or dissimilar to the foregoing. All costs, expenses and obligations of every kind and nature whatsoever relating to the ownership, operation, management, development, construction, use, or occupancy of the Leased Premises and the appurtenances thereto and the use and occupancy thereof which may arise or become due and payable during the Term in accordance with the provisions of this Lease (whether or not the same shall become payable prior to or during the Term or thereafter, but in each case only if such payment is payable on account of a period occurring during the Term) shall be paid by Tenant except as otherwise expressly provided herein. It is the purpose and intention of the parties to this Lease that the Base Rent due hereunder shall be absolutely net to Landlord and that this Lease shall yield, net to Landlord, the Rent provided in this Lease. The parties intend that the obligations of Tenant hereunder shall be separate and independent covenants and agreements and shall continue unaffected unless such obligations shall have been modified or terminated pursuant to an express provision of this Lease. Notwithstanding the foregoing or anything in this Lease to the contrary, in no event shall Tenant be obligated to pay any of the following (it being agreed that such costs shall be at Landlord's sole cost and expense): (a) principal, interest or other sum due on any Fee Mortgages now or hereafter in effect with respect to the Fee Estate, (b) amounts necessary to discharge any lien or encumbrance on the Fee Estate created or permitted by Landlord, (c) except as otherwise expressly set forth in this Lease to the contrary, legal, accounting or administrative expenses or other out-of-pocket expenses incurred by Landlord in connection with the administration of Landlord's existence or ownership or maintenance of the Fee Estate, including, without limitation, any expenses in connection with Landlord maintaining its corporate existence, or (d), any transfer taxes, mortgage recording taxes or other similar taxes payable in connection with a transfer, mortgage or other encumbrance of the Fee Estate occurring after the Effective Date, except (i) as otherwise expressly set forth in this Lease to the contrary or (ii) to the extent any such taxes are payable in connection with Landlord's exercise of its remedies (including, without limitation, a transfer, sale, or assignment of Landlord's interest in this Lease and/or its fee title in the Fee Estate pursuant to Section 11 hereof) following an Event of Default, as determined in the Landlord's sole discretion.

(b) Landlord and Tenant agree that this Lease is a true lease and does not represent a financing arrangement, including for U.S. federal, state and local tax purposes. Landlord holds fee title in and to the Fee Estate, and such title was not acquired or intended to be held as any type of mortgage or security interest. Tenant shall be deemed the owner of the Leasehold Estate, and entitled to any and all refundable state income tax credits that may result from completion of Tenant's obligations under the Property BCA, if any, and that are based upon costs paid or incurred by Tenant that qualify for such income tax credits pursuant to Tax Code Section 21. Nothing in this Lease is intended to or shall create a partnership, joint venture, or any

other relationship between Landlord and Tenant, except the relationship of ground lessor and ground lessee as aforesaid. Throughout the Term, for non-tax purposes, Landlord shall treat itself as the owner and lessor of the Land and the Improvements, and Tenant shall treat itself as the lessee of the Land and Improvements. Throughout the Term, for all U.S. federal, state and local tax purposes, (i) Landlord shall be treated as owner of the Land, the Existing Improvements, and any depreciable items expressly funded by Landlord under this Lease (including through the Improvement Allowance) and shall deduct any associated depreciation, and Tenant shall treat itself as lessee of the Land and the Existing Improvements, and as the owner of the depreciable items not expressly funded by Landlord under this Lease, and (ii) each of Landlord and Tenant shall treat all Rent as rent in respect of the Leased Premises. Landlord and Tenant shall enter into a Cost Sharing Agreement allocating the Improvement Allowance among particular Improvements, as more particularly set forth in the Work Letter. Landlord and Tenant will not take any position inconsistent with this Section 5(b) in any federal, state or local tax returns filed by them. In the event that any change in tax law affects Tenant's ability to claim depreciation in accordance with the terms of this Section 5(b), Landlord shall cooperate with any reasonable request made by Tenant, at Tenant's sole cost and expense, to execute and/or submit any documentation or information necessary to permit Tenant to claim such depreciation, provided that Landlord shall not be required to cooperate with any such request to the extent that such cooperation would result in any adverse tax or economic impact to Landlord (as determined in the Landlord's reasonable judgment).

(c) This Lease is intended by Landlord and Tenant to be an operating lease under GAAP. So long as the substantive terms of this Lease remain unchanged, Landlord shall, at Tenant's sole cost and expense (including reasonable attorney's fees and court costs), cooperate with any reasonable request made by Tenant to amend this Lease, to the extent such amendment is necessary for this Lease to be treated as an operating lease under GAAP. Notwithstanding anything in this Section 5 to the contrary, however, Tenant may elect to treat this Lease as a capital lease under GAAP.

(d) Tenant shall, at Tenant's sole cost and expense, be responsible for supplying the Leased Premises with electricity, heating, ventilating and air conditioning, water, natural gas, lighting, replacement for all lights, restroom supplies, telephone service, data and internet service, window washing, security service, janitor, pest control and disposal services (including, if applicable, hazardous, medical and biological waste disposal), and any other services consistent with satisfaction of the Applicable Standard. Landlord shall not be in default hereunder or be liable for any Losses directly or indirectly resulting from, nor shall the Base Rent or Additional Rent be abated or a constructive or other eviction be deemed to have occurred by reason of, the installation, use or interruption of use of any equipment in connection with the furnishing of any of the foregoing services, any failure to furnish or delay in furnishing any such services, whether such failure or delay is caused by accident or any condition beyond the control of Landlord or Tenant or by the making of repairs, alterations or improvements to the Leased Premises, or any limitation, curtailment, rationing or restriction on use of water, electricity, gas or any form of energy serving the Leased Premises, whether such results from mandatory governmental restriction or voluntary compliance with Legal Requirements. Tenant will pay (or cause its subtenants to pay) directly to the proper Governmental Authorities or other third parties charged

with the collection thereof all costs of utilities or services used or consumed on the Leased Premises during the Term, when due.

(e) For the avoidance of doubt, no provision of this Lease that restricts or governs the use, occupancy, or maintenance of the Improvements (or otherwise affects the Improvements) shall be deemed to derogate or detract in any way from the provisions of Sections 5(b) – 5(d).

6. Title and Condition.

(a) Tenant acknowledges that it is fully familiar with the Leased Premises and the physical condition thereof on the Effective Date, and that the Leased Premises are demised and let to Tenant, and Tenant shall accept the Leased Premises, in the condition and state of repair which exists on the Effective Date “AS IS, WHERE IS, WITH ALL FAULTS” subject to the Permitted Encumbrances, all Legal Requirements and Insurance Requirements, including any existing violation of any thereof, without representation or warranty by Landlord.

(b) Without limiting the effect of Landlord’s covenant set forth in Section 6(c), Landlord makes no, and expressly hereby denies any, representations or warranties regarding the condition or suitability of, or title to, the Leased Premises as of the Effective Date. Tenant agrees that (i) no representations, statements or warranties, express or implied, have been made by or on behalf of Landlord in respect of the Leased Premises, the status of title thereof, the physical condition thereof (including, without limitation, the presence or absence of Hazardous Materials), the zoning or other laws, regulations, rules and orders applicable thereto, or the use that may be made of the Leased Premises, (ii) Tenant has relied on no such representations, statements or warranties, and (iii) Landlord shall in no event whatsoever be liable for any latent or patent defects in the Leased Premises.

(c) Upon the expiration or earlier termination of this Lease, Tenant’s leasehold interest in the Improvements shall terminate and title to all such Improvements shall remain with Landlord, free and clear of all claims by, through or under Tenant, without further action on the part of either party. Tenant shall upon expiration or earlier termination of the Term, deliver the Leased Premises and all Improvements to the possession and use of Landlord, without delay and in good order, condition and repair, ordinary wear and tear and (subject to the terms of this Lease) Casualty and Condemnation excepted, and in a broom clean, free of Hazardous Materials to the extent required by this Lease, free and clear of liens and encumbrances other than Permitted Encumbrances, and in reasonably safe condition. Tenant shall not remove any of the Improvements during the Term (except in conjunction with the making of Alterations permitted pursuant to and made in accordance with this Lease) or upon the expiration or termination of this Lease.

7. Taxes; Insurance and Legal Requirements.

(a) Subject to the provisions of Section 20, Tenant will pay directly to the applicable Governmental Authority, and discharge all Taxes or installments thereof prior to delinquency and assessment of any interest or penalties for late payment. Landlord will promptly

deliver to Tenant any bill or invoice it receives with respect to the Taxes. Notwithstanding the foregoing or anything in this Lease to the contrary, nothing in this Lease, will obligate Tenant to pay, and the term "Taxes" shall not include, federal, state or local (i) capital stock or similar taxes, if any, of Landlord, (ii) income, franchise, excess profits or other taxes, if any, of Landlord, determined on the basis of or measured by its net income, or (iii) any estate, inheritance, succession, gift, capital levy or similar taxes, except to the extent that any such taxes are levied or assessed in lieu of or in substitution for any other tax or assessment upon or with respect to any of the Leased Premises which, if such other tax or assessment were in effect on the Effective Date, would be payable by Tenant. In the event that any assessment against any of the Leased Premises may be paid in installments, Tenant will have the option to pay such assessment in installments; and in such event, Tenant will be liable only for those installments (and all resulting interest thereon) that become due and payable in respect of the Term or the period prior to the Term. Tenant will prepare and file all reports and returns required by applicable Governmental Authorities. Tenant will deliver to Landlord and/or any Fee Mortgagee (of which Tenant has been provided notice in accordance with this Lease), fifteen (15) days prior to delinquency, copies of all settlements and notices pertaining to the Taxes which may be issued by any Governmental Authority and within fifteen (15) days prior to delinquency, receipts for payments of all Taxes made during each calendar year of the Term to Landlord's reasonable satisfaction.

(b) If at any time during the Term, the methods of taxation prevailing at the Effective Date shall be altered so that in lieu of or as a substitute for (and designated as such) the whole or any part of the taxes, assessments, levies, impositions or charges now levied, assessed, or imposed on real estate and the improvements thereon, there shall be levied, assessed and imposed on Landlord, (i) a tax, assessment, levy, imposition or charge, wholly or partially as a capital levy or otherwise, on the rents received therefrom, (ii) a tax, assessment, levy, imposition or charge measured by or based in whole or in part upon the Leased Premises, or (iii) a license fee measured by any portion of the Rent payable by Tenant under this Lease, then all such taxes, assessments, levies, impositions or charges or the part thereof so measured or based, shall be deemed to be included within the term "Taxes" for the purposes hereof, but only to the extent that the same would be payable if the Leased Premises was the only property of Landlord subject to the same and the income from the Leased Premises was the only income of Landlord. Any Taxes relating to a fiscal period of a Governmental Authority, a part of which period is included within the Term and a part of which period is prior to the Effective Date or subsequent to the Expiration Date, shall (whether or not such Taxes shall be assessed, levied, confirmed, imposed upon or in respect of or become a lien upon the Leased Premises or any portion thereof, or shall become payable, during the Term) be apportioned between Landlord and Tenant as of the Effective Date or Expiration Date, as applicable, so that Tenant shall pay such Taxes in the proportion that the portion of such fiscal period included in the Term, inclusive of the Effective Date or Expiration Date, as applicable, bears to the entire fiscal period, and Landlord shall pay the remainder thereof. Landlord hereby authorizes Tenant to make, on Landlord's behalf, all payments to be made by Tenant to Persons other than Landlord pursuant to any of the provisions of this Lease directly to such Persons.

(c) Tenant will cause the Leased Premises to comply with and conform to all of the Legal Requirements and Insurance Requirements, and Tenant will promptly comply with

and conform to any such requirements, subject to the provisions of Section 20 hereof. During the Term, Tenant shall be responsible for obtaining all permits, licenses and approvals of all Governmental Authorities which are necessary for the use and operation of its business at the Leased Premises. Tenant shall, upon request therefor, deliver to Landlord a true and complete copy of each such permit, license and approval theretofore obtained by Tenant during the Term and not previously delivered to Landlord. Tenant, at Tenant's expense, shall procure and maintain (or cause to be procured and maintained) any and all certificates of occupancy required in connection with the use and occupancy of the Leased Premises for the Permitted Use. Tenant shall not at any time use or occupy (or permit to be used or occupied) the Leased Premises in violation of the certificate of occupancy issued for the Improvements.

(d) Tenant shall not, without the prior written consent of Landlord (which consent shall not be unreasonably withheld, conditioned or delayed), apply or cause the Land or Leased Premises to be submitted for application to, or cause the Land or Leased Premises to be subject to: (1) any tax exemption or similar program; (2) any rent regulation or similar program; and/or (3) any program or legal structure that would be reasonably likely to (x) impose any restrictions on the use of the Improvements and/or Land or any portion thereof and/or (y) restrict cash flow with respect to the Improvements and/or Land or any portion thereof and/or (z) impair the value of the Improvements and/or Land or any portion thereof (the programs and structures set forth in clauses (1), (2) and/or (3) hereof, each, a "Rent Regulation Program"). For the avoidance of doubt, the term Rent Regulation Program shall include, without limitation, (i) the Rent Stabilization Law of 1969 (Administrative Code of the City of New York §26-501), (ii) the New York City Rent Stabilization Code (9 NYCRR 2520.1 et. seq.); (iii) the New York City Rent and Rehabilitation Law (Administrative Code of the City of New York Sections §26-401 et. seq.); (iv) the Emergency Tenant Protection Act of 1974 (McKinney's Unconsolidated §8621 et. seq.); (v) New York City Local Law of 1994 (Local Law 1994, No. 4); (vi) the 1993 Rent Regulation Reform Act (L. 1993, ch. 253); (vii) the Rent Regulation Reform Act of 1997 (L. 1997, ch. 116); (viii) New York City Rent and Eviction Regulations (9 NYCRR 2200 et. seq.); (ix) New York Consolidated Laws, Penal Law §241.00 and §241.05, Administrative Code of the City of New York §27-2115 and Housing Maintenance § 27-2004; (x) the 421-a Program; (xi) the Housing Stability and Tenant Protection Act of 2019; and (xii) the New York City Zoning Resolution §§23-154 and 23-90 et. Seq., all as the same may have been or hereafter may be amended from time to time, together with any other applicable laws, rules, orders, regulations, ordinances, judgments, decrees, injunctions, permits or requirements of any Governmental Authority having jurisdiction over the issue or matter in question (including, without limitation, DHCR and the RGB) and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Tenant, at any time in force affecting the Leased Premises or any part thereof which, in the case of each of the foregoing, relate to the rental of residential apartment units. Tenant shall not be deemed to be in breach of the provisions of this Section 7(d) to the extent that a Rent Regulation Program was instituted by statute or by a Governmental Authority without Tenant's direct or indirect consent, support or solicitation, provided, however, that in such event Tenant shall be obligated to provide written notice to Landlord of such Rent Regulation Program as soon as Tenant believes it reasonably likely to affect the Leased Premises and shall keep Landlord informed of the status of the Rent Regulation Program once instituted. Tenant represents

and warrants to Landlord that as of the date hereof, neither the Land, Leased Premises nor any portion thereof is subject to any Rent Regulation Program.

(e) Upon the reasonable request of Landlord, Tenant shall, to the extent it is legally entitled to do so, deliver to Landlord duly executed copies of any form prescribed by applicable Legal Requirements as a basis for claiming exemption from or a reduction in any U.S. federal withholding tax, together with such supplementary documentation as may be prescribed by applicable Legal Requirements, to permit Landlord to determine the withholding or deduction required to be made.

(f) Notwithstanding anything to the contrary set forth in Section 7(d), Landlord acknowledges and agrees that, in connection with the Construction Project, Tenant is submitting and shall have the right to submit the Leased Premises to the 421-a Program. If requested by Tenant, Landlord shall reasonably cooperate with Tenant, at Tenant's sole cost and expense, to execute and/or submit any documentation or information reasonably necessary and required by the applicable Governmental Authority for Tenant to submit the Leased Premises to the 421-a Program (including, without limitation, the RPTL 421-a(16) Restrictive Declaration required to be filed with the New York City Department of Housing Preservation and Development), provided that no such documentation decreases or impairs any of Landlord's rights hereunder or increases Landlord's obligations hereunder, except, in each case, to a *de minimis* extent. For the avoidance of doubt, the inherent effect of rent regulation of the Leased Premises resulting from such 421-a Program (and associated restrictions which accompany it) shall not be deemed to decrease or impair any of Landlord's rights hereunder or increase Landlord's obligations.

(g) If at any time, the Land, the Leased Premises or any portion thereof becomes subject to any Rent Regulation Program (including, without limitation, the 421-a Program as set forth in Section 7(e)), then: (i) Tenant shall comply with all applicable statutes and rules provided under such Rent Regulation Program (including, without limitation, serving any subtenant and filing with DHCR all rent registration statements as required by any applicable Rent Regulation Program), (ii) Tenant shall promptly provide to Landlord all documentation relating to any legal or administrative proceeding where there has been a claim of rent overcharge or a question regarding the regulatory status of any residential unit (such documentation shall include, but is not limited to, complaints, correspondence, answers, motions, administrative orders or determinations, court decisions, or stipulations of settlement) and (iii) no renewal or extension options greater or less than those required under the applicable Rent Regulation Program shall be granted to any subtenant under any of the Residential Subleases.

(h) Notwithstanding anything to the contrary set forth in Section 7(d), Landlord acknowledges that the Land is subject to a Brownfield Cleanup Agreement with the New York State Department of Environmental Conservation ("NYSDEC") dated as of February 18, 2020 (the "BCA") and agrees that, if Tenant elects at Tenant's sole cost and expense to apply to NYSDEC for and enter into such BCA or a new separate brownfield cleanup agreement with respect to the Land (such agreements, as amended, collectively hereinafter referred to as the "Property BCA"), Landlord shall reasonably cooperate with Tenant, at Tenant's sole cost and expense, in Tenant attaining such Property BCA as a Volunteer Applicant, including, without limitation, if required

in connection with Tenant performing its obligations in accordance with the Property BCA, executing and placing an Environmental Easement satisfactory to NYSDEC on the Land. Landlord shall also reasonably cooperate with Tenant, at Tenant's sole cost and expense, by completing and submitting any other documentation, information or forms as may be required by NYSDEC of the Land owner, including, without limitation, providing written confirmation of Tenant's rights of access to the Land as required in connection with a BCA amendment or other application for a Property BCA; if required, recording a notice of any Property BCA document(s); submittal of any 60-day Advance Notification of Change of Use, Transfer of Certificate of Completion, and/or Ownership required in connection with any Landlord actions; and recording a Notice of Certificate of Completion within 30 days of receipt of a Certificate of Completion. For the avoidance of doubt, any refundable state income tax credits that may result from Tenant's completion of the obligations under the Property BCA and that are based upon costs paid or incurred by Tenant that qualify for such income tax credits pursuant to Tax Code Section 21 shall accrue to Tenant, and the restrictions, limitations, responsibilities and prohibitions of the Environmental Easement, shall not be deemed to decrease or impair any of Landlord's rights hereunder or increase Landlord's obligations.

8. **Use.**

(a) Tenant, and any subtenant of Tenant, may use the Leased Premises for the Permitted Use and for no other purpose without the written consent of Landlord. In no event will the Leased Premises be used for any purpose that violates any provision of any recorded covenants, restrictions or agreements applicable to the Leased Premises (excluding any entered into by Landlord in violation of this Lease). Tenant will observe, perform and comply with and carry out the provisions of any recorded covenants, restrictions or agreements, required therein to be observed and performed by Landlord and which are capable of being performed by Tenant (excluding any entered into by Landlord in violation of this Lease). Landlord shall not, after the date of this Lease, enter into any voluntary covenants, restrictions or agreements applicable to the Leased Premises which would impose any obligation or restriction with respect to the use, operation, development, management or transfer or other aspect of the Leased Premises or the Leasehold Estate (or the lessee thereof), and, in all events, any such covenants, restrictions or agreements shall be subject and subordinate to the Leasehold Estate hereunder and Tenant shall not be bound thereby, and, notwithstanding anything in this Lease to the contrary, the term "Legal Requirements", as it relates to Tenant's obligations under this Lease, shall not be deemed to include any such covenants, restrictions or agreements entered into by Landlord in violation of the above; provided, however, the foregoing shall in no way limit Landlord's right to encumber the Fee Estate with any Fee Mortgage in accordance with Article 11, provided the same does not impact any of Tenant's rights or obligations hereunder and does not encumber or affect the Leasehold Estate.

(b) Tenant will not permit any unlawful occupation, business or trade to be conducted on any of the Leased Premises or any use to be made thereof contrary to applicable Legal Requirements or Insurance Requirements. Tenant will not use, occupy or permit any of the Leased Premises to be used or occupied, nor do or permit anything to be done in or on any of the Leased Premises, in a manner which would (i) violate any certificate of occupancy, zoning

compliance certificate, or equivalent certificate affecting any of the Leased Premises, (ii) make void or voidable any insurance which Tenant is required hereunder to maintain then in force with respect to any of the Leased Premises, (iii) adversely affect in any material manner the ability of Tenant to obtain any insurance which Tenant is required to furnish hereunder, (iv) cause any injury or damage to any of the Improvements (other than for Alterations permitted under this Lease), or (v) constitute a public or private nuisance or waste.

(c) Tenant shall not use, suffer or permit the Leased Premises, or any portion thereof, to be used by Tenant, any third party or the public, as such, without restriction or in such manner as might adversely affect Landlord's title to or interest in the Leased Premises, or in such manner as might make possible a claim or claims of adverse possession by the public, as such, or third Persons, or of implied dedication of the Leased Premises, or any portion thereof.

(d) Landlord acknowledges that there may be circumstances beneficial to Tenant or one or more potential subtenants (e.g., to maintain or take advantage of certain exemptions from real estate taxes under applicable governmental programs and procedures, to permit Tenant or any potential subtenant (or sub-subtenants) to take advantage of real estate tax incentive or abatement programs (such as in the nature of the ICAP or PILOT programs), to take advantage of any other financing, or to effectuate one or more transfers to Affiliates of Tenant in a tax-efficient manner) to either (x) submit all or any portion of the Leasehold Estate to a condominium form of ownership (a "Leasehold Condominium") pursuant to the Condominium Act or (y) (i) sublease all or any portion of the Leasehold Estate to an Affiliate of Tenant (any such Sublease, a "Condo Sublease"), and (ii) convert such subleasehold interest to a subleasehold condominium form of ownership pursuant to the Condominium Act (a "Subleasehold Condominium"; and together with any Leasehold Condominium, individually and collectively, as the context may require, a "Condominium Regime"). Tenant shall not be permitted to convert all or any portion of the Leasehold Estate to a Condominium Regime without the prior written consent of Landlord (it being agreed that it shall be a condition to any such consent that Tenant provide for Landlord's review and approval, the Condominium Documents), which consent shall not be unreasonably withheld, conditioned or delayed. In connection with its review of Tenant's request to convert its Leasehold Estate into a Condominium Regime, Tenant shall provide to Landlord true, correct and complete copies of (1) the proposed declaration and by-laws of the condominium board or association for the Condominium Regime to be created pursuant to the Condominium Act (the "Condominium Association"), (2) the proposed offering plan for such Condominium Regime, (3) if applicable, the Condo Sublease, and (4) any other condominium documents which Landlord may reasonably request (collectively, the "Condominium Documents"). Landlord shall have no obligation to consent to the submission of all or any part of the Leasehold Estate to a Condominium Regime if Landlord, in its judgment determines that such submission will: (A) adversely affect (beyond a *de minimis* extent) Landlord's ability to obtain financing on Landlord's Fee Estate, (B) create, increase or accelerate any tax liability on the part of Landlord or any Landlord affiliate, or (C) result in any residential condominium or co-op units for individual sale. Provided that no Event of Default exists hereunder and Landlord consents to Tenant's proposed submission of the Leasehold Estate to a Leasehold Condominium pursuant to the terms hereof, Landlord shall reasonably cooperate with Tenant, at Tenant's sole cost and expense, in connection

with all of the foregoing. If Landlord consents to the creation of such Condominium Regime, the following shall apply:

- (i) the creation of such Condominium Regime will not cause there to be more than one (1) tenant under this Lease and, if required by Landlord, such tenant shall be jointly and severally liable with all predecessors-in-interest to such tenant's interest in the Leasehold Estate, and such tenant shall be a Qualified Transferee;
 - (ii) all of the terms and provisions of the Condominium Documents shall at all times be subject and subordinate to the terms and provisions of this Lease and shall automatically terminate and be null and void on the expiration of this Lease or the earlier termination thereof;
 - (iii) the Condominium Association, the board of managers and the unit owners, as applicable, shall comply with all of the obligations of Tenant hereunder (and that a default by any of them in the payment or performance of Tenant's obligations hereunder beyond the expiration of any applicable notice and cure period shall be an Event of Default by Tenant hereunder);
 - (iv) in no event shall Landlord have any obligations or liabilities whatsoever under the Condominium Documents as a declarant, sponsor or otherwise (including, without limitation, any obligations or liabilities to any unit owners), as any such obligations or liabilities of Landlord are to arise solely out of this Lease;
 - (v) true, complete and correct copies of the Condominium Documents (and of any amendment to either) shall be delivered to Landlord no less than thirty (30) days prior to same being submitted to any Governmental Authorities, and no later than three (3) Business Days following the date same become effective;
 - (vi) in no event shall Landlord be required to subordinate the Fee Estate to any Condominium Regime or the mortgage on any unit(s) in the Leasehold Condominium or Subleasehold Condominium, as applicable; and
 - (vii) Nothing contained in this Section 8(d) or the Condominium Documents (as applicable), shall serve to waive or be deemed a waiver of, any of Landlord's rights and remedies as more particularly set forth herein.
- (e) Landlord may enter upon and examine any of the Leased Premises at reasonable times after reasonable notice and during business hours and exercise any rights and privileges granted to Landlord under the provisions of this Lease, so long as Landlord does not unreasonably interfere with Tenant's or any subtenant's use and enjoyment of the Leased Premises. During an emergency, Landlord's access to the Leased Premises will not be restricted as provided in the immediately preceding sentence.

9. **Maintenance and Repair.**

(a) Subject to Sections 14 and 16 hereof, at Tenant's sole cost and expense, will at all times, keep and maintain the Leased Premises and all Tenant's Personal Property in good condition, repair, and appearance and otherwise in such order and repair as is consistent with the Applicable Standard (including, without limitation, the sidewalks, grounds, roof and all roof components, plazas, vaults, foundations, railings, gutters, alleys and curbs in front of or adjacent to the Leased Premises, plumbing, water, sewer, and gas connections, pipes, and mains, electrical components, equipment, landscaping, parking facilities, parking areas, walls (interior and exterior), footings, foundations and structural components of the Leased Premises), and will promptly make all repairs and replacements (substantially equivalent in quality and workmanship to the original work) of every kind and nature, whether foreseen or unforeseen, structural and nonstructural, ordinary and extraordinary, which may be required to be made upon or in connection with any of the Leased Premises in order to keep and maintain the Leased Premises in good condition and repair. Tenant will do or cause others to do all shoring of the Leased Premises or of foundations and walls of the Improvements and every other act reasonably necessary or appropriate for preservation and safety thereof, by reason of or in connection with any excavation or other building operation upon any of the Leased Premises, whether or not Landlord, by reason of any Legal Requirements or Insurance Requirements, is required to take such action or is liable for failure to do so. Landlord will not be required to make any repair, whether foreseen or unforeseen, or to maintain any of the Leased Premises in any way, and Tenant hereby expressly waives the right to make repairs at the expense of the Landlord, which right may otherwise be provided for in any Legal Requirements now or hereafter in effect. Tenant will, in all events, make all repairs for which it is responsible hereunder promptly, and all repairs will be in a good, proper and workmanlike manner. Landlord may, upon two (2) Business Days' prior Notice, inspect or cause independent private inspectors to make inspections of the Leased Premises to determine Tenant's compliance with this Section 9. Except as otherwise set forth in the Work Letter, such inspection at the Leased Premises by or on behalf of Landlord shall be at the cost of Landlord; provided, however, if such inspection by Landlord reveals that the Leased Premises or any portion thereof is not in the condition required by this Lease or any Event of Default is continuing, then Tenant shall pay for the reasonable, out-of-pocket costs of such inspections performed by Landlord. All maintenance and repairs performed or made by or on behalf of Tenant as required hereunder shall be made in compliance with all applicable Legal Requirements and Insurance Requirements.

(b) If Tenant is in default under any of the provisions of this Section 9, then Landlord may, after thirty (30) days' notice to Tenant and failure of Tenant to commence to cure during said period or to diligently prosecute such cure to completion once begun (provided that in the event of an emergency, Landlord shall notify Tenant contemporaneously with such entrance), do whatever is necessary to cure such default as may be reasonable under the circumstances for the account of and at the expense of Tenant. All actual and reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) so incurred by Landlord or any Fee Mortgagee (plus an administration fee equal to five percent (5%) of such costs and expenses), together with interest thereon at the Default Rate from the date of payment or incurring the expense, will constitute Additional Rent payable by Tenant under this Lease and will be paid

by Tenant to Landlord on demand. The foregoing provisions will in no way reduce or lessen Tenant's responsibilities and liabilities under this Lease pertaining to the maintenance and repair of the Leased Premises.

(c) Tenant will from time-to-time replace with other similar operational equipment or parts any of the mechanical systems or other equipment included in the Improvements and required for the operation of the Leased Premises which (i) become worn out, obsolete or unusable for the purpose for which it is intended, (ii) is taken by a Condemnation as provided in Section 14, or (iii) is lost, stolen, damaged or destroyed as provided in Section 16. Tenant will repair at its sole cost and expense all damage to the Leased Premises caused by the removal of equipment or any other Personal Property of Tenant at any time, including upon expiration or earlier termination of this Lease.

(d) Tenant shall maintain on the Leased Premises, and turn over to Landlord upon expiration or termination of this Lease, then current operating manuals and original warranties (to the extent applicable) for the equipment then located on the Leased Premises specifically excluding, in all cases, trade fixtures of Tenant and any subtenant at the Leased Premises which may be and which are subsequently removed by Tenant upon expiration or earlier termination of this Lease.

(e) Tenant shall not cause, suffer, or permit, and shall use all reasonable precaution to prevent any waste, damage or injury to the Leased Premises or any overloading of the floors therein, and Tenant shall not create or allow any condition that would invalidate any insurance required under this Lease.

(f) It is intended by Tenant and Landlord that Landlord shall have no obligation in any manner whatsoever, to alter, replace, Restore, repair, or maintain the Leased Premises (or any fixture or equipment therein), whether structural or nonstructural, to demolish the Existing Improvements, or to furnish any services, utilities, or facilities whatsoever to the Leased Premises, all of which obligations are intended, as between Landlord and Tenant, to be those of Tenant. Tenant expressly waives the benefit of any statute or other Legal Requirement now or in the future in effect which would otherwise afford Tenant the right to make repairs at Landlord's expense or to terminate this Lease because of Landlord's failure to keep the Leased Premises in good order, condition and repair.

10. **Mechanic's Liens.**

(a) Subject to Section 20 and this Section 10, Tenant will not, without Landlord's prior written consent (not to be unreasonably withheld, conditioned or delayed), permit any lien, easement, license or other encumbrance to be recorded or filed against the Fee Estate or Leased Premises, on the Rent payable by Tenant under this Lease, or any equipment, materials or other Personal Property supplied to the Leased Premises at the request of Tenant, or anyone holding the Leased Premises, or any portion thereof, through or under Tenant, other than the Permitted Encumbrances and if any such mechanic's, laborer's, materialmen's or other lien shall at any time be filed or recorded against the Leased Premises, or any portion thereof, Tenant shall

cause the same to be discharged of record or bonded over by payment, deposit, bond, order of a court of competent jurisdiction or otherwise within thirty (30) days after the date of the filing or recording of the same.

(b) All materialmen, contractors, artisans, engineers, mechanics, laborers and any other Person now or hereafter furnishing any labor, services, materials, supplies or equipment to Tenant with respect to the Leased Premises, or any portion thereof, are hereby charged with Notice that they must look exclusively to Tenant to obtain payment for any lien. Notice is hereby given that Landlord shall not be liable for any labor, services, materials, supplies, skill, machinery, fixtures or equipment furnished or to be furnished to Tenant upon credit, and that no mechanic's lien or other lien for any such labor, services, materials, supplies, machinery, fixtures or equipment shall attach to or affect the estate or interest of Landlord in and to the Leased Premises, or any portion thereof.

(c) Nothing in this Lease shall be deemed or construed in any way as constituting the consent or request of Landlord, 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 for any specific improvement, alteration to or repair of the Leased Premises or any part thereof, nor as giving Tenant any right, power, or authority to contract for or permit the rendering of any services or the furnishing of materials that would give rise to the filing of any lien against the Fee Estate or any assets of Landlord. Landlord shall be entitled to post and maintain on the Leased Premises any notices of nonresponsibility provided for under applicable Legal Requirements, and to inspect (without obligation) the Leased Premises in relation to the construction at all reasonable times and upon reasonable prior notice.

(d) If Tenant fails to cause any lien described in Section 10(a) to be discharged within the period required thereunder, in addition to any other right or remedy, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event Landlord shall be entitled, if Landlord so elects, to 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. Any amount so paid by Landlord, with all out-of-pocket costs and expenses incurred by Landlord in connection therewith, together with interest thereon at the Default Rate from the respective dates of Landlord's making of the payment or incurring of the costs and expenses to and including the date of reimbursement to Landlord by Tenant, shall be paid by Tenant to Landlord within five (5) days after Landlord's demand therefor.

11. Landlord's Right to Mortgage; Transfer.

(a) Landlord shall have the absolute and unconditional right, without the consent of Tenant, to freely, sell, assign, or transfer, at any time and from time to time, its fee title in the Land subject to the Lease and any Property BCA or Environmental Easement, and to transfer and assign its rights, titles and interests in this Lease to such transferee, assignee, or purchaser (including, without limitation, any Fee Mortgagee or any Person who succeeds to the interest of Landlord following a foreclosure or other enforcement of a Fee Mortgage in lieu of foreclosure)

(any such transferee, assignee, or purchaser, a “Successor Landlord”); provided, however, that Landlord shall: (i) if there is a Property BCA, complete, execute and submit to NYSDEC a 60-day Advance Notification of Change of Use, Transfer of Certificate of Completion, and/or Ownership prior to such sale, assignment or transfer; (ii) if a Certificate of Completion has been issued, execute and ensure recording on title of a Transfer of Certificate of Completion, and/or Ownership; and (iii) endeavor to provide Tenant Notice of any such sale and transfer promptly (and in all events within 30 days following) after consummation and closing thereof. Upon any such sale, assignment, or transfer, and receipt of such Notice, Tenant shall attorn to any such Successor Landlord and upon such attornment, this Lease shall continue in full force and effect upon all of the terms, conditions and covenants as are set forth in this Lease. The transferor Landlord shall be thereupon relieved and freed of all obligations of Landlord under this Lease first accruing after such transfer, provided that such transferee has assumed and agreed in writing to perform and observe all obligations of Landlord herein during the period it is the holder of Landlord’s interest under this Lease (subject to the provisions hereof), but the foregoing shall not be construed to relieve any fee owner for any period of time from the full and prompt payment, performance and observance of the covenants, obligations and conditions to be paid, performed and observed by such fee owner under this Lease during the period that such fee owner is Landlord under this Lease. Without limiting the generality of the foregoing, in the event a Fee Mortgagee or other Person succeeds to the interest of Landlord through foreclosure or other enforcement of a Fee Mortgage or any purchaser in a foreclosure sale following the exercise of remedies under a Fee Mortgage, Tenant shall attorn to such Successor Landlord, and, upon such attornment, this Lease shall continue in full force and effect as, or as if it were, a direct lease between the Successor Landlord and Tenant upon all of the terms, conditions and covenants as are set forth in this Lease and shall be applicable after such attornment, except that such Successor Landlord (excluding a Successor Landlord that Controls, is Controlled by or is under common Control with Landlord) shall not be: (i) liable for any previous act or omission of Landlord (or its predecessor in interest) under this Lease which have accrued prior to the date on which the Successor Landlord acquires title to the Fee Estate (but the foregoing shall not abrogate the obligation of Successor Landlord with respect to a continuing default of Landlord which, and to the extent, continue following such acquisition of the Fee Estate by Successor Landlord); (ii) bound by any previous modification of this Lease, not expressly provided for in this Lease or bound by any previous payment of Base Rent, Additional Rent or sums paid more than one (1) month in advance, unless such modification or prepayment shall have been expressly approved in writing by the Fee Mortgagee; (iii) responsible for any monies then owing by Landlord to the credit of Tenant (other than those of a continuing nature and solely to the extent such amounts have actually been received by or are in the control of the Successor Landlord); (iv) subject to any credits, offsets, claims, defenses, abatements, demands or counterclaims which Tenant may have against Landlord (or its predecessors in interest) not expressly set forth in this Lease and which have theretofore accrued as of the date of the acquisition of the Fee Estate by Successor Landlord; (v) bound by any covenant to undertake or complete any construction; and (vi) required to account for any security or other deposit other than any such deposit that is actually delivered to the Successor Landlord.

(b) The foregoing provisions of Section 11(a), are intended to be self-operative and no confirmation shall be required from Tenant in order to effectuate same, provided, however, upon reasonable request made by any transferor of the interest of Landlord under this Lease,

Tenant will deliver an acknowledgement or other instrument in which Tenant confirms the release of any transferor from liability under this Lease first accruing from and after the date of such sale, transfer, or assignment.

(c) Subject to the express terms and conditions of this Lease, Landlord has the absolute and unconditional right, without the consent of Tenant, to encumber by mortgage, pledge, deed of trust, security agreement or other instrument in the nature thereof, including, without limitation, any modification, amendment, spreader, consolidation or renewal of any of the foregoing (a "Fee Mortgage"), any of Landlord's right, title or interest in the Fee Estate and/or this Lease (including Landlord's reversionary interest in the Improvements), which may include a pledge by direct or indirect owner of Landlord of its interest in Landlord; provided that any such Fee Mortgage shall at all times during the Term be subject and subordinate to this Lease, the Environmental Easement, if any, required by the Property BCA, and the rights, titles and interests of Tenant and any Leasehold Mortgagee arising by virtue of this Lease (and any New Lease executed pursuant to the provisions of this Lease). The provisions of this Section 11(c) shall be self-operative, and no instrument of any such attornment shall be required or needed by the holders of any such mortgage (a "Fee Mortgage"); provided, however, (i) Tenant shall execute, acknowledge and deliver any documents reasonably requested by Landlord, any such transferee or Fee Mortgagee relating to such assignment of this Lease by Landlord or the Fee Mortgagee financing thereof, and (ii) Landlord shall (or shall cause its Fee Mortgagee or such transferee, as the case may be, to) execute, acknowledge and deliver any documents reasonably requested by Tenant or any Leasehold Mortgagee confirming or otherwise evidencing such assignment of this Lease by Landlord or the Fee Mortgagee financing thereof, as the case may be.

(d) If Landlord or a Fee Mortgagee gives Tenant Notice of the name and address of a Fee Mortgagee, then Tenant shall thereafter give to any such Fee Mortgagee copies of all material Notices (including, without limitation, Notices of default) sent by Tenant to Landlord under this Lease at the same time and in the same manner as and whenever Tenant shall give any such Notice to Landlord, and no such Notice shall be effective against any such Fee Mortgagee unless and until a copy of such Notice shall have been so delivered to such Fee Mortgagee. Tenant shall not seek to enforce any remedy it may have for any default on the part of Landlord without first giving written Notice, specifying the default in reasonable detail, to any Fee Mortgagee whose address has been given to Tenant, and affording such Fee Mortgagee a reasonable opportunity (not less than sixty (60) days from the date of such Notice) to perform Landlord's obligations hereunder. No default by Landlord under this Lease shall exist or shall be deemed to exist (i) as long as such Fee Mortgagee, in good faith, shall have commenced to cure such default and shall be prosecuting the same to completion with reasonable diligence, subject to Force Majeure, or (ii) if possession of the Leased Premises is required in order to cure such default, or if such default is not susceptible of being cured by such Fee Mortgagee within the period described above, as long as such Fee Mortgagee, in good faith, shall have notified Tenant that such Fee Mortgagee intends to institute proceedings under the Fee Mortgage to acquire possession of the Leased Premises, and, thereafter, as long as such proceedings shall have been instituted and shall be prosecuted with reasonable diligence. In the event of the termination of this Lease by reason of Landlord's default hereunder, upon such Fee Mortgagee's written request, given within thirty (30) days after any such termination, Tenant, within fifteen (15) days after receipt of such

request, shall execute and deliver to such Fee Mortgagee or its designee or nominee a new lease of the Leased Premises for the remainder of the Term of this Lease upon all of the terms, covenants and conditions of this Lease; provided, that, concurrently therewith, such default of Landlord is cured to the extent such default (x) is not a default which is personal to Landlord, and (y) is still continuing notwithstanding such termination of the Lease. Neither such Fee Mortgagee nor its designee or nominee shall become liable under this Lease unless and until such Fee Mortgagee or its designee or nominee becomes, and then only for so long as such Fee Mortgagee or its designee or nominee remains, the fee owner of the Leased Premises. Such Fee Mortgagee shall have the right, without Tenant's consent, to foreclose the Fee Mortgage or to accept a deed in lieu of foreclosure of such Fee Mortgage and to convey Landlord's interests hereunder to the purchaser at such foreclosure sale or pursuant to a deed-in-lieu thereof, in either case subject to the terms of this Lease.

(e) Landlord will give Tenant prior written notice of Landlord's intention to mortgage or pledge its interest in this Lease promptly upon electing to do so. In no event may Landlord mortgage or pledge its interests in this Lease to any Prohibited Person. The joint and several liability of Landlord and any immediate and remote successor in interest of Landlord (by assignment or otherwise), and the due performance of the obligations of this Lease on Landlord's part to be performed or observed, will not in any way be discharged, released or impaired by any (A) stipulation which extends the time within which an obligation under this Lease is to be performed, (B) waiver of the performance of an obligation required under this Lease, or (C) failure to enforce any of the obligations set forth in this Lease.

(f) In no event shall the acquisition of title to the Fee Estate by a purchaser which, simultaneously therewith, leases the entire Fee Estate back to the seller thereof or its designee, be treated as an assumption, by operation of law or otherwise, of Landlord's obligations hereunder. Notwithstanding the foregoing, Landlord shall at all times be the owner of the Fee Estate (rather than merely a tenant pursuant to a ground lease of the Fee Estate) without the consent of Tenant, not to be unreasonably withheld, conditioned or delayed provided that such structure does not materially and adversely impact Tenant or the Leasehold Estate.

(g) Subject to Section 11(d), the Fee Mortgagee shall have the right, but not the obligation, through Landlord or as a Successor Landlord, to perform on behalf of Landlord any covenant or agreement under this Lease to be performed by Landlord by reason of being a Fee Mortgagee (or by power of attorney to the extent necessary and enforceable), and Tenant shall accept such performance by any Fee Mortgagee, as if performed by Landlord, and the Fee Mortgagee shall have the right to exercise any and all rights of Landlord under this Lease (through Landlord or as a Successor Landlord); provided, however, that such performance or exercise by the Fee Mortgagee shall not, prior to the Fee Mortgagee's succession to Landlord's interest in the Leased Premises through any foreclosure event, operate to place responsibility for the control, care, management or repair of the Leased Premises upon the Fee Mortgagee or impose responsibility for the carrying out of the terms and conditions of this Lease, nor shall the Fee Mortgagee be responsible for or liable therefor.

(h) Tenant shall not unreasonably withhold, condition or delay its consent to any modifications to this Section 11 and other provisions of this Lease relating to the rights of a Fee Mortgagee (including any prospective Fee Mortgagee that becomes a Fee Mortgagee contingent upon such modification), that are reasonably requested by a Fee Mortgagee (or prospective Fee Mortgagee), provided that (i) Landlord pays Tenant's reasonable, out-of-pocket costs and expenses in connection with any such modification (including, without limitation, reasonable attorneys' fees and disbursements) and (ii) any such modification does not (unless consented to in writing by Tenant) (x) increase any monetary obligation of Tenant under this Lease, (y) adversely affect the rights, benefits or protections of Tenant or any Leasehold Mortgagee under this Lease or increase the non-monetary obligations of Tenant under this Lease, except, in each case, to a *de minimis* extent, or (z) require this Lease or the Leasehold Estate or any Leasehold Mortgage to be subordinate to the rights of the Fee Mortgagee (or a prospective Fee Mortgagee).

12. **Tenant's Right to Mortgage.**

(a) Tenant shall from time to time and at any time, without Landlord's consent, have the right to encumber by one or more Leasehold Mortgages, the Leasehold Estate created by this Lease, and/or all of Tenant's right, title and interest in and to any Improvements at any time located on the Leased Premises; provided, however, that no holder of any Leasehold Mortgage, nor anyone claiming by, through or under any such Leasehold Mortgage, shall by virtue thereof, acquire any greater rights hereunder than Tenant has, except the right to cure or remedy Tenant's defaults or become entitled to a New Lease as more fully set forth in this Section 12 and such other Mortgagee Protections as are expressly granted to Leasehold Mortgagees hereunder. Landlord shall not be required to join in, or "subordinate" the Fee Estate, any Fee Mortgage or any of Landlord's interests to, any Leasehold Mortgage (but, for the avoidance of doubt, the Fee Mortgage shall remain subject and subordinate to this Lease and the Leasehold Estate in accordance with Section 11 hereof). So long as such Leasehold Mortgage complies with the definition of Leasehold Mortgage, there shall be (A) no limit on the amount or nature of any obligation secured by a Leasehold Mortgage; (B) no restrictions on the purpose for which the proceeds of any such financing may be applied; (C) no restrictions on the nature or character of any Leasehold Mortgage; or (D) no restrictions on the creation of participation or syndication interests in or to any Leasehold Mortgage. Leasehold Mortgages may secure construction or permanent financing. No Leasehold Mortgagee shall be entitled to any Mortgagee Protections unless and until Notice of the Leasehold Mortgage in question has been given to Landlord together with the name and address of such Leasehold Mortgagee. Any Leasehold Mortgage that does not comply with the provisions of this Section 12 shall be of no force and effect against Landlord and any Fee Mortgagees.

(b) No Leasehold Mortgage shall be effective, unless: (A) at the time of making such Leasehold Mortgage there is no existing and unremedied monetary Default and no existing and unremedied Event of Default on the part of Tenant under this Lease; (B) the holder of such Leasehold Mortgage is at all times a Qualified Institutional Lender; and (C) prior to achieving Completion of the Project, all Leasehold Mortgages, taken together, shall not secure an amount in excess of eighty-five percent (85%) of the Total Project Cost. In addition, the following shall apply with respect to each Leasehold Mortgage:

(i) Tenant's making of a Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of the Leasehold Estate, nor shall any Leasehold Mortgagee, as such, or in the exercise of its rights under this Lease, be deemed to be an assignee, transferee, or mortgagee in possession of the Leasehold Estate so as to require such Leasehold Mortgagee, as such, to assume or otherwise be obligated to perform any of Tenant's obligations under this Lease except when, and then only for so long as, such Leasehold Mortgagee has acquired ownership and possession of the Leasehold Estate pursuant to a foreclosure event under its Leasehold Mortgage (as distinct from its exercise of Leasehold Mortgagee's cure rights hereunder).

(ii) Upon written request by Tenant or by any Leasehold Mortgagee, Landlord shall, at Tenant's expense, deliver to the requesting party such documents and agreements as the requesting party shall reasonably request to confirm the terms and provisions of this Section 12, including a separate written instrument in recordable form signed and acknowledged by Landlord setting forth and confirming, directly for the benefit of specified Leasehold Mortgagee(s), any or all rights of Leasehold Mortgagees; provided that such documents and/or agreements shall neither decrease the rights, nor increase the liabilities, of Landlord in any respect (any such documents and/or agreements being agreed to be an unreasonable request).

(iii) Notwithstanding anything to the contrary in this Lease, any foreclosure event under any Leasehold Mortgage (or any exercise of rights or remedies under or pursuant to any Leasehold Mortgage, including the appointment of a receiver), shall not in and of itself be deemed to violate this Lease or, in and of itself, entitle Landlord to exercise any rights or remedies, but the foregoing shall not limit Landlord's rights and remedies (subject to all other Mortgagee Protections set forth herein) if any Default or Event of Default occurs.

(iv) If Tenant enters into any Leasehold Mortgage that complies with the definition of such term, then the Leasehold Mortgagee under such Leasehold Mortgage shall be entitled to all Mortgagee Protections (as against both Landlord and any Successor Landlord) from and after such date as Tenant or the Leasehold Mortgagee has given Landlord Notice of such Leasehold Mortgage and Leasehold Mortgagee, accompanied by a copy of the recorded Leasehold Mortgage, within thirty (30) days after receipt thereof by Tenant. No change of address of such Leasehold Mortgagee, amendments, supplements, and modifications of such Leasehold Mortgage or assignments of such Leasehold Mortgage, shall be effective against Landlord unless and until such Leasehold Mortgagee shall have given Landlord Notice of such change, amendment, supplement, modification or assignment.

(v) If a Leasehold Mortgagee is entitled to Mortgagee Protections hereunder, such entitlement shall not terminate unless and until such time, if any, as either (1) the Leasehold Mortgage shall have been satisfied and discharged of record, except through a foreclosure event; (2) such Leasehold Mortgagee has consented in writing to the termination of its Mortgagee Protections; or (3) after Landlord has

complied with the applicable Mortgagee Protections, Landlord has validly terminated this Lease, no Leasehold Mortgagee has validly requested (and is entitled to) a New Lease, and the New Lease Option Period has expired.

(vi) Landlord shall, upon written request, acknowledge receipt of the name and address of any Leasehold Mortgagee (or proposed Leasehold Mortgagee) and confirm to such party that such party is or would be, upon closing of its loan to Tenant or its acquisition of an existing Leasehold Mortgage, a Leasehold Mortgagee (in compliance, as of the date of such confirmation, with the definition of such term, including all applicable conditions and requirements set forth in such definition) entitled to all Mortgagee Protections as provided in this Lease. Such confirmation may, in Landlord's discretion, be conditioned upon Landlord's receipt and verification of evidence reasonably satisfactory to Landlord that the Person seeking such confirmation is entitled to such confirmation pursuant to this Lease. Landlord shall, upon written request by any subsequent Leasehold Mortgagee executing a Leasehold Mortgage after the date hereof, provide such Leasehold Mortgagee with, and execute, an agreement substantially similar in form and substance as the Leasehold Mortgagee Agreement; provided that (i) such Leasehold Mortgagee is a Qualified Institutional Lender and has otherwise complied with the terms and conditions of this Lease and (ii) that Landlord shall have the right to revise the factual statements therein to reflect the actual then-existing circumstances. Further, if, in connection with the entering into of a Leasehold Mortgage, the Leasehold Mortgagee requests reasonable modifications to this Lease solely with respect to this Section 12 or any other provisions of this Lease affecting the rights or obligations of Leasehold Mortgagee (including, without limitation, any reasonable requests to comply with federally-insured or other regulated loan providers, such as the Federal National Mortgage Association), Landlord shall not unreasonably withhold, condition or delay its consent to such modifications provided that (A) such modifications do not materially reduce any of Landlord's rights hereunder, materially increase any of Landlord's obligations hereunder, or result in any adverse tax consequences to Landlord or any Landlord affiliate and (B) Tenant shall pay to Landlord all reasonable, out-of-pocket costs and expenses (including reasonable attorneys' fees) incurred by Landlord in complying with this clause (v).

(vii) Landlord shall, without cost to Landlord (Tenant shall pay all reasonable costs, including reasonable attorney fees, associated with the entry into such agreement), at any time and from time to time, within twenty (20) calendar days after written request by Tenant or any Leasehold Mortgagee, duly execute and deliver to Tenant or any Leasehold Mortgagee, an estoppel in such Leasehold Mortgagee's customary form (if a Leasehold Mortgagee has requested such estoppel) and in any event in a form reasonably acceptable to Landlord, as to certain factual matters with respect to this Lease, including without limitation, the existence of any Defaults and the payment of Rent hereunder, which estoppel shall not be recorded; provided that, in either case, Landlord shall have the right to revise the factual statements therein to reflect the actual then existing circumstances.

(viii) No Leasehold Mortgage shall attach to: (1) Landlord's interest in this Lease, in the Fee Estate and Landlord's remainder and/or reversionary interest in the Improvements; (2) Landlord's interest in any New Lease and the Fee Estate thereunder; (3) any judgment arising from Tenant's breach of this Lease; (4) Landlord's and any Fee Mortgagee's rights and remedies under this Lease; and (5) any rights of a Fee Mortgagee with respect to the Fee Estate. Any Leasehold Mortgagee in the event of a foreclosure or the grantee or successful bidder at the foreclosure, shall succeed only to the Leasehold Estate under this Lease.

(c) Notwithstanding anything to the contrary in this Lease, if Tenant at any time or from time to time enters into any Leasehold Mortgage in accordance with the provisions of this Lease, and Tenant or a Leasehold Mortgagee has given Landlord Notice of such Leasehold Mortgage, then:

(i) No cancellation, termination (including Tenant's termination of this Lease pursuant to any express right of termination in this Lease or under applicable Legal Requirements), surrender, acceptance of surrender, abandonment, amendment, modification, or rejection of this Lease, or other encumbrance on the Fee Estate, shall bind a Leasehold Mortgagee if done without Leasehold Mortgagee's prior written consent. Nothing in this paragraph shall limit the right of Landlord to terminate this Lease upon occurrence of an Event of Default and the expiration of all Leasehold Mortgagee's cure rights without cure of such Event of Default, subject however to (1) provisions of this Lease that limit the right of Landlord to terminate this Lease on account of Personal Default(s) or certain non-monetary Event of Defaults; and (2) the right of any Leasehold Mortgagee to obtain a New Lease as provided for in this Lease.

(ii) In the event of any arbitration, appraisal, or other dispute resolution proceeding, or any proceeding relating to the determination of Base Rent or any component of any Base Rent, or any proceeding relating to the application or determination of any Casualty proceeds or Condemnation Awards (including, without limitation, the arbitration of a Dispute pursuant to Section 50 hereof):

1. Landlord shall promptly give Notice to each Leasehold Mortgagee of the commencement of such proceeding, which Notice shall enclose copies of all Notices, papers, and other documents related to such proceeding to the extent then given or received by Landlord. Landlord shall provide Leasehold Mortgagee with copies of all additional Notices, papers, and other documents related to such proceeding when and as given or received by Landlord.

2. Leasehold Mortgagee shall, at its sole cost and expense or at the sole cost and expense of Tenant (but at no cost or expense to Landlord), be entitled to participate (to the exclusion of Tenant) in such proceeding. Such participation shall, to the extent required by Leasehold Mortgagee, include: (1) receiving copies of all Notices, demands, and other written communications and documents at the same time they are served upon or delivered to Landlord or

Tenant; and (2) attending and participating in all hearings, meetings, and other sessions or proceedings relating to such dispute resolution.

(d) If Tenant enters into a Leasehold Mortgage in accordance with the terms hereof and Tenant or a Leasehold Mortgagee has given Landlord Notice thereof, Tenant or the Leasehold Mortgagee shall furnish Landlord with the address to which such Leasehold Mortgagee desires copies of notices to be delivered (together with a duplicate original or certified copy of the applicable Leasehold Mortgage), Landlord hereby agrees that Landlord will thereafter deliver to such Leasehold Mortgagee at the address so given (subject to any change in such address by Notice to Landlord from such Leasehold Mortgagee) and contemporaneously with the delivery thereof to Tenant, duplicate copies of any and all written Notices of Default or termination which Landlord may from time to time give or serve upon Tenant under and pursuant to the terms and provisions of this Lease (provided that Landlord shall have no liability for the failure to provide such Notice and Landlord's failure to so provide Notice to any such Leasehold Mortgagee thereof shall not be a default by Landlord under this Lease). No Notice to Tenant shall be effective unless and until so given to each Leasehold Mortgagee. No Event of Default, termination of this Lease (other than with respect to a Total Loss), or other rights or remedies of Landlord predicated upon the giving of Notice to Tenant shall be deemed to have occurred or arisen unless like Notice shall have been so given to each Leasehold Mortgagee at the same time and by the same means, which Notice shall describe in reasonable detail the alleged Default or other event allegedly giving rise to rights of Landlord. If a Default occurs, Landlord will not exercise any remedy until Landlord has given Notice of such Default to a Leasehold Mortgagee and until the curative periods set forth below have ended without cure of the applicable Default.

(e) If any Default occurs, then any Leasehold Mortgagee shall have the same cure period (which cure period for the Leasehold Mortgagee shall commence upon the date Leasehold Mortgagee receives Notice of any such Default) available to Tenant under this Lease, plus the additional time provided for below (regardless of the original time fixed for performance by Tenant), within which to take (if such Leasehold Mortgagee so elects; and no Leasehold Mortgagee shall have any duty to undertake any Leasehold Mortgagee's cure of any kind) whichever of the actions set forth below shall apply to such Default:

(i) In the case of a monetary Default, Leasehold Mortgagee shall be entitled (but not required) to cure such default within a cure period ending on the later of (x) the end of Tenant's cure period under this Lease or (y) the fifth (5th) Business Day after Landlord gives Notice of such Default to Leasehold Mortgagee. Any such cure shall be accompanied by payment to Landlord of interest at the Default Rate.

(ii) In the case of any non-monetary Default that a Leasehold Mortgagee is reasonably capable of curing without obtaining possession of the Leased Premises (excluding, in any event, a Personal Default), Leasehold Mortgagee shall be entitled, but not required, to: within a period ending on the later of (x) the final calendar day of Tenant's cure period for the Event of Default (if Tenant is entitled to any such cure period) or (y) the date that occurs ninety (90) calendar days after Leasehold Mortgagee receives Notice of such Default, to cure such Default; provided, however, if such non-

monetary Default is inherently not susceptible to cure within such ninety (90) calendar day period, such cure period shall be extended to the extent reasonably necessary to cure such Default so long as the Leasehold Mortgagee is proceeding with reasonable diligence to cure such Default.

(iii) In the case of (1) any non-monetary Default that is not reasonably susceptible of being cured by a Leasehold Mortgagee without obtaining possession of the Leased Premises or (2) any Personal Default, Leasehold Mortgagee shall be entitled (but not required) to do the following, so long as, for all other Defaults, such Leasehold Mortgagee has exercised or is exercising, within the applicable periods, the applicable Leasehold Mortgagee's cure rights as provided in this Lease:

1. At any time during a period ending on the later of (i) the cure period (if any) applicable to Tenant, or (ii) ninety (90) calendar days after Landlord gives to the Leasehold Mortgagee Notice of the non-monetary Default, Leasehold Mortgagee shall be entitled to institute proceedings to obtain Control of the Leased Premises, and (subject to any stay in any bankruptcy proceedings affecting Tenant, or any injunction, so long as such stay or injunction has not been lifted) then with reasonable diligence prosecute the same to completion (but not necessarily within such ninety (90) calendar day period or, if applicable, cure period of Tenant).

2. Upon obtaining Control of the Leased Premises (whether before or after expiration of any otherwise applicable cure period), Leasehold Mortgagee or any Successor Tenant shall then be entitled (but not required) to proceed with reasonable diligence to cure such non-monetary Default (excluding Personal Defaults of Tenant, which neither Leasehold Mortgagee nor a Successor Tenant need cure at any time). A Leasehold Mortgagee or Successor Tenant having Control of the Leased Premises shall not be bound by any deadline for completion of any construction or alterations, or other performance, required of Tenant under this Lease, provided that such Leasehold Mortgagee or Successor Tenant shall with reasonable diligence prosecute completion of same and shall cure all monetary Defaults within the period provided for under this Lease for such cure.

(f) A Leasehold Mortgagee shall not be required to continue to exercise Leasehold Mortgagee's cure rights or otherwise proceed to obtain or to exercise Control of the Leased Premises if and when the Default that such Leasehold Mortgagee was attempting to cure shall have been cured. Upon such cure and the cure of any other Defaults in accordance with this Lease, this Lease shall continue in full force and effect as if no Default(s) or Event of Default(s) had occurred. Even if a Leasehold Mortgagee has commenced Leasehold Mortgagee's cure, such Leasehold Mortgagee may abandon or discontinue Leasehold Mortgagee's cure at any time, without liability to Landlord or otherwise except with regard to liabilities arising while the Leasehold Mortgagee has Control of the Leased Premises. Leasehold Mortgagee's exercise of Leasehold Mortgagee's cure rights shall not be deemed an assumption of this Lease in whole or in part.

(g) So long as the period for a Leasehold Mortgagee to exercise Leasehold Mortgagee's cure rights for any Default has not expired, Landlord shall not (1) re-enter the Leased Premises on account of such Default (but this shall not limit Landlord's right of access to the Leased Premises otherwise provided for under the express terms of this Lease), (2) give any Notice terminating or electing to terminate this Lease, or (3) bring a proceeding on account of such Default to (w) dispossess Tenant or subtenants under any Subleases, (x) reenter the Leased Premises, (y) terminate this Lease or the Leasehold Estate, or (z) otherwise (except as expressly permitted by this Section 12) exercise any other rights or remedies under this Lease by reason of such Default. Nothing in the Mortgagee Protections shall, however, be construed to either (i) extend the Term beyond the expiration date provided for in this Lease that would have applied if no Default had occurred, (ii) preclude Landlord from exercising its rights under Sections 9 and 22 and, if so exercised, Tenant shall pay Landlord in accordance with Sections 9 and 22, the failure to so pay being a Default hereunder, (iii) preclude Landlord from seeking and obtaining actual damages or injunctive and other equitable relief against Tenant on account of such Default, (iv) preclude Landlord from seeking and obtaining the benefits of Sections 38 and 28 or (v) require any Leasehold Mortgagee to cure any Personal Default as a condition to preserving this Lease or to obtaining a New Lease (but this shall not limit a Leasehold Mortgagee's obligation to seek to obtain Control of the Leased Premises, and then consummate a foreclosure, by way of the exercise of Leasehold Mortgagee's cure rights, if Leasehold Mortgagee desires to preclude Landlord from terminating this Lease on account of a Personal Default).

(h) Upon termination of this Lease as a result of either (i) an Event of Default or (ii) a rejection hereof in any bankruptcy proceeding in which Tenant is the debtor or otherwise relating to Tenant, Landlord shall give Notice to Leasehold Mortgagee within ten (10) Business Days thereof (but Landlord shall not be liable for a failure to timely provide such Notice provided, however, it is agreed that the New Lease Option Period will not commence until such Notice is given) and any Leasehold Mortgagee holding a Leasehold Mortgage which shall remain unsatisfied of record shall have the option, within thirty (30) days after the date of such Notice (which such period shall be tolled and extended during any period during which the Leasehold Mortgagee is subjected to an automatic stay under any Bankruptcy Action) (the "New Lease Option Period") to elect to receive from Landlord a new lease (a "New Lease") of the Leased Premises for the unexpired balance of the Term, on the exact same terms and conditions as in this Lease, and Landlord agrees to execute such New Lease provided such Leasehold Mortgagee: (i) shall pay to Landlord, on the delivery date of such New Lease, (A) all sums then due under this Lease, as if this Lease had not been terminated, including interest at the Default Rate, any Late Charge and (B) all reasonable expenses, including transfer, documentary, stamp, recording or similar taxes and legal costs incurred by Landlord in connection with any Default and termination of this Lease, recovery of possession of the Leased Premises, the preparation, execution of the New Lease and any memorandum of the New Lease requested by the new tenant thereof; (ii) shall remedy all non-monetary Defaults and Events of Default (other than Personal Defaults of the predecessor Tenant) that are susceptible to cure by such Leasehold Mortgagee within a reasonable period of time; (iii) shall thereafter observe and perform all covenants and conditions in such Lease contained on the part of Tenant to be observed and performed (including, without limitation, the payment of rents hereunder); (iv) shall pay to Landlord all sums expended by Landlord, or that Landlord may be liable for, with respect to any Subleases not terminated; (v) shall operate the

Leased Premises subject to the provisions requirements of this Lease; and (vi) shall be subject to and shall be liable to perform the obligations imposed on the tenant under such New Lease only during period such Person has title to the Leasehold Estate. After termination of this Lease and during the period thereafter during which any Leasehold Mortgagee shall be entitled to enter into a New Lease (and only during such time), Landlord will not terminate the rights of any subtenant hereunder unless such subtenant shall be in default under its Sublease and has failed to cure same within the time provided under such Sublease, nor shall Landlord modify or amend any of the terms of any Residential Sublease or any other Sublease. During such periods, Landlord shall receive all revenues payable under the Sublease as agent of such Leasehold Mortgagee and shall deposit such revenues in a separate and segregated account in trust for the Leasehold Mortgagee, but may withdraw such sums as are required to be paid to Landlord under this Lease at the time and in the amounts due hereunder, and, upon the execution and delivery of the New Lease, Landlord shall account to the new tenant thereunder for the balance, if any (after application as aforesaid) of the revenues payable under the Sublease received by Landlord from the operation of the Leased Premises and shall pay any such balance to Leasehold Mortgagee upon the commencement of the New Lease. The collection of revenues payable under the Sublease by Landlord acting as an agent pursuant to this Section 12 shall not be deemed an acceptance by Landlord for its own account of the attornment of any party under a Sublease unless Landlord shall have agreed in writing with such party that its tenancy or contract shall be continued following the expiration of any period during which a Leasehold Mortgagee may be granted a New Lease as the tenant thereunder, in which case such attornment shall take place upon the expiration of such period but not before. Except as expressly set forth in any non-disturbance and attornment agreements executed with respect to such Sublease, under no circumstances shall Landlord be obligated to perform any obligations of any Person under any Sublease.

Upon the commencement of the New Lease, Landlord shall assign, without recourse or warranty (except for a representation and warranty that, except for collateral assignments previously or concurrently therewith released, Landlord has not previously assigned such right, title and interest), to Leasehold Mortgagee all of Landlord's right, title and interest in and to all: (1) leases affecting any portion of the Leased Premises (which leases, upon such assignment by Landlord to Leasehold Mortgagee, shall become Subleases arising from the Leasehold Estate under the New Lease) and (2) security deposits of subtenants to the extent held by Landlord. All rights of any Leasehold Mortgagee, and obligations of Landlord, regarding a New Lease under this clause (h) shall survive the termination of this Lease for the duration of the New Lease Option Period.

(i) A Leasehold Mortgage shall not encumber or attach to the Fee Estate or affect, limit, or restrict Landlord's rights and remedies under this Lease except as expressly provided in this Lease. Any Leasehold Mortgage shall attach solely to the Leasehold Estate and not the Fee Estate. Upon a foreclosure or assignment in lieu thereof under a Leasehold Mortgage, the Leasehold Mortgagee or any Successor Tenant shall succeed only to the Leasehold Estate. Any foreclosure or assignment in lieu thereof under a Leasehold Mortgage shall not extinguish, terminate, or otherwise adversely affect the Fee Estate (subject to this Lease) or the rights of any Fee Mortgagees as against Landlord or the Fee Estate (which shall in all events remain subject to this Lease). If a Leasehold Mortgage expressly limits the related Leasehold Mortgagee's exercise

of any Mortgagee Protections, then as between Tenant and such Leasehold Mortgagee the terms of such Leasehold Mortgage shall govern. A Leasehold Mortgagee may, by Notice to Landlord, temporarily or permanently waive any Mortgagee Protections as specified in such Notice. Any such waiver shall be effective in accordance with its terms as against such Leasehold Mortgagee and its successors and assigns. Any such waiver shall not bind any subsequent Leasehold Mortgagee under a subsequent Leasehold Mortgage granted by Tenant. The exercise of any rights or remedies of a Leasehold Mortgagee under a Leasehold Mortgage, including the appointment of a receiver and the consummation of any foreclosure, shall not constitute an Event of Default under this Lease, notwithstanding anything to the contrary in this Lease.

(j) Notwithstanding anything contained herein to the contrary, if more than one Leasehold Mortgagee has exercised any of the rights described in Sections 12(d) - 12(h) hereof, only that Leasehold Mortgagee, to the exclusion of all other Leasehold Mortgagees, whose Leasehold Mortgage is most senior in lien shall be recognized by Landlord as having exercised such right, for so long as such Leasehold Mortgagee shall be diligently exercising its rights under this Lease with respect thereto, and thereafter only the Leasehold Mortgagee whose Leasehold Mortgage is next most senior in lien shall be recognized by Landlord, unless, in each instance, all of the Leasehold Mortgagees have designated a Leasehold Mortgagee to exercise the foregoing rights (regardless of the seniority of such Leasehold Mortgagee's lien). If the parties shall not agree on which Leasehold Mortgage is prior in lien, such dispute shall be determined by a title insurance company chosen by Landlord, and such determination shall bind the parties. The foregoing recognition shall in no way extend the time periods to exercise the rights afforded by this Section 12.

13. Alterations.

(a) After the Substantial Completion of the Project, Tenant shall obtain Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed, before making any Material Alteration and shall otherwise comply with the provisions of this Section 13. It shall not be unreasonable for Landlord to disapprove, and Landlord may disapprove, a Material Alteration if (i) the Improvements, upon completion of such Material Alteration, (A) will not consist of a complete self-sufficient and independent structure erected wholly within the boundary lines of the Land or (B) will tie-into or connect to or be dependent upon in any way on any other real property (either structurally, legally or otherwise) or (ii) in the case of any Material Alteration other than the demolition of all or a material portion of the Improvements, such Material Alteration will adversely affect the structural integrity of the Improvements. Tenant may make Alterations to the Leased Premises not constituting Material Alterations without Landlord's consent only if (i) such Alterations will be in compliance with all applicable Legal Requirements and the insurance required under Section 15 hereof, and (ii) such Alterations will not result in a breach or Default under this Lease. Tenant agrees to give Landlord copies of the plans and specifications for any alteration to the Leased Premises; provided, however, that Tenant's failure to do so shall not constitute an Event of Default hereunder unless Tenant shall have failed to deliver such plans and specifications within thirty (30) days after Landlord's written Notice to Tenant requesting same. At Landlord's option, any Alteration made without the consent of Landlord, if required pursuant to the first sentence of this Section 13(a), shall be removed and

the area repaired and restored to its prior condition, at Tenant's sole cost and expense, upon demand or, at Landlord's election in its sole discretion, at the termination or expiration of the Term.

(b) All Alterations to the Leased Premises during the Term of this Lease (whether or not such alterations constitute Material Alterations) shall be made at Tenant's sole cost and expense and shall be made in accordance with all Legal Requirements and Insurance Requirements. Tenant shall obtain and comply with all Permits required in connection with the Alterations and promptly after request from Landlord (i) shall deliver to Landlord a true and complete copy of all such Permits and (ii) upon Tenant obtaining same following completion of the Alterations, shall deliver to Landlord all certificates of occupancy required pursuant to applicable Legal Requirements to use and occupy the Improvements (or analogous items). All Alterations shall comply with all Applicable Standards and shall be constructed and completed in a good and workmanlike manner and with good construction practices.

(c) In the event that Tenant desires to perform any Material Alterations, Tenant shall (i) be required to have (in Landlord's sole but good faith discretion) sufficient financial resources and liquidity available to perform and pay for all costs associated with the proposed Material Alterations in such a manner as would provide sufficient protection against liens which could arise in connection with the performance of any such Material Alterations, (ii) provide evidence to Landlord of such sufficient financial resources and liquidity, including, without limitation, completion and operating deficit guarantees, cash deposits, equity commitments and debt commitments and (iii) have furnished to Landlord a surety bond, cash deposit, Letter of Credit, guaranty or other security (in each case as selected by Tenant and reasonably acceptable to Landlord) with respect to such Material Alteration (the "Material Alteration Security").

(d) All Material Alterations shall be made (at Tenant's sole cost and expense) as follows:

(i) Tenant shall submit to Landlord, complete plans and specifications for all work to be done by Tenant, and Landlord will have the right to approve such plans and specifications. All such plans and specifications shall be prepared by the licensed architect(s) and engineer(s) approved in writing by Landlord (such approval not to be unreasonably withheld, conditioned or delayed), shall comply with all applicable Legal Requirements, shall not, when completed, adversely affect the structural elements of the Leased Premises, shall comply with the insurance required under Section 15 hereof, shall be in a form sufficient to secure the approval of all applicable Governmental Authorities, and with respect to plans and specifications pertaining to alterations, improvements and additions requiring Landlord's approval under this Section 13, shall be otherwise satisfactory to Landlord in Landlord's reasonable discretion.

(ii) Landlord shall notify Tenant in writing within thirty (30) days whether Landlord approves or disapproves of the plans and specifications for such Material Alteration. Tenant may submit to Landlord revised plans and specifications

for Landlord's prior written approval, which approval shall in all events not be withheld or delayed if (a) the work to be done would not, in Landlord's reasonable judgment, adversely affect the value, character, rentability or usefulness of the Leased Premises or any part thereof, or (b) the work to be done shall be required by any Legal Requirements. Tenant shall pay all costs, including the fees and expenses of the licensed architect(s) and engineer(s), in preparing such plans and specifications. Tenant shall pay all Landlord's reasonable out-of-pocket costs and expenses in connection with Landlord's review of any such plans and specifications. If Landlord does not, within thirty (30) days following Tenant's written request for such consent or approval, respond in writing with Landlord's consent or approval or specific reasons for withholding consent or approval to any Material Alteration (or new or revised plans and specifications therefor) to which Tenant has requested Landlord's consent or approval, and such failure continues for an additional ten (10) Business Days following a second written notice from Tenant to Landlord (which second written notice shall state at the top thereof, in bold and capitalized letters, "LANDLORD'S FAILURE TO RESPOND TO THIS REQUEST MAY RESULT IN A DEEMED APPROVAL") is received by Landlord, then, at Tenant's election, Landlord's consent and approval shall be deemed given thereto.

(iii) All changes (other than *de minimis* changes and/or field changes for which no change order is proposed and which will be reflected in the final "as built" plans) in any plans and specifications approved by Landlord for any Material Alteration shall be subject to Landlord's prior written approval, such approval not to be unreasonably withheld. If Tenant wishes to make such change in approved plans and specifications for any Material Alteration, Tenant shall have such architect(s) and engineer(s) prepare plans and specifications for such change and submit them to Landlord for Landlord's written approval. Landlord shall notify Tenant in writing promptly whether Landlord approves or disapproves such change. Tenant may submit to Landlord revised plans and specifications for such change for Landlord's written approval. After Landlord's written approval of such change, such change shall become part of the plans and specifications approved by Landlord.

(iv) Tenant acknowledges and agrees that (A) any review of any plans and specifications by or on behalf of Landlord is solely for Landlord's benefit, (B) Landlord makes no representation or warranty that any plans and specifications comply with any Legal Requirements or Insurance Requirements or are otherwise sufficient or correct for any purpose and (C) such review and any approval by Landlord (whether actually given or deemed given) of any plans and specifications shall not constitute any opinion or representation or warranty by or on behalf of Landlord as to the compliance thereof with any Legal Requirements or Insurance Requirements or the sufficiency or correctness thereof for any purpose or otherwise.

(e) Tenant shall obtain and comply with all Permits required in connection with the Material Alteration and promptly after request from Landlord (i) shall deliver to Landlord a true and complete copy of all such Permits and (ii) upon Tenant obtaining same following

completion of the Material Alteration, shall deliver to Landlord all certificates of occupancy required pursuant to applicable Legal Requirements to use and occupy the Improvements (or analogous items). Tenant shall, through Tenant's licensed contractor, perform the Material Alteration substantially in accordance with the plans and specifications approved in writing by Landlord. Except to the extent funded with the Improvement Allowance or the proceeds of any Leasehold Mortgage, insurance policy or Condemnation Award (subject, in each case, to the terms and conditions of this Lease), Tenant shall pay the entire cost of all alterations, work, additions, or improvements (including the cost of all utilities, Permits, fees, taxes, and property and liability insurance premiums in connection therewith) required to complete the Material Alteration. Under no circumstances shall Landlord be liable to Tenant for any damage, loss, cost or expenses incurred by Tenant on account of any plans and specifications, contractors or subcontractors, design of any work, construction of any work, or delay in completion of any work.

(f) Tenant shall give at least ten (10) days' prior Notice to Landlord of the date on which construction of any work to be done by outside contractors which constitutes a Material Alteration. Landlord shall have the right to post and keep posted on the Leased Premises any notices that may be provided by law or which Landlord reasonably may deem to be proper for the protection of Landlord and the Leased Premises, or any portion thereof from liens; provided that such notices do not in any material respect interfere with the use and enjoyment of the Leased Premises by any subtenant. Tenant acknowledges and agrees that, subject to the rights of Tenant's architect, if this Lease is terminated for any reason and Landlord does not enter into a New Lease with a Leasehold Mortgagee or its designee, or, if entered into, such New Lease is terminated, then the plans and specifications and other materials relating to the construction of a Material Alteration shall (subject, in each case, to the prior rights of any Leasehold Mortgagee) become the sole property of Landlord and Landlord shall have the benefit thereof but no liability thereunder.

(g) All Alterations and fixtures, whether temporary or permanent in character, made in or to the Leased Premises by Tenant, shall become part of the Leased Premises, except those which are readily removable without causing material damage to the Leased Premises (which shall be and remain the property of Tenant). Subject to this Section 13, upon termination or expiration of this Lease, Tenant shall, at Landlord's election and at Tenant's expense, (i) remove all movable furniture, equipment, trade fixtures, office machines and other personal property from the Leased Premises and (ii) those Improvements, Alterations and additions to the Leased Premises made without Landlord's consent in violation of this Lease and, in each case, repair all damage caused by any such removal pursuant to clauses (i) and (ii) of this Section 13(g). Termination of this Lease shall not affect the obligations of Tenant pursuant to this Section 13(g) to be performed after such termination.

(h) If required by a Fee Mortgagee, prior to the commencement of any Alteration involving any demolition or removal of the Improvements that constitute real property under the REMIC Requirements, Tenant shall provide to Landlord any reasonably requested information for the Fee Mortgagee to determine its compliance with the REMIC Test. Any actual out-of-pocket costs or expenses incurred by Tenant arising as a result of any such request by Landlord (to the extent such costs and expenses would not have been incurred by Tenant if not for such request) shall be borne entirely by Landlord.

(i) At least five (5) Business Days prior to the commencement of any work in connection with any such proposed Material Alteration, Tenant shall furnish to Landlord:

(i) the Material Alteration Security;

(ii) copies of all contracts entered into in connection with the proposed Material Alteration, in form assignable to Landlord (subject, in each case, to the prior rights of any Leasehold Mortgagee), providing for the completion of all work, labor and materials necessary to perform the proposed Material Alteration in accordance with the plans and specifications therefor, which contracts shall provide that upon any termination of this Lease or upon Landlord's re-entry upon the Leased Premises following an Event of Default prior to the complete performance of such contracts (but subject, in each case, to the prior rights of any Leasehold Mortgagee), Landlord shall be entitled to the benefit of the terms of such contracts but shall have no liability thereunder unless and solely to the extent that Landlord elects in its sole discretion to assume such contracts;

(iii) a collateral assignment to Landlord (subject, in each case, to the prior rights of any Leasehold Mortgagee) of the contracts so furnished, duly executed and acknowledged by Tenant, by its terms to be effective upon any termination of this Lease or upon Landlord's re-entry upon the Leased Premises following an Event of Default prior to the complete performance of such contracts, which assignment shall provide that Landlord (subject, in each case, to the prior rights of any Leasehold Mortgagee) shall be entitled to the benefit of the terms of such contracts (including the benefit of all payments made on account of said contracts including payments made prior to the effective date of such assignment) but shall have no liability thereunder unless and solely to the extent that Landlord elects in its sole discretion to assume such contracts; and

(iv) insurance policies or certificates for such Material Alteration, issued by responsible insurers, certifying that insurance will be in force and effect at all times during the performance of such Material Alteration for "Builders All Risk" course of construction insurance, worker's compensation insurance covering all persons employed in connection with such Material Alteration and with respect to whom death or bodily injury claims could be asserted against Landlord, the Fee Mortgagees, if any, Tenant, a subtenant or the Leased Premises, and owner's and contractor's protective liability insurance expressly covering the additional hazards resulting from such Material Alteration with limits not less than those, and otherwise subject to the same conditions and requirements, set forth in Section 15 hereof with respect to the liability insurance required thereunder (it being agreed that Tenant's obligation set forth in this sentence shall be deemed satisfied to the extent that (x) the risks required to be insured against by Tenant pursuant to this sentence are already insured against pursuant to the insurance maintained by Tenant pursuant to the requirements of Section 15 or (y) the insurance required to be provided and maintained by Tenant pursuant to this sentence is provided and maintained by Tenant's contractor(s) and Tenant has delivered to Landlord insurance policies or certificates therefor). If under the provisions of any fire, liability or other insurance policy or policies then covering the Leased Premises or any part thereof, any consent to any

Alteration or series of Alterations by said insurance company or companies issuing such policy or policies is required to continue and keep such policy or policies in full force and effect, then Tenant shall obtain such consents and pay any additional premiums or charges therefor that may be imposed by said insurance company or companies. Nothing in this Section 13(i)(iv) shall diminish Tenant's obligations under Section 15.

(j) Subject to the terms of this Section 13(j), any Material Alteration, once commenced, shall be diligently performed to completion (subject to Force Majeure) in accordance with the plans and specifications therefor. If an Event of Default occurs that derives from Tenant's failure to (A) diligently perform to completion, once commenced, any Material Alteration in accordance with the terms hereof, or (B) restore such portion of the Leased Premises in which such Material Alteration was being performed in accordance with the terms hereof, then, in either case, subject to the prior rights of any Leasehold Mortgagee, Landlord may draw upon Material Alteration Security in connection with such Material Alteration to the extent of the cost required to complete such Material Alteration in accordance with the plans and specifications therefor or to restore such portion of the Leased Premises in which such Material Alteration was being performed, as applicable.

(k) Within thirty (30) days after completion of each Material Alteration, Tenant, at Tenant's sole expense, shall deliver to Landlord a certificate from Tenant's Architect certifying that the Material Alteration has been Substantially Completed in accordance with the plans and specifications.

(l) Landlord (and its consultants and representatives) shall have the right, during the construction of any Material Alterations, at reasonable times upon at least three (3) Business Days of prior notice to Tenant (but not more frequently than one (1) time per month, unless Landlord believes in good faith that Tenant is in violation of any term of this Lease), to inspect the Leased Premises to determine whether the construction of a Material Alteration is being conducted in accordance with the provisions of this Lease, provided that Landlord (and any such consultants and representatives of Landlord) who perform such inspection shall comply with all reasonable security, safety and insurance requirements that Tenant reasonably determines are necessary to maintain a safe working environment and are generally applicable to all Persons onsite. No such observation or attendance by Landlord or its consultants or representatives shall impose upon Landlord any responsibility for any failure by Tenant or its contractors (or any other Person) to comply with any Legal Requirements, Insurance Requirements or safety practices in connection with the Leased Premises or constitute an acceptance of any portion of such Material Alteration which does not comply in all respects with the provisions of this Lease.

(m) All Alterations and fixtures, whether temporary or permanent in character, made in or to the Leased Premises by Tenant, shall become part of the Leased Premises, except those which are readily removable without causing material damage to the Leased Premises (which shall be and remain the property of Tenant). Subject to this Section 13, upon termination or expiration of this Lease, Tenant shall, at Landlord's election and at Tenant's expense, (i) remove all Personal Property from the Leased Premises and (ii) those Improvements, Alterations and additions to the Leased Premises made without Landlord's consent in violation of this Lease and,

in each case, repair all damage caused by any such removal pursuant to clauses (i) and (ii) of this Section 13(m). All property permitted or required to be removed by Tenant at the end of the Term that is remaining in the Leased Premises after expiration or earlier termination of this Lease shall be deemed abandoned and may, at the election of Landlord, either be retained as Landlord's property or removed from the Leased Premises by Landlord at Tenant's sole cost and expense. The provisions of this Section 13(m) shall survive the expiration of earlier termination of this Lease.

14. **Condemnation.**

(a) Tenant, promptly upon obtaining knowledge of any actual or proposed institution of any proceeding for Condemnation, will notify Landlord thereof and Landlord (and any Fee Mortgagee) will be entitled to participate in any Condemnation proceeding at its own expense. Subject to the provisions of this Section 14 and Section 17, Tenant hereby irrevocably conveys and assigns to Landlord any Condemnation Award attributable to the Fee Estate; provided, however, that nothing in this Lease will be construed as, or deemed to require, the assignment to Landlord of any Condemnation Award attributable to the Leasehold Estate hereunder, Tenant's trade fixtures or other tangible personal property of Tenant, Tenant's moving expenses and similar claims.

(b) If a Condemnation that is a Total Loss shall occur (which Condemnation is not a temporary taking), then, the following shall apply: This Lease shall terminate as of the date the transfer of title pursuant to such Condemnation. In the event of any such termination, the Base Rent and Additional Rent payable by Tenant hereunder shall be apportioned as of the date of such termination. Any Condemnation Awards shall be allocated between Landlord and Tenant in the following order of priority until exhausted: (a) to Landlord, in an amount equal to the Condemnation Fair Market Value of the Fee Estate that is subject to the Condemnation; and (b) to Tenant, in an amount equal to the Condemnation Fair Market Value of the Leasehold Estate that is subject to the Condemnation; provided, however, that if there are separate Condemnation Awards for the Fee Estate and the Leasehold Estate, each party shall be entitled to its respective award awarded to it by the applicable Governmental Authority (each party cooperating in good faith to make sure such awards are paid to the proper party). Tenant and any Leasehold Mortgagee shall have the right to participate in Condemnation proceedings with Landlord. The obligations of Landlord and Tenant to allocate the Condemnation Award shall survive termination of this Lease.

(c) If a Condemnation that is not a Total Loss shall occur, then the following shall apply: Tenant will promptly, at its sole cost and expense, without regard to the adequacy of any Condemnation Award for such purpose, either (as elected by Tenant) diligently and promptly as commercially practicable, Restore the Improvements so taken in conformity with the requirements of Section 14 as nearly as practicable to the condition, size, quality of workmanship and market value thereof immediately prior to such Condemnation. There shall be no abatement of Rent during such period of Restoration or thereafter. The Condemnation Award shall be distributed in accordance with the manner set forth in Section 14(b) above, except that Tenant's entire Condemnation Award (plus, notwithstanding the foregoing, all proceeds of Condemnation

Award paid on account of the cost of Restoration, regardless of whether such proceeds were otherwise allocated or allocable to Landlord or Tenant) shall be deposited in a fund ("Restoration Fund") to be paid to and held and disbursed by the Proceeds Trustee under the same terms and conditions for disbursement (as if a Restoration following a Casualty as set forth in Section 16(b) hereof); provided, however, that if there are separate Condemnation Awards for the Fee Estate and the Leasehold Estate, the Condemnation Award for the Fee Estate shall be distributed to Landlord and the Condemnation Award for the Leasehold Estate shall be deposited in the Restoration Fund (it being acknowledged and agreed that all Condemnation Awards paid on account of the cost of Restoration shall be paid into the Restoration Fund to be used for Restoration, regardless of whether such proceeds were otherwise allocated or allocable to Landlord or Tenant).

(d) Solely in the event of a Condemnation that affects any part of the Improvements (but is not a Total Loss), as of the date of receipt of the applicable Condemnation Award, Base Rent hereunder shall be reduced by an amount equal to the Condemnation Percentage (the "Condemnation Reduction"), but shall not otherwise be abated, diminished, reduced or delayed (for the avoidance of doubt, it is understood that if there is no loss to the income or revenue from Tenant's operation of the Leased Premises as a result of such Condemnation, then there shall be no Condemnation Reduction applied to Base Rent). For purposes of calculating any Rent Escalation or CPI Escalation pursuant to Section 4 following the reduction in Base Rent pursuant to a Condemnation Reduction, Base Rent for the Lease Year in which the Condemnation Reduction occurs and all preceding Lease Years shall be deemed to have been reduced by the Condemnation Reduction (without duplication). For the avoidance of doubt, any Rent Escalation or CPI Escalation described in Section 4 of this Lease shall otherwise continue to apply in the same manner as set forth in Section 4 at all times following the date of the Condemnation Reduction.

(e) If a temporary Condemnation occurs, the Condemnation Award from such temporary Condemnation shall belong to Tenant (subject to the rights of Leasehold Mortgagees and this Lease shall not be affected in any way).

(f) Notwithstanding anything to the contrary contained herein, if any such Condemnation that is not a Total Loss occurs at any time during the last two (2) years of the Term of this Lease, Tenant, upon Notice given to Landlord within ninety (90) days following such Condemnation, may elect not to restore the Leased Premises, in which event this Lease and the Term shall terminate and expire on the date said Notice is received by Landlord and the Rent payable by Tenant hereunder shall be apportioned as of the date of such termination; provided, however, such termination shall not be effective unless the Notice is accompanied by an unconditional written consent to such termination executed by any and all Leasehold Mortgagee(s). Any Condemnation Award shall be allocated between Landlord (subject to the rights of Fee Mortgages) and Tenant (subject to the rights of Leasehold Mortgagees) as set forth in Section 14(b) above.

(g) If the condemning authority makes separate Condemnation Awards to Tenant with respect to the Leasehold Estate and to Landlord with respect to the Fee Estate, then subject to the rights of any Leasehold Mortgagee under any Leasehold Mortgage, Tenant shall, at its sole cost and expense, negotiate and settle the amount of the Condemnation Award with regard

to the Leasehold Estate, and Landlord shall, at its sole cost and expense, negotiate and settle the amount of the Condemnation Award with regard to the Fee Estate.

15. **Insurance.**

(a) At all times throughout the Term, Tenant will maintain at its sole cost and expense the following insurance on the Leased Premises for the mutual benefit of the Landlord, Tenant, any Fee Mortgagee and any Leasehold Mortgagee hereunder:

(i) Property Insurance against loss or damage to the Improvements under a "Special Form" (previously, "comprehensive all risk") insurance policy or it's equivalent, which will include flood insurance, earthquake insurance, wind and hail boiler explosion (if there is any boiler upon the Leased Premises), sprinkler damage/leakage, ordinance and law, and terrorism coverage. Improvements shall be insured for no less than one hundred (100%) of the full insurable value and valued on a replacement cost with no co-insurance provisions. Catastrophic sub-limits must be sufficient for the Leased Premises. Landlord may require Tenant to provide catastrophic modeling from Tenant to evaluate catastrophic limits. Sub-limits for Flood, Earthquake, and coverages B & C under Ordinances and Laws are permitted subject to Landlord's prior written approval.

(ii) Commercial general liability and excess (umbrella) liability including products liability coverage, covering Landlord and Tenant against bodily injury liability, and property damage liability, including without limitation any liability arising out of the maintenance, repair, condition or operation of the Leased Premises. If alcoholic beverages are sold or furnished by the Tenant, Dram Shop/Liquor Liability Insurance shall also be provided with limits of not less than \$1,000,000 per occurrence. Coverage should not include exclusions for assault and battery, abuse and molestation (including human trafficking), contractual liability, gravity related injuries, or independent contractors. Coverage shall be written on a per occurrence form. Such insurance policy or policies shall contain a "severability of interest" clause or endorsement which precludes the insurer from denying the claim of Tenant or Landlord because of the negligence or other acts of the other. General Liability shall be in amounts of not less than \$1,000,000.00 per occurrence, and \$2,000,000.00 aggregated per location. Tenant shall also carry commercial umbrella/excess liability insurance in an amount no less than \$25,000,000.00. Landlord or Fee Mortgagee may require at their reasonable discretion, increased limits that shall be consistent with the commercial umbrella/excess liability required by institutional owners of properties similar to the Leased Premises per occurrence and aggregate. Excess liability/Umbrella coverage shall be as broad in coverage as the underlying insurance and shall sit excess of employers' liability and auto liability as required under this Lease. If coverage insures more than one location, the policy limit shall be written on a "per location" basis. Tenant will name the Landlord, Fee Mortgagee and Leasehold Mortgagee as an additional insured and, where commercially reasonably attainable, shall provide a waiver of subrogation in favor of the Landlord, Fee Mortgagee and Leasehold

Mortgagee. In addition, commercial general liability coverage shall be provided for the vacant building and land prior to the demolition of the Existing Improvements, with umbrella limits of \$10,000,000 and demolition coverage in the amount of the limits set forth above.

(iii) Auto Liability insurance resulting from losses from an automobile including Garagekeepers Legal liability (if valet services are provided on the Leased Premises by Tenant) with a combined single limit of not less than one million dollars (\$1,000,000) per occurrence for bodily injury and property damage in any one accident covering (i) all owned autos; (ii) hired autos; and (iii) non owned autos. Tenant will name the Landlord as an additional insured and provide a waiver of subrogation in favor of the Landlord, Fee Mortgagee and Leasehold Mortgagee. If there is a third-party operator of the parking area of the Leased Premises, this coverage may be satisfied if held by such third party (provided that Landlord, Tenant, Fee Mortgagee and Leasehold Mortgagee are each added as additional insured to such policy).

(iv) Workers' compensation covering all W2 salaried employees employed by Tenant on the Leased Premises in connection with any work done on or about any of the Leased Premises providing statutory coverage and employers' liability limits of not less than \$1,000,000 each accident for bodily injury by accident and \$1,000,000 each employee and policy limit for bodily injury by disease.

(v) New York disability coverage for all W2 salaried employees employed by Tenant in connection with the Construction Project, as required by the State of New York.

(vi) Loss of rents and/or business interruption insurance (A) covering all risks required to be covered by the insurance provided for in Section 15(a)(i) and (iii) hereof; (B) in an amount equal to 100% of the projected Base Rent and Additional Rent from the Leased Premises (on an actual loss sustained basis) for a period continuing until the Restoration of the Leased Premises is completed; the amount of such business interruption/loss of rents insurance shall be determined prior to the date of Completion and at least once each year thereafter based on Tenant's reasonable determination of the projected gross income from the Leased Premises for a eighteen (18) month period; and (C) containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and the personal property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of six (6) months from the date that the Leased Premises is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period. Except as otherwise expressly set forth in this Lease, all proceeds payable to Landlord pursuant to this clause shall be held by Landlord, and shall be applied to the obligations from time to time due and payable under this Lease; provided, however, that nothing herein contained shall be deemed to relieve Tenant of its obligation to pay Taxes, Base Rent, Additional Rent or any other amounts due hereunder on the

respective dates of payment provided for herein except to the extent such amounts are actually paid out of the proceeds of such business income insurance; provided, further, if the amount of such insurance proceeds shall be in excess of such obligations, the excess shall be paid to and be retained by Tenant unless pursuant to the terms of any Leasehold Mortgage such excess is required to be paid to such Leasehold Mortgagee.

(vii) At all times prior to Completion of the Project, a Contractors Pollution policy (CPL) covering the construction work on site is required for the Leased Premises on terms and conditions reasonably acceptable to Landlord. Tenant will name the Landlord, Fee Mortgagee and Leasehold Mortgagee as an additional insured.

(viii) At all times prior to Substantial Completion, and thereafter whenever Tenant is making any Alterations, repairs (including maintenance related repairs) or performing or causing to be performed other construction work of any kind on the Leased Premises (collectively, "Construction Work"), the estimated cost of which in any one instance exceeds \$1,000,000.00 (as adjusted for the Index every five (5) Lease Years), the term "Insurance Requirement" or "Insurance Requirements" will include a requirement that Tenant obtain or cause its contractor to obtain builder's risk "special perils" insurance (including wind, flood, earthquake (if high zone), boiler and machinery, ordinance or law insurance) (which builder's risk insurance will be in lieu of, and not in addition to, the casualty insurance policy described in Section 15(a)(i) with respect to the Construction Project under the Work Letter) in amounts sufficient to provide full "completed value" replacement coverage for all Improvements, including the Construction Work, and all materials and equipment on or about the Leased Premises. Tenant shall require all general contractors performing work on the Leased Premises to maintain the same coverage as outlined in Sections 15(a)(ii), (iii), and (iv), in respect of any work or operations on or about the Leased Premises, or in connection with the Leased Premises or its operation or other insurance coverage covering all persons employed in connection with the Construction Work, whether by Tenant or its Construction Manager and with respect to whom death or bodily injury claims could be asserted against Landlord; provided, however, that a Construction Manager must carry a commercial umbrella/excess liability insurance in an amount no less than \$5,000,000.00 (as opposed to the minimum of \$25,000,000 that Tenant must maintain). Sub-contractors shall be required to obtain limits in accordance with the Construction Manager's requirements. In addition, all such insurance described in this Section 15(a)(viii): (A) Shall name the Landlord and any Fee Mortgagee as an additional insured except on workers' compensation, (B) shall include a waiver of subrogation in favor of the Landlord and Fee Mortgagee, (C) coverage shall be on a primary and non-contributory basis, and (D) if any off-site storage location listed with Tenant's insurer is used, shall cover, for full insurable value, all materials and equipment which have been delivered to and are stored at any such offsite storage location and which are intended for use with respect to the Improvements.

(b) All companies providing insurance required by Section 15(a) must have an A- or higher rating, as such ratings are ascribed by A.M. Best or equivalent, with a financial class

of VIII or higher (or otherwise agreed to by Landlord and any Fee Mortgage) and a claims paying ability/financial strength rating of "A-" or better by S&P, and must be licensed to do insurance business in the State. The Tenant's insurance policies and those required pursuant to Section 15(a)(viii) above shall be primary and non-contributory. If the required insurance expires, is withdrawn, becomes void because of a breach of any condition thereof by Tenant or becomes void for any other reason, Tenant must immediately obtain new or additional insurance as required under Section 15(a) above. The deductible for the insurance coverage required under Section 15 but not including catastrophic property perils deductible may not exceed \$50,000.00 unless approved by Landlord and shall be adjusted for any increase in the Index every five (5) Lease Years. Self-insurance is not permitted without Landlord's prior written consent. In addition, Tenant shall not name any person other than Landlord and any Fee Mortgagee(s) and any Leasehold Mortgagee as loss payee, without Landlord's prior consent, and shall not carry separate insurance (other than personal injury liability insurance) concurrent in form or contributing in the event of loss with that required by this Lease to be furnished or which may be required to be furnished by Tenant, unless Landlord and any Fee Mortgagees are included therein as insureds with loss payable as provided in this Lease. Tenant shall immediately notify Landlord of the carrying of any such separate insurance and shall cause the same to be delivered as required in this Lease.

(c) Each insurance policy referred to above must, to the extent applicable, contain standard mortgagee clauses in favor of any Fee Mortgagee and Leasehold Mortgagee. All insurance policies and endorsements required herein shall be fully paid and nonassessable. As evidence of the insurance specified in Section 15(a) required to be maintained by Tenant, Tenant will deliver to Landlord a certificate or certificates of insurance on an industry standard Acord 25 or Acord 28 (as applicable) or such other form as may be reasonably acceptable to Landlord and any Fee Mortgagee and Leasehold Mortgagee. Certificates will be furnished to the Landlord ten (10) days prior the policy effective dates and shall include copies of additional insured, waiver of subrogation, primary and non-contributory, and loss payee endorsements required in Section 15. Each policy required pursuant to this Section 15 shall and provide as follows, to the extent Tenant is reasonably able to obtain policies that so provide: (A) that any loss otherwise payable thereunder to a particular insured or loss payee will be payable notwithstanding (i) any act or omission of any other insured or loss payee which might, absent such provision, result in a forfeiture of all or a part of such insurance payment, (ii) the occupation or use of any of the Leased Premises for purposes more hazardous than permitted by the provisions of such policy, (iii) any foreclosure or other action or proceeding taken by any Fee Mortgage pursuant to any provision of any Fee Mortgage upon the happening of an event of default therein, or (iv) any change in title or ownership of any of the Leased Premises, (B) that such policy shall provide thirty (30) days' notice (which notice shall be delivered to Landlord and Fee Mortgagee) of cancellation in coverage, or such notice as is customarily available in accordance with policy provisions, Tenant shall notify Landlord within thirty (30) days of receipt of any Notice of Cancellation from its insurer that results in a material change in the coverage terms and limits resulting in non-compliance with the insurance provisions stated herein.

(d) Tenant will pay as they become due all premiums for insurance required by this Section 15, will timely renew or replace each policy, and will deliver to Landlord and any Fee

Mortgage a certificate (reasonably acceptable to Landlord and such Fee Mortgage) evidencing the existing policy and such renewal or replacement policy upon policy renewal. In the event of Tenant's failure to comply with any of the foregoing requirements of this Section 15, Landlord, will be entitled to immediately procure such insurance. Any sums expended by Landlord or any Fee Mortgagee in procuring such insurance will be Additional Rent and will be repaid by Tenant, together with interest thereon at the Default Rate, from the time of payment by Landlord or such Fee Mortgagee until fully paid by Tenant immediately upon written demand therefor by Landlord or such Fee Mortgagee, as the case may be. Tenant shall (and/or shall cause its subtenants, if applicable, to) observe and comply with the requirements of all policies of insurance in force with respect to the Leased Premises required under this Section 15.

(e) Notwithstanding anything to the contrary in this Section 15, any insurance which Tenant is required to obtain pursuant to Section 15(a) may be carried under a "blanket" policy or policies covering other properties or liabilities of Tenant, provided that such "blanket" policy or policies otherwise comply with the provisions of this Section 15. In the event any such insurance is carried under a blanket policy, Tenant will deliver to Landlord and any Fee Mortgage a certificate of insurance as required in the above sections of this Section 15.

(f) Notwithstanding anything to the contrary contained in this Section 15, in light of the length of the Term, Landlord may from time to time, upon not less than sixty (60) days' written notice to Tenant, adjust the insurance coverages required by this Section 15, including the amounts of the coverage required hereby, to conform to the insurance requirements that are, in Landlord's good faith determination, then customary for leases of projects similar to the Leased Premises or otherwise required by any Leasehold Mortgagee or by any Legal Requirements.

(g) Anything in this Lease to the contrary notwithstanding, Landlord and Tenant, for themselves and their respective insurers or any other party claiming through or under them by way of subrogation or otherwise, hereby waive and release each other of and from any and all right of recovery, claim, action, or cause of action against each other, their agents, officers and employees, for any loss or damage that may occur to the Leased Premises, improvements to the Leased Premises, or personal property within the Leased Premises, by reason of fire or the elements, or other casualty, regardless of cause or origin including the negligence of the Landlord or Tenant, to the extent such loss is fully-insured under insurance policies carried by Landlord or Tenant (or required to be carried hereunder) and agree that no insurer shall have any right of subrogation against the other such party. Landlord and Tenant agree to obtain a waiver of subrogation from the respective insurance companies which have issued policies of insurance covering all risk of direct physical loss, and to have the insurance policies endorsed, if necessary, to prevent the invalidation of the insurance coverages by reason of the mutual waivers.

(h) Tenant may also carry any additional insurance with respect to the Leased Premises as may be required from time to time by any Leasehold Mortgagee.

(i) A lack of insurance coverage does not reduce or limit the Tenant's obligation to indemnify the Landlord set forth in this Lease.

16. **Casualty.**

(a) In the event the Leased Premises shall be wholly or partially damaged or destroyed by fire or other casualty (each, a “Casualty”), Tenant will promptly give Landlord written notice thereof and Tenant shall, at its own cost and expense, promptly and diligently commence and complete Restoration of the Leased Premises using, to the extent reasonably possible, materials of the same or better quality than that of the materials being replaced. Notwithstanding the foregoing, during the period prior to commencing such Restoration, Tenant shall promptly take such steps as shall be necessary or advisable to preserve any undamaged portion of the Leased Premises and to ensure that the portions of the Leased Premises that are accessible to the public shall be safe and free from conditions hazardous to life and property. Such Restoration must comply with all terms of this Lease, including, without limitation, Section 13. This Lease shall remain in full force and effect and Tenant’s obligation to pay Rent shall remain unabated during the period required for adjusting insurance claims and completion such Restoration. Tenant shall so Restore the Leased Premises whether or not (i) such damage or destruction was insured (provided same was insurable), or (ii) the insurance proceeds are sufficient to pay in full any cost of the Restoration; and Landlord shall in no event be called upon to repair, replace or rebuild the Leased Premises or any Improvements thereon.

(b) If the Net Proceeds are equal to or less than \$2,500,000.00 (as adjusted for the Index every five (5) Lease Years) (the “Casualty Threshold”), such Net Proceeds shall be paid and disbursed directly to Tenant, to be applied to the completion of the Restoration in accordance with this Lease. In no event shall such Net Proceeds be applied towards the prepayment of any loan secured by a Leasehold Mortgage.

(c) If the Net Proceeds exceed the Casualty Threshold, such Net Proceeds shall be held by and administered by the Proceeds Trustee in an Eligible Account and paid to Tenant as Restoration progresses in accordance with this Lease. In no event shall such Net Proceeds be applied towards the prepayment of any loan secured by a Leasehold Mortgage. Tenant shall, not later than the later of (x) the commencement of such Restoration or (y) ten (10) Business Days after Notice from Landlord to Tenant demanding that a Casualty Repair Guarantor execute a deliver a Casualty Repair Guaranty to Landlord, do the following:

(i) cause a Person approved by Landlord (such Person, the “Casualty Repair Guarantor”), such approval not to be unreasonably withheld, delayed or conditioned, to execute and deliver to Landlord, a guaranty, in form and substance approved by Landlord (such approval not to be unreasonably withheld, delayed or conditioned) guarantying for the benefit of Landlord, each Fee Mortgagee and the respective successors and assigns of Landlord and each Fee Mortgagee, the timely satisfaction of all obligations of Tenant to commence, perform and complete the Restoration in question (such guaranty, the “Casualty Repair Guaranty”); and

(ii) deliver to Landlord proposed plans and specifications and a budget for such Restoration, all of which Landlord shall approve in its reasonable discretion. Landlord agrees that it will approve the Casualty Repair Guarantor

approved by Leasehold Mortgagee and the form of guaranty of the Tenant's obligations to commence, perform and complete the Restoration in question approved by Leasehold Mortgagee (with such modifications as Landlord may reasonably require to conform with the provisions of this Section 16(c)).

(d) If requested by Notice to Tenant from Landlord, Tenant shall promptly provide to Landlord such evidence of Casualty Repair Guarantor's creditworthiness, liquidity, existence, good standing, power and authority to execute, deliver and perform its obligations under the Casualty Repair Guaranty and the due authorization, execution and delivery by Casualty Repair Guarantor of the Casualty Repair Guaranty as Landlord may reasonably require. A Casualty Repair Guarantor shall cease to be a Casualty Repair Guarantor upon timely full completion by Tenant of the applicable Restoration in accordance with this Section 16. Except as otherwise provided in the Leasehold Mortgage (or any loan document in connection therewith), the Net Proceeds shall be deposited in an interest bearing Eligible Account, to the extent not previously disbursed for Restoration costs, be distributed to Tenant upon completion of said Restoration, provided no Event of Default has occurred and is continuing hereunder.

(e) Subject to Tenant's rights of termination hereinafter set forth, in the event of any Casualty (whether or not insured against) resulting in damage to the Leased Premises or any part thereof, the Term will nevertheless continue and there will be no abatement or reduction of Base Rent, Additional Rent or any other sums payable by Tenant hereunder. Promptly after such Casualty (but subject to Tenant's termination rights set forth below), Tenant must (whether or not such Casualty is insured against and, if insured, whether or not the Net Proceeds are sufficient for the purpose) promptly cause a Restoration of the Improvements subject to, and otherwise in accordance with, all Insurance Requirements and Legal Requirements and the provisions of this Lease (including Section 13 hereof) and the Net Proceeds of such Casualty may be utilized by Tenant for such purpose, subject to the provisions of Section 17 hereof if such Net Proceeds have been paid over to the Proceeds Trustee. If any such Net Proceeds have been paid over to the Proceeds Trustee in such capacity, the Proceeds Trustee must make the Net Proceeds received by it available to Tenant for Restoration, in accordance with the provisions of Section 17.

(f) Notwithstanding anything to the contrary contained herein, if a Casualty occurs that is a Total Loss, provided Tenant shall have obtained and maintained all insurance relating to such Casualty as was required under this Lease, Tenant will have the right to terminate this Lease by written notice to Landlord given within sixty (60) days after such occurrence, so long as the following conditions precedent are satisfied: (i) in the event that the Total Loss results in the destruction of the Improvements to such an extent that the damaged portion thereof cannot be Restored, Tenant shall, at Tenant's expense, promptly raze the Improvements and clean and otherwise put the Leased Premises in good order (unless Landlord notifies Tenant in writing within thirty (30) days after Landlord receives Tenant's notice of termination that Landlord intends to rebuild or restore the Improvements, in which case Tenant shall only raze the Improvements and clean the Leased Premises to the extent specified in such Notice from Landlord), (ii) Tenant shall pay to Landlord any and all amounts accrued or payable under this Lease (including, without limitation, all Rent) through the effective date of such termination, and (iii) as a condition precedent to the effectiveness of such termination, Tenant shall assign and pay over to Landlord

the Net Proceeds with respect to such Casualty, less all costs of demolition and debris removal (provided, however, that Tenant shall be entitled to keep any insurance proceeds payable on account of any loss income or revenue from Tenant's operation of the Leased Premises for periods prior to the date of such termination). Upon the expiration of such 30-day period after delivery of such notice, this Lease shall cease and terminate; provided, however, such termination shall not be effective unless the notice is accompanied (or thereafter is followed) by an unconditional written consent to such termination executed by all Leasehold Mortgagee(s). If this Lease is terminated pursuant to this Section 16(f), all insurance proceeds attributable to Restoration of the Improvements will be paid to Landlord and Landlord alone will have the right to settle any claim with the insurance with respect to such proceeds (provided, however, that Tenant shall be entitled to keep any insurance proceeds payable on account of any loss income or revenue from Tenant's operation of the Leased Premises for periods prior to the date of such termination).

(g) The provisions of this Section 16 shall be deemed an express agreement governing any case of damage or destruction of the Leased Premises by fire or other Casualty, and Section 227 of the Real Property Law of the State of New York, providing for such a contingency in the absence of an express agreement, and any other law of like import, now or hereafter in force, shall have no application in such case.

17. **Restoration.** In the event that the Net Proceeds of any insurance payment following a Casualty or any Condemnation Award has been paid to or otherwise held by a Proceeds Trustee in accordance with this Lease, then, provided that no Event of Default has occurred and is then continuing, the Net Proceeds or Condemnation Award paid to the Proceeds Trustee will be disbursed by the Proceeds Trustee to Tenant, to be applied to the Restoration, subject to the following conditions:

(a) At the time of any disbursement, no Event of Default has occurred and is continuing and no mechanics' or materialmen's liens have been filed and remain undischarged and unbonded.

(b) Prior to commencement of the Restoration, the architects, contracts, contractors, plans and specifications for the Restoration must have been approved by Landlord if and to the extent required in accordance with this Lease.

(c) Each request for disbursement must be accompanied by a statement by Tenant or its general contractor describing the completed work for which payment is requested and stating the cost incurred in connection therewith.

(d) Disbursements will be made from time-to-time in an amount not exceeding the cost of the work completed since the last disbursement upon receipt of (1) satisfactory evidence, including architects' certificates, of the stage of completion, of the estimated cost of completion and of performance of the work to date in a good and workmanlike manner in accordance with the contracts, plans and specifications approved by Landlord, and (2) unconditional lien waivers for providers of labor or materials for work which was the subject of prior paid requisitions.

(e) The Proceeds Trustee may retain ten percent (10%) from each disbursement of the Net Proceeds or Condemnation Award as retainage until not later than thirty (30) days after the Restoration is substantially completed (as evidenced by the delivery of an AIA Form G704) and issuance of a temporary certificate of occupancy for the Leased Premises, if required by Legal Requirements.

(f) Prior to commencement of Restoration and at any time during Restoration, if the estimated cost of Restoration, as set forth in the applicable construction contract for the Restoration, exceeds the amount of the Net Proceeds or Condemnation Award, the amount of such excess will be paid by Tenant to the Proceeds Trustee to be added to the Net Proceeds or Condemnation Award prior to any further disbursement or, at Tenant's option, Tenant will fund at its own expense the costs of such Restoration until the remaining Net Proceeds or Condemnation Award is sufficient for the completion of the Restoration. Except for the payment to Landlord or Fee Mortgage of the Net Award referred to in Section 14(c), any amount of the Net Proceeds or Condemnation Award and all other amounts then held by the Proceeds Trustee which remains upon the completion of Restoration will be paid to Tenant. For purposes of determining the source of funds with respect to the disposition of funds remaining after the completion of Restoration, the Net Proceeds or Condemnation Award will be deemed to be disbursed prior to any amount added by Tenant.

18. **Subordination to Financing.**

(a) Landlord's interest in this Lease and/or the Leased Premises shall not be subordinate to any encumbrances placed upon the Leased Premises by or resulting from any act of Tenant, and nothing herein contained shall be construed to require such subordination by Landlord. Subject to Section 20 below and Section 10 above, Tenant shall keep the Leased Premises free from any liens for work performed, materials furnished or obligations incurred by Tenant.

(b) This Lease is and will be superior to the lien of any Fee Mortgage. Without limiting the automatic subordination of any mortgages granted by Landlord as set forth in this Section 18(b), at Tenant's request, each Fee Mortgagee shall deliver to Tenant and cause to be recorded in the appropriate land records a commercially reasonable subordination agreement reasonably satisfactory to the parties thereto which shall provide that such Fee Mortgagee's Fee Mortgage shall at all times be fully subordinate to this Lease and any New Lease executed in accordance with Section 12(h) hereof. So long as no Event of Default has occurred and is continuing, Tenant's tenancy will not be disturbed, nor will this Lease be affected by any default under such Fee Mortgage, and in the event of a foreclosure or other enforcement of any such Fee Mortgage, or sale in lieu thereof, the purchaser at such foreclosure sale or pursuant to a deed-in-lieu thereof will be bound to Tenant for the Term of this Lease and any extensions thereof, the rights of Tenant hereunder will expressly survive, and this Lease will in all respects continue in full force and effect (subject to any rights of such Successor Landlord with respect to any Event of Default by Tenant that has occurred and is continuing). So long as no Event of Default by Tenant has occurred and is continuing, Tenant will not be named as a party defendant in any such foreclosure suit, except as may be required by Legal Requirements, and only to such extent.

(c) At any time prior to the expiration of the Term, Tenant agrees to attorn, from time to time, to any owner of the Fee Estate, any Fee Mortgagee or Successor Landlord which succeeds to Landlord's interest under this Lease, upon the then executory terms and conditions of this Lease, for the remainder of the Term demised in this Lease, provided that such owner or Fee Mortgagee will assume the obligations of Landlord under this Lease thereafter arising. The provisions of this Section 18(c) (x) inure to the benefit of any such owner of the Fee Estate, Fee Mortgagee, or Successor Landlord, and (y) as to Tenant, apply notwithstanding that, as a matter of law, this Lease would have otherwise terminated upon the foreclosure of the Mortgage, will be self-operative, and no further instrument will be required to give effect to said provisions.

19. Assignment; Subleasing.

(a) As used herein, the term "Transfer" means (i) any sale, assignment or other transfer of Tenant's interest in this Lease and/or the Leasehold Estate, (ii) any sublease of all or substantially all of the Leased Premises, and (iii) any sale, assignment, other transfer of any interest in Tenant, or in any Person that directly or indirectly owns Tenant; provided, however, that the term "Transfer" shall not include execution of the Property BCA by Tenant or any Leasehold Mortgage that is permitted pursuant to Section 12, nor the consummation of a foreclosure or deed-in-lieu of foreclosure by the holder of a Leasehold Mortgage (but any Transfer by a Person that acquired Tenant's interest in this Lease and the Leasehold Estate, or the equity interests in Tenant or Tenant's direct or indirect owners, in each case pursuant to a foreclosure or deed-in-lieu of foreclosure, shall be a Transfer for purposes of this Lease).

(b) Prior to Substantial Completion of the Project, Tenant may not effectuate any Transfer that would result in a Tenant Key Person Event or sublease any portion(s) of the Leased Premises, unless (in each instance) Landlord grants its prior written consent thereto, which shall be given or withheld in Landlord's sole and absolute discretion; provided, however, that the foregoing shall not prohibit Tenant from entering into any Commercial Sublease pursuant to which the subtenant thereunder is required to perform construction, alteration or other improvement obligations and obtain a temporary and/or permanent certificate of occupancy, so long as such sublease otherwise complies with the terms and conditions of this Section 19 and Tenant prohibits any occupancy not permitted pursuant to Legal Requirements. From and after Substantial Completion of the Project, (i) Landlord's consent shall not be required with respect to any Transfer of the Lease, provided that (A) at the time of such Transfer, no Event of Default has occurred and remains uncured and is continuing (unless such Event of Default will be cured upon and as condition to the effectiveness of such Transfer), (B) following the consummation of such Transfer, the Tenant hereunder will not be, and will not be Controlled by, a Prohibited Person, and (C) following the consummation of such Transfer, the Tenant hereunder will be a Qualified Transferee, and (ii) Tenant may enter into one or more Residential Subleases and/or Commercial Subleases of the Leased Premises. Notwithstanding the foregoing provisions of this Section 19(b), (i) Landlord's consent shall not be required in connection with any Leasehold Mortgagee's exercise of its remedies under the Leasehold Mortgage, including without limitation its foreclosure on or acceptance of an assignment-in-lieu of foreclosure with respect to Tenant's interest herein and conveying Tenant's interests hereunder to the purchaser at such foreclosure sale or pursuant to such assignment-in-lieu thereof, (ii) if Leasehold Mortgagee becomes a Successor Tenant pursuant

to and in accordance with the terms of this Lease, such Leasehold Mortgagee may effectuate a Transfer prior to Substantial Completion, provided that (A) such Transfer is to a Qualified Transferee, (B) such transfer will be to a Person that retains a Qualified Developer to bring about Completion of the Project in accordance with the terms of this Ground Lease, and (C) one or more Qualified Replacement Guarantors executes and delivers to Landlord each Project Guaranty in the same form(s) as then in effect or on such form as is acceptable to Landlord in its sole and absolute discretion, and (iii) the foregoing Transfers by a Leasehold Mortgagee shall not trigger a Tenant Key Person Event and "Tenant Key Person Event" shall not apply to any Leasehold Mortgagee.

(c) In no event may Tenant effectuate a Transfer to, or sublease any portion of the Leased Premises to any Prohibited Person, and any such Transfer or subletting shall not be effective until the transferee or subtenant has provided written certification to Landlord that (A) neither such transferee or subtenant nor any Person who owns directly or indirectly any interest in such assignee or subtenant is a Prohibited Person, and (B) such transferee or subtenant has taken reasonable measures to assure that no Person who owns directly or indirectly any interest in such assignee or subtenant is a Prohibited Person; provided, however, the covenant contained in this sentence shall not apply to any Person to the extent that such Person's interest is in or through a U.S. Publicly Traded Entity. Notwithstanding anything to the contrary contained herein, the parties hereto acknowledge and agree that it will not be an Event of Default if Tenant enters into a Residential Sublease with a Prohibited Person if (i) pursuant to any Rent Regulation Program effected in accordance with this Lease and/or any Legal Requirement, Tenant is not permitted to decline entering into such Residential Sublease with such Prohibited Person (unless such Person is a Rent Regulation Non-Curable Prohibited Person), or (ii) otherwise (A) at the time of entering into such Residential Sublease, the Tenant did not know such Subtenant was a Prohibited Person and (B) immediately after first learning that Subtenant is a Prohibited Person, Tenant notifies Landlord of the same and terminates the Residential Sublease with such Prohibited Person.

(d) At least fifteen (15) days prior to consummating a Transfer, Tenant shall deliver reasonable evidence to Landlord that, following the consummation of such Transfer, the Tenant hereunder will not be, and will not be Controlled by, a Prohibited Person and will be a Qualified Transferee. Tenant agrees that in the case of an assignment of this Lease, Tenant will, not less than ten (10) days prior to the execution and delivery of any such assignment as described in Section 19(a), give notice of such assignment to Landlord and any Fee Mortgage. Tenant further agrees that in the case of such assignment, Tenant will, within fifteen (15) days after the execution and delivery of any such assignment, deliver to Landlord and any Fee Mortgage (i) a duplicate original of such assignment, along with a Memorandum thereof in recordable form and (ii) an agreement executed and acknowledged by the assignee in recordable form wherein the assignee agrees to assume and agrees to observe and perform all of the terms and provisions of this Lease on the part of the Tenant to be observed and performed from and after the date of such assignment. Notwithstanding anything in this Lease to the contrary, upon an assignment of this Lease to a Qualified Transferee permitted hereunder or otherwise consented to by Landlord, the assigning Tenant shall be thereupon released from all obligations and liabilities which accrue from and after the effective date of such assignment in the event that such Qualified Transferee assumes all of the obligations and liabilities of the Tenant hereunder accruing from and after the effective date of such assignment (and in the event that such Qualified Transferee assumes all of the obligations

and liabilities of the Tenant hereunder prior to and after the effective date of such assignment, the assigning Tenant shall also be thereupon released from all obligations and liabilities which accrued prior to the effective date of such assignment).

(e) No Sublease under, or assignment of this Lease (or any rejection in bankruptcy or other default by any assignee or subtenant hereunder) will relieve the original Tenant of its obligations hereunder, which will continue as the obligations of a principal and not as the obligations of a surety or a guarantor. Notwithstanding any merger, consolidation or sale (i) of Tenant, (ii) of any parent, subsidiary or Affiliate of Tenant, or (iii) of any or all of the assets of Tenant or any parent, subsidiary or Affiliate of Tenant, Tenant (and any successor of Tenant by such merger, sale or consolidation) will continue to be obligated for all of Tenant's obligations hereunder without any abatement, diminution, set-off, reduction, rebate, termination, or decrease, except as expressly provided in this Lease. The joint and several liability of Tenant and any immediate and remote successor in interest of Tenant (by assignment or otherwise), and the due performance of the obligations of this Lease on Tenant's part to be performed or observed, will not in any way be discharged, released or impaired by any (A) stipulation which extends the time within which an obligation under this Lease is to be performed, (B) waiver of the performance of an obligation required under this Lease, or (C) failure to enforce any of the obligations set forth in this Lease. Notwithstanding the foregoing or anything in this Lease to the contrary, upon an assignment of this Lease to a Qualified Transferee permitted hereunder or otherwise consented to by Landlord, the assigning Tenant shall be thereupon released from all obligations and liabilities which accrue from and after the effective date of such assignment in the event that such Qualified Transferee assumes all of the obligations and liabilities of the Tenant hereunder accruing from and after the effective date of such assignment (and in the event that such Qualified Transferee assumes all of the obligations and liabilities of the Tenant hereunder prior to and after the effective date of such assignment, the assigning Tenant shall also be thereupon released from all obligations and liabilities which accrued prior to the effective date of such assignment). If Tenant assigns this Lease to a Qualified Transferee that is not an Affiliate of the named Tenant hereunder in accordance with the terms of this Lease, then, so long as there is no Event of Default then existing, Tenant may propose a replacement guarantor in respect of the Environmental Indemnity and Landlord shall not unreasonably withhold its consent to such replacement guarantor; provided and on the condition that, (i) such replacement guarantor is a Qualified Replacement Guarantor and (ii) such Qualified Replacement Guarantor executes and delivers to Landlord an Environmental Indemnity in the same form(s) as then in effect or on such form as is acceptable to Landlord in its sole and absolute discretion. If Tenant delivers a Qualified Replacement Guarantor meeting the conditions of this paragraph, then, upon receipt of such executed Environmental Indemnity the Tenant named herein and original Guarantor will be released from liability and obligations thereunder accruing from and after the date such replacement Environmental Indemnity is executed.

(f) No interest in Tenant or any Affiliate of Tenant, or in any Person owning directly or indirectly any interest in Tenant or any Affiliate of Tenant, shall be transferred, assigned or conveyed to any Prohibited Person, and any such transfer, assignment or conveyance shall not be effective until the transferee has provided written certification to Landlord that (i) the transferee or any Person who owns directly or indirectly any interest in transferee, is not an Prohibited Person,

(ii) the transferee has taken reasonable measures to assure than any Person who owns directly or indirectly any interest in transferee, is not a Prohibited Person, and (iii) after such transfer, Tenant shall still meet the requirements of a Qualified Transferee; provided, however, the covenant contained in this sentence shall not apply to any Person to the extent that such Person's interest is in or through a U.S. Publicly Traded Entity.

(g) Intentionally Omitted.

(h) Each Residential Sublease, Commercial Sublease and other Sublease of the Leased Premises or any part thereof shall:

(i) at all times, be subject and subordinate to the provisions of this Lease;

(ii) have a scheduled expiration no later than the calendar day immediately preceding the Expiration Date, unless otherwise required by Legal Requirements or a Rent Regulation Program;

(iii) not, by entering thereinto, cause any violation of any Legal Requirement or Insurance Requirement;

(iv) not be with an Affiliate of Tenant without the prior written consent of Landlord (which consent may be given or withheld in Landlord's sole and absolute discretion); and

(v) contain provisions which provide that, (A) if such Sublease terminates, for any reason, then at the option of Landlord, such Sublease shall terminate and subtenant shall have no rights against Landlord, (B) in such event, such subtenant, only at the option and request of Landlord, shall attorn to Landlord and recognize Landlord as such subtenant's direct landlord under such Sublease, and (C) such subtenant shall execute and deliver, at any time and from time to time, upon the request of Tenant, Landlord, any Fee Mortgagee, or any Leasehold Mortgagee, any instrument necessary or appropriate to evidence such attornment.

(i) The fact that a violation or breach of any of the terms, provisions or conditions of this Lease results from or is caused by an act or omission by any subtenant under a sublease shall not relieve Tenant of Tenant's obligations in respect thereof. If this Lease terminates for any reason prior to the scheduled Expiration Date, then Landlord shall have the option (but no obligation whatsoever (except as set forth in this Lease or as otherwise expressly agreed in writing by Landlord)) at the time this Lease terminates to recognize as a direct lease between Landlord and the applicable subtenant any sublease and such subtenant, at Landlord's option, shall attorn to Landlord pursuant to the then-executory provisions of such sublease; provided, however, that Landlord shall not be bound by or liable for any of the matters for which Landlord is exempt from liability as set forth in the recognition, non-disturbance and attornment agreement, in the form attached hereto as Exhibit B. Tenant shall deliver to Landlord, within five (5) Business Days of

the effective date of a Commercial Sublease, a true, correct and complete copy of such sublease, certified by Tenant to be true, correct and complete.

(j) Upon the occurrence and during the continuance of an Event of Default under this Lease, Landlord (and/or Landlord's designee) will have the right to collect and enjoy all rents and other sums of money payable under any Residential Sublease, Commercial Sublease or other Sublease of all or any portion of the Leased Premises, and Tenant hereby irrevocably and unconditionally assigns such rents and money to Landlord (and/or Landlord's designee), which assignment(s) may be exercised upon and after (but not before) the occurrence of an Event of Default so long as such Event of Default is continuing. In the event this Lease is terminated following an Event of Default or otherwise in accordance with the terms hereof, Landlord, may, in its sole discretion (without any obligation to do so), elect to recognize any one or more of the Subleases as a direct lease between Landlord (and/or Landlord's designee) and such subtenant. Under no circumstances shall Landlord (and/or Landlord's designee) have liability under any Subleases unless and until Landlord so elects to recognize such Sublease (or has recognized or is obligated to recognize such Sublease pursuant to Section 19(n)).

(k) If a Transfer occurs in violation of the provisions of this Section 19, then such Transfer shall be void and of no force and effect against Landlord; provided, however, Landlord may collect an amount equal to the then Rent from the transferee, assignee, subtenant, or other applicable party as a fee for its use and occupancy of the Leased Premises. If the Leased Premises or any part thereof is sublet to, or occupied by, or used by, any Person other than Tenant, whether or not in violation of this Section 19, Landlord, after the occurrence of and during the continuance of an Event of Default, including, without limitation, a subletting or occupancy in violation of this Section 19, may collect any item of rent or other sums paid by any subtenant, user or occupant as a fee for its use and occupancy, and shall apply the net amount collected to the Rent reserved in this Lease. No Transfer, subletting, occupancy or use, whether with or without Landlord's prior consent, nor any such collection or application of rent or fee for use and occupancy, shall be deemed a waiver by Landlord of any term, covenant or condition of this Lease or, except as expressly provided in such consent or as expressly provided otherwise in this Section 19, the acceptance by Landlord of such assignee, subtenant, occupant or user as tenant hereunder. The consent by Landlord to any Transfer, subletting, occupancy or use, to the extent required under this Section 19, shall not relieve Tenant from its obligation to obtain the express prior consent of Landlord to any further Transfer, subletting, occupancy or use which requires Landlord's consent hereunder.

(l) With regard to any assignment or Sublease or other Transfer which is permitted pursuant to this Section 19, Landlord shall cooperate with the reasonable requests of Tenant made for purposes of effectuating such assignment or Sublease or other Transfer and the use of the Leased Premises as contemplated thereby, which cooperation shall include, without limitation, execution and delivery of any such documents, agreements, instruments, applications, licenses, permits, estoppels or consents reasonably required by the parties to consummate such assignment, Sublease or Transfer and/or to permit the Leased Premises to be used by such assignee, subtenant or transferee as contemplated by such assignment, Sublease or Transfer and so long as Landlord assumes no liability thereunder or Tenant indemnifies Landlord from such liability.

Notwithstanding the foregoing, Landlord shall not be required to incur any cost or expense, nor shall Landlord be required to revise, amend or modify any terms or conditions of this Lease in order to effectuate an assignment or sublease desired by Tenant. Tenant agrees to promptly reimburse Landlord for its out-of-pocket costs and reasonable attorney's fees incurred by Landlord in connection with the actions requested by Tenant hereunder.

(m) Notwithstanding anything to the contrary contained herein, (i) no single subtenant shall be a party to more than three (3) Residential Subleases at any one time and (ii) if a Commercial Sublease is for more than the lesser of (x) 10,000 rentable square feet or (y) five percent (5%) of the rentable square footage of the Improvements or is a Commercial Sublease for all or substantially all of the commercial portion of the Improvements (any such Commercial Sublease, a "Significant Commercial Sublease"), Tenant shall deliver to Landlord a certificate or letter from a reputable national brokerage company approved by Landlord (not to be unreasonably withheld, conditioned or delayed) confirming that such subletting is for a rental which is not less than the "fair market rental" (meaning, for purposes of this clause (ii), rental which would be paid for such space (commencing at the same time as the proposed subtenant's use or occupancy) in an arms-length transaction with a third party leasing a similar amount of space in the Leased Premises for the same term and shall include, *inter alia*, all fixed, percentage and escalation rents which would be included under such Sublease for the portion of the Leased Premises demised thereunder) (any such letter or certificate, a "Market Sublease Letter").

(n) Without limiting the automatic recognition of any subtenant by Landlord set forth in Section 19(h), Landlord shall, upon Tenant's request made at any time or from time to time, enter into a recognition, non-disturbance and attornment agreement, in the form attached hereto as Exhibit B (with such commercially reasonable modifications as such subtenant may request) or otherwise in a commercially reasonable form reasonably acceptable to Landlord, with respect to any Commercial Sublease entered into in accordance with the provisions of this Lease; provided, that: (A) the subtenant is not a Prohibited Person and is not Tenant or an Affiliate of Tenant; (B) either (x) such Sublease is a Significant Commercial Sublease and the term of such Sublease (taking into account any renewal or extension terms) is not less than ten (10) years or (y) the subtenant under such Sublease is a national or regional credit subtenant whose creditworthiness is consistent with good industry leasing standards and which subtenant possesses or has a parent company that possesses, or which subtenant's lease obligations are guaranteed by an affiliate that possesses, a public senior unsecured long-term debt or similar rating of at least investment grade from one or more nationally recognized statistical rating organizations (such subtenant, a "National or Regional Credit Tenant"); (C) such Sublease is on terms that are commercially reasonable at the time of execution of such Sublease (taking into account security and the creditworthiness and experience of any guarantor) and Tenant shall have delivered to Landlord a Market Sublease Letter; (D) such Sublease shall provide for the payment of no upfront sums (other than security deposits) to Tenant or any Affiliate of Tenant and shall preclude the prepayment of rent or any additional rent more than thirty (30) days in advance; and (E) Tenant provides Landlord with a copy of such Sublease with such other provisions as are required by this Lease. Notwithstanding the foregoing, at any time there is a Leasehold Mortgage encumbering the Leased Premises, if requested by Tenant, Landlord shall enter into a recognition, non-disturbance and attornment agreement with respect to any Commercial Sublease on substantially the same form as such

Leasehold Mortgagee is willing to enter into a subordination, non-disturbance and attornment agreement with respect to such Sublease. Tenant shall reimburse Landlord for all of Landlord's reasonable out-of-pocket costs and expenses incurred in connection with the entering into of any agreement pursuant to this Section 19(n). Notwithstanding the foregoing or anything else to the contrary set forth in this Lease, in no event shall Landlord be obligated to provide a recognition, non-disturbance and attornment agreement with respect to any Residential Sublease. In the event of any dispute between Tenant and Landlord with respect to the matters described in this Section 19(n), the same shall be resolved by arbitration pursuant to Section 50 hereof.

20. **Permitted Contests.** Notwithstanding any provision of this Lease to the contrary, after prior written notice to Landlord and any Fee Mortgagee, Tenant may contest, in good faith and at its sole cost and expense, the existence, the amount or the validity of any Taxes, Legal Requirements or any liens encumbering the Leased Premises, the amount of the damages caused thereby, or the extent of Tenant's or Landlord's liability therefor, by appropriate proceedings provided that during the pendency thereof such contest does not require or will not cause, as appropriate: (A) the collection of, or other realization upon, the Taxes or lien so contested (unless Tenant pays same without prejudice), (B) the sale, forfeiture, loss of or damage to any of the Leased Premises, any Base Rent or any Additional Rent to satisfy the same or to pay any damages caused by the violation of the same, (C) any interference with the use, occupancy, sale or financing of any of the Leased Premises, (D) any interference with the payment of any Base Rent or any Additional Rent, and (E) the cancellation of any fire or other insurance policy, and provided further that Tenant keeps Landlord and any Fee Mortgagee reasonably informed as to the status of such contest and proceedings. Tenant will provide Landlord or Leasehold Mortgagee, if there is a Leasehold Mortgage in place, as security for such contest, an amount of cash or bond equal to one hundred twenty-five percent (125%) of the amount being contested, or other form of security satisfactory in the reasonable opinion of any Leasehold Mortgagee or Landlord in that order, in assuring the payment, compliance, discharge, removal or other action, including all costs, attorneys' fees, interest and penalties, in the event that the contest is unsuccessful (which cash, bond or other security shall be sufficient to (i) pay such contested Taxes, comply with such contested Legal Requirement or discharge or remove such contested lien, as applicable, (ii) pay any interest, penalties, fines, fees and expenses which may be assessed or payable by reason of Tenant's deferral of compliance or payment, as applicable, and (iii) pay any liability reasonably likely to be payable to any independent third parties by reason of such deferral of payment or compliance). In no event will Tenant pursue any contest with respect to any Taxes, Legal Requirement, or lien referred to above in such manner that exposes Landlord, Tenant or any Fee Mortgagee, to any criminal or civil penalty or sanction, causes Landlord to be in default of any Fee Mortgage, causes Tenant to be in default under any Leasehold Mortgage or results in a defeasance of Landlord's interest in the Leased Premises. Tenant shall, upon demand from Landlord, promptly pay any fine, penalty, liability or sanction that may be imposed upon Tenant or Landlord (or its employees, officers, directors, shareholders, partners, members, managers, agents or any other Indemnified Party) by virtue of any non-compliance by Tenant with Legal Requirements. While any such proceedings are pending and the required security is held by any Fee Mortgagee or Landlord, in that order, the Fee Mortgagee or Landlord, as the case may be, will not have the right to pay, remove or cause to be discharged the Tax, Legal Requirement or lien thereby being contested unless Landlord or any Fee Mortgagee reasonably believes that Tenant is

not satisfying any one or more of the relevant conditions in clauses (A) through (E) preceding during the pendency of the contest. Tenant will pay any and all judgments, decrees and costs (including all attorneys' fees and expenses) in connection with any such contest and will, promptly after the final determination of such contest, fully pay and discharge the amounts which are assessed, or imposed or are determined to be payable therein or in connection therewith, together with all penalties, fines, interest, costs and expenses thereof or in connection therewith, and perform all acts the performance of which are ordered as a result thereof, whereupon all such security then held hereunder shall be returned to Tenant.

21. **Events of Default.** The occurrence of any one or more of the following events will constitute an event of default (an "Event of Default") under this Lease:

(a) Tenant's failure to make any payments of Base Rent, Additional Rent or other sum herein required to be paid by Tenant when due and such default continues for a period of ten (10) days after written Notice from Landlord to Tenant.

(b) Tenant's failure to duly perform and observe the provisions of Section 24(b) and such default continues for a period of ten (10) days after written Notice from Landlord to Tenant.

(c) Tenant's failure to maintain insurance substantially in accordance with the requirements of Section 15 hereof and such default continues for a period of ten (10) days after written Notice from Landlord to Tenant.

(d) Any default in any obligation to perform or failure to meet any required deadline for the Construction Project set forth in the Work Letter, including, without limitation, Tenant's failure to cause Substantial Completion to occur on or before the Required Substantial Completion Date.

(e) Tenant, Guarantor or any Casualty Repair Guarantor under a guaranty of any of Tenant's obligations under this Lease then in effect (i) is adjudicated bankrupt or insolvent, or (ii) consents to the appointment of a receiver or trustee for itself or for any of the Leased Premises, (iii) files or acquiesces to (as applicable) a voluntary or involuntary petition seeking relief under the bankruptcy or other similar laws of the United States, any state or any jurisdiction, (iv) makes a general assignment for the benefit of creditors, or (v) is liquidated or dissolved or begins proceedings toward its liquidation or dissolution.

(f) A court enters an order, judgment or decree appointing a receiver or trustee for it or for any of the Leased Premises or approving a petition filed against Tenant or Guarantor (under a guaranty of this Lease then in effect) which seeks relief under the bankruptcy or other similar laws of the United States, any state or any jurisdiction, and such order, judgment or decree remains in force, undischarged and unstayed ninety (90) days after it is entered (each, together with those items listed in Section 21(f) above, a "Bankruptcy Action").

(g) The estate or interest of Tenant or Guarantor in any of the Leased Premises is levied upon or attached in any proceeding and such estate or interest is about to be sold or

transferred or such process is not be vacated or discharged within ninety (90) days after such levy or attachment.

(h) Any representation or warranty made by Tenant or Guarantor herein proves to have been incorrect when made in any material respect, such incorrect representation or warranty has, or is reasonably expected to have, a material adverse effect on Landlord or the Leased Premises, and, if Tenant did not intentionally make such false representation or warranty, Tenant does not take such action as Landlord may reasonably require to protect Landlord from or compensate Landlord for such material adverse effect within thirty (30) days after written notice from Landlord to Tenant; provided, however, in cases where Tenant intentionally made such materially and adversely false representation and warranty of Tenant or intentionally breached a covenant of Tenant that materially and adversely affected Landlord, no cure or correction period shall exist.

(i) Any fraud or embezzlement against Landlord or with respect to the Leased Premises on the part of Tenant, Guarantor, or any Tenant Key Person, as determined by a final, non-appealable decision of court of competent jurisdiction; provided, however, notwithstanding the foregoing, if an Event of Default occurs pursuant to this clause (i) and was caused by an officer or employee of Tenant (other than a Tenant Key Person or Guarantor), such event shall not be an Event of Default if (x) Tenant removes the offending officer or employee from any duties related to the Leased Premises promptly after Tenant (or any Tenant Key Person or Guarantor) becomes aware of such conduct, as confirmed by Landlord to its reasonable satisfaction, (y) such Event of Default is cured within ten (10) days following Tenant, any Tenant Key Person or Guarantor becoming aware of such Event of Default, and (z) Tenant, at its sole cost and expense indemnifies Landlord for any Losses sustained by Landlord and any Indemnified Parties, which amounts shall be paid in full within thirty (30) days of receipt of Notice from Landlord of any such Losses.

(j) At any time that the Leased Premises is subject to the 421-a Program during the Term, any voluntary action or voluntary inaction (where there was a duty by such party to act) of Tenant or any Affiliate of Tenant that causes the rejection, suspension or revocation of any 421-a Program benefits with respect to the Leased Premises, which action or inaction is taken without the prior written approval of Landlord (which approval shall be given or withheld in Landlord's sole and absolute discretion), unless Tenant, within thirty (30) days following notice thereof from Landlord, takes such action as is necessary to reinstate such program.

(k) Tenant enters into or executes a Mortgage in violation of the provisions of this Lease and same is not cured within thirty (30) days after Notice thereof from Landlord (unless such Mortgage is made to a Non-Curable Prohibited Person or any Person who owns directly or indirectly any interest in a Non-Curable Prohibited Person, in which case, no such Notice or cure period shall apply; provided, however, that the first time during the Term that a Mortgage is made to a Non-Curable Prohibited Person in violation of the Lease, Tenant shall have the ability to cure such violation within thirty (30) days after Notice thereof from Landlord).

(l) The occurrence of (i) a Tenant Key Person Event or (ii) an intentional Transfer by Tenant of this Lease or its rights, title and/or interests in the Leased Premises in violation of the terms and conditions of this Lease.

(m) Other than Transfers governed by clause (l) above, the occurrence of any other Transfer by Tenant of this Lease, or any of its rights, title and/or interests in the Leased Premises, in violation of this Lease and same is not cured within thirty (30) days after Notice thereof from Landlord (unless such Transfer is made to a Non-Curable Prohibited Person or any Person who owns directly or indirectly any interest in a Non-Curable Prohibited Person, in which case, no such Notice or cure period shall apply; provided, however, that the first time during the Term that a Transfer is made to a Non-Curable Prohibited Person in violation of the Lease, Tenant shall have the ability to cure such violation within thirty (30) days after Notice thereof from Landlord).

(n) At any time that the Leased Premises is subject to a BCA, Tenant's receipt of a notice from the NYSDEC that it has terminated the BCA for reason of noncompliance thereunder.

(o) If any Draw Request is fraudulently submitted by Tenant hereunder.

(p) If Landlord, Construction Consultant or any of their representatives are not permitted at a reasonable time upon not less than one (1) Business Days' notice to enter upon the Leased Premises in violation of the terms of Section 9(d) of the Work Letter.

(q) If, following the Commencement Date, there is any cessation at any time in construction of the Construction Project for more than twenty (20) consecutive Business Days after notice and a failure to resume construction within such period, other than as a result of Force Majeure.

(r) At any time prior to Completion of the Project, any building permits required for the construction of the Construction Project have terminated, lapsed, or otherwise been cancelled or suspended (and are not reinstated in a reasonably prompt manner).

(s) Tenant (i) (x) executes any Major Contract or (y) becomes party to any arrangement for the performance of the Work or any other work on the Project (except with Tenant's Architect or Engineer and Major Trade Contractors), in each instance without the prior written consent of Landlord (not to be unreasonably withheld, delayed or conditioned), (ii) modifies, amends, or terminates the Project Plans and Specifications, the Construction Management Agreement or any Major Contract or any contract with Tenant's Architect or Engineer (other than permitted change orders under this Lease), in each instance without the prior written consent of Landlord (not to be unreasonably withheld, delayed, or conditioned).

(t) The failure of the Tenant to (i) timely deliver the documentation set forth in Section 48(b) on or before the dates set forth in such Section 48(b) or (ii) timely deliver and satisfy the Hard Cost Funding Condition Deliveries when required under this Lease (except to the extent

any such Hard Cost Funding Condition Deliveries have been expressly waived in writing by Landlord in its sole and absolute discretion).

(u) With respect to any other non-monetary Default under the Lease under any of the other terms, covenants, or conditions of this Lease not specified in clauses (a) through (t) above, if such Default continues for a period of thirty (30) days after Notice thereof from Landlord, provided that if such Default cannot be cured within such period of thirty (30) days, such period will be extended for such longer time as reasonably necessary provided that Tenant has commenced to cure such Default within said period of thirty (30) days and is actively, diligently and in good faith proceeding with continuity to remedy such Default, but in no event shall the cure period for any non-monetary Default exceed one hundred fifty (150) days, in the aggregate. Tenant agrees that after receiving any such notice of default referred to herein, Tenant will, upon request of Landlord or any Fee Mortgagee, advise the requesting party of Tenant's progress in curing such default.

22. **Landlord's Remedies.** Upon the occurrence of an Event of Default, with or without notice or demand, except to the extent such notice is expressly required pursuant to Section 21 above or otherwise in this Lease, Landlord shall be entitled, so long as such Event of Default remains uncured, to exercise, at its option (in its sole and absolute discretion), concurrently, successively, or in any combination, all remedies available at law or in equity, including without limitation any one or more of the following:

(a) Terminate Tenant's right to possession of the Leased Premises by any lawful means, in which case this Lease shall terminate and Tenant immediately shall surrender possession of the Leased Premises to Landlord. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including (i) the cost of recovering possession of the Leased Premises; (ii) the worth at the time of the award of any unpaid Base Rent and Additional Rent which had been earned at the time of termination; (iii) the worth at the time of the award of the amount by which the unpaid Base Rent and Additional Rent which would have been earned after the termination until the time of the award exceeds the amount of such rental loss that Tenant proves could reasonably have been avoided; (iv) reasonable expenses of placing the Leased Premises in good order, condition and repair; (v) reasonable expenses of reletting, including 421-a Program marketing monitor fees and any necessary renovation or alteration of the Leased Premises, as applicable; (vi) reasonable and actual attorneys' fees; (vii) the worth at the time of award of the amount by which the unpaid Base Rent and Additional Rent required to be paid by Tenant pursuant to this Lease for the balance of the term after the time of such award exceeds the amount of such rental loss for the same period that Tenant proves reasonably could be avoided; (viii) that portion of any leasing commission paid by Landlord and applicable to the unexpired term of this Lease; and (ix) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom. As used above, the "worth at the time of award" is computed by (x) allowing interest at the Default Rate to accrue with respect to accrued amount (until the date of the such amounts are paid in full), and (y) discounting such amounts to net present value with respect to future rental amounts, at a rate of 6% per annum.

(b) Landlord shall have the right to terminate Tenant's right to possession of the Leased Premises and repossess the Leased Premises by any lawful means without terminating this Lease. Landlord shall use good faith and commercially reasonable efforts, to the extent required by applicable law of the state where the Leased Premises are located, to re-let the Leased Premises, in whole or in part, for the account of Tenant for such rent and upon such terms as may be satisfactory to Landlord in Landlord's sole discretion. For the purposes of that re-letting, Landlord may repair, and perform normal remodeling and alterations to the Leased Premises. If Landlord fails to re-let the Leased Premises, Tenant shall pay to Landlord the Base Rent and Additional Rent in this Lease for the balance of the Term as those amounts become due in accordance with the terms of this Lease (to the extent Landlord has not exercised its right in Section 22(a) above to accelerate such Rent). If Landlord re-lets all or any part of the Leased Premises, but fails to realize a sufficient sum from the re-letting to pay the full amount of Rent in this Lease for the balance of the Term as those amounts become due in accordance with the terms of this Lease, after paying all of the costs and expenses of all normal and customary decoration, repairs, remodeling, alterations and additions and the expenses of the re-letting and of the collection of the rent accruing from the re-letting, Tenant shall pay to Landlord the amount of any deficiency upon Landlord's demand from time to time made. The timing of any such demands (and lawsuits relating thereto) shall be in the sole discretion of Landlord; and irregular demands or lawsuits relating thereto shall not be deemed a waiver of any claims or rights of Landlord under this Lease or otherwise at law or equity.

(c) Maintain Tenant's right to possession, in which case this Lease shall continue in full force and effect whether or not Tenant shall have abandoned the Leased Premises. In such event Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover Base Rent and Additional Rent as may become due hereunder.

(d) Provided that Landlord has first exercised its rights under either Sections 22(a) or 22(b) above, to remove all or any portion Tenant's tangible Personal Property and cause the same to be stored in a public warehouse or elsewhere at Tenant's sole expense, without becoming liable for any loss or damage resulting therefrom and without resorting to legal or judicial process, procedure or action.

(e) To bring an action against Tenant for any damages sustained by Landlord or any equitable relief available to Landlord.

(f) To immediately or at any time thereafter, and with or without notice, at Landlord's sole option but without any obligation to do so, correct such breach or default and charge Tenant all reasonable costs and expenses incurred by Landlord therein. Any sum or sums so paid by Landlord, together with interest at the Default Rate, shall be deemed to be Additional Rent hereunder and shall be immediately due from Tenant to Landlord. Any such acts by Landlord in correcting Tenant's breaches or defaults hereunder shall not be deemed to cure said breaches or defaults or constitute any waiver of Landlord's right to exercise any or all remedies set forth herein, until such time as Tenant pays such Additional Rent.

(g) To immediately or at any time thereafter, and with or without notice, except as required herein, set off any money of Tenant held by Landlord under this Lease against any sum owing by Tenant.

(h) To seek any equitable relief available to Landlord, including, without limitation, the right of specific performance.

(i) To enforce, and Tenant does hereby consent to such enforcement, all of Landlord's self-help remedies available at law or in equity.

(j) If Tenant abandons or surrenders the Leased Premises, or any portion thereof, or Tenant is dispossessed by process of law or otherwise, any Personal Property belonging to Tenant and left in the Leased Premises, or any portion thereof, shall be deemed to be abandoned, at the option of Landlord, and subject to any Leasehold Mortgagee's interest therein, Landlord shall have the right to sell or otherwise dispose of such Personal Property in any commercially reasonable manner. If Tenant abandons the Leased Premises, or any portion thereof, Landlord shall, in addition to all of its rights and remedies under this Lease or at law or equity, have the right, but not the obligation, to sublet the Leased Premises, or any portion thereof, on reasonable terms for the account of Tenant, and Tenant shall be liable for all costs of such subletting, including the cost of preparing the Leased Premises, or any portion thereof, for subtenants and leasing commissions paid to brokers.

(k) Tenant hereby grants to Landlord a security interest in all of Tenant's rights, title and interests in and to the following to the extent owned by Tenant on the date Landlord terminates this Lease due to an Event of Default: (A) the Personal Property, (B) all service contracts for the Leased Premises then in effect, (C) all licenses, Permits, registrations, certificates, authorizations and governmental approvals of any kind obtained by Tenant with respect to the Leased Premises, (D) all drawings, plans, specifications and similar materials prepared by Tenant with respect to the Leased Premises (including, without limitation, the Project Plans and Specifications), (E) all warranties and guaranties of architects, engineers, contractors, subcontractors, suppliers or materialmen solely with respect to any repair, construction, maintenance, design, reconstruction or operation of the Leased Premises, or of any equipment or system constituting solely a part of the Leased Premises, (F) all pictures, paintings, drawings, prints, sculptures, tapestries or other items of art, if any, located in the Leased Premises and (G) all Commercial Subleases and Residential Subleases, including the right to receive and collect the rents or profits under all such subleases. The security interest granted to Landlord hereunder shall be subordinate and inferior to (x) any security interest now or hereafter granted to any Leasehold Mortgagee unless this Lease is terminated upon the occurrence of an Event of Default and such Leasehold Mortgagee fails to enter into a New Lease and (x) the security interest (if any) now or hereafter granted by Tenant to any purchase money and/or equipment lender. Without limiting the foregoing, in the event that Landlord terminates this Lease after an Event of Default, Tenant agrees to assign to Landlord, Tenant's interest in the Project Plans and Specifications for the Project and any plans and specifications for any Alterations, if any, to the extent assignable, **"AS-IS", "WHERE IS", WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED.**

All powers and remedies given by this Section 22 to Landlord, subject to applicable Legal Requirements, shall be cumulative and not exclusive of one another or of any other right or remedy or of any other powers and remedies available to Landlord under this Lease, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements of Tenant contained in this Lease, and no delay or omission of Landlord to exercise any right or power accruing upon the occurrence of any Event of Default shall impair any other or subsequent Event of Default or impair any rights or remedies consequent thereto. Every power and remedy given by this Section 22 or by law to Landlord may be exercised from time to time, and as often as may be deemed expedient, by Landlord, subject at all times to Landlord's right in its sole judgment to discontinue any work commenced by Landlord or change any course of action undertaken by Landlord. Suit or suits for the recovery of damages, or for a sum equal to any installment or installments of Rent payable hereunder or any deficiencies or other sums payable by Tenant to Landlord pursuant to the provisions of this Section 22, may be brought by Landlord from time to time at Landlord's election, and nothing herein contained shall be deemed to require Landlord to await the Expiration Date. In the event of any breach or threatened breach by Tenant of any of the covenants, agreements, terms or conditions contained in this Lease, Landlord shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Lease.

Except as expressly provided to the contrary herein or prohibited by applicable Legal Requirements, Tenant hereby expressly waives the service of any notice of intention to re-enter provided for in any statute, or of the institution of legal proceedings to that end which may otherwise be required to be given under any present or future law. Tenant, for and on behalf of itself and all persons claiming by, through or under Tenant, also waives any and all rights of redemption provided by any statute now in force or hereafter enacted or otherwise and any rights of re-entry or repossession or to restore the operation of this Lease in case Tenant shall be dispossessed by a judgment or by warrant of any court or judge or in case of re-entry or repossession by Landlord or in case of any expiration or termination of this Lease, whether such dispossess, re-entry, expiration or termination shall be by operation of law or pursuant to the provisions of this Lease. The terms "enter", "reenter", "entry" or "reentry", as used in this Lease shall not be restricted to their technical, legal meanings.

No receipt of monies by Landlord from Tenant after termination of this Lease, or after the giving of any notice of termination of this Lease shall reinstate, continue or extend the Term or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Landlord to enforce the payment of Rent payable by Tenant hereunder or thereafter falling due, or operate as a waiver of the right of Landlord to recover possession of the Leased Premises by proper remedy, except as herein otherwise expressly provided, it being agreed that after the service of notice to terminate this Lease or the commencement of suit or summary proceedings, or after final order or judgment for the possession of the Leased Premises, Landlord may demand, receive and collect any monies due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such monies collected being deemed payments on account of the use and occupation of the Leased Premises or, at the election of Landlord, on account of Tenant's liability hereunder.

Each right and remedy of Landlord provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

23. **Notices.** All notices, demands, requests, consents, approvals, offers, statements and other instruments or communications required or permitted to be given pursuant to the provisions of this Lease (collectively “Notice” or “Notices”) must, to be effective for purposes of this Lease, be in writing, and they will be deemed to have been given for all purposes (i) three (3) Business Days after having been sent by United States registered or certified mail, return receipt requested, postage prepaid, addressed to the other party at its address as stated below, (ii) one (1) day after having been sent by Federal Express or other nationally recognized air courier service, to the addresses stated below, or (iii) if such Notice is sent via email (which email shall be addressed to the email addresses set forth below and shall include the notice as a .pdf attachment thereto) (x) as of the date of the email, if such email was sent prior to 4 P.M. EST on a Business Day or (y) on the Business Day immediately succeeding the date of the email, if such email was sent on a day that is not a Business Day or after 4 P.M. EST on a Business Day, provided if a Notice is delivered via email, such Notice shall not be effective unless a hardcopy of such Notice is delivered via the method described in clauses (i) and (ii) above:

If to Landlord: 138 Bruckner Ground Lessor, LLC
c/o MSP Capital Investments, L.L.C.
Woodlawn Hall at Old Parkland
3953 Maple Ave., Suite 350
Dallas, Texas 75219
Attn: Luke Pak
Telephone: 214-545-5576
E-mail: pak@mspcm.com

With a copy to: 138 Bruckner Ground Lessor, LLC
c/o MSP Capital Investments, L.L.C.
Woodlawn Hall at Old Parkland
3953 Maple Ave., Suite 350
Dallas, Texas 75219
Attn: Max Lamont
Telephone: 214-545-5577
E-mail: lamont@mspcm.com

And with a copy to: Duval & Stachenfeld LLP
555 Madison Avenue, 6th Floor
New York, NY 10022
Attention: Danielle Ash, Esq. & File Manager
File No. 4308.0008
Email: Dash@dslp.com

If to Tenant: 138 BRUCKNER JS LLC
199 Lee Avenue, Suite 1088
Brooklyn, New York 11211
Attention: Jacob Schwimmer
Email: jschwimmer@jcsrealty.com

With a copy to: Jeffrey Zwick & Associates, P.C.
266 Broadway, Suite 403
Brooklyn, NY 11211
Attention: Jeffrey Zwick, Esq.
Email: jeffrey@jzlegal.com

If any Fee Mortgagee has advised Tenant by Notice in the manner aforesaid that it is the holder of a Mortgage and stating in said Notice its address for the receipt of Notices, then simultaneously with the giving of any Notice by Tenant to Landlord of a default by Landlord under this Lease, Tenant will serve one or more copies of such Notice upon any Fee Mortgagee in the manner aforesaid and no such Notice of default will be effective against such Fee Mortgagee unless and until such Fee Mortgagee has been sent a copy thereof. For the purposes of this Section 23, any party may substitute or supplement its address by giving ten (10) Business Days' notice to the other party in the manner provided above.

24. **Memorandum of Lease; Estoppel Certificates.**

(a) Tenant and Landlord will execute, deliver and record, file or register from time-to-time all such instruments as may be required by any present or future law in order to evidence the respective interests of Landlord and Tenant in any of the Leased Premises, and will cause a memorandum of this Lease in the form attached hereto as Exhibit G, (together with the New York City Real Property Transfer Tax Return and the New York State Real Estate Transfer Tax Return required to record such memorandum of lease), which shall be submitted for recording with the Office of the City Register, Bronx County and any supplement hereto or to such other instrument, if any, as may be appropriate, to be recorded, filed or registered and re-recorded, refiled or re-registered in such manner and in such places as may be required by any present or future law in order to give public notice and protect the validity of this Lease. The cost of such recording, including, without limitation, any and all recording fees and recordation and transfer taxes due upon such recording or otherwise upon the creation of this Lease, shall be paid by Tenant as and when due. In the event of any discrepancy between the provisions of said recorded memorandum of this Lease or any other recorded instrument referring to this Lease and the provisions of this Lease, the provisions of this Lease will prevail.

(b) Landlord and Tenant will, at no cost to the requesting party, at any time and from time to time, upon not less than fifteen (15) days' prior written request by the other, execute, acknowledge and deliver to the other a statement in writing, executed by Landlord or Tenant by an authorized officer thereof certifying (i) that this Lease is unmodified and in full effect (or, if there have been modifications, that this Lease is in full effect as modified, setting forth such modifications); (ii) the dates to which Base Rent and Additional Rent payable hereunder has been paid; (iii) that to the knowledge of the party executing such certificate, no default by either Landlord or Tenant exists hereunder or specifying each such default of which such party may have knowledge; (iv) the remaining Term hereof; (v) that to the knowledge of the party executing such certificate, there are no proceedings pending or threatened against such party before or by any court or administrative agency which if adversely decided would materially and adversely affect the financial condition and operations of such party or if any such proceedings are pending or threatened to said party's knowledge, specifying and describing the same; and (vi) that no rent has been paid under this Lease for more than one month in advance. It is intended that any such statements may be relied upon by any Fee Mortgagee, Leasehold Mortgagee, the recipient of such statements or their assignees or by any prospective mortgagee, purchaser, assignee or subtenant of the Leased Premises or the Leasehold Estate.

25. **Surrender; End of Term.**

(a) Upon the expiration or earlier termination of this Lease, Tenant will peaceably leave and surrender the Leased Premises (except as to any portion thereof with respect to which this Lease has previously terminated), including the equipment and all other personal property located within the Improvements, including, without limitation, all passwords and combinations on locks, safes and vaults (if any), or otherwise on the Leased Premises, to Landlord free and clear of all lettings, occupancies, liens and encumbrances, other than the Permitted Encumbrances and recognized subtenants, in good condition and repair, except for ordinary wear and tear and damage by fire, casualty or condemnation but only to the extent Tenant is not required to repair the same hereunder. Upon such termination, the Leasehold Estate created hereby and all of Tenant's right, title and interest in and to the Leased Premises and to all subleasehold estates and interests therein created pursuant to this Lease, shall automatically (without further documentation; provided, however, that Tenant will execute such documentation that Landlord reasonably requests to evidence the same) revert to and become the sole property of Landlord, free and clear of all claims by, through or under Tenant. This Lease shall terminate without further notice upon the expiration of the Term and any holding over by Tenant after the expiration of the Term shall not constitute a renewal of this Lease or give Tenant any rights hereunder or to the Leased Premises, except as otherwise provided in this Lease. Landlord and Tenant acknowledge and agree that this Lease cannot be extended or modified except by a writing signed by Landlord and Tenant. All Alterations affixed to the Leased Premises shall remain upon the Leased Premises as the property of Landlord, but Tenant, on or before the Expiration Date, shall remove from the Leased Premises (and repair any damage caused by such installation or removal) all of Tenant's Personal Property. Except as expressly set forth in this Lease, Landlord shall not be obligated to assume any sublease or any service contracts with respect to the Leased Premises and Tenant shall cause any subleases and service contracts to be terminated as of the Expiration Date. Landlord and

Tenant acknowledge and agree that this Lease cannot be extended or modified except by a writing signed by Landlord and Tenant.

(b) Upon the Expiration Date or earlier termination of this Lease, Tenant shall deliver to Landlord, (i) such maintenance records for the Leased Premises and all plans and specifications then pertaining to the Leased Premises as it may then have in its possession, (ii) all original licenses and permits then pertaining to the Leased Premises, including temporary or permanent certificates of occupancy then in effect for the Improvements, (iii) all warranties and guarantees then in effect which Tenant has received in connection with any work or services performed or equipment installed in the Improvements or on the Leased Premises, and (iv) any and all other documents of every kind and nature whatsoever in Tenant's possession relating to the operation of the Leased Premises as a building (as opposed to Tenant's use or occupancy thereof), to the extent that any of the aforesaid are in Tenant's possession, together with a duly executed assignment, without representation, warranty or recourse of any kind, in form and substance reasonably acceptable to Landlord, of each of the foregoing to the extent assignable to Landlord.

(c) If Tenant remains in possession of the Leased Premises after the expiration of the Term hereof, Tenant, at Landlord's option and within Landlord's sole discretion, may be deemed a tenant on a month-to-month basis and shall continue to pay rentals and other sums in the amounts herein provided, except that the Base Rent shall automatically be one hundred and seventy-five percent (175%) of the Base Rent then applicable to this Lease, and to comply with all the terms of this Lease; provided that nothing herein nor the acceptance of Rent by Landlord shall be deemed a consent to such holding over. Tenant shall defend, indemnify, protect and hold the Indemnified Parties, harmless for, from and against any and all Losses resulting from Tenant's failure to surrender possession upon the expiration of the Term, including, without limitation, any claims made by any succeeding lessee. The indemnity obligations of the Tenant and the rights and remedies of the Landlord under this Section 25(c) will survive for six (6) years after the expiration of the Term or the earlier termination of this Lease.

26. **No Merger of Title.** There will be no merger of this Lease nor of the Leasehold Estate created by this Lease with the Fee Estate in or ownership of any of the Leased Premises by reason of the fact that the same person or entity may acquire or hold or own, directly or indirectly, (i) this Lease or the Leasehold Estate created by this Lease or any interest in this Lease or in such Leasehold Estate, and (ii) the Fee Estate or ownership of any of the Leased Premises or any interest in such Fee Estate. No such merger will occur unless and until all persons and entities having any interest in (x) this Lease or the Leasehold Estate created by this Lease, and (y) the Fee Estate in the Leased Premises or any leasehold created thereby, including, without limitation, any Fee Mortgagee's and/or Leasehold Mortgagee's respective interests therein, or any part thereof sought to be merged have joined in a written instrument effecting such merger and have duly recorded the same.

27. **Exculpation.** Anything contained herein to the contrary notwithstanding (except the last sentence of Section 42), any claim based on or in respect of any liability of Landlord under this Lease will be enforced only against the interest of Landlord in the Fee Estate

and all rents, insurance proceeds, Condemnation Awards and other proceeds thereof, and will not be otherwise enforced against any direct or indirect members, partners, joint venturers, tenants in common, officers, directors, shareholders, agents, representatives or affiliates of Landlord. Tenant agrees that any assignment by Landlord to a Fee Mortgagee of Landlord's interest in this Lease, or the rent, payable hereunder, whether absolute or conditional in nature or otherwise, whether such assignment is made to any Fee Mortgagee solely as additional collateral related to a mortgage or otherwise, and the acceptance thereof by such Fee Mortgagee will not be treated as an assumption by any Fee Mortgagee of any obligations of Landlord hereunder unless such Fee Mortgagee has, by notice sent to Tenant, specifically elected to assume such obligations; provided, that the Fee Mortgagee will be treated as having assumed Landlord's obligations hereunder upon purchase of the Leased Premises pursuant to foreclosure of the Mortgage or by deed in lieu thereof, or other conveyance, subject to the limitations set forth in the first sentence hereof.

Other than with regard to any guaranties executed by a Guarantor or Casualty Guarantor in accordance with this Lease from time to time, no direct or indirect members, partners, principals, joint venturers, tenants in common, officers, directors, shareholders, agents, representatives or affiliates of Tenant shall have any liability under this Lease for the obligations of Tenant, or with regard to the relationship of Landlord and Tenant hereunder, or with regard to Tenant's use or occupancy of the Leased Premises (it being agreed that Landlord's sole recourse under or pursuant to this Lease shall be to the entity that is Tenant or to any Guarantor or Casualty Guarantor solely in accordance with the applicable guaranty to which such Guarantor or Casualty Guarantor is a party).

28. **Hazardous Materials.**

(a) For the purposes hereof, the following terms shall have the following meanings:

"Hazardous Materials" means any hazardous material, waste or substance including, without limitation, those materials, wastes and substances: (i) defined as "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in or pursuant to any Legal Requirements, or subject to regulation under any Legal Requirement, pertaining to health, industrial hygiene, or the environment; (ii) listed in the United States Department of Transportation Optional Hazardous Material Table, 49 C.F.R. Section 172.101, as enacted as of the Effective Date or as hereafter amended, or in the United States Environmental Protection Agency List of Hazardous Substances and Reportable Quantities, 40 C.F.R. Part 302, as enacted as of the Effective Date or as hereafter amended; (iii) explosive, radioactive, asbestos, a polychlorinated biphenyl, petroleum or a petroleum product or waste oil; and (iv) toxic mold or fungus of a type that may pose a risk to human health or the environment or would negatively impact the value of the Leased Premises (**"Toxic Mold"**).

"Environmental Claim" means any claim, action, investigation or written notice by any Person alleging potential liability (including, without limitation, potential liability for investigatory costs, cleanup costs, governmental response costs, natural resource damages, property damages, personal injuries or penalties) arising out of, based on or resulting from (A) the

presence, or release into the environment, of any Hazardous Materials at the Leased Premises, or (B) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law.

“Environmental Easement” means any environmental easement required pursuant to a Property BCA.

“Environmental Laws” includes all laws and regulations pertaining to health, industrial hygiene, Hazardous Materials or the environment, including, without limitation each of the following, as enacted as of the Effective Date or as hereafter amended; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §96021 et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901 et seq.; the Toxic Substance Control Act, 15 U.S.C. §2601 et seq.; the Water Pollution Control Act (also known as the Clean Water Act), 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq.; the New York State Environmental Quality Review Act, N.Y. Env'tl. Conserv. Law Sect. 8-0101 et seq.; Article 19 of the New York Environmental Conservation Law (air); Article 17 of the New York Environmental Conservation Law (water); The Tidal Wetlands Act, N.Y. Env'tl. Conserv. Law Sect. 25-0101 et seq.; The Freshwater Wetlands Act, N.Y. Env'tl. Conserv. Law Sect. 24-0101 et seq.; The Hazardous Substances Bulk Storage Act, N.Y. Env'tl. Conserv. Law Sect. 40-0101 et seq.; The Oil Spill Prevention, Control and Compensation Law, New York Navigation Law, Article 12; The New York Abandoned Sites Act, N.Y. Env'tl. Conserv. Law, Article 27, Title 13; The Brownfield Cleanup Program, N.Y. Env'tl. Conserv. Law, Article 27, Title 14 (“BCP”); Article 27, Title 9, of the N.Y. Env'tl. Conserv. Law (solid waste); Article 30 of the New York Labor Law (asbestos); Local Law 97 of 2019 of New York City; New York State superfund and environmental clean-up statutes, with implementing regulations and guidelines; and all other federal, state or local laws, rules or regulations pertaining to Hazardous Materials, and the BCP.

“Environmental Report” means, individually and collectively as the context may require, each environmental report delivered to Landlord in connection with the Leased Premises pursuant to this Lease from time to time, including, without limitation, that certain Initial Environmental Report delivered prior to the Effective Date.

“Initial Environmental Report” means that certain Phase I Environmental Site Assessment prepared by Haley & Aldrich of New York for 138 Bruckner Realty LLC and dated as of October 2021.

(b) Tenant will comply with and will cause the Leased Premises to comply with all Environmental Laws applicable to the Leased Premises and Tenant’s operations thereon, which shall include without limitation (i) diligent implementation of the Property BCA as necessary to expeditiously and timely obtain a Certificate of Completion; (ii) Tenant will not use (or permit the use of by any other Person) the Leased Premises for the generation, manufacture, storage, handling, transfer, treatment, recycling, transportation, processing, production, refinement or disposal of any Hazardous Materials (each, a “Regulated Activity”), other than in connection with implementation of the Property BCA or in Tenant’s (or permitted subtenants’ or other permitted

occupants') normal business operations and in commercially reasonable quantities, or as otherwise necessary to comply with the provisions of this Lease (including without limitation, this Section 28) and/or Legal Requirements, in each case subject to compliance with applicable Legal Requirements and the Applicable Standard; (iii) (A) Tenant will not install or permit the installation on the Leased Premises of any underground storage tanks or surface impoundments containing petroleum products and will not cause any petroleum contamination in violation of applicable Environmental Laws originating on the Leased Premises, and (B) with respect to any petroleum contamination on the Leased Premises which originates from a source off the Leased Premises, Tenant will, upon knowledge of same, notify all responsible third parties and appropriate Governmental Authorities (collectively, "Third Parties") and will prosecute enforcement of the cleanup of the Leased Premises by such Third Parties, including, without limitation, undertaking commercially reasonable legal action, if necessary, to enforce the cleanup obligations of such Third Parties; (iv) Tenant will cause any Alterations of the Leased Premises to be done in a way which complies with Legal Requirements and the Applicable Standard, including those relating to exposure of persons working on or visiting the Leased Premises to Hazardous Materials and, in connection with any such Alteration, will remove any Hazardous Materials present upon the Leased Premises which are not in compliance with applicable Environmental Laws or which present a danger to persons working on or visiting the Leased Premises; and (v) Tenant will not install in the Leased Premises or permit to be installed in the Leased Premises asbestos or any asbestos-containing materials in any form that is or could be friable. Additionally, Landlord agrees that Tenant may use household and commercial cleaners and chemicals to maintain the Leased Premises and may store items commonly carried in Tenant's business operations, provided that such use is in compliance with all Environmental Laws and Legal Requirements. For the purposes of Sections 28(c) through (e), the term "Hazardous Materials" will exclude the Hazardous Materials permitted in this Section 28(b).

(c) If, at any time during the Term, Hazardous Materials are found in or on the Leased Premises, regardless of when such Hazardous Materials arose or were discovered, then Tenant must (at Tenant's sole cost and expense) promptly commence and diligently prosecute to completion all investigation, site monitoring, containment, cleanup, removal, restoration or other remedial work of any kind or nature (collectively, "Remedial Work") to the extent required by Environmental Laws, and in compliance with Environmental Laws; provided, that, except as required pursuant to the Property BCA, including, without limitation, any Environmental Easement, Landlord will not be required to accept any institutional control (such as a deed restriction) that restricts the permitted residential use of the Leased Premises as a condition to any remedial plan approved by any Governmental Authority in connection with such Remedial Work.

(d) To Tenant's actual knowledge, except as set forth in the Environmental Report, neither the Leased Premises, nor any portion thereof, has been used by Tenant or by any prior owner for Regulated Activities, and as of the Effective Date, there are no Hazardous Materials present on, in or under the Leased Premises or any portion thereof in violation of any Environmental Laws. Notwithstanding the foregoing, at all times during the Term, to the extent that Tenant has knowledge thereof, Tenant will promptly provide Notice in writing to Landlord and any Fee Mortgagee of any of the following matters:

(i) any proceeding or investigation commenced or threatened by any Governmental Authority with respect to the release, threatened release or presence of any Hazardous Material affecting the Leased Premises or other potential environmental problem or liability in, under, from or migrating towards the Leased Premises;

(ii) any lien, action or notice affecting the Leased Premises, Tenant or Landlord resulting from any violation or alleged violation of Environmental Laws or any proceeding or investigation commenced or threatened by any Governmental Authority against Tenant or Landlord with respect to the presence, suspected presence, release or threatened release of Hazardous Materials from the Leased Premises;

(iii) all written notices of any pending or threatened investigation or claims made or any lawsuit or other legal action or proceeding brought by any person against (A) Tenant or Landlord or the Leased Premises, or (B) any other party occupying the Leased Premises or any portion thereof, in any such case relating to any loss or injury allegedly resulting from any Hazardous Material or relating to any violation or alleged violation of Environmental Laws in connection with the Leased Premises;

(iv) the discovery of any occurrence, condition or state of facts with respect to the Leased Premises, other than that related to the Property BCA, including, without limitation, any Environmental Easement, or written notice received by Tenant of any occurrence or condition on any real property adjoining or in the vicinity of the Leased Premises, which reasonably could be expected to lead to the Leased Premises or any portion thereof being in violation of any Environmental Laws or subject to any restriction on ownership, occupancy, transferability or use under any Environmental Laws or which might subject Landlord or any Fee Mortgagee to any Environmental Claim; and

(v) the commencement and completion of any Remedial Work with respect to the Leased Premises or any portion thereof.

(e) TENANT WILL BE SOLELY RESPONSIBLE FOR AND WILL DEFEND, REIMBURSE, INDEMNIFY AND HOLD THE INDEMNIFIED PARTIES HARMLESS FROM AND AGAINST ALL DEMANDS, CLAIMS, ACTIONS, CAUSES OF ACTION, ASSESSMENTS, LOSSES, DAMAGES, LIABILITIES, INVESTIGATIONS, OR WRITTEN NOTICES INCLUDING, COSTS AND EXPENSES OF ANY KIND (INCLUDING WITHOUT LIMITATION, REASONABLE EXPENSES OF INVESTIGATION BY ENGINEERS, ENVIRONMENTAL CONSULTANTS AND SIMILAR TECHNICAL PERSONNEL AND REASONABLE FEES AND DISBURSEMENTS OF COUNSEL) (COLLECTIVELY, THE “INDEMNIFIED LIABILITIES”), ARISING OUT OF, IN RESPECT OF OR IN CONNECTION WITH (I) TENANT’S BREACH OF ITS REPRESENTATIONS, WARRANTIES, COVENANTS OR OBLIGATIONS IN THIS SECTION 28, (II) THE OCCURRENCE OF ANY REGULATED ACTIVITY BY TENANT AT, ON OR UNDER THE LEASED PREMISES AT ANY TIME DURING OR PRIOR TO THE TERM OF THIS LEASE,

(III) ANY REMEDIAL WORK REQUIRED TO BE PERFORMED PURSUANT TO ANY ENVIRONMENTAL LAW OR THE TERMS HEREOF WITH RESPECT TO MATTERS ARISING OR OCCURRING PRIOR TO OR DURING THE TERM DUE TO ACTIVITIES OF TENANT, (IV) THE PROPERTY BCA, OR (V) ANY ENVIRONMENTAL EASEMENT.

(f) Upon Landlord's or any Fee Mortgagee's request, at any time as Landlord or such Fee Mortgagee has reasonable grounds to believe that Hazardous Materials (except to the extent associated with implementation of the Property BCA, including, without limitation, those subject to long term operation, maintenance and monitoring, if any provided that this exception shall not apply if Landlord has reason to believe that conditions exist that do not comply with the Property BCP or any Environmental Easement, or those substances are permitted to be used under Section 28(b) in the ordinary course of its business and in compliance with all Environmental Laws) are or have been released, stored or disposed of or are on or around the Leased Premises in violation of the Environmental Laws or that the Leased Premises may be in violation of the Environmental Laws, Tenant will provide, at Tenant's sole cost and expense, an inspection or audit of the Leased Premises prepared by a hydrogeologist or environmental engineer or other appropriate consultant reasonably approved by Landlord and any Fee Mortgagee indicating the presence or absence of the reasonably suspected Hazardous Materials on the Leased Premises or an inspection or audit of the Leased Premises prepared by an engineering or consulting firm reasonably approved by Landlord and any Fee Mortgagee indicating the presence or absence of friable asbestos or substances containing asbestos on the Leased Premises. If Tenant fails to provide such inspection or audit within sixty (60) days after such request, Landlord may order the same, and Tenant hereby grants to Landlord and any Fee Mortgagee and their respective employees and agents access to the Leased Premises upon reasonable notice and a license to undertake such inspection or audit. The cost of such inspection or audit, together with interest thereon at the Default Rate from the date of demand by Landlord until actually paid by Tenant, will be immediately paid by Tenant on demand.

(g) Tenant acknowledges that it has had the opportunity to inspect the Leased Premises prior to the Effective Date, and during such time, observe its physical characteristics and existing conditions and the opportunity to conduct such investigation and study on and of the Leased Premises and adjacent areas as Tenant deems necessary, and, except for any claims relating to Landlord's breach of its obligations pursuant to this Lease (it being understood that Landlord has no obligation to make any payment or take any action except to the extent expressly required by this Lease), Tenant hereby FOREVER RELEASES AND DISCHARGES Landlord from all responsibility and liability, whether arising before or after the Effective Date, and liabilities under Environmental Laws, regarding the condition, valuation, salability or utility of the Leased Premises, or its suitability for any purpose whatsoever (including, without limitation, with respect to the presence in the soil, air, structures and surface and subsurface waters, of Hazardous Materials or other materials or substances that have been or may in the future be determined to be toxic, hazardous, undesirable or subject to regulation and that may need to be specially treated, handled and/or removed from the Leased Premises under current or future Environmental Laws, and any structural and geologic conditions, subsurface soil and water conditions and solid and hazardous waste and Hazardous Materials on, under, adjacent to or otherwise affecting the Leased Premises). Tenant further hereby waives any and all objections and complaints (including, without limitation

to, federal, state and local statutory and common law based actions, and any private right of action under any federal, state or local laws, regulations or guidelines to which the Leased Premises is or may be subject, including, without limitation, Environmental Laws) concerning the physical characteristics and any existing conditions of the Leased Premises, whether arising before or after the Effective Date. Tenant further hereby assumes the risk of changes in applicable laws and regulations relating to past, present and future environmental conditions on the Leased Premises and the risk that adverse physical characteristics and conditions, including the presence of Hazardous Materials or other contaminants, may not have been revealed by its investigation.

(h) The indemnity obligations of the Tenant in Section 28(e) above, the release in Section 28(e) above, and the rights and remedies of the Landlord under this Section 28 shall survive the expiration of the Term or the earlier termination of this Lease. Notwithstanding anything to the contrary set forth in this Section 28 or elsewhere in this Lease, Tenant shall not be liable for and the indemnity and release by Tenant of Landlord, and the rights and remedies of the Landlord, under this Section 28 shall in no event include or apply to (i) any Losses resulting directly from the fraud, illegal acts, gross negligence or willful misconduct of Landlord or any Indemnified Parties hereunder or (ii) with respect to violations of any Environmental Law and/or release or other introduction for Hazardous Materials in on or from the Leased Premises, which Tenant can reasonably prove (x) were not present at the Project prior to the date that Tenant has vacated the Leased Premises completely after the termination of this Lease and (y) were not caused by the fraud, illegal acts, gross negligence or willful misconduct of Tenant or any Affiliate of Tenant.

29. **Representations and Warranties of Tenant.** As a material inducement to Landlord executing this Lease, Tenant warrants and represents as of the Effective Date to Landlord as follows:

(a) Tenant is duly organized or formed, validly existing and in good standing under the laws of its state of incorporation or formation. Tenant is qualified as a corporation, partnership or limited liability company, as applicable, to do business in the state where the Leased Premises is located, and Tenant is qualified as a foreign corporation, partnership or limited liability company, as applicable, to do business in any other jurisdiction where the failure to be qualified would reasonably be expected to result in a material adverse effect upon the Leased Premises or Tenant's ability to perform and discharge its obligations under this Lease. All necessary action has been taken to authorize the execution, delivery and performance by Tenant of this Lease and of the other documents, instruments and agreements provided for herein.

(b) Tenant is not a "foreign corporation", "foreign partnership", "foreign trust", "foreign limited liability company" or "foreign estate", as those terms are defined in the Code and the regulations promulgated thereunder. Tenant's U.S. Federal Tax Identification number and principal place of business have been provided to Landlord. Tenant has delivered to Landlord a duly executed IRS Form W-9 certifying that Tenant is exempt from U.S. federal backup withholding. None of Tenant or any Affiliate of Tenant, and no Person owning directly or indirectly any interest in Tenant or any Affiliate of Tenant, is a Prohibited Person, Tenant is not a

party to any lease or sublease with a Prohibited Person in respect of all or any part of the Leased Premises.

(c) The person(s) who have executed this Lease on behalf of Tenant are duly authorized to do so. Upon execution by Tenant, this Lease shall constitute the legal, valid and binding obligation of Tenant, enforceable against Tenant in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, liquidation, reorganization and other laws affecting the rights of creditors generally and general principles of equity.

(d) There are no suits, actions, proceedings or investigations pending, or, to its knowledge, threatened against or involving Tenant or the Leased Premises before any arbitrator or Governmental Authority, except for such suits, actions, proceedings or investigations which, individually or in the aggregate, have not had, and would not reasonably be expected to result in, a material adverse effect upon the Leased Premises or Tenant's ability to perform and discharge its obligations under this Lease.

(e) Tenant is not, and the authorization, execution, delivery and performance of this Lease and the documents, instruments and agreements provided for herein will not result in, any breach or default under any document, instrument or agreement to which Tenant or any Affiliate of Tenant is a party or by which Tenant or any Affiliate of Tenant, the Leased Premises or any of the property of Tenant or any Affiliate of Tenant is subject or bound, except for such breaches or defaults which, individually or in the aggregate, have not had, and would not reasonably be expected to result in, a material adverse effect upon the Leased Premises or Tenant's ability to perform and discharge its obligations under this Lease. The authorization, execution, delivery and performance of this Lease and the documents, instruments and agreements provided for herein will not violate any applicable law, statute, regulation, rule, ordinance, code, rule or order other than violations that do not have, and are not reasonably expected to have, a material adverse effect on Landlord, Tenant or the Leased Premises. The Leased Premises is not subject to any right of first refusal, right of first offer or option to purchase or lease granted to a third party. Except pursuant to the Construction Loan Documents in connection with obtaining the Construction Loan, Tenant has not assigned, transferred, mortgaged, hypothecated or otherwise encumbered this Lease or any rights hereunder or interest herein.

(f) All required licenses and permits, both governmental and private, to use and operate the Leased Premises for the Permitted Use are (or will be, upon Substantial Completion) in full force and effect, except for such licenses and permits the failure of which to obtain has not had, and would not reasonably be expected to result in, a material adverse effect upon the Leased Premises or Tenant's ability to perform and discharge its obligations under this Lease.

(g) All financial information provided by Tenant to Landlord regarding Tenant and its Affiliates (including Guarantor) (collectively, the "Financial Information") is true, correct and complete in all material respects and there have been no material adverse amendments to the Financial Information since the date such Financial Information was prepared or delivered to Landlord. Tenant understands that Landlord is relying upon the Financial Information and Tenant

represents that such reliance is reasonable. All financial statements included in the Financial Information fairly present as of the date of such financial statements the financial condition of each Person to which they pertain. No change has occurred with respect to the financial condition of Tenant and/or the Leased Premises as reflected in the Financial Information which has not been disclosed in writing to Landlord or has had, or could reasonably be expected to result in, a material adverse effect upon the Leased Premises or Tenant's ability to perform and discharge its obligations under this Lease.

(h) Tenant is not and will not be, and is not and will not be acting on behalf of, (i) an "employee benefit plan" within the meaning of Section 3(3) of ERISA, subject to Title I of ERISA, (ii) a "plan" within the meaning of, and subject to, Section 4975 of the Code, or (iii) an entity deemed to hold "plan assets" within the meaning of the Plan Asset Regulations. None of the transactions contemplated by this Lease are in violation of any state statutes applicable to Tenant that regulate the investments of, and fiduciary obligations with respect to, governmental plans and that are similar to the provisions of Section 406 of ERISA or Section 4975 of the Code.

(i) Neither Tenant nor any ERISA Affiliate maintains, contributes to, or has any obligation to contribute to, or has any direct or indirect liability with respect to any "employee benefit plan" as defined in Section 3(3) of ERISA (including any "multiemployer plan" as defined in Section 3(37) of ERISA) that is subject to Title IV or Section 302 of ERISA or Section 412 of the Code. Tenant shall take or refrain from taking, as the case may be, such actions as may be necessary to cause the representation and warranty in this paragraph remain true and accurate until the expiration or earlier termination of this Lease.

30. **Representations and Warranties of Landlord.** As a material inducement to Tenant executing this Lease, Landlord warrants and represents as of the Effective Date to Tenant as follows:

(a) Landlord is duly organized or formed, validly existing and in good standing under the laws of its state of incorporation or formation. Landlord is qualified as a foreign corporation, partnership or limited liability company, as applicable, to do business in the state where the Leased Premises is located, and Landlord is qualified as a foreign corporation, partnership or limited liability company, as applicable, to do business in any other jurisdiction where the failure to be qualified would reasonably be expected to result in a material adverse effect upon the Leased Premises or Landlord's ability to perform and discharge its obligations under this Lease. All necessary action has been taken to authorize the execution, delivery and performance by Landlord of this Lease and of the other documents, instruments and agreements provided for herein. Landlord is not a "foreign corporation", "foreign partnership", "foreign trust", "foreign limited liability company" or "foreign estate", as those terms are defined in the Code and the regulations promulgated thereunder. Landlord's U.S. Federal Tax Identification number and principal place of business have been provided to Tenant. The person(s) who have executed this Lease on behalf of Landlord are duly authorized to do so. None of Landlord or any Affiliate of Landlord, and no Person owning directly or indirectly any interest in Landlord or any Affiliate of Landlord, is a Prohibited Person; provided, however, the representation contained in this sentence

shall not apply to any Person to the extent that such Person's interest is in or through a U.S. Publicly Traded Entity.

(b) Upon execution by Landlord, this Lease shall constitute the legal, valid and binding obligation of Landlord, enforceable against Landlord in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, liquidation, reorganization and other laws affecting the rights of creditors generally and general principles of equity.

(c) There are no suits, actions, proceedings or investigations pending, or, to its knowledge, threatened against or involving Landlord or the Leased Premises before any arbitrator or Governmental Authority, except for such suits, actions, proceedings or investigations which, individually or in the aggregate, have not had, and would not reasonably be expected to result in, a material adverse effect upon the Leased Premises or Landlord's ability to perform and discharge its obligations under this Lease.

(d) Landlord is not, and the authorization, execution, delivery and performance of this Lease and the documents, instruments and agreements provided for herein will not result in, any breach or default under any document, instrument or agreement to which Landlord or any Affiliate of Landlord is a party or by which Landlord or any Affiliate of Landlord, the Leased Premises or any of the property of Landlord or any Affiliate of Landlord is subject or bound, except for such breaches or defaults which, individually or in the aggregate, have not had, and would not reasonably be expected to result in, a material adverse effect upon the Leased Premises or Landlord's ability to perform and discharge its obligations under this Lease. The authorization, execution, delivery and performance of this Lease and the documents, instruments and agreements provided for herein will not violate any applicable law, statute, regulation, rule, ordinance, code, rule or order. Landlord has not assigned, transferred, mortgaged, hypothecated or otherwise encumbered this Lease or any rights hereunder or interest herein.

31. **Entry by Landlord and Lender.** Landlord, any Fee Mortgagee and their authorized representatives will have the right upon reasonable notice (which will be not less than one (1) Business Day except in the case of emergency) to enter the Leased Premises at all reasonable business hours (and at all other times in the event of an emergency), for (i) the purpose of inspecting the same or for the purpose of doing any work in accordance with Section 9 above, and may take all such action thereon as may be necessary or appropriate for any such purpose (but nothing contained in this Lease or otherwise will create or imply any duty upon the part of Landlord or any Fee Mortgagee to make any such inspection) and (ii) the purpose of showing the Leased Premises to prospective investors, purchasers and mortgagees. No such entry will constitute an eviction of Tenant, but any such entry shall in all events be done by Landlord in such reasonable manner as to minimize any disruption of Tenant's or any subtenant's business, occupancy or operation.

32. **Financial Reporting.** Tenant will submit to Landlord:

(a) within ninety (90) days of the end of each of the calendar year following Substantial Completion, annual financial statements, including:

(i) a certified balance sheet of Tenant as of the end of such year (certified by Tenant and an independent certified public accounting firm of recognized national or regional standing (any such accountant, an “Approved Accountant”)), a statement of profits and losses of Tenant for such year, and a statement of cash flows of Tenant for such year, setting forth in each case, in comparative form, the corresponding figures for the preceding fiscal year in reasonable detail and scope and each prepared or reviewed by an Approved Accountant and all certified by the chief financial officer of Tenant; and

(ii) an unaudited balance sheet of Tenant as at the end of any quarter, an unaudited statement of profits and losses of Tenant from operations on the Leased Premises for such quarter, an unaudited statement of cash flows of Tenant for such quarter and, a computation, in reasonable detail, calculating, on a trailing twelve-month basis, the ratio of such cash flows during such period to the Base Rent required to be paid during such period, setting forth in each case, in comparative form, the corresponding figures for the similar quarter of the preceding year (or in the case of an interim balance sheet, to the end of the prior year), in reasonable detail and scope, and certified to be complete and accurate by Tenant’s chief financial officer; the foregoing financial statements all being prepared in accordance with GAAP or other real estate accounting methods that are generally acceptable for REITs;

(b) within ninety (90) days of Landlord’s request: audited annual financial statements for the most recent fiscal year for which audited financial statements are available, which shall include substantially the same information as set forth in clause (a)(i) above; provided, however, unless an Event of Default is continuing, Landlord shall not request any such audited financial statements more than once per calendar year and the cost of any such audited financial statements shall be paid by Landlord to the extent such audited financial statements show a variance from the certified financial statements received by Landlord under clause (i) of this Section 32(a) by a variance of five percent (5%) or less;

(c) within twenty (20) days following written request from Landlord (provided Landlord shall be limited to a reasonable amount of requests per Lease Year (but not more than once per quarter)), such aforementioned balance sheets, income and cash flow statements, rent rolls, and operating statements for Tenant and the Leased Premises, certified to be true and correct in all material respects by the chief financial officer of Tenant;

(d) if Tenant is a U.S. Publicly Traded Entity, quarterly 10Qs filed with the Securities and Exchange Commission will satisfy the delivery requirement contained in clause (a)(i) herein and copies of the 10Ks filed with the Securities and Exchange Commission will satisfy the delivery requirement contained in clause (c) herein; the obligations of Tenant will continue whether or not this Lease has been assigned or subleased;

(e) Tenant shall deliver to Landlord and to any Fee Mortgagee or purchaser designated by Landlord all federal, state, local and foreign tax returns, reports and other tax-related documents filed by Tenant;

(f) together with the annual financial statements described above, following Substantial Completion, Tenant shall deliver to Landlord an annual Leased Premises operating expense statements for the Leased Premises which shall include, without limitation, an itemized breakdown of capital expenditures, in detail reasonably satisfactory to Landlord and certified to be complete and accurate by an officer of Tenant;

(g) in addition, not later than thirty (30) days after the end of each of the first three fiscal quarters of Tenant (and forty-five (45) days after the end of the fourth fiscal quarter of Tenant), Tenant shall deliver to Landlord or any Fee Mortgagee, as applicable:

(i) following Substantial Completion, a rent roll of the Leased Premises, certified by Tenant, identifying, each Sublease and subtenant (and stating the address of such subtenant to which Notices are to be sent pursuant to the Sublease in question), the applicable subleased premises, the term of each Sublease, the commencement and termination dates of each Sublease, the base, fixed or minimum rent payable under each Sublease, the expansion and extension options contained in such Sublease, the date(s) to which base, fixed or minimum rent under the Sublease has been paid, the security deposits, if any, deposited under such Subleases, whether Notice of default has been given to, or by such subtenant, which has not been cured, and the subtenant's share, if any, of operating expenses;

(ii) to the extent not previously provided to Landlord, a true and complete copy of each Sublease and all subsequent amendments thereto or extension notices in connection therewith, certified as true and complete by Tenant;

(iii) any financial reports or statements delivered or provided to Tenant, as sublandlord, by any subtenant under any Sublease for which Landlord has delivered to such subtenant a non-disturbance agreement; and

(iv) with respect to all Subleases that are not Residential Subleases, the names of the subtenants thereunder, together with a duplicate original of such Sublease and a certificate from an executive officer of Tenant certifying that, as of the effective date of the Sublease and as of the date of such quarterly reporting, to such officer's actual knowledge (A) neither the subtenants thereunder nor any Person who owns directly or indirectly any interest in any such subtenant is a Prohibited Person and (B) each such subtenant has taken reasonable measures to assure that no Person who owns directly or indirectly any interest in such subtenant is a Prohibited Person;

(h) Tenant shall furnish to Landlord a full and complete copy of the filed Real Property and Income Expense Statement (or its successor) (the "RPIE") submitted by Tenant to the New York City Department of Finance (or its successor) ("DOF"), pursuant to §11-208.1 of

the Administrative Code of the City of New York with respect to the Leased Premises for each annual fiscal period within thirty (30) days after Tenant's submission of the applicable RPIE to DOF (it being understood and agreed that, at all times during the Term, Tenant shall furnish the RPIE to the DOF as and when required by Legal Requirements);

(i) so long as any Project Guaranty remains in effect in accordance with its terms, Tenant shall cause each Guarantor to deliver to Landlord as soon as available, but in no event later than ninety (90) days after such Guarantor's fiscal year end (if such Guarantor is an entity) or the calendar year (if such Guarantor is an individual), current financial statements in a form reasonably acceptable to Landlord (including, without limitation, an income and expense statement, balance sheet, and statement of cash flow), together with supporting property and mortgage debt schedules and any other financial information reasonably requested by Landlord for such Guarantor;

(j) if requested by Landlord, so long as any Project Guaranty remains in effect in accordance with its terms, Tenant shall cause each Guarantor to deliver true, correct, and complete copies of such Guarantor's federal, state and local tax returns to Landlord, within thirty (30) days after the filing of such tax returns;

(k) within ten (10) Business Days' after receipt of Landlord's written request therefor, so long as any Project Guaranty remains in effect in accordance with its terms, Tenant shall cause each Guarantor to deliver to Landlord such other supplemental information related to such Guarantor's financial statements as is reasonably requested by Landlord; and

(l) Tenant shall, from time to time, provide such other information reasonably requested by Landlord in connection with Landlord's (or any Landlord affiliate's) qualification as a REIT.

33. **No Usury.** The intention of the parties being to conform strictly to the usury laws now in force in the State, whenever any provision herein provides for payment by Tenant to Landlord of interest at a rate in excess of the legal rate permitted to be charged, such rate herein provided to be paid will be deemed reduced to such legal rate.

34. **Broker.** Landlord and Tenant represent and warrant to each other that neither party negotiated with any broker in connection with this Lease other than SPR Group, LLC whose fee will be paid by Landlord pursuant to a separate written agreement. Each party hereby agrees to indemnify the other against all claims, damages, costs and expenses incurred by the indemnified party as a result of the breach of the foregoing representation or warranty by the indemnifying party.

35. **Bankruptcy.** As a material inducement to Landlord executing this Lease, Tenant acknowledges and agrees that Landlord is relying upon (i) the financial condition and specific operating experience of Tenant and Tenant's obligation to use the Leased Premises for the Permitted Use, (ii) Tenant's timely performance of all of its obligations under this Lease notwithstanding the entry of an order for relief for Tenant under the United States Bankruptcy Code (as amended, the "Bankruptcy Code") and (iii) all defaults under this Lease being cured

promptly and this Lease being assumed within sixty (60) days of any order for relief entered under the Bankruptcy Code for Tenant, or this Lease being rejected within such sixty (60) day period and the Leased Premises surrendered to Landlord. Accordingly, in consideration of the mutual covenants contained in this Lease and for other good and valuable consideration, Tenant hereby agrees that:

(a) All obligations that accrue or become due under this Lease (including the obligation to pay rent), from and after the date that an Bankruptcy Action is commenced shall be timely performed exactly as provided in this Lease and any failure to so perform shall be harmful and prejudicial to Landlord.

(b) Any and all obligations under this Lease that accrue or become due from and after the date that an Bankruptcy Action is commenced and that are not paid as required by this Lease shall, in the amount of such rents, constitute administrative expense claims allowable under the Bankruptcy Code with priority of payment at least equal to that of any other actual and necessary expenses incurred after the commencement of the Bankruptcy Action.

(c) Any extension of the time period within which Tenant may assume or reject this Lease without an obligation to cause all obligations accruing or coming due under this Lease from and after the date that an Bankruptcy Action is commenced to be performed as and when required under this Lease shall be harmful and prejudicial to Landlord.

(d) Any time period designated as the period within which Tenant must cure all defaults and compensate Landlord for all pecuniary losses which extends beyond the date of assumption of this Lease shall be harmful and prejudicial to Landlord.

(e) Any assignment of this Lease must result in all terms and conditions of this Lease being assumed by the assignee without alteration or amendment, and any assignment which results in an amendment or alteration of the terms and conditions of this Lease without the express written consent of Landlord shall be harmful and prejudicial to Landlord.

(f) Any proposed assignment of this Lease to an assignee that does not possess financial condition, operating performance and experience characteristics capable of assuming and performing under this Lease shall be harmful and prejudicial to Landlord.

(g) The rejection (or deemed rejection) of this Lease for any reason whatsoever shall constitute cause for immediate relief from the automatic stay provisions of the Bankruptcy Code, and Tenant stipulates that such automatic stay shall be lifted immediately and possession of the Leased Premises will be delivered to Landlord immediately without the necessity of any further action by Landlord.

(h) No provision of this Lease shall be deemed a waiver of Landlord's rights or remedies under the Bankruptcy Code or applicable law to oppose any assumption and/or assignment of this Lease, to require timely performance of Tenant's obligations under this Lease, or to regain possession of the Leased Premises as a result of the failure of Tenant to comply with the terms and conditions of this Lease or the Bankruptcy Code.

(i) Notwithstanding anything in this Lease to the contrary, all amounts payable by Tenant to or on behalf of Landlord under this Lease, whether or not expressly denominated as such, shall constitute “rent” for the purposes of the Bankruptcy Code.

(j) For purposes of this Section 35 addressing the rights and obligations of Landlord and Tenant in the event that an Bankruptcy Action is commenced, the term “Tenant” shall include Tenant’s successor in bankruptcy, whether a trustee, Tenant as debtor in possession or other responsible person.

36. **No Waiver.** No delay or failure by either party to enforce its rights hereunder will be construed as a waiver, modification or relinquishment thereof. No failure by Landlord to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy against Tenant consequent upon a breach thereof shall constitute a waiver of any such breach or of any covenant, agreement, term or condition. No acceptance of full or partial Rent by Landlord during the continuance of any breach by Tenant shall constitute a waiver of any breach by Tenant or of any covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by Tenant, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by Landlord. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

37. **Separability.** If any term or provision of this Lease or the application thereof to any provision of this Lease or the application thereof to any person or circumstances will to any extent be invalid and unenforceable, the remainder of this Lease, or the application of such term or provision to person or circumstances other than those as to which it is invalid or unenforceable, will not be affected thereby, and each term and provision of this Lease will be valid and will be enforced to the extent permitted by applicable Legal Requirements.

38. **Indemnification.**

(a) Tenant shall defend, pay, protect, indemnify, save and hold harmless the Indemnified Parties from and against any and all Losses, including, without limitation, any bodily or personal injury, illness or death of any person (including employees and invitees of Tenant), howsoever caused (except for the fraud, illegal acts, gross negligence or willful misconduct of Landlord or any Fee Mortgagee or any of the Indemnified Parties), arising from any of the Leased Premises the use, non-use, occupancy, condition, design, construction, maintenance, repair, rebuilding, of any of or otherwise relating to, the Leased Premises or any part thereof, whether or not any of the Indemnified Parties had or should have had knowledge or notice of the defect or conditions, if any, causing or contributing to said Loss, and any lien or claim which may be alleged to have arisen against or on the Leased Premises, or any lien or claim which may be alleged to have arisen out of this Lease and created or permitted to be created by, through or under Tenant against any assets of Landlord under the laws of the State of New York or of any other Governmental Authority, or any liability which may be asserted against Landlord with respect thereto. In case any action or proceeding is brought against any of the Indemnified Parties by

reason of any such Loss, Tenant covenants upon notice from Landlord or any Fee Mortgagee to defend the Indemnified Parties in such action, with the expenses of such defense paid by Tenant, and the Indemnified Parties will cooperate and assist in the defense of such action or proceeding if reasonably requested so to do by Tenant. Notwithstanding the foregoing or anything in this Lease to the contrary, except pursuant to Section 28 hereof (if applicable), Tenant shall not be liable to Landlord or any other Indemnified Party for any indirect, consequential, special, or punitive damages, except to the extent any such damages (i) are claimed by a third party of which there is an indemnity obligation of Tenant hereunder to indemnify or defend Landlord with respect to such third-party claims, or (ii) arise in connection with any federal, state or local tax (and related interest and penalties) imposed as a result of Tenant's default or breach of Tenant's obligation under the Lease, to the extent same is imposed with respect to the Leased Premises, the Fee Estate, or any income (directly or indirectly) allocable to the Lease. The obligations of Tenant under this Section 38 will survive the expiration or earlier termination of this Lease.

(b) To the fullest extent permitted by law, Landlord shall not be liable to Tenant for any damage to or loss or theft of any property or for any bodily or personal injury, illness or death of any person in, on or about the Leased Premises arising at any time and from any cause whatsoever other than if solely caused by the fraud, illegal acts, gross negligence or willful misconduct of Landlord. Tenant waives all claims against Landlord arising from any liability described in this Section 38. The obligations of Tenant under this Section 38 will survive the expiration or earlier termination of this Lease.

39. **Permitted Encumbrances.** Tenant agrees that Tenant is obligated to and will perform all obligations of the owner of the Leased Premises, and pay all expenses that the owner of the Leased Premises may be required to pay, in accordance with the Permitted Encumbrances. Tenant further covenants and agrees to indemnify, defend and hold harmless Landlord and any Fee Mortgagee against any claim, loss or damage suffered by Landlord or such Fee Mortgagee by reason of Tenant's failure to perform any obligations or pay any expenses as required under any of the Permitted Encumbrances or comply with the terms and conditions of any of the Permitted Encumbrances as hereinabove provided during the term of this Lease.

40. **Headings.** The paragraph headings in this Lease are used only for convenience in finding the subject matters and are not part of this Lease or to be used in determining the intent of the parties or otherwise interpreting this Lease.

41. **Modifications.** This Lease may be modified, amended, discharged or waived only by an agreement in writing signed by the party against whom enforcement of any such modification, amendment, discharge or waiver is sought. Each of Tenant and Landlord agrees that it will not modify or amend this Lease without the written consent of any Fee Mortgagee, which will not be unreasonably withheld, within any period during which there is a Fee Mortgagee hereunder. In the event of any inconsistent instruction from Landlord and any Fee Mortgagee, Tenant will comply with the instruction of the Fee Mortgagee.

42. **Successors and Assigns.** The covenants of this Lease will run with the Land and will inure to the benefit of and bind Tenant, the successors and permitted assigns of

Tenant and all present and subsequent encumbrances and subtenants of any of the Leased Premises, and will inure to the benefit of and bind Landlord, its successors and assigns. In the event there is more than one Tenant, the obligation of each will be joint and several. The term “Landlord” as used in this Lease, so far as covenants or obligations on the part of Landlord are concerned, will be limited to mean and include only the owner or owners of Landlord’s right, title and interest in and to the Fee Estate and in the event of any transfer or transfers by Landlord of the Fee Estate, the Landlord herein named (and in case of any subsequent transfers or conveyances, the then grantor) will be automatically freed and relieved from and after the date of such transfer and conveyance of all personal liability as respects the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed; and such assignee shall automatically be deemed to have assumed all of Landlord’s obligations arising after the date of such assignment.

43. **Counterparts.** This Lease may be executed in several counterparts, which together will be deemed one and the same instrument. It shall not be necessary that any single counterpart be signed by or on behalf of each of the parties hereto, and all such counterparts shall be deemed to constitute one and the same instrument. The exchange of executed copies of this Lease by so-called “portable document format” (PDF) transmission shall constitute effective execution and delivery of this Lease as to the parties for all purposes, and signatures of the parties transmitted by PDF shall be deemed to be their original signatures for all purposes.

44. **Time of the Essence.** Time is of the essence in this Lease and each and every provision hereof in which any date or time is specified.

45. **Governing Law.** This Lease will be governed by and construed according to the laws of the State, without regard to conflicts of laws principles.

46. **Third Party Beneficiary.** Any Fee Mortgagee will be deemed a third party beneficiary with respect to all Mortgagee Protections set forth herein. Any Leasehold Mortgagee will be deemed a third party beneficiary with respect to all Mortgagee Protections set forth herein.

47. **Intentionally Omitted.**

48. **New Construction; Improvement Allowance.**

(a) Except with respect to the Improvement Allowance funded by Landlord, Tenant shall, at its sole cost and expense, promptly after the Effective Date and receipt of all required Permits, commence construction of the Construction Project (which shall include commencement of demolition of the Existing Improvements) (the date of such commencement, the “Commencement Date”); provided, however, it shall be an immediate Event of Default hereunder if the 421-a Commencement does not occur prior to the 421-a Deadline.

As used herein, “421-a Deadline” shall mean June 15, 2022 unless:

(i) after the date hereof, (x) the applicable Governmental Authority extends the date by which the 421-a Commencement may occur to a date that is

after June 15, 2022, (y) such extension enables the Project to be eligible for the 421-a Program based on a 421-a Commencement that is later than June 15, 2022, and (z) such extension does not alter, amend, or repeal any portion of the 421-a Program as it exists as of the Effective Date then such extended date shall be the 421-a Deadline; and/or

- (ii) the initial 421-a Deadline occurs (i.e., June 15, 2022) but, within ninety (90) days thereafter, (x) the applicable Governmental Authority reinstates or retroactively extends the 421-a Program to provide for a later date by which the 421-a Commencement that is after June 15, 2022, (y) such reinstatement or extension enables the Project to be eligible for the 421-a Program based on a 421-a Commencement that is later than June 15, 2022 and that at such time has not yet occurred, and (z) such reinstatement or extension does not alter, amend, or repeal any portion of the 421-a Program as it exists as of the Effective Date, then the date to which the 421-a Program is so extended shall be the 421-a Deadline;

provided, however, in no event shall the 421-a Deadline be later than August 15, 2022, for purposes of this Lease.

Commencing demolition of Existing Improvements shall be deemed to be a commencement of construction hereunder; provided however, that it is understood that commencing demolition of Existing Improvements does not constitute a 421-a Commencement. Thereafter, the Tenant shall proceed with reasonable diligence and continuity (subject in all events to delays due to Force Majeure) to Complete the Project in accordance with the Project Plans and Specifications, all Legal Requirements and such other terms and conditions set forth in the Work Letter and the Construction Loan Documents. The Construction Project constitutes a Material Alteration consented to by Landlord. Nothing contained in this Section 48 releases Tenant from any of its obligations under this Lease. For the avoidance of doubt, but subject to the Work Letter and Section 5 of this Lease, the Improvements comprising the Project are the Tenant's property, in accordance with Section 6.

(b) Tenant shall provide Landlord, by email to Luke Pak at pak@mspcm.com, Max Lamont at lamont@mspcm.com, Danielle Ash at Dash@dslp.com and Christine Leas at cleas@sprlaw.com, with periodic updates on the status of Tenant's receipt of all necessary Permits required to commence construction of the Construction Project, in any event no less frequently than the first day of each month following the Effective Date until 421-a Commencement occurs. Such periodic updates shall at a minimum address and transmit written documentation demonstrating that:

- (i) no later than March 1, 2022, Tenant has made a submittal to the New York City Office of Environmental Remediation ("OER") of a work plan and report, in a format acceptable to OER, that satisfies the

requirements of zoning designation E-143 pertaining to noise to support a Notice of No Objection;

- (ii) no later than April 1, 2022, Tenant has either: 1) submitted to OER a copy of a Remedial Investigation Report approved by NYSDEC pursuant to the Property BCA; 2) submitted to OER a draft Remedial Investigation Work Plan in OER's preferred format; or 3) submitted to OER a copy of a 60-day Advance Notification of Change of Use, Transfer of Certificate of Completion, and/or Ownership sent to NYSDEC describing installation of the foundation element part of the Construction Project, accompanied by a copy of a written approval from the NYSDEC with respect to the installation of the foundation element; and
- (iii) no later than May 1, 2022, Tenant has obtained from OER of a Notice of No Objection to issuance of a foundation construction permit pertaining to the Construction Project by the New York City Department of Buildings.

Failure to provide to Landlord any of the documentation required pursuant to this Section 48(b) by the stipulated date shall be an immediate Event of Default hereunder.

(c) The Total Project Costs to be paid in connection with the Construction Project shall be paid (i) first, through contributions by Tenant of Tenant's Equity Contribution until the full amount of Tenant's Equity Contribution has been expended for Total Project Costs set forth in the Project Budget, (ii) second, through payments by Landlord of the Improvement Allowance, in an aggregate amount not to exceed the amount of the Improvement Allowance (subject to the conditions of advancing such Improvement Allowance in accordance with the terms of the Work Letter), and (iii) third, through disbursements by Construction Lender of the Construction Loan. To the extent that Total Project Costs exceed the sum of the amounts paid or disbursed by Tenant of Tenant's Equity Contribution, by Landlord of the Improvement Allowance and by Construction Lender of advances of the Construction Loan, such excess shall be paid through cash contributions by Tenant in the amount necessary to pay all remaining Total Project Costs.

(d) Landlord shall not be obligated to pay or disburse the Improvement Allowance during any period in which an Out Of Balance Condition exists. To the extent Landlord is not obligated under this Lease or Construction Lender is not obligated under the Construction Loan Documents to pay or disburse funds to pay Project costs due to the existence of an Out Of Balance Condition, Tenant shall promptly (and, in any event, not later than ten (10) Business Days) after demand from Construction Lender or Landlord deposit with Construction Lender (but if no Construction Lender or Leasehold Mortgagee then exists or requires same, with Landlord) all amounts required to cure the Out Of Balance Condition; provided that Landlord shall only have the right to make such demand (i) on or prior to the date that the Improvement Allowance has been paid in full to Tenant or (ii) if such Out Of Balance Condition occurs after the date that the

Improvement Allowance has been paid in full to Tenant, ten (10) Business Days after Landlord provides Notice of such Out Of Balance Condition to Construction Lender (if Construction Lender has not made such demand and if Tenant is not then implementing a cure previously approved by any such Construction Lender to cure such Out Of Balance Condition). To the extent such funds are so deposited, such funds shall be used to pay Total Project Costs prior to the advance of any then unpaid Improvement Allowance. Tenant shall receive and hold in trust for the sole benefit of Landlord (and not for the benefit of any other Person, including, without limitation, contractors or any subcontractors) all payments by Landlord to Tenant of the Improvement Allowance, solely for the purpose of paying the Total Project Costs in accordance with the Project Budget. Landlord's payment of the Improvement Allowance shall be paid pursuant to the terms and conditions set forth in Work Letter, in addition to the terms and provisions set forth in this Section 48(d). Notwithstanding anything to the contrary contained in this Lease or in the Work Letter, any portion of the Improvement Allowance which has not been advanced or funded by Landlord prior to (i) the achievement of Substantial Completion or (ii) the 421-a Deadline, if a 421-a Commencement has not been achieved by the 421-a Deadline, shall be deemed cancelled and, from and after such date and Tenant shall have no right to an advance thereof. Construction of the Construction Project shall be governed by the terms and conditions set forth in the Work Letter attached to this Lease, in addition to the terms and provisions set forth in this Lease. Pursuant to the terms of this Lease, the Improvements comprising the Construction Project shall immediately revert to Landlord upon the expiration or termination of the Term.

(e) Guarantor has concurrently with Tenant's execution and delivery of this Lease executed the Project Guaranties. Tenant has executed and delivered to Landlord the Environmental Indemnity and will-serve letters from Tenant's general contractor, architect, and engineer in same form as Construction Loan requires.

(f) Without the prior written consent of Landlord (to be given or withheld in Landlord's sole and absolute discretion), Tenant shall not amend, modify or supplement any of the Construction Loan Documents. Tenant shall provide to Landlord true, correct and complete copies of all of the Construction Loan Documents and, from time to time, shall deliver copies of all amendments, modifications or supplements to same.

49. **Intentionally Omitted.**

50. **Arbitration.**

(a) In such cases where this Lease provides for the settlement of a dispute or question (each, a "Dispute") by arbitration, such Dispute shall be resolved by final and binding arbitration. The arbitration shall be in accordance with the then prevailing Expedited Procedures of the Arbitration Rules for the Real Estate Industry of the American Arbitration Association ("AAA") or the successor of said procedures, except that the procedures shall be modified as follows:

- (i) There shall be three arbitrators.

(ii) The party commencing arbitration (the “First Party”) shall specify the name and address of the person to act as the arbitrator on the First Party’s behalf.

(iii) Within fifteen (15) days after the service of the demand for arbitration, the party receiving service of demand for arbitration from the First Party (the “Second Party”) shall give notice to the First Party specifying the name and address of the person designated by the Second Party to act as arbitrator on its behalf, which arbitrator shall be similarly qualified.

(iv) No arbitrator under this Section 50 shall be an employee of or counsel to Landlord or Tenant (or of an Affiliate of Landlord or Tenant) or have been so in the ten (10) years prior, and each arbitrator under this Section 50 shall have at least twenty (20) years of experience in the County of Bronx, City and State of New York in commercial real estate.

(b) Within ten (10) Business Days after the appointment of the arbitrator of the Second Party, the two party-appointed arbitrators so chosen shall appoint a third arbitrator, who shall be a competent and impartial person with qualifications satisfying those required of the first two arbitrators pursuant to Section 50(a). If they are unable to agree upon such appointment within five (5) Business Days after expiration of such ten (10) Business Day period, the third arbitrator shall be selected by the parties themselves within five (5) Business Days after expiration of the foregoing five (5) Business Day period.

(c) If any arbitrator appointment is not made timely under this Section 50, then either party may request the appointment be made within ten (10) Business Days by the AAA or its successor. Each party shall pay the fees and expenses of its respective arbitrator and both shall share equally the fees and expenses of the third arbitrator. Attorneys’ fees and expenses of counsel and of witnesses for the respective parties shall be paid by the respective party engaging such counsel or calling such witnesses.

(d) In the event of a failure, refusal or inability of any arbitrator to act, his or her successor shall be appointed, within ten (10) Business Days, by Landlord or Tenant in the case of the party-appointed arbitrators, and jointly by the parties in the case of the third arbitrator. If an appointment is not made timely pursuant to this Section 50(d), the arbitrator shall be appointed, at the request of any party, within ten (10) Business Days, by the AAA or its successor.

(e) Any award issued by the arbitrators shall be final and binding on the parties. Judgment on the award rendered by the arbitrators may be enforced and entered in any court having jurisdiction.

(f) By agreeing to arbitration, the parties do not intend to deprive any court of its jurisdiction under Section 50(g) to issue a pre-arbitral injunction, pre-arbitral attachment or other order in aid of the arbitration proceedings. In the exercise of their authority to resolve the merits of any Dispute, the arbitral tribunal shall have full authority to grant provisional remedies or to order the parties to request that a court modify or vacate any temporary or preliminary relief

issued by a court, and to award damages for the failure of any party to respect the arbitral tribunal's orders.

(g) The parties irrevocably consent and agree that (i) any action brought to compel arbitration or in aid of arbitration in accordance with the terms of this Lease, (ii) any action confirming and entering judgment upon any arbitration award, and (iii) any action for eviction or temporary injunctive relief to maintain the status quo or prevent irreparable harm, may be brought in the courts of the State of New York in Bronx County or the United States District Court for the Southern District of New York and for that purpose each of the parties hereby expressly and irrevocably submits itself to the jurisdiction of such courts. Each party irrevocably waives any objection to venue or jurisdiction on its person or assets, including any objection to the laying of venue or based on the grounds of *forum non conveniens* or any right of objection to jurisdiction on account of its place of incorporation or domicile.

(h) To the extent that Landlord has a right to participate in any arbitration proceeding, the Fee Mortgagee may reasonably participate in such proceeding; and to the extent that Tenant has a right to participate in any arbitration proceeding, the most senior Leasehold Mortgagee may reasonably participate in such proceeding.

51. **Right to Perform.**

(a) If Tenant at any time fails to (i) pay any Taxes in accordance with the provisions hereof, (ii) obtain, pay for, maintain or deliver any of the insurance policies that Tenant is required to obtain, pay for, maintain or deliver in accordance with the terms of this Lease or (iii) perform any other act on its part to be made or performed and, in each case, such Default shall continue beyond the notice and cure period hereunder applicable thereto, if any, then, in any such event, Landlord, without waiving or releasing Tenant from any obligation of Tenant contained in this Lease, may (but shall be under no obligation to): (A) pay any Taxes required to be paid by Tenant pursuant to the provisions hereof; (B) obtain, pay for and maintain any of the insurance policies that Tenant is required to obtain, pay for and maintain in accordance with the terms of this Lease; or (C) perform any other act on Tenant's part to be made or performed as provided in this Lease, and may enter upon the Leased Premises (subject to the terms and conditions of this Lease) for such purpose and take all such action thereon as may reasonably be necessary therefor

(b) All sums so paid by Landlord and all reasonable costs and expenses incurred by Landlord in connection with the performance of any such act permitted to be taken by Landlord under Section 51(a), together with interest thereon at the Default Rate from the respective dates of Landlord's making of each such payment or incurring of each such sum, cost, expense, charge, payment or deposit, shall be paid by Tenant to Landlord within thirty (30) days after demand therefor. Any payment or performance by Landlord pursuant to the provisions of Section 51(a) shall not be nor be deemed to be a waiver or release of the breach or Default of Tenant with respect thereto or of the right of Landlord to terminate this Lease, institute summary proceedings and/or take such other action as may be permissible hereunder if a Default by Tenant shall have occurred. Landlord shall not be limited, in the proof of any damages which Landlord may claim against Tenant arising out of or by reason of Tenant's failure to provide and keep in force insurance in

accordance with this Lease, to the amount of the insurance premium 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 Leased Premises.

52. **Entire Agreement.** This Lease and all exhibits attached to this Lease contain the entire understanding between Landlord and Tenant with respect to the Leased Premises and are intended to be a full integration of all prior or contemporaneous agreements, conditions, understandings or undertakings between them with respect thereto. There are no promises, agreements, conditions, undertakings, understandings, warranties or representations, whether oral, written, express or implied, between Landlord and Tenant with respect to the Leased Premises other than as are expressly set forth in this Lease and the exhibits attached to this Lease.

53. **Waiver of Trial by Jury.** LANDLORD AND TENANT IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS LEASE.

54. **Exhibits.** All exhibits attached to this Lease are incorporated by this reference as if fully set forth in this Lease.

55. **Prevailing Party Attorneys' Fees.** If either party brings an action or proceeding in any court of competent jurisdiction to enforce its rights or the other party's obligations under this Lease (including any proceeding brought by Landlord with respect to the collection of Rent), then the prevailing party in such action or proceeding shall be entitled to be reimbursed by the non-prevailing party for all reasonable attorneys' fees and disbursements incurred by the prevailing party in connection with such action or proceeding. If neither party prevails in such action or proceeding, or if both parties prevail in part in such action or proceeding, then such court shall determine whether, and the extent to which, one party shall reimburse the other party for all or any portion of the reasonable attorneys' fees and disbursements incurred by such other party in connection with such action or proceeding.

[Signature Page follows]

IN WITNESS WHEREOF, Landlord and Tenant have caused this instrument to be executed under seal as of the day and year first above written.

LANDLORD:

138 BRUCKNER GROUND LESSOR, LLC,
a Delaware limited liability company

By: _____

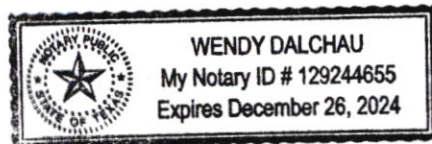
Name: Murray McCabe

Title: Authorized Signatory

STATE OF Texas)
COUNTY OF Dallas) ss.:

On the 11th day of January in the year 2022, before me, the undersigned, personally appeared Murray McCabe, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Wendy Dalchau
Notary Public



[SIGNATURES CONTINUED ON FOLLOWING PAGE]

TENANT:

138 BRUCKNER REALTY LLC,
a New York limited liability company

By: _____

Name: Jacob Schwimmer
Title: Manager

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

On the 11 day of January in the year 2022, before me, the undersigned, personally appeared Jacob Schwimmer, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

JEFFREY ZWICK
Notary Public, State of New York
Reg. No. 02ZW6163791
Qualified in Kings County
Commission Expires 4-2-2022

EXHIBIT A

LEGAL DESCRIPTION OF THE LAND

(Attached)

LEGAL DESCRIPTION

As to Parcel 1:

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough and County of the Bronx, City and State of New York, bounded and described as follows:

BEGINNING at a point on the Northerly side of East 132nd Street, distant 100 feet Westerly from the corner formed by the intersection of the said Northerly side of 132nd Street with the Westerly side of St. Ann's Avenue;

RUNNING THENCE Northerly, parallel with the Westerly side of St. Ann's Avenue, 200 feet to the Southerly side of Southern Boulevard (now Bruckner Boulevard);

THENCE Westerly, along the said Southerly side of Southern Boulevard, (now Bruckner Boulevard), 175 feet;

THENCE Southerly again parallel with the said Westerly side of St. Ann's Avenue, 200 feet to the Northerly side of 132nd Street,

THENCE Easterly, along the said Northerly side of 132nd Street, 175 feet to the point or place of BEGINNING.

For Information Only:

Said premises is also known as 138 Bruckner Boulevard, Bronx, New York
Block 2260 Lot 10

**LEGAL DESCRIPTION
(CONTINUED)**

As to Parcel 2:

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough and County of the Bronx, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly side of East 132nd Street with the westerly side of St. Ann's Avenue;

RUNNING THENCE northerly along the westerly side of St. Ann's Avenue 175.00 feet;

THENCE westerly along a line forming an interior angle of 89 degrees 58 minutes 00 seconds with the last mentioned line, for a distance of 75.00 feet;

THENCE southerly along a line forming an interior angle of 90 degrees 02 minutes 00 seconds with the last mentioned line, for a distance of 75.00 feet;

THENCE westerly along a line forming an exterior angle of 90 degrees 02 minutes 00 seconds with the last mentioned line, for a distance of 25.00 feet;

THENCE southerly along a line forming an interior angle of 90 degrees 02 minutes 00 seconds with the last mentioned line, for a distance of 100.00 feet to the northerly side of East 132nd Street;

THENCE easterly along the northerly side of East 132nd Street 100.00 feet to the point of place of BEGINNING.

For Information Only:

Said premises is also known as 107 St Anns Avenue, Bronx, New York
Block 2260 Lot 19

EXHIBIT B

Form of Owner's Recognition and Non-Disturbance Agreement

NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "**Agreement**") is made and entered into as of the ____ day of _____, 202[2], among _____, a _____ (together with its successors and/or assigns, "**Ground Landlord**"), [_____] ("**Sublandlord**"), and [_____] a [_____] ("**Subtenant**").

WITNESSETH:

A. Ground Landlord is the owner of the land located in 138 Brucker Boulevard and 107 Saint Ann's Avenue, Bronx, New York, legally described on Exhibit A attached hereto and made a part hereof. Ground Landlord has leased all or a portion of such real property (the "**Real Property**") to Sublandlord together with all improvements upon such Real Property (such improvements the "**Improvements**") pursuant to the terms of that certain Ground Lease dated as of January [____], 2022 (as may be amended, amended and restated, modified, supplemented or split, from time to time the "**Ground Lease**").

B. Sublandlord and Subtenant have entered into a [sublease] dated [_____, 2____] (as amended, restated, supplemented or otherwise modified from time to time, the "**Sublease**"), demising a portion of a building located on the Real Property to Subtenant as further described in the Sublease (the "**Leased Premises**").

C. Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Ground Lease.

D. Ground Landlord, Sublandlord and Subtenant desire to evidence their understanding with respect to the Ground Lease as hereinafter provided.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree and certify as follows:

1. **Non-Disturbance and Attornment.** Provided the Sublease is then in full force and effect, if the Ground Lease is terminated for any reason other than pursuant to a Condemnation constituting a Total Loss or during the last two (2) years of the Term, in each case as expressly set forth in the Ground Lease, Ground Landlord shall not terminate the Sublease, and none of Subtenant's rights thereunder shall be affected, diminished or modified in any manner, including, without limitation, Subtenant's use and occupancy of the Leased Premises, and Ground Landlord will not join Subtenant in any action or proceeding for the purpose of terminating the Ground Lease or for the purpose of recovering possession of the Leased Premises from Sublandlord. In the event that the Ground Lease is terminated for any reason other than pursuant to a Condemnation constituting a Total Loss or during the last two (2) years of the Term, in each case as expressly set

forth in the Ground Lease, Subtenant covenants and agrees to attorn to Ground Landlord as its landlord, and Ground Landlord shall recognize Subtenant as its tenant, and the Sublease shall continue unmodified and in full force and effect as a direct lease between Subtenant and Ground Landlord, upon all the terms, covenants, conditions and agreements set forth in the Sublease, and Ground Landlord shall be bound by all of the obligations of Sublandlord under the Sublease; provided, however, that in no event shall Ground Landlord be:

- (1) liable for any act or omission of any prior Sublandlord under the Sublease (including, without limitation, the then Sublandlord under the Sublease) except to the extent such acts or omissions constitute a continuing non-monetary default and continue after the date that Ground Landlord succeeds to the interest of Sublandlord under the Sublease;
- (2) subject to any offsets, claims or defenses which the Subtenant may have against any prior Sublandlord (including, without limitation, the then Sublandlord under the Sublease);
- (3) bound by any payment of rent which the Subtenant might have made for more than one month in advance to any prior Sublandlord under the Sublease (including, without limitation, the then Sublandlord under the Sublease);
- (4) bound by any covenant to undertake or complete any construction;
- (5) bound by any covenant or obligation to repair, restore or rebuild after a Casualty or Condemnation, in each case, which occurred prior to the date that Ground Landlord succeeds to the interest of Sublandlord under the Sublease;
- (6) bound by any obligation to make any payment to the Subtenant (other than refunds which arise in the ordinary course of the Sublease on account of certain reimbursables (such as taxes and/or common area expenses)), but only to the extent such refundable amounts were actually received by Ground Landlord and Subtenant is actually entitled to same pursuant to the terms of the Sublease; or
- (7) bound by any obligation to assign, transfer or sell the Leasehold Estate or the Improvements to the Subtenant.

Ground Landlord and Subtenant agree that if a Leasehold Mortgagee obtains a New Lease pursuant to the Ground Lease or any other agreement between Ground Landlord and the Leasehold Mortgagee whereby such Leasehold Mortgagee shall succeed to the interest of Sublandlord under the Ground Lease, none of Subtenant's rights hereunder shall be affected or diminished in any way, and this Agreement shall remain in effect in accordance with its terms.

2. Ground Landlord Confirmation. Ground Landlord confirms to Subtenant as follows (as of the date hereof):

(a) The Ground Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way[, except as follows: _____].¹

(b) To Ground Landlord's knowledge, there are no defaults by Ground Landlord or Sublandlord under the Ground Lease which permit Ground Landlord to terminate the Ground Lease or Subtenant's right of possession under the Ground Lease, that remain uncured.

(c) Ground Landlord's consent to the Sublease is not required under the Ground Lease, or, if such consent is required, Ground Landlord has given such consent.

(d) Ground Landlord shall look solely to Sublandlord, its successors and assigns, with respect to the exercise of Ground Landlord's claims arising out of noncompliance by the Sublandlord with its obligations under the Ground Lease.

(e) Ground Landlord and all persons executing this Agreement on behalf of Ground Landlord are authorized to do so and such execution hereof is the binding act of Ground Landlord and enforceable against Ground Landlord.

3. Self-Operative. The provisions hereunder shall be self-operative and effective without the execution of any further instruments on the part of any of the parties hereto.

4. Counterparts. This Agreement may be executed in one or more counterparts, or by the parties executing separate counterpart signature pages, including facsimiles transmitted by telecopier or counterparts being sent by email or other electronic medium (including, without limitation, DocuSign and AdobeSign), all of which shall be deemed to be original counterparts of this Agreement and all of which taken together shall constitute one and the same agreement.

5. Amendments; Successors and Assigns. This Agreement may not be modified other than by an agreement in writing, signed and delivered by the parties hereto or by their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns.

6. Notices. All Notices required or permitted to be given, rendered or made by either party to the other pursuant to this Agreement or pursuant to any applicable law or requirement of public authority, shall be in writing (whether or not so stated elsewhere in this Agreement) and shall be deemed to have been properly given, rendered or made, when received by personal delivery or overnight delivery or overnight courier delivery (or, if such delivery is refused, upon the date that delivery would have occurred but for such refusal) addressed to the other parties as follows:

¹ Identify amendments and modifications.

To Ground Landlord: c/o MSP Capital Investments, L.L.C.
Woodlawn Hall at Old Parkland
3953 Maple Ave., Suite 350
Dallas, Texas 75219
Attention: Luke Pak

With a copy to: Duval & Stachenfeld LLP
555 Madison Avenue, 6th Floor
New York, New York 10022
Attention: Danielle Ash, Esq. and File Manager
File No. 4308.0008

With a copy to: _____

Attention: _____

To Sublandlord: _____

Attention: _____

With a copy to: Jeffrey Zwick & Associates, P.C.
266 Broadway, Suite 403
Brooklyn, NY 11211
Attention: Jeffrey Zwick, Esq.

To Subtenant: [_____]
[_____]
[_____]
Attention: [_____]

With a copy to: [_____]
[_____]
[_____]
Attention: [_____]

Any party listed in this paragraph 6 may, by Notice as aforesaid, designate a different address for addresses for Notice intended for it.

No Notice shall be effective unless and until a copy of such Notice has been delivered to the intended recipient's Fee Mortgagee or Leasehold Mortgagee, as applicable, of which the sender shall have received Notice. Any party may change its address or the name and address of its attorneys by giving Notice in compliance with this Agreement. Notice given on behalf of a party by any attorney who represents such party shall constitute Notice by such party.

7. Governing Law. This Agreement shall be governed by the laws of the State of New York (without regard to conflicts of law principles). If any of the terms of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of any such terms to any person or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

8. Parties Bound. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns, and all covenants, conditions and agreements herein contained shall be construed as running with the land.

[Signatures on following page.]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

“GROUND LANDLORD”

_____,

a _____

By: _____

Name: _____

Title: _____

“SUBLANDLORD”

_____,

a _____

By: _____

Name _____

Title: _____

“SUBTENANT”

_____,

a _____

By: _____

Name _____

Title: _____

EXHIBIT A (to Owner's Recognition and Non-Disturbance Agreement)
(Description of Property)

EXHIBIT C

Work Letter

This Work Letter (“Work Letter”) describes and specifies the respective rights and obligations of Landlord and Tenant with respect to the Construction Project.

1. **Definitions.** Capitalized terms that are defined in the Lease shall have the same meanings in this Work Letter. Additionally, as used in this Work Letter, the following terms (when delineated with initial capital letters) shall have the respective meaning indicated for each as follows:

“**Architect**” means Greenberg Farrow Architecture, Inc., or any successor engaged by Tenant with the prior written consent of Landlord, which consent shall not be unreasonably delayed, conditioned, or delayed.

“**Architect Contract**” shall mean that certain Agreement, made on or about August 26, 2021, between Tenant and Architect, as the same may be amended from time to time in compliance with the terms hereof.

“**Completion**”, “**Complete**” or “**Completion of the Project**” means, with respect to the Construction Project: (i) Substantial Completion shall have occurred and all Punch List Items shall have been completed in substantial accordance with the Project Plans and Specifications, all applicable Legal Requirements, and the Lease, (ii) all construction costs in connection with the Improvements have been paid in full, (iii) Tenant shall have received duly executed final and unconditional lien waivers, which lien waivers are in form and substance reasonably acceptable to Landlord, from Construction Manager and all contractors who have performed work, for the work so performed, and/or who have supplied labor and/or materials for the labor and/or materials so supplied, with respect to any contract which is, when aggregated with all other contracts with such contractor, for an aggregate contract price equal to or greater than \$50,000, in each case, in connection with the Improvements (including from Construction Manager and/or any contractor performing work on account of Punch List Items), (iv) Tenant has received a permanent or temporary certificate of occupancy for the entire Project, (v) Landlord shall have received confirmation from Construction Consultant the requirements set forth in clauses (i) through (iv) above have been achieved and all final lien waivers from such parties have been obtained; with completion of such requirements set forth in clauses (i) through (v) above to be evidenced to the reasonable satisfaction of Landlord.

“**Construction Consultant**” means a consulting architect, inspector, and/or engineer designated by Landlord, the fees of which shall be paid by Tenant.

“**Construction Manager**” means Prestige Construction NY LLC, or any successor engaged by Tenant with the prior written consent of Landlord, which consent shall not be unreasonably delayed, conditioned, or delayed.

“**Construction Management Agreement**” shall mean that certain construction management agreement to be entered into between Tenant and Construction Manager on or prior

to commencement of the demolition of the Existing Improvements, and which is in form and substance reasonably satisfactory to Landlord and Construction Lender.

“Construction Schedule” means the schedule attached hereto as Schedule 4 establishing a timetable for Completion of the Project, showing, on a monthly basis, the anticipated progress of the construction and that Completion will be achieved not later than the Required Substantial Completion Date. For the avoidance of doubt, Tenant shall not amend the Construction Schedule without Landlord’s prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

“Draw Request” means a properly completed and executed written application by Tenant to Landlord in the form of Schedule 3 attached hereto (or another form satisfactory to Landlord) setting forth the requested amount of the Improvement Allowance to be paid by Landlord, and reasonably approved by Landlord.

“Engineer” means EP Engineering LLC, or any successor engaged by Tenant with the prior written consent of Landlord, which consent shall not be unreasonably delayed, conditioned, or delayed.

“Engineer Contract” shall mean that certain agreement, dated as of October 13, 2021, between Engineer and Tenant.

“Hard Costs” shall mean the direct construction costs incurred by Tenant in connection with the Work including, but not limited to, materials, supplies, and payments to any construction manager, general contractor, contractor, subcontractor, laborer, supplier, materialman, or architects.

“Improvement Allowance” means \$20,000,000.00, which shall be subject to the terms of Section 48 of the Lease and the Work Letter.

“Major Contract” shall mean (a) the Construction Management Agreement, the Architect Contract, and the Engineer Contract, (b) any contract which is, when aggregated with all other contracts with such contractor or Other Design Professional (or any Affiliate of any of the foregoing) hired by (or on behalf of) Tenant, and taking into account all change orders under such contract, for an aggregate contract price equal to or greater than \$500,000, and (c) each other contract and agreement relating to the Construction Project, as to which either (i) there is an obligation of Tenant to pay more than \$100,000 per annum, (ii) the term thereof extends beyond one (1) year (unless cancelable on thirty (30) days or less notice without requiring the payment of termination fees or payments of any kind), (iii) relates solely or primarily to environmental remediation or other environmental matters or (iv) is with Tenant or any Affiliate of Tenant

“Major Contractor” shall mean any contractor or provider under a Major Contract.

“Other Design Professionals” shall mean any architect (other than Architect), engineer (other than Engineer), expeditor or other professionals engaged by Tenant or any Affiliate of Tenant to work on the Improvements having compensation which is, when aggregated with all

other compensation received by such professional (and any Affiliate of such professional) under any contract relating to the Improvements, equal to or in excess of \$250,000.

“Permitted Equipment Leases” shall mean leases entered into for equipment during the course of construction of the Improvements, provided that the liabilities underlying such leases shall not exceed \$250,000 in the aggregate as to all such leases in effect at any given time and such leases only relate to the equipment that is subject to such lease.

“Project Budget” means the budget for the Construction Project attached hereto as Schedule 1 specifying all sources and uses, costs and expenses of every kind and nature whatever to be incurred by Tenant in designing, constructing and developing the Construction Project in accordance with the Project Plans and Specifications, as the same may be amended from time to time with the prior written consent of Landlord in its reasonable discretion.

“Project Plans and Specifications” means the plans and specifications identified on Schedule 5 attached hereto, as amended from time to time in accordance with this Lease. For the avoidance of doubt, Tenant shall not materially amend the Project Plans and Specifications without Landlord’s prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

“Project Report” shall mean periodic reports to be prepared by Construction Consultant, based on its review of the Project Budget, the Project Plans and Specifications, the Construction Schedule, inspections of the Project, and such other documents and information required by Construction Consultant.

“Punch List Items” shall mean, collectively, minor or insubstantial details of construction, decoration, mechanical adjustment or installation, the non-completion of which do not hinder or impede the lawful use, operation, or maintenance of the Property as a whole (other than to a *de minimis* extent).

“Required Substantial Completion Date” means July 13, 2025, by which date Completion of the Project shall have occurred, time being of the essence, but subject to Force Majeure (not to exceed ninety (90) days in the aggregate).

“Substantial Completion” and **“Substantially Completed”** means: (i) the occurrence of substantial completion of the Improvements (excluding Punch List Items) substantially in accordance with the Project Plans and Specifications, all applicable Legal Requirements and the Lease (provided, however, that as it relates to the commercial and community facility space with the Project, such portions of the Project shall be deemed substantially completed if they are in so-called “vanilla box” condition ready for interior improvements by the tenant or other occupant thereof), (ii) that Tenant has delivered to Landlord an AIA Form Document G704-2000 Certification of Substantial Completion executed by Architect and Tenant in connection with the Improvements, (iii) other than Punch List Items, that the Improvements shall contain all fixtures, furniture and equipment required for the use and operation of the Improvements for their intended use or by any Governmental Authority or under any Legal Requirement, (iv) Tenant shall have received and delivered to Landlord duly executed final and unconditional lien waivers, which lien waivers are in form and substance reasonably acceptable to

Landlord, from Construction Manager and all contractors and subcontractors who have performed work, for the work so performed, and/or who have supplied labor and/or materials for the labor and/or materials so supplied, in each case, in connection with the Improvements other than from contractors or subcontractors performing work on account of Punch List Items, or Construction Manager for work to be performed on account of Punch List Items, in which event Tenant shall have received duly executed conditional lien waivers, which lien waivers are in form and substance reasonably acceptable to Landlord, from Construction Manager and such contractors and subcontractors, provided, that, in the case of contractors or subcontractors other than the Construction Manager, lien waivers shall only be required from such contractors or subcontractors who have entered into contracts in the amount of, or provided services with a value of, \$50,000 or more, when aggregated with all other contracts with such contractor or subcontractor, provided, further that with respect to any contractors or subcontractors or any other Persons below such \$50,000 threshold, Tenant shall, upon Landlord's request, promptly provide proof of payment thereto, (v) that all utilities necessary to serve the Leased Premises have been connected and are in operation, (vi) delivery to Landlord of a temporary certificate of occupancy with regard to the Improvements as a whole and with no conditions to the issuance of a permanent certificate of occupancy other than customary conditions or those otherwise reasonably approved by Landlord, together with evidence that all other applicable Governmental Approvals, to the extent required under applicable Legal Requirements, have been issued, and (vii) Landlord has received and approved an updated "as built" Survey; with completion of such requirements set forth in the foregoing clauses (i) through (vii) to be evidenced to the reasonable satisfaction of Landlord.

"Soft Costs" shall mean all costs, charges, expenses and fees, including, without limitation, interest payments, Taxes, insurance premiums, appraisal fees, brokerage fees, leasing commissions, title premiums and charges incurred in connection with the Work, the acquisition of the Leasehold Estate and identified on the Project Budget but excluding Hard Costs.

"Tenant's Architect" means Greenberg Farrow Architecture, Inc., or any successor engaged by Tenant with the prior written consent of Landlord, which consent shall not be unreasonably delayed, conditioned, or delayed.

"Total Project Costs" means collectively all Hard Costs and all Soft Costs.

"Work" means all materials and labor required in order to construct and Complete the Project in accordance with the Project Plans and Specifications, all Legal Requirements and the Construction Loan Documents.

2. Project Plans and Specifications.

(a) Landlord will review any proposed revisions to the Project Plans and Specifications. Within ten (10) Business Days after receipt of any revisions to the Project Plans and Specifications, Landlord shall (i) return one (1) copy of such revised Project Plans and Specifications to Tenant with Landlord's suggested modifications and/or written approval (which shall not be unreasonably withheld, conditioned or delayed) or (ii) otherwise provide Tenant with Landlord's suggested modifications and/or approval. If such revised Project Plans and Specifications are returned to Tenant with comments, but not bearing approval of Landlord, or Landlord otherwise provides Tenant's with its

suggested modifications, such revised Project Plans and Specifications shall be immediately revised by Tenant and resubmitted to Landlord for approval within twenty (20) Business Days of their receipt by Tenant. Unless (i) Landlord returns such revised Project Plans and Specifications or (ii) otherwise provides Tenant with Landlord's suggested modifications, in either case within ten (10) Business Days, Tenant shall have the right to give Landlord a second request (which second request shall state at the top thereof, in bold and capitalized letters, "LANDLORD'S FAILURE TO RESPOND TO THIS REQUEST MAY RESULT IN A DEEMED APPROVAL") and if Landlord fails to return such revised Project Plans and Specification or otherwise provide Tenant with Landlord's suggested modifications without ten (10) Business Days of such second notice, Landlord shall, at the election of Tenant, be deemed to have approved such revisions to the Project Plans and Specifications.

(b) Upon Completion of the Project, Tenant shall deliver to Landlord two (2) copies of an "as-built" set of Project Plans and Specifications for the Leased Premises, together with such other information in an electronic media as required by Landlord to place the information from the "as-built" Project Plans and Specifications in Landlord's data base.

3. Project Budget. Tenant represents and warrants that the amounts set forth in the Project Budget present a full and complete itemization by category of all costs, expenses and fees which Tenant reasonably expects to pay or reasonably anticipates becoming obligated to pay to Complete and operate the Project through Substantial Completion of the Project. Tenant is unaware of any other material costs, expenses or fees not yet paid which are not covered by the Project Budget. Advances by Landlord of the Improvement Allowance shall be governed by and subject to the Project Budget. The Project Budget shall specify all Total Project Costs of every kind and nature whatsoever to be incurred. The initial Project Budget, which has been agreed to by Tenant and Landlord, is attached to this Work Letter as Schedule 1 and made a part hereof. All changes to the Project Budget shall in all respects be subject to the prior written approval of Landlord, which approval may be granted or withheld in Landlord's reasonable discretion. With the prior written approval of Landlord, which approval may be granted or withheld in Landlord's reasonable discretion (and subject to the terms of the Construction Loan Documents), any cost savings, actual or estimated, affecting any approved Project Budget category, and any contingency line item, may be reallocated by Tenant to any other approved Total Project Costs.

4. Construction Schedule. Tenant agrees that the Construction Schedule that Tenant submitted to Landlord prior to the Commencement Date is a reasonable estimate of the current projected timing for the construction and Completion of the Project. The Construction Schedule that Tenant submitted to Landlord prior to the Commencement Date was approved by Landlord in writing.

5. Required Substantial Completion Date. Tenant agrees to cause Substantial Completion no later than the Required Substantial Completion Date.

6. Improvement Allowance; Draw Requests. Landlord shall fund the Improvement Allowance in accordance with the following procedures:

(a) Tenant may obtain advances of the Improvement Allowance from time to time in accordance with this Lease by requesting payment by Notice given by Tenant to Landlord at least ten (10) Business Days before each requested payment of any portion of the Improvement Allowance with each such Notice requesting payments to be accompanied by a fully completed Draw Request duly executed by Tenant, and Tenant shall also provide, in connection therewith: (i) such additional information (including, without limitation, paid receipts, invoices, lien waivers, statements of accounts, contractor or subcontractor pay applications, etc.) as Landlord may reasonably require to assure that amounts requisitioned are to be used to reimburse Tenant for Total Project Costs previously paid by Tenant or to pay Total Project Costs incurred by Tenant which are then due and owing, (ii) completed and executed AIA Application for Payment Form G702 and G703, (iii) copies of all materials submitted by Tenant to Construction Lender in connection with any draw request made pursuant to the Construction Loan Documents, and (iv) such schedules, affidavits, releases, waivers, statements, invoices, bills and other documents, certificates and information satisfactory to Landlord as Landlord shall reasonably request supporting such use of the requested payment. Landlord shall not be required to make advances of the Improvement Allowance more frequently than once each calendar month.

(b) The following individuals are authorized by Tenant to sign Draw Requests on behalf of Tenant: Jacob Schwimmer.

(c) Within ten (10) Business Days following Landlord's receipt and approval of a Draw Request, all supporting documentation and information required by Landlord in accordance with clause (a), and receipt and approval of a written report from the Construction Consultant reasonably satisfactory to Landlord, Landlord shall determine the amount of the applicable advance of Improvement Allowance in accordance with the provisions of this Work Letter and the Project Budget and make such advance to Tenant.

(d) No advances by Landlord of the Improvement Allowance shall be made for building materials or furnishings that are not yet incorporated into the Improvements unless (i) Tenant has good title to the stored materials, the stored materials are components in a form ready for incorporation into the Improvements and will be incorporated into the Improvements within a period of forty-five (45) days after the applicable advance of Improvement Allowance and Tenant delivers to Landlord bill of sales or other evidence satisfactory to Landlord of the cost of such stored materials, (ii) the stored materials are in Tenant's possession and satisfactorily stored on the Land or such materials are satisfactorily stored at such other site as Landlord may approve, (iii) the stored materials are protected and insured against theft and damage in a manner and amount satisfactory to Landlord, (iv) the stored materials have been paid for in full or will be paid for with the funds to be advanced and all lien rights and claims of the supplier have been released or will be released upon payment with the advanced funds, and (v) the stored materials are components in substantially final form ready for incorporation into the Improvements. The aggregate amount of payments by Landlord of Improvement Allowance for stored materials that have not yet been incorporated into the Improvements shall not exceed \$2,000,000 at any time, the aggregate cost of the stored materials stored at the Leased Premises being confirmed by Construction Consultant and, if required by Landlord,

Construction Consultant shall certify that it has inspected such stored materials and they are in good condition and suitable for use in connection with the Improvements.

(e) Each Draw Request shall be accompanied by (i) bills, invoices and other evidence of the Total Project Costs which are the subject of such Draw Request, (ii) applicable lien waivers required under this Work Letter for all previous advances and payments made by Tenant from Tenant's own funds to any Person who performed any portion of, or supplied materials for, the Work, and (iii) a certificate from Tenant to Landlord certifying that (x) the applicable Total Project Costs have been actually incurred by Tenant, (y) the Total Project Costs to be funded from the advance in question have not been the subject of a previous advance, and (z) all previous advances for Total Project Costs have been used to pay previously identified Total Project Costs.

(f) Landlord shall, be required to make the requested advance of the Improvement Allowance to Tenant within ten (10) Business Days after satisfaction of all conditions precedent to the advance set forth in this Work Letter and the Lease. Each payment of Improvement Allowance shall be deemed to constitute Tenant's ratification, representation, warranty and confirmation, as of the date of and giving effect to the payment of, such portion of the Improvement Allowance that: (i) all representations and warranties of Tenant in this Lease are true and correct in all material respects as of the date of such advance (provided that Tenant shall be entitled to update its representations and warranties so long as such updates do not cause an Event of Default or other default under the Lease), (ii) no Event of Default has occurred and is continuing, (iii) all conditions to the applicable advance of the Improvement Allowance are satisfied, (iv) the AIA Document G702 and G703 forms (or other similar forms approved by Landlord in its reasonable judgment) executed by each contractor and approved by Tenant's Architect, together with all schedules, affidavits, releases, waivers, statements, invoices, bills, and other documents, certificates and information submitted for the requisition are complete and correct, and in all material respects what they purport and appear to be for the amount and period applicable to the requisition, (v) all payments previously made to Tenant were paid, and the proceeds of the payment requested in the applicable requisition will be paid, for the payment of costs and expenses specified in the requisition and for no other purpose, (vi) after the applicable advance by Landlord of Improvement Allowance all obligations for Work and other Total Project Costs heretofore incurred by Tenant in connection with the construction of the Improvements and which are due and payable have been fully paid and satisfied, and (vii) no Out Of Balance Condition then exists.

Landlord shall not be obligated to make any advance if any inspection report submitted by the Construction Consultant (or any other party having jurisdiction over the Work) reveals any structural or material defects ("**Defects**") in the Work until such time as Tenant repairs or replaces such Defects to Landlord's reasonable satisfaction. Alternatively, Landlord may elect to withhold proceeds from any advance in the amount of one hundred twenty-five percent (125%) of the cost (as estimated by Landlord) to repair or replace Defects to Landlord's reasonable satisfaction.

7. Tenant's Equity Contribution. Tenant shall cause the Tenant's Equity Contribution to be paid for Total Project Costs in accordance with the Project Budget, the Construction Schedule, this Lease and the Construction Loan Documents and shall cause all of such Tenant's

Equity Contributions to be so applied in accordance with the Project Budget prior to submitting any Draw Request for any advance of the Improvement Allowance. Landlord hereby acknowledges and agrees that as of the Effective Date, the Tenant's Equity Contribution has been fully funded by Tenant to pay for Total Project Costs in accordance with the foregoing.

8. Conditions Precedent to All Payments by Landlord of the Improvement Allowance. Landlord shall not be obligated to make any advance of the Improvement Allowance, as applicable, unless the conditions described in this Section 8 shall be satisfied with respect to each requested advance of the Improvement Allowance:

(a) Landlord shall have received evidence reasonably satisfactory to Landlord that Tenant's Equity Contribution has been made with respect to Total Project Costs in full (it being acknowledged and agreed that as of the Effective Date, the Tenant's Equity Contribution has been paid in full by Tenant in accordance with Section above).

(b) Landlord shall have received a Draw Request and all of the other applicable items described in Section 6 of this Work Letter. Each Draw Request shall be delivered to Landlord with a copy of each requisition contemporaneously delivered to the Construction Consultant.

(c) Landlord shall have received a title search prepared by Executive Abstract Group, Inc. or by other evidence reasonably satisfactory to Landlord indicating that since the last preceding advance of the Improvement Allowance, there has not been filed with respect to the Leased Premises any mechanics' or other lien or instrument for the retention of title or change in the status of title and no other exceptions not theretofore approved by Landlord, in respect of any part of the work for which the applicable Draw Request relates which has not been discharged of record (unless any such liens have been bonded over or are being diligently contested by Tenant in accordance with this Lease), which evidence will be at Tenant's sole cost and expense, and shall, if applicable, be sufficient for Landlord's title insurer to increase the coverage of Landlord's owner's title insurance policy by an amount equal to the advance by Landlord of Improvement Allowance then being made, if the title insurance policy does not by its terms provide for such an increase.

(d) No monetary Default or Event of Default shall have occurred and be continuing.

(e) The Improvements shall not have been materially damaged by fire or other Casualty unless the insurance company shall have paid insurance proceeds sufficient in the judgment of Landlord to (together with other Available Project Proceeds and funds provided by Tenant) effect a satisfactory Restoration of the Improvements in accordance with the terms of this Lease and Substantial Completion thereof by the Required Substantial Completion Date.

(f) Landlord shall have received written evidence, in form and substance satisfactory to Landlord, to the effect that all Work completed which is then-requiring inspection by Governmental Authorities having or claiming jurisdiction has been duly

inspected and approved by such Governmental Authorities and by any rating or inspection organization, bureau, association or office having or claiming jurisdiction.

(g) Landlord shall be satisfied that the Improvements can be Substantially Completed by a date no later than the Required Substantial Completion Date and no Out of Balance Condition exists as of such date.

(h) Landlord shall have received a confirmation from its advisors and/or consultants (which, absent Landlord's receipt of same for such parties, may be provided by Tenant's Architect) that, (1) to the best of such party's knowledge, information and belief, construction is in accordance with the Project Plans and Specifications, the quality of the Work for which the advance by Landlord of the Improvement Allowance is being requested is in accordance with the applicable contract and such Work has been performed in a good and workmanlike manner, (2) the amount of the payment by Landlord of the applicable portion of the requested payment of the Improvement Allowance represents work in place based on on-site observations and the data comprising the requisition, (3) any contract change orders presented are appropriate in cost and scope and in accordance with this Lease, (4) the Work has progressed materially in accordance with the Construction Manager's construction contract and the Construction Schedule, (5) the Available Project Proceeds is sufficient to complete the remaining contracted work, (6) the applicable contractor is entitled to the payment of the amount certified and (7) all materials and fixtures to which such advance of the Improvement Allowance have been furnished and installed.

(i) The representations and warranties made by Tenant in this Lease, the Tenant and Guarantor in the Project Guaranties shall be true and correct in all material respects on and as of the date of the advance by Landlord of Improvement Allowance with the same effect as if made on such date.

(j) No event or circumstance that has a material adverse effect on (i) the business, results of operations, financial condition, assets, liabilities or prospects of Tenant or Guarantor, (ii) the ability of Tenant and Guarantor to perform any of their respective obligations under this Lease or the Project Guaranties, or (iii) the rights and remedies of Landlord under this Lease or the Project Guaranties, shall have occurred and be continuing.

(k) The Construction Loan Documents shall be in full force and effect and no default or event of default shall exist under the Construction Loan Documents.

(l) A Project Report with regard to the period since the last Project Report shall have been delivered to Landlord by Construction Consultant.

(m) An anticipated cost report (y) in a form requested or agreed to by Landlord executed by Construction Manager which sets forth the anticipated Hard Costs to complete construction of the Improvements to Completion, after giving effect to costs incurred to date and the determination of costs relating to any anticipated change orders and (z) in a form requested or agreed to by Landlord executed by Tenant which sets forth, with respect to all costs to complete construction of the Improvements to Completion, on a cumulative

basis and broken down by line item, percentage of completion, the original budgeted amount, the current budgeted amount pursuant to an updated Project Budget approved by Landlord, costs incurred to date, projected costs to complete, explanations of any Project Budget variances, a summary of any budget reallocations (regardless of whether such reallocations required approval pursuant to the Lease or if such reallocations were permitted without Landlord's approval), a summary of permitted, approved, pending and anticipated change orders, an explanation of any variances from the approved Construction Schedule and an updated Construction Schedule for which Tenant has requested Landlord's approval.

(n) Landlord shall have received copies of all executed change orders and construction contracts, and, to the extent requested by Landlord, of all inspection or test reports and other documents relating to the construction of the Improvements not previously delivered to Landlord.

(o) If the Construction Lender is then funding any advances under the Construction Loan, all of the conditions precedent set forth in Section 2.10 of the Construction Loan Agreement remain satisfied, performed and unimpaired in all respects on and as of the date of such Draw Request.

(p) Prior to any advance of funds for Hard Costs, Tenant shall have delivered to Landlord in form and substance reasonably satisfactory to Landlord the following (i) the fully-executed Construction Management Agreement, (ii) a fully-executed certification and consent (or so-called "will serve letter") from Construction Manager in favor of Landlord and substantially in the form provided to the Construction Lender (and if no such form is provided then in form prepared by Landlord and reasonably approved by Construction Manager), (iii) evidence of bonds issued from a reputable bonding company for each of the contracts and contractors (A) concrete, (B) plumbing, (C) electrical, (D) drywall, and (E) HVAC, in each instance in no less than the amount set forth in the applicable line item of the Project Budget, and (iv) and updated Project Budget setting forth the Total Project Costs (the matters set forth in this clause (p), the "**Hard Cost Funding Condition Deliveries**").

(q) Landlord shall have received such other documents and further approvals, opinions, documents and information as Landlord may have reasonably requested, in form and substance reasonably satisfactory to Landlord.

9. Construction Monitoring.

(a) Tenant shall furnish to Landlord the following:

(1) within thirty (30) days after the end of each month, monthly progress reports and construction budget reports; and

(2) within fifteen (15) days after written request therefor, such other information about the business properties or the condition or operations, financial or otherwise, of the Project as Landlord may from time to time reasonably request.

(b) Construction Consultant shall perform the following services on behalf of Landlord:

- (1) Prepare periodic Project Reports;
- (2) Review and advise Landlord whether, in the opinion of Construction Consultant, the Project Plans and Specifications are satisfactory;
- (3) Review and advise Landlord on Draw Requests and change orders;
- (4) Have the right to attend all regularly scheduled meetings relating to the construction of the Project;
- (5) Review any construction contracts, Governmental Approvals or other documentation relating to the Project requested by Landlord or the Construction Consultant; and
- (6) Take such other actions determined to be reasonably necessary by Landlord or Construction Consultant in order to effectively administer and review the Project.

Tenant acknowledges that (i) Construction Consultant has been retained by Landlord to act as a consultant and only as a consultant to Landlord in connection with the Project and has no duty to Tenant, (ii) Construction Consultant shall in no event have any power or authority to give any approval or consent or to do any other act or thing which is binding upon Landlord, (iii) Landlord reserves the right to make any and all decisions required to be made by Landlord under this Lease and to give or refrain from giving any and all consents or approvals required to be given by Landlord under this Lease, and without being bound or limited in any manner or under any circumstance whatsoever by any opinion expressed or not expressed, or advice given or not given, or information, certificate or report provided or not provided, by Construction Consultant with respect thereto, (iv) Landlord reserves the right in its sole and absolute discretion to disregard or disagree, in whole or in part, with any opinion expressed, advice given or information, certificate or report furnished or provided by Construction Consultant to Landlord or any other person or party, and (v) Landlord reserves the right to replace Construction Consultant with another construction consultant at any time and without prior notice to or approval by Tenant. The fees of Construction Consultant shall be paid by Tenant (and expenses incurred by Landlord on account thereof shall be reimbursed to Landlord) after Tenant receives Construction Consultant's invoice approved by Landlord for payment within thirty (30) days after request therefor. Neither Landlord nor Construction Consultant shall have any liability to Tenant, Tenant Key Person, or any Affiliate of any of the foregoing on account of (i) the services performed by Construction Consultant, (ii) any neglect or failure on the part of Construction Consultant to properly perform its services or (iii) any approval by Construction Consultant of construction of the Project. Neither Landlord nor Construction Consultant assumes any obligation to Tenant or any other Person concerning the quality of the Project or the absence thereof of Defects.

(c) Tenant shall promptly advise Landlord of any Defects in the Work of which Tenant is actually aware and shall promptly correct same to Landlord's reasonable satisfaction. Tenant shall, upon written demand of the Landlord and prior to the next

advance of the Improvement Allowance, correct to Landlord's satisfaction any Defect in the Work as may be reasonably determined to exist by Landlord or the Construction Consultant or any material departure from the Project Plans and Specifications not approved by the Construction Consultant. The making of an advance of the Improvement Allowance by Landlord shall not constitute a waiver of Landlord's right to require compliance with this covenant with respect to any such Defects or departures from the Project Plans and Specifications not theretofore discovered by, or called to the attention of, Landlord or the Construction Consultant.

(d) Tenant shall, at all times during Tenant's regular business hours and upon not less than twenty-four (24) hours prior notice from Landlord (except in the event of an emergency, in which case no notice is necessary), permit Landlord, the Construction Consultant and their respective representatives to enter upon the Leases Premises, inspect the Project and all materials to be used in connection with the Work and to examine the Project Plans and Specifications and shall cooperate, and cause Construction Manager to cooperate, with the Construction Consultant to enable the Construction Consultant to perform the Construction Consultant's functions hereunder.

10. Release of Liens. Before making any advance of the Improvement Allowance, Landlord may require Tenant to obtain from the Construction Manager and from any Person who performed any portion of, or supplied materials for, the Work which, when aggregated with all other contracts with such contractor, is for an aggregate contract price equal to or greater than \$50,000, acknowledgments of payment and releases of liens and rights to claim liens for work performed or materials delivered through the date of the last preceding payment by Landlord of Improvement Allowance and concurrently with the final advance thereof. All such acknowledgments and releases shall be in form and substance reasonably satisfactory to Landlord and Landlord's title insurance company.

11. Trust Funds. Tenant will receive the advances by Landlord of the Improvement Allowance to be made hereunder and will hold the same as a trust fund for the purpose of paying the costs of the Construction Project in accordance with the Project Budget and Tenant agrees not to expend any of the advances by Landlord of Improvement Allowance for any purpose except in connection with the uses and purposes provided for in this Lease, without the prior written consent of Landlord.

12. Payments by Landlord of Improvement Allowance to Pay Other Amounts. At the option of Landlord, at any time when an Event of Default is continuing, Landlord may pay directly from the payments by Landlord of the Improvement Allowance all amounts payable by Tenant in connection with this Lease and all costs, fees and expenses payable by Tenant under this Lease (including, without limitation, those with respect to Taxes, insurance premiums and Total Project Costs including those made for such purposes directly to the Construction Manager, the title company, any contractor, subcontractor or materialman, or to any of them jointly), in each case, as and when due and payable and as and when Landlord deems necessary or desirable to preserve or protect the Leased Premises or any portion thereof. The execution of this Lease by Tenant shall, and hereby does, constitute an irrevocable authorization to Landlord to so pay the requested portion of the Improvement Allowance. No further direction or authorization from Tenant shall be necessary with respect to such payments by Landlord and all such payments by Landlord shall

satisfy the obligations of Tenant hereunder, regardless of the disposition thereof by the party or parties to whom such payment by Landlord is made.

13. Deposit Account. Tenant shall establish and maintain a separate account (the “Improvement Allowance Account”) (which shall be an Eligible Account held by an Eligible Institution) into which advances of the Improvement Allowance shall be deposited, and against which checks or wires shall be drawn only for the payment of Total Project Costs specified in the Project Budget, which account shall not be used for any other purpose. Tenant hereby irrevocably authorizes Landlord to deposit each payment of Improvement Allowance requested by Tenant to the credit of Tenant in the Improvement Allowance Account. Advances of the Improvement Allowance may also be made, in addition to other methods contemplated herein, at Tenant’s request and Landlord’s option, by direct or joint check payment, to any or all Persons entitled to payment for work or services performed or materials furnished in connection with the Improvements or the Construction Loan, or by having the proceeds thereof made available to the title company (or its agent) for payment by Landlord. Landlord shall not be required to, or shall have any responsibility to, supervise the proper application or distribution of funds to third parties.

14. Liability of Landlord. Landlord shall in no event be responsible or liable to any Person other than Tenant for the payment of or failure to pay the Improvement Allowance when required to make any such payment and neither the Construction Manager, nor any contractor, subcontractor, laborer or material supplier shall have any right or claim against Landlord under this Lease or the administration thereof.

15. Construction Loan. Tenant shall cause the Construction Loan proceeds to be applied to Total Project Costs in accordance with the Project Budget, the Construction Schedule, this Lease and the Construction Loan Documents and shall timely satisfy all conditions required for such advances of the Construction Loan as and when required pursuant to the Construction Loan Documents or as necessary to cause Substantial Completion not later than the Required Substantial Completion Date. At all times while the Construction Loan is outstanding, Tenant shall, not less frequently than once per calendar month, provide, to the extent not previously provided to Landlord, to Landlord, a true and complete copy of the draw packages and requests for advance (and all supporting materials) provided to Construction Lender to obtain the proceeds of the Construction Loan.

16. Performance of the Work. Except to the extent funded by the Improvement Allowance in accordance with the Lease and this Work Letter, Tenant shall, at its sole cost, construct, install and Complete the Project pursuant to the following requirements:

(a) Tenant shall, subject to Force Majeure, promptly following obtaining the requisite Permits therefor, commence, and shall thereafter prosecute diligently to Completion, the Project and cause the Project to be Substantially Completed not later than the Required Substantial Completion Date.

(b) Tenant shall cause the Project to be performed in a good and workmanlike manner, in compliance, in all material respects, with all applicable Legal Requirements and in substantial conformity with the Project Plans and Specifications.

(c) Tenant shall promptly after request from time to time from Landlord, meet with Landlord and Landlord's Construction Consultant to discuss progress of the Project. Notwithstanding anything to the contrary in this Lease or any of its exhibits or schedules, Landlord shall have no responsibility or liability with respect to the construction, design, development or Completion of the Construction Project.

(d) All materials used in the construction, installation and completion of the Work shall be at least equal to industry standard for similar projects.

(e) Tenant agrees that no off-site improvements are needed as part of the construction of the Construction Project, except for those off-site improvements that are part of the Project Plans and Specifications and included in the Project Budget.

17. Changes and Other Construction Matters. Other than change orders permitted under the terms of the Construction Loan Documents, Tenant shall (a) not execute or consent to any material change orders without the consent of the Landlord (which consent shall not be unreasonably withheld, conditioned or delayed and shall be subject to the deemed consent/approval provisions Section 2(a) of this Work Letter) and, if such consent is obtained or Tenant executes or consents to any change orders, Tenant shall provide Landlord, upon request from Landlord, a true and complete copy of all of such change orders (to the extent not previously provided to Landlord), (b) not, in any material respect, amend or modify the agreements with the Construction Manager or Tenant's Architect without the consent of the Landlord (which consent shall not be unreasonably withheld, conditioned or delayed and shall be subject to the deemed consent/approval provisions Section 2(a) of this Work Letter), (c) promptly after request from Landlord, deliver to Landlord, a true and complete copy of each contract for the Construction Project (to the extent not previously provided to Landlord) or (d) amend or modify, in any material respect, the Project Budget or the Construction Schedule without the consent of the Landlord (which consent shall not be unreasonably withheld, conditioned or delayed and shall be subject to the deemed consent/approval provisions Section 2(a) of this Work Letter).

18. Landlord's Right to Complete Construction. If the Commencement Date has not occurred in accordance with Section 48 of the Lease, the 421-a Commencement has not occurred by the 421-a Deadline, a delay or discontinuance occurs in the construction for the Construction Project for a period of thirty (30) days after Notice from Landlord concerning such delay or discontinuance (other than a delay or discontinuance caused by Force Majeure), or if Substantial Completion has not been achieved on or before the Required Substantial Completion Date (unless the delay is due solely to Force Majeure), without limitation of any other rights and remedies of Landlord, then, subject to the rights of Leasehold Mortgagees, Landlord may exercise its rights under this Section 18 (except in the case of an emergency or the occurrence of other exigent circumstances, in which case no such notice shall be required to exercise the rights under this Section 18). Landlord shall have the right to enter upon and take possession of the Leased Premises and all material, equipment and supplies thereon and do anything reasonably necessary or desirable to cause Completion of the Construction Project and to fulfill the obligations of Tenant hereunder and to manage, maintain, repair and protect the Leased Premises or to cause the Construction Consultant or another independent contractor of Landlord's selection to enter the Leased Premises, the Project or any part thereof and perform any and all work and labor necessary to complete the Project substantially in accordance with the Project Plans and Specifications and to employ

watchmen to protect the Project and all reasonable sums actually expended and reasonable costs actually incurred by Landlord for such purposes shall be deemed to have been an advance of the Improvement Allowance to Tenant. Without limiting the generality of the foregoing and for the purposes aforesaid, Tenant hereby appoints and constitutes Landlord its lawful attorney-in-fact with full power of substitution to (i) use any funds of Tenant, including any funds that might not have been paid for the purpose of Completion of the Construction Project, (ii) make such changes to the Project Plans and Specifications as Landlord may deem reasonably desirable to cause Completion, (iii) execute all applications and certificates in the name of Tenant which may be required to carry out the intent and purpose hereof and (iv) employ such contractors, subcontractors, architects and others as Landlord may reasonably deem appropriate.

19. Representations and Warranties Pertaining to the Construction Project.

(a) Tenant shall not commence any work on any stage or phase of the Improvements unless all required Governmental Approvals have been issued or obtained from the appropriate Governmental Authorities with respect to the commencement of such stage or phase of construction. Subject to any rights reserved by Architect or any Other Design Professional pursuant to the applicable contract with such Person, all Project Plans and Specifications shall become the property of Landlord if Landlord terminates the Lease in accordance with the terms of the Lease. During the continuance of an Event of Default, Landlord shall have the right to use and rely on the Project Plans and Specifications in connection with the enforcement of any of Landlord's remedies under the Lease.

(b) The Improvements shall be constructed and equipped in compliance with the requirements of all Governmental Authorities.

(c) Tenant represents and warrants to Landlord that attached hereto as Schedule 2 is a true, correct and complete list of all of the Major Contractors (and related construction contracts) as of the Effective Date who have been or will be supplying labor or materials for the Project to the extent known to Tenant on the Effective Date.

(d) Tenant represents and warrants that Tenant has no current reason to believe that there are any known risks that would prevent any applicable Governmental Authorities having jurisdiction over the Project from issuing the permits necessary for the construction of the Project.

(e) No portion of the Project is designated by or registered with any governmental authority as historic or landmark buildings or any other similar designation or registration and Tenant shall not attempt or cooperate to obtain or effect any such designation or registration.

(f) Tenant shall deliver, from time to time within ten (10) days of Tenant's receipt of Landlord's written request therefor (but in no event more frequently than once every 30 days during the Construction Project), in a form acceptable to Landlord, the following: (i) a list containing the name, address, telephone number and contact party of each Major Contractor previously employed, or to be employed, or to be used in connection with Substantial Completion and Completion of the Project, which list shall include the Dollar amount, inclusive of any change orders, if any, of each construction contract, and specifying the portion thereof, if any, paid through

the date of such list; (ii) true, correct and complete copies of each construction contract and schedule of materials and values identified in such list, including any changes thereto; (iii) a breakdown of each cost of the projected total cost of completing the Project, specifying that portion, if any, of each cost item which has been incurred; and (iv) a detailed report specifying the progress of all construction and projected sequencing and Completion time for all yet to be completed work compared to the Construction Schedule, all as of the date of such request. Landlord may contact any such Major Contractor to discuss the course of construction. Tenant acknowledges and agrees that Landlord may disapprove any Major Contractor which, in Landlord's good faith determination, is deemed financially or otherwise unqualified. Tenant acknowledges that the absence of any such disapproval shall not constitute and shall not be deemed to constitute a representation or warranty of qualification by Landlord.

(g) Tenant shall not contract for the installation in, or install in, the Project any materials, furnishings, equipment, fixtures or other parts or components of the Improvements if any third party shall retain any ownership interest (other than Permitted Equipment Leases and the security interest held by a Leasehold Mortgagee pursuant to a Leasehold Mortgage) in such items after their delivery to the Leased Premises. Tenant shall have five (5) Business Days to effect the removal of any such retained interest. Notwithstanding the foregoing, Tenant may request Landlord's prior written consent to any such contract.

(h) Upon completion thereof and prior to commencement of construction, the Project Plans and Specifications shall be satisfactory to Tenant and, solely to the extent necessitated by Legal Requirements or any effective restrictive covenant, shall have been approved by all applicable Governmental Authorities and the beneficiary of any such covenant, respectively.

(i) The anticipated use of the Project complies with all Legal Requirements and restrictive covenants affecting the Project.

(j) Tenant has obtained (or, if not, shall hereafter obtain and maintain) all permits, including, but not limited to, where appropriate and obtainable, a building permit and all required environmental permits, all of which are (to the extent heretofore obtained), as of the date hereof, in full force and effect and not, to the best knowledge of Tenant, subject to any revocation, amendment, release, suspension, forfeiture or the like. The present and/or contemplated use and/or occupancy of the Project does not conflict with or violate any such permit (whether heretofore obtained or hereafter intended to be obtained) and Tenant has delivered to Landlord, prior to the execution of this Lease, duplicate originals or officially certified copies of all such permits, if any.

(k) All utility services necessary for the construction of the Project and the operation thereof for their intended purposes are or will be available at the boundaries of the Leased Premises, including, without limitation, water supply, storm (or leaching) and sanitary sewer facilities, gas and/or electric and telephone facilities.

(l) (i) The Architect Contract is in full force and effect and has not been amended; (ii) Tenant and Architect are in compliance with their respective obligations under the Architect Contract; and (iii) the work to be performed by Architect under the Architect Contract shall be the architectural services required to design the Improvements to be built in accordance with the Project Plans and Specifications and all architectural services required to complete the

Improvements in accordance with the Project Plans and Specifications as provided for under the Architect Contract.

(m) Upon approval and execution thereof, (i) the Construction Management Agreement shall be in full force and effect; (ii) Tenant and Construction Manager shall be and shall remain in compliance with their respective obligations under the Construction Management Agreement; and (iii) the work to be performed by Construction Manager under the Construction Management Agreement shall be construction management and oversight services required to oversee the Project in accordance with the Project Plans and Specifications and all construction management services required to complete the Improvements in accordance with the Project Plans and Specifications as provided for under the Construction Management Agreement.

(n) (i) The Engineer Contract is in full force and effect and has not been amended; (ii) Tenant and Engineer are in compliance with their respective obligations under the Engineer Contract; and (iii) the work to be performed by Engineer under the Engineer Contract shall be the engineering services required to design the Improvements to be built in accordance with the Project Plans and Specifications and all engineering services required to complete the Improvements in accordance with the Project Plans and Specifications as provided for under the Engineer Contract.

(o) Tenant shall (i) enforce the provisions of the Architect Contract, the Construction Management Agreement and the Engineer Contract in the best interests of the Project using sound business judgment, (ii) waive none of the material obligations of Architect, Construction Manager, or Engineer thereunder, as applicable, (iii) do no act which would relieve Architect, Construction Manager, or Engineer from its material obligations under the Architect Contract, Construction Management Agreement, or the Engineer Contract, respectively, and (iv) not enter into any amendments to the Architect Contract, Construction Management Agreement, or Engineer Contract (other than, in each case, change orders to implement scope of work modifications allowed or approved pursuant to this Lease), or enter into any new or replacement architect's, general contractor's, or engineer's contract, in each case, without the prior written approval of Landlord, which approval shall not be unreasonably withheld, conditioned, or delayed.

(p) Tenant shall (i) cause Construction Manager to oversee and cause the construction of the Project Improvements in accordance with the Construction Management Agreement, in the best interests of the Project using sound business judgment, (ii) diligently perform and observe in all material respects all of the terms, covenants and conditions of the Construction Management Agreement on the part of Tenant to be performed and observed, (iii) promptly notify Landlord of any material default under the Construction Management Agreement of which Tenant is aware, (iv) promptly enforce, as may be commercially appropriate for an arm's length transaction with a third party, the performance and observance of all of the material covenants required to be performed and observed by Construction Manager under the Construction Management Agreement, (v) cause Construction Manager to ensure that the work to be performed by each contractor under each construction contract is the work called for by the Project Plans and Specifications (other than *de minimis* changes to reflect site conditions), and (vi) ensure that all work on the Improvements shall be completed in substantial accordance with the Project Plans and Specifications in a good and workmanlike manner and shall be free of any Defects. Tenant shall, upon request by Landlord, cause Construction Manager to provide Landlord and Construction

Consultant with reports in regard to the status of construction of the Improvements, in such form and detail and in such intervals as may be reasonably requested by Landlord. If Tenant shall default (beyond all reasonable notice and cure periods) in the performance or observance of any term, covenant or condition of the Construction Management Agreement on the part of Tenant to be performed or observed, then, without limiting Landlord's other rights or remedies under this Agreement or the other Total Loan Documents, and without waiving or releasing Tenant from any of its obligations hereunder or under the Construction Management Agreement, as applicable, during the continuance of an Event of Default, Landlord shall have the right, but shall be under no obligation, to pay any sums and to perform any act as may be appropriate to cause all the terms, covenants and conditions of the Construction Management Agreement on the part of Tenant to be performed or observed. Tenant hereby agrees to pay to Landlord promptly following demand, all such sums so paid and expended by Landlord during such Event of Default, together with interest thereon at the Default Rate from the day incurred by Landlord until paid.

(q) Without the express written consent of Landlord, which consent shall not be unreasonably withheld so long as the counterparty is not an Affiliate of Tenant, Tenant shall not: (i) surrender, terminate, cancel, modify, renew or extend the Construction Management Agreement except as otherwise permitted under the Lease; (ii) enter into any other agreement relating to the subject matter of the Construction Management Agreement with respect to the Leased Premises or any part thereof with Construction Manager or any other Person; (iii) consent to the assignment by Construction Manager of its interest under the Construction Management Agreement other than in favor of Landlord pursuant to the Lease or Construction Lender pursuant to the Construction Loan Agreement; (iv) waive or release any of its rights and remedies under the Construction Management Agreement; or (v) do any act which would relieve Construction Manager under the Construction Management Agreement of any material obligation thereunder.

(r) Without limiting any other rights of Landlord under the Lease or other documents entered into in connection thereto, at Landlord's election, Tenant shall remove and replace Construction Manager and all other Persons (the "**Project Development Team**") involved in the construction, development management or marketing of the Project working on behalf of Tenant or any Affiliate of Tenant, as applicable, with a Person or Persons approved by Landlord acting in its sole discretion (or if no such Person or Persons are approved by Landlord within thirty (30) days of such election, with such Person(s) chosen by Landlord acting in its sole discretion) in accordance with and upon the occurrence of any one or more of the following events: (a) with regard to the replacement of Construction Manager and/or any such Person, if such Person (i) has engaged in gross negligence, fraud, willful misconduct or misappropriation of funds, (ii) shall be in material default under the Construction Management Agreement, as applicable, beyond any applicable notice and cure period, or (iii) becomes insolvent or a debtor in any bankruptcy or insolvency proceeding; and (b) with regard to the replacement of Construction Manager and/or any member of the Project Development Team, any or all of such parties, at any time following the occurrence and during the continuance of an Event of Default of which Landlord has provided Tenant written notice.

(s) Tenant shall cause each construction contract to include a provision, approved by Landlord, whereby the applicable contractor agrees, during the continuance of an Event of Default, at Landlord's option, to permit an assignment of such construction contract to Landlord and to recognize and attorn to Landlord under such construction contract.

20. Cost Sharing Agreement. At any time, from time to time, Landlord may require (or Tenant may request) that Tenant and Landlord enter into an amendment to this Lease or a separate agreement or instrument (any such amendment, agreement or instrument, a “Cost Sharing Agreement”), which Cost Sharing Agreement shall set forth the particular Improvements funded by the Improvement Allowance. The Improvement Allowance shall be allocated only to Improvements treated as real property for purposes of Section 856(d) of the Code, as determined in the sole judgment of the Landlord. In accordance with Section 5(b) of the Lease, Landlord alone shall be entitled to claim depreciation in respect of depreciable items funded by the Improvement Allowance pursuant to the Cost Sharing Agreement. Landlord and Tenant shall not take any position inconsistent with the Cost Sharing Agreement or Section 5(b) of the Lease on any federal, state or local tax return. If Landlord delivers Notice to Tenant of its desire to enter into a Cost Sharing Agreement (or Tenant requests same), Landlord shall provide to Tenant, Landlord’s proposed form of the Cost Sharing Agreement and the parties shall negotiate such Cost Sharing Agreement in good faith for a period of thirty (30) days after delivery of such Notice (which period may be extended by Landlord, in Landlord’s reasonable discretion, provided that Tenant is diligently and in good faith pursuing negotiation of such Cost Sharing Agreement). Each of Tenant and Landlord shall pay their own costs and fees (including reasonable attorneys’ fees) incurred in connection with the preparation and negotiation of the Cost Sharing Agreement. Notwithstanding the foregoing or anything in this Work Letter or the Lease to the contrary, Tenant shall not be obligated to enter into a Cost Sharing Agreement which has the effect of (i) reducing Tenant’s rights or Landlord’s obligations under this Work Letter or the Lease (other than to a de minimis extent), or (ii) increasing Tenant’s obligations under this Work Letter or the Lease or otherwise (other than to a de minimis extent), or (iii) adversely affecting the respective economics of each of Tenant and Landlord in the Fee Estate, the Leasehold Estate and/or the Project, as applicable, or otherwise being economically detrimental to Tenant, in each case, other than any tax consequences expressly contemplated by the Lease and any costs incurred in connection with the preparation and negotiation of the Cost Sharing Agreement (as further set forth in this Section 20). Further, notwithstanding the foregoing or anything in this Work Letter or the Lease to the contrary, Tenant shall not be obligated to enter into a Cost Sharing Agreement which would be reasonably likely to result in a violation of any Legal Requirement. In the event that Landlord requires Tenant to enter into a Cost Sharing Agreement in accordance with this Section 20, Tenant’s failure to diligently and in good faith cooperate with Landlord in the negotiation and preparation of such Cost Sharing Agreement in accordance with this Section 20 shall be an Event of Default under the Lease if Landlord delivers Notice of such failure and Tenant has not cured same within five (5) Business Days of receipt of such Notice.

21. Whole Agreement; No Oral Modification. This Work Letter, together with the Lease, embodies all representations, warranties and agreements of Landlord and Tenant with respect to the matter described herein, and this Work Letter may not be altered or modified except by an agreement in writing signed by the parties.

22. Paragraph Headings. The paragraph headings contained in this Work Letter are for convenient reference only and shall not in any way affect the meaning or interpretation of such paragraphs.

23. Notices. All Notices required or contemplated hereunder shall be given to the parties in the manner specified for giving Notices under the Lease.

24. Binding Effect. This Work Letter shall be construed under the laws of the State where the Leased Premises is located and shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns.

25. Conflict. In the event of conflict between this Work Letter and any other exhibits or addenda to the Lease, this Work Letter shall prevail.

[Schedules follow]

SCHEDULE 1

Project Budget

[See Attached]

PROJECT BUDGET		
GROUND RENT RESERVE	Total	PGSF
Ground Rent Reserve	5,000,000.00	11.83
TOTAL GROUND RENT RESERVE	\$5,000,000.00	\$11.83
HARD COSTS		
Demolition/Asbestos Removal	1,220,000.00	2.89
Excavation/SOE	6,300,000.00	14.91
Foundation	2,640,000.00	6.25
Foundation Waterproofing	420,000.00	0.99
Concrete Superstructure	16,607,640.00	39.30
Plumbing	4,275,840.00	10.12
Sprinkler	1,578,960.00	3.74
Electric	5,814,000.00	13.76
Low Voltage	567,120.00	1.34
HVAC - Heating/Cooling System	4,477,800.00	10.60
Windows	4,002,480.00	9.47
Parking Stackers	1,176,000.00	2.78
Elevator/Lifts	3,468,000.00	8.21
Carpentry	10,506,000.00	24.86
Fire Alarm/Arcs	448,800.00	1.06
Masonry	1,734,000.00	4.10
Exterior Panel	1,224,000.00	2.90
Roofing/Pavers	1,754,400.00	4.15
Stucco	1,781,504.00	4.22
Waterproofing	360,000.00	0.85
Fire Stopping	326,400.00	0.77
Insulation	758,880.00	1.80
Rubbish Removal	1,410,600.00	3.34
Water & Sewer Main	204,000.00	0.48
Scaffolding/Sidewalk Shed/Hoist	1,660,719.00	3.93
Misslanious Steel	540,600.00	1.28
Kitchens	1,774,800.00	4.20
Flooring	1,285,200.00	3.04
Plumbing Fixtures	918,000.00	2.17
Lighting Fixtures	1,062,720.00	2.51
Painting	1,366,800.00	3.23
Appliances	1,680,000.00	3.98
Shower Glass/glass Patitions	330,000.00	0.78
Tiles	920,040.00	2.18
Tiles Instaltion	1,254,600.00	2.97
Compactor Chute	73,440.00	0.17
Common Area Finishes	3,025,000.00	7.16
Site work	306,000.00	0.72
Generator	150,000.00	0.35
Signage	153,000.00	0.36
TRADE COSTS (NEW BUILDING)	\$89,557,343.00	\$211.93
General Conditions	4,080,000.00	9.65
Owners Hard Cost Contingency	4,928,281.00	11.66
TOTAL HARD COSTS (NEW BUILDING)	\$98,565,624.00	\$233.25

PROJECT BUDGET		
SOFT COSTS		
Surveying	40,000.00	0.09
Accounting	28,450.00	0.07
Real Estate Tax	180,000.00	0.43
Permits And Fees	360,000.00	0.85
Expediting	144,000.00	0.34
Controlled Inspections	400,000.00	0.95
Monitoring	250,000.00	0.59
Enviromental Consultant / Brownfield	360,000.00	0.85
Insurance	1,200,000.00	2.84
Consultants	180,000.00	0.43
421a Consultant	300,000.00	0.71
HPD Fee	1,200,000.00	2.84
Marketing	90,000.00	0.21
Interior Designer	300,000.00	0.71
Lender Engineering Reports	39,500.00	0.09
Architect	1,000,000.00	2.37
MEP	420,000.00	0.99
Structural engineer	300,000.00	0.71
Developers Overhead	570,000.00	1.35
Laborers	1,000,000.00	2.37
Site Safety Manager	767,750.00	1.82
Site Super	250,000.00	0.59
Temp Electric	215,000.00	0.51
Construction Management	2,040,000.00	4.83
Soft Cost Contingency	618,800.00	1.46
TOTAL SOFT COSTS	\$12,253,500.00	\$29.00
LOAN FINANCING / CLOSING COSTS		
Lender Legal	167,500.00	0.40
Lender Third Party Costs	34,500.00	0.08
Mortgage Recordation	2,940,000.00	6.96
Borrower Legal	211,725.34	0.50
Title	513,244.12	1.21
Origination Fee	1,575,000.00	3.73
Landlord Advisory Fee	550,000.00	1.30
Landlord Costs	300,000.00	0.71
TOTAL FINANCING / CLOSING COSTS	\$6,291,969.46	\$14.89
INTEREST RESERVE		
Interest Reserve	8,500,000.00	20.11
TOTAL INTEREST RESERVE	\$8,500,000.00	\$20.11
TOTAL PROJECT BUDGET	\$130,611,093.46	\$309.08

SOURCES & USES					
Uses	Total	Per Unit	PGSF	PGSF (less Parking)	% of Costs
Hard Costs	\$89,557,343	\$200,352	\$212	\$250	68.6%
Hard Cost Contingency	\$4,080,000	\$9,128	\$10	\$11	3.1%
General Conditions	\$4,928,281	\$11,025	\$12	\$14	3.8%
Soft Costs	\$12,253,500	\$27,413	\$29	\$34	9.4%
Closing/Financing Costs	\$6,291,969	\$14,076	\$15	\$18	4.8%
Ground Rent Reserve	\$5,000,000	\$11,186	\$12	\$14	3.8%
Interest Reserve	\$8,500,000	\$19,016	\$20	\$24	6.5%
Total Uses	\$130,611,093	\$292,195	\$309	\$364	100.0%

Sources	Total	Per Unit	PGSF	PGSF (less Parking)	% of Costs
Landlord Improvement Allowance	\$20,000,000	\$44,743	\$47	\$56	15.3%
Leasehold Construction Loan	\$105,000,000	\$234,899	\$248	\$293	80.4%
Equity	\$5,611,093	\$12,553	\$13	\$16	4.3%
Total Sources	\$130,611,093	\$292,195	\$309	\$364	100.0%

SCHEDULE 2

List of Major Contractors

Tenant's Architect (Greenberg Farrow Architecture, Inc.)

Engineer (EP Engineering LLC)

SCHEDULE 3

Form of Draw Request

TENANT'S CERTIFICATE AND REQUEST FOR ADVANCE

Tenant: 138 BRUCKNER REALTY LLC

Date: [_____]

Draw Request Number: [_____]

Reference is hereby made to that certain Ground Lease, dated as of January [___], 2022, by and between 138 Bruckner Ground Lessor, LLC, a Delaware limited liability company (together with its successors and assigns, "Landlord") and Tenant (as amended, the "Lease"), which Lease includes a Work Letter attached thereto (as amended, the "Work Letter"). Unless otherwise defined herein, all terms herein have the meanings assigned in the Lease or the Work Letter, as applicable.

Tenant hereby certifies and represents to Landlord as of the date of this request for advance (this "Draw Request"), as follows:

1. No monetary Default or Event of Default under the Lease has occurred and is continuing, and no event known to Tenant has occurred which, upon the service of notice and/or lapse of time, would constitute an Event of Default thereunder.

2. Except for Permitted Encumbrances, no adverse change has occurred as to the title to the Leased Premises, except as previously acknowledged and approved by Landlord, and all payable real estate taxes and insurance premiums have been paid in full, except those being contested in accordance with the Lease.

3. The progress of construction of the Construction Project is such that it can be completed on or before the Required Substantial Completion Date. The work and materials for which funds are herein requested are actually in place or are stored as permitted by the Lease.

4. Except for matters being contested as permitted by the Lease, all bills for labor, material, services and supplies previously furnished which could constitute or give rise to a mechanics lien if unpaid, have been paid, or will be paid out of the funds requested in the current application, and, except to a Leasehold Mortgagee, no security interest has been given in connection with any materials, appliances, machinery, fixtures or furnishings installed in the Construction Project.

5. All representations and warranties of Tenant in the Lease and the Work Letter and Guarantor in the Project Guaranties are true and correct in all material respects, as of the date of this Draw Request (other than those by which their nature are no longer applicable at such time). Tenant hereby requests Landlord to make a \$[_____] advance of the Improvement Allowance as follows, all in accordance with the procedures provided in the Lease.

6. Attached hereto as schedules to this certificate is the support for the advance.
7. The undersigned is an authorized representative of Tenant.
8. This certificate and the requisition contained herein meets all applicable conditions contained in the Lease and the Work Letter.
9. All amounts shown on all previous advances of the Improvement Allowance have been paid in full and all amounts requested herein have been paid or will be paid in full from the proceeds of the disbursement requested hereby. The amount requested to be disbursed does not exceed the amount available to Tenant as an advance as of the date of Tenant's request for disbursement and the date on which such disbursement is to be made, such that at no time shall Landlord be obligated to pay amounts to Tenant in excess of the total amount available to Tenant as an advance at the time of disbursement.
10. All labor, materials, and/or services shown on each draw schedule, for which funds have been or are requested, are incorporated into the Project at this date, or in the case of stored materials, have been stored in accordance with, and otherwise satisfy the requirements of, the Lease and the Work Letter.
11. None of the amounts for which payment is requested in this certificate have been included in any prior advances of the Improvement Allowance. All Total Project Costs for which the current disbursement is sought have been incurred and are included as part of the most recently approved Project Budget.
12. The Improvements have not been injured or damaged by fire, explosion, accident, flood or other casualty, except as previously disclosed in writing to Landlord.

TENANT:

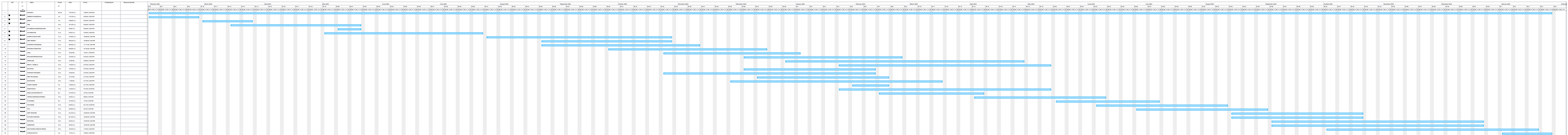
138 BRUCKNER REALTY LLC,
a New York limited liability company

By: _____
Name:
Title:

SCHEDULE 4
Construction Schedule

[See Attached]

	Info	A ut on	Name	Durati on	Start	Finish
1		■	PROJECT	26 mo	1/31/22. 8...	1/26/24. 5:00 PM
2	Ⓔ	■	ASBESTOS REMOVAL	4 w	1/31/22. 8...	2/25/22. 5:00 PM
3	Ⓔ	■	DEMO	4 w	2/28/22, 8...	3/25/22, 5:00 PM
4	Ⓔ	■	SOE	10 w	3/14/22. 8...	5/20/22. 5:00 PM
5		■	PLUMBING UNDERGROUND	2 w	5/9/22, 8:...	5/20/22, 5:00 PM
6	Ⓔ	■	FOUNDATION	12 w	5/2/22, 8:...	7/22/22, 5:00 PM
7	Ⓔ	■	SUPER STRUCTURE	14 w	7/25/22. 8...	10/28/22. 5:00 PM
8	Ⓔ	■	MEP RISERS	10 w	8/22/22, 8...	10/28/22, 5:00 PM
9		■	EXTERIOR FRAMINGS	12 w	8/22/22, 8...	11/11/22, 5:00 PM
10		■	EXTERIOR SHEETING	12 w	9/26/22. 8...	12/16/22. 5:00 PM
11		■	CMU	10 w	10/24/22,...	1/2/23, 12:00 PM
12		■	EFIS/WATERPROOFING	12 w	12/5/22. 8...	2/24/23. 5:00 PM
13		■	WINDOWS	18 w	12/26/22....	4/28/23. 5:00 PM
14		■	BIRCK / PANELS	16 w	1/23/23, 8...	5/12/23, 5:00 PM
15		■	ROOFING	10 w	12/5/22. 8...	2/10/23. 5:00 PM
16		■	INTERIOR FRAMING	16 w	10/24/22....	2/10/23. 5:00 PM
17		■	MEP ROUGHING	10 w	12/12/22,...	2/17/23, 5:00 PM
18		■	ELEVATORS	16 w	11/28/22....	3/17/23. 5:00 PM
19		■	WATER SEWER	3 w	1/30/23, 8...	2/17/23, 5:00 PM
20		■	SHEETROCK	16 w	1/23/23, 8...	5/12/23, 5:00 PM
21		■	INSULATION/FIRESTOP	8 w	2/13/23. 8...	4/7/23. 5:00 PM
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23		■	FLOORING	8 w	5/15/23, 8...	7/7/23, 5:00 PM
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29		■	AMENITIES	16 w	9/4/23. 8:...	12/22/23. 5:00 PM
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SCHEDULE 5

Description of Project Plans and Specifications

Plans and Specifications prepared by Greenberg Farrow Architecture, Inc. as more particularly described as follows:

Project Name: 138 Bruckner Boulevard

Address: 138 Bruckner Blvd, Bronx, NY 10454

Issue/Revision Date: 12.21.2021

Number of Sheets: 63

See attached Index of Drawings

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Form of Environmental Indemnity

ENVIRONMENTAL INDEMNITY AGREEMENT

THIS ENVIRONMENTAL INDEMNITY AGREEMENT (this “**Indemnity**”) dated as of January ____, 2022 (“Effective Date”), is made by **138 BRUCKNER REALTY LLC**, a New York limited liability company (“**Tenant**”) and **JACOB SCHWIMMER**, an individual (“**Guarantor**”) to and for the benefit of **138 BRUCKNER GROUND LESSOR, LLC**, a Delaware limited liability company (“**Landlord**”), as follows:

WHEREAS, pursuant to that certain (i) Ground Lease (as the same may be amended, modified, supplemented, restated or replaced from time to time, the “**Ground Lease**”);

WHEREAS, as a condition to Landlord’s entering into the Ground Lease, Landlord is requiring that Tenant and Guarantor execute and deliver to Landlord this Indemnity;

WHEREAS, Guarantor hereby acknowledges that Guarantor owns direct or indirect ownership interests in Tenant and, accordingly, Guarantor will materially benefit from Landlord’s agreeing to enter into the Ground Lease.

NOW THEREFORE, for value received and other good and valuable consideration, the receipt of which are hereby acknowledged, and in order to induce Landlord to enter into the Ground Lease, the undersigned hereby covenants and agrees as follows:

1. **Capitalized Terms.** All capitalized terms used herein and not otherwise defined shall have the meaning ascribed thereto in the Ground Lease.

2. **Indemnity.** Tenant and Guarantor hereby covenant and agree, jointly and severally, at Tenant’s and Guarantor’s sole cost and expense to defend, indemnify and hold each Indemnified Party harmless from and against any and all Indemnified Liabilities, including, without limitation, cleanup, removal and disposal costs, reasonable attorneys’ fees and disbursements, consultants’ fees and disbursements, and reasonable costs of determining whether the Property is in compliance and causing the Property to be in compliance with Environmental Laws, and from and against any diminution in the value of the security afforded by the Property or any future reduction of the sales price of the Property by reason of any matter set forth in this Section 2, arising directly or indirectly from, out of or by reason of: (i) the breach of any of the covenants, obligations, representations and warranties of Tenant set forth in this Indemnity, and in Section 28 and Section 48(b) of the Ground Lease, and of any other covenants, obligations, representations and warranties concerning Environmental Laws or Hazardous Materials in the Ground Lease, (ii) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Material on, from or adversely affecting the Property or any building or structure now or hereafter constructed on the Property, or on, in, under or around any other property as a result of conditions at the Property or emanating therefrom; (iii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to any Hazardous Material on, from or adversely affecting the Property, any building or structure now or hereafter constructed on the Property, or any other property as a result of conditions at the Property or emanating therefrom; (iv) any lawsuit brought or threatened, settlement reached, or government order relating to any Hazardous Material on, from or adversely affecting the Property, any building or structure now or hereafter constructed on the Property, or any other property as a result of conditions at the Property or emanating therefrom; (v) any violation of, or non-compliance with, Environmental Laws, including the costs and expenses of any Remedial Work; (vi) any actions taken by Landlord to enforce

this Indemnity, including, without limitation, attorneys' fees, disbursements and court costs suffered or paid directly or indirectly by Landlord in any action or proceeding between Landlord and Tenant, Landlord and Guarantor or Landlord and any third party or otherwise; (vii) any misrepresentation or inaccuracy in any representation or warranty of Tenant contained in this Indemnity, (viii) the Property BCA, and (ix) any Environmental Easement.

3. Obligations. Tenant and Guarantor understand, agree and acknowledge that: (i) the obligations of the Tenant and Guarantor, respectively, and the rights of Landlord under this Indemnity are in addition to and not in substitution of the obligations of Tenant and Guarantor, respectively, under the Ground Lease and the obligations of Tenant and Guarantor, respectively, and the rights of Landlord, under the laws and regulations of any Governmental Authority; (ii) Tenant and Guarantor shall be fully and personally, jointly and severally, liable for the obligations hereunder; and (iii) the obligations hereunder shall survive the termination of the Ground Lease.

4. Representations and Warranties: Tenant and Guarantor represent and warrant to Landlord that, as of the Effective Date of this Indemnity and except as otherwise expressly disclosed by that certain ASTM Phase I Environmental Site Assessment Report, dated October 1, 2021, prepared by Haley & Aldrich of New York, including that certain appended Draft Phase I Environmental Site Assessment report, dated XX June 2019, which among other things contains soil data, groundwater data and two figures related to a limited Phase II Investigation performed on April 20th and April 23rd 2019, each prepared by Langan Engineering, Environmental, Surveying, Landscape Architecture and Geology, D.P.C. ("**Environmental Reports**") delivered to Landlord :

a. To Tenant's and Guarantor's knowledge, after due inquiry, the Property is not in violation of any Environmental Laws;

b. The Property is not subject to any private or governmental Lien or judicial or administrative notice or action or inquiry, proceeding, investigation or claim relating to Hazardous Materials including, without limitation, Toxic Mold;

c. To Tenant's and Guarantor's knowledge, after due inquiry, no Hazardous Materials are or have been (including the period prior to Tenant's acquisition of the Property), discharged, generated, treated, disposed of or stored on, incorporated in, or removed or transported from the Property other than in compliance with all Environmental Laws;

d. To Tenant's and Guarantor's knowledge, after due inquiry, no Hazardous Materials are present in, on or under any nearby real property which could migrate to or otherwise affect the Property;

e. To Tenant's and Guarantor's knowledge, after due inquiry, no Toxic Mold is on or about the Property which requires remediation;

f. To Tenant's and Guarantor's knowledge, after due inquiry, no underground storage tanks or underground storage receptacles exist on the Property and to Tenant's and Guarantor's knowledge, after due inquiry, the Property has never been used as a landfill;

g. There have been no environmental investigations, studies, audits, reviews or other analyses conducted by or on behalf of any Tenant Party or which are in any Tenant Party's possession which have not been provided to Landlord;

h. Tenant has not received notice of, and has no knowledge of any investigation, action, proceeding or claim by any agency, authority or unit of government or by any third party which could result in any liability, penalty, sanction or judgment under any Environmental Laws with respect to any condition, use or operation of the Property, nor does Tenant know of any basis for such a claim;

i. There has been no written claim delivered to Tenant and Guarantor by any party that any use, operation or condition of the Property has caused any nuisance or any other liability or adverse condition on any other property nor does Tenant know of any basis for such a claim; and

j. There are no agreements, consent orders, decrees, judgments, license or permit conditions or other orders or directives of any federal, state or local court, governmental agency or authority, or agreements, whether settlement agreements or otherwise, with any third parties relating to the ownership, use, operation, sale, transfer or conveyance of the Property that require any change in the present condition of the Property or any work, repairs, construction, containment, clean up, investigations, studies, removal or other remedial action or capital expenditures with respect to the Property

5. Covenants.

a. So long as Tenant owns or is in possession of the Property, Tenant shall (i) keep the Property, and expressly require tenants at the Property to keep the Property, free from Hazardous Materials (other than Permitted Hazardous Materials) and in compliance with all Environmental Laws, which shall include without limitation, diligent implementation of the Property BCA as necessary to expeditiously and timely obtain a Certificate of Completion, (ii) keep the Property free from any liens or encumbrances imposed pursuant to any Environmental Laws, (iii) promptly notify Landlord if Tenant shall become aware that (A) any Hazardous Material (other than Permitted Hazardous Materials and those conditions described in the Environmental Reports) is on or near the Property, (B) the Property is in violation of any Environmental Laws or (C) any condition on or near the Property shall pose a threat to the health, safety or welfare of humans, (iv) not use construction materials containing asbestos nor install any improvements at the Property with any materials that contain asbestos, (v) remove any such Hazardous Materials (other than Permitted Hazardous Materials) and/or cure any such violations and/or abate any such threats to the health safety or welfare of humans, as applicable, as required by law (or as shall be required by Landlord in the case of removal which is not required by law, but in response to a reasonable recommendation of a licensed hydrogeologist, licensed environmental engineer, licensed industrial hygienist or other qualified environmental consulting firm engaged by Landlord ("Landlord's Consultant"), promptly after Tenant becomes aware of same, at Tenant's sole expense, and (vi) comply in all respects with the reasonable recommendations of any qualified environmental engineer or other expert hired by Tenant or Guarantor or Landlord with respect to the Property. Nothing herein shall prevent Tenant from recovering such costs and expenses from any other party that may be liable for such removal or cure.

b. Tenant shall give prompt written notice to Landlord of (i) any proceeding or inquiry by any party (including any Governmental Authority) with respect to the presence of any Hazardous Material on, under, from or about the Property, (ii) all investigations, actions or claims made or threatened by any third party (including any Governmental Authority) against Tenant or the Property or any party occupying the Property relating to any loss or injury resulting from the presence of any Hazardous Material on under, from or about the Property, (iii) Tenant's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property to be subject to any investigation or cleanup pursuant to any Environmental Laws and (iv) actual or

potential liens or other encumbrances imposed pursuant to any Environmental Laws, whether due to any act or omission by Tenant or any other Person. Upon becoming aware of the presence of mold or fungus at the Property potentially posing a threat to the health, safety or welfare of humans, Tenant shall (A) undertake an investigation to identify the source(s) of such mold or fungus (B) develop and implement an appropriate remediation plan to abate the presence of any Toxic Mold, (C) perform or cause to be performed all acts reasonably necessary for the remediation of any Toxic Mold (including taking any action necessary to clean and disinfect any portions of the Property affected by Toxic Mold, including providing any necessary moisture control systems at the Property), and (D) provide evidence reasonably satisfactory to Landlord of the foregoing. Tenant shall permit Landlord to join and participate in, as a party if it so elects, any legal or administrative proceedings or other actions initiated with respect to the Property in connection with any Environmental Laws or the presence of any Hazardous Material, and Tenant shall pay all reasonable attorneys' fees and disbursements incurred by Landlord in connection therewith.

c. Upon Landlord's reasonable request, at any time after the first anniversary of this Agreement and from time to time (but in any event no more frequently than once per year), Tenant shall provide an inspection or audit of the Property prepared by a licensed hydrogeologist, licensed environmental engineer or qualified environmental consulting firm approved by Landlord ("Qualified Environmental Professional") assessing the presence or absence of Hazardous Materials on, in or near the Property, and if a Default or Event of Default or other violation of this Section 5 has occurred and is continuing, or if Landlord in its good faith judgment determines that reasonable cause exists for the performance of such environmental inspection or audit, then the cost and expense of such audit or inspection shall be paid by Tenant. Such inspections and audit may include soil borings and ground water monitoring if, in the opinion of the Qualified Environmental Professional, such are required. If Tenant fails to provide any such inspection or audit within thirty (30) days after such request, Landlord may order same, and Tenant hereby grants to Landlord and its employees and agents access to the Property and a license to undertake such inspection or audit.

d. If, in any environmental site assessment report prepared in connection with such inspection or audit, the Qualified Environmental Professional recommends that an operations and maintenance plan be implemented for any Hazardous Material, whether such Hazardous Material existed prior to the ownership of the Property by Tenant, or presently exists or is reasonably suspected of existing, Tenant shall cause such operations and maintenance plan to be prepared and implemented at its expense, and with respect to any Toxic Mold, Tenant shall take all action necessary to clean and disinfect any portions of the Improvements affected by Toxic Mold in or about the Improvements, including providing any necessary moisture control systems at the Property. If any Remedial Work is reasonably necessary in the opinion of the Qualified Environmental Professional, Tenant shall commence all such Remedial Work within thirty (30) days after becoming aware of the same and thereafter diligently prosecute to completion all such Remedial Work within such period of time as may be required under applicable law. All Remedial Work shall be performed by licensed contractors approved in advance by Landlord and under the supervision of a consulting engineer approved by Landlord, which approval shall not be unreasonably conditioned, delayed or withheld. All costs of such Remedial Work shall be paid by Tenant, including Landlord's reasonable attorneys' fees and disbursements incurred in connection with the monitoring or review of such Remedial Work. If Tenant does not timely commence and diligently prosecute to completion the Remedial Work, Landlord may (but shall not be obligated to) cause such Remedial Work to be performed at Tenant's expense. Notwithstanding the foregoing, Tenant shall not be required to commence such Remedial Work within the above specified time period: (x) if prevented from doing so by any Governmental Authority, (y) if

commencing such Remedial Work within such time period would result in Tenant or such Remedial Work violating any Environmental Laws, or (z) if Tenant, at its expense and after prior written notice to Landlord, is contesting by appropriate legal, administrative or other proceedings, conducted in good faith and with due diligence, the need to perform Remedial Work. Tenant shall have the right to contest the need to perform such Remedial Work, provided that, (1) Tenant is permitted by the applicable Environmental Laws to delay performance of the Remedial Work pending such proceedings, (2) neither the Property nor any part thereof or interest therein will be sold, forfeited or lost if Tenant fails to promptly perform the Remedial Work being contested, and if Tenant fails to prevail in such contest, Tenant would thereafter have the opportunity to perform such Remedial Work, (3) Landlord would not, by virtue of such permitted contest, be exposed to any risk of any civil liability for which Tenant has not furnished additional security as provided in clause (4) below, or to any risk of criminal liability, and neither the Property nor any interest therein would be subject to the imposition of any Lien for which Tenant has not furnished additional security as provided in clause (4) below, as a result of the failure to perform such Remedial Work and (4) Tenant shall have furnished to Landlord additional security in respect of the Remedial Work being contested and the loss or damage that may result from Tenant's failure to prevail in such contest in such amount as may be reasonably requested by Landlord but in no event less than one hundred twenty-five percent (125%) of the cost of such Remedial Work as estimated by Qualified Environmental Professional and any loss or damage that may result from Tenant's failure to prevail in such contest.

e. Tenant shall not install or permit to be installed on the Property any underground storage tank.

6. O&M Program. In the event any environmental report delivered to Landlord by a Qualified Environmental Professional in connection with the Ground Lease or this Indemnity recommends the development of or continued compliance with an operation and monitoring program to address the presence of Hazardous Materials at the Property or to mitigate or prevent Toxic Mold conditions at the Property ("O&M Program"), Tenant shall retain a Qualified Environmental Professional to develop (or continue to comply with, as the case may be) such O & M Program and shall, during the Term, including any extension or renewal thereof, comply in all material respects with the terms and conditions of such O & M Program.

7. Indemnification Procedures.

a. If any action shall be brought against any Indemnified Party based upon any of the matters for which such Indemnified Party is indemnified hereunder, the applicable Indemnified Party shall notify Tenant and Guarantor in writing thereof, and Tenant and Guarantor shall promptly assume the defense thereof, including, without limitation, the employment of counsel acceptable to the applicable Indemnified Party and the negotiation of any settlement; provided, however, that any failure of the applicable Indemnified Party to notify Tenant and Guarantor of such matter shall not impair or reduce the obligations of Tenant and Guarantor hereunder. Indemnified Party shall have the right, at the expense of Tenant and Guarantor (which expense shall be included in Indemnified Liabilities), to employ separate counsel in any such action and to participate in the defense thereof. In the event Tenant or Guarantor shall fail to discharge or undertake to defend the applicable Indemnified Party against any claim, loss or liability for which such Indemnified Party is indemnified hereunder, such Indemnified Party may, at its sole option and election, defend or settle such claim, loss or liability. The liability of Tenant and Guarantor to the applicable Indemnified Party hereunder shall be conclusively established by such settlement, provided such settlement is made in good faith, the amount of such liability to include both

the settlement consideration and the costs and expenses, including, without limitation attorneys' fees and disbursements (together with appellate counsel fees, if any), incurred by such Indemnified Party in effecting such settlement. In such event, such settlement consideration, costs and expenses shall be included in Indemnified Liabilities and Tenant and Guarantor shall pay the same as hereinafter provided. The applicable Indemnified Party's good faith in any such settlement shall be conclusively established if the settlement is made between non-affiliated parties on the advice of independent legal counsel for such Indemnified Party.

b. Neither Tenant nor Guarantor shall, without the prior written consent of the applicable Indemnified Party which consent shall not be unreasonably conditioned, delayed or withheld: (i) settle or compromise any action, suit, proceeding or claim or consent to the entry of any judgment that does not include as an unconditional term thereof the delivery by the claimant or plaintiff to such Indemnified Party of a full and complete written release of such Indemnified Party (in form, scope and substance satisfactory to such Indemnified Party in its sole discretion) from all liability in respect of such action, suit, proceeding or claim and a dismissal with prejudice of such action, suit, proceeding or claim; or (ii) settle or compromise any action, suit, proceeding or claim in any manner that may adversely affect such Indemnified Party or obligate such Indemnified Party to pay any sum or perform any obligation as determined by such Indemnified Party in its sole discretion.

c. All Indemnified Liabilities shall be immediately reimbursable to the applicable Indemnified Party when and as incurred and, in the event of any litigation, claim or other proceeding, without any requirement of waiting for the ultimate outcome of such litigation, claim or other proceeding, and Tenant and Guarantor shall pay to the applicable Indemnified Party any and all Indemnified Liabilities within ten (10) days after receipt of a written invoice from the applicable Indemnified Party itemizing the amounts thereof incurred to the date of such notice with reasonable documentation supporting same. In addition to any other remedy available for the failure of Tenant or Guarantor to periodically pay such Indemnified Liabilities, such Indemnified Liabilities, if not paid within said ten (10) day period, shall bear interest at the Default Rate.

8. Reinstatement of Obligations. If at any time all or any part of any payment made by Tenant or Guarantor or received by an Indemnified Party from Tenant or Guarantor under or with respect to this Indemnity is or must be rescinded or returned for any reason whatsoever (including, but not limited to, the insolvency, bankruptcy or reorganization of Tenant or Guarantor), then the obligations of Tenant and Guarantor hereunder shall, to the extent of the payment rescinded or returned, be deemed to have continued in existence, notwithstanding such previous payment made by Tenant or Guarantor, or receipt of payment by such Indemnified Party, and the obligations of Tenant and Guarantor hereunder shall continue to be effective or be reinstated, as the case may be, as to such payment, all as though such previous payment by Tenant or Guarantor, as applicable, had never been made.

9. Waivers. To the extent permitted by law, Tenant and Guarantor hereby irrevocably and absolutely waives any and all defenses to the performance of their duties and obligations under this Indemnity, including any defense based on any of the following:

- a. Any right to require Landlord to proceed against any other Person or to proceed against or exhaust any security held by Landlord at any time or to pursue any other remedy in Landlord's power or under any other agreement before proceeding against Tenant or Guarantor hereunder;

- b. Any defense to the payment of the obligations secured by the Total Security Instrument or the Indemnified Liabilities, including those that may arise by reason of the incapacity, lack of authority, death or disability of any other Person or Persons or the failure of Landlord to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other Person or Persons;
- c. Demand, presentment for payment, notice of nonpayment, protest, notice of protest and all other notices of any kind, or the lack of any thereof, including, without limiting the generality of the foregoing, notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of Landlord, any endorser or creditor of Tenant or Guarantor or any other Person whomsoever under this or any other instrument in connection with any obligation or evidence of indebtedness held by Landlord;
- d. Any defense based upon an election of remedies by Landlord;
- e. Any right or claim of right to cause a marshaling of the assets of Tenant or Guarantor;
- f. Any principle or provision of law, statutory or otherwise, which is or might be in conflict with the terms and provisions of this Indemnity;
- g. Any duty on the part of Landlord to disclose to Tenant or Guarantor any facts Landlord may now or hereafter know about Tenant or the Property, regardless of whether Landlord has reason to believe that any such facts materially increase the risk beyond that which Tenant or Guarantor intends to assume or has reason to believe that such facts are unknown to either of them or has a reasonable opportunity to communicate such facts to them, it being understood and agreed that Tenant and Guarantor fully responsible for being and keeping informed of the condition of Tenant and the Property and of any and all circumstances bearing on the risk that liability may be incurred by Tenant and Guarantor hereunder;
- h. ; and
- i. Any action, occurrence, event or matter consented to by Tenant or Guarantor under any provision hereof, or otherwise.

10. Waiver of Notices. Tenant and Guarantor hereby waive any and all notices including (a) notice of or proof of reliance by any Indemnified Party upon this Indemnity or acceptance of this Indemnity, (b) notice of any actions taken by Landlord or Tenant or any other Person under the Ground Lease, and (c) notices of nonpayment or nonperformance, protest, notices of protest and notices of dishonor.

11. Miscellaneous Provisions.

(a) Survival. This Indemnity shall be deemed to be continuing in nature and shall remain in full force and effect and shall survive the termination of the Ground Lease and the exercise of any remedy by Landlord under the Ground Lease.

(b) Subrogation; No Recourse against Landlord. Tenant and Guarantor hereby each agree that, until the termination of this Indemnity, it shall not exercise any right or remedy arising by reason of any performance by it of its indemnity hereof, whether by subrogation, contribution, indemnity, or otherwise, against any Person or entity obligated to pay or perform any of the Indemnified Liabilities or against any security for any of the Indemnified Liabilities. In addition to and without in any way limiting the foregoing, Guarantor hereby subordinates any and all indebtedness of Tenant now or hereafter owed to Guarantor to all indebtedness of Tenant to Landlord, and agree with Landlord that Guarantor shall not demand or accept any payment of principal or interest from Tenant, shall not claim any offset or other reduction of Tenant's and Guarantor's obligations hereunder because of any such indebtedness and shall not take any action to obtain any of the collateral from the Total Loan. Further, neither Tenant nor Guarantor shall have any right of recourse against Landlord by reason of any action Landlord may take or omit to take under the provisions of this Indemnity or under the provisions of any of the Ground Lease Documents.

(c) Reservation of Rights. Nothing contained in this Indemnity shall prevent or in any way diminish or interfere with any rights or remedies, including, without limitation, the right to contribution, which Landlord may have against Tenant or Guarantor or any other party under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (codified at Title 42 U.S.C. §9601 *et seq.*), as it may be amended from time to time, or any other applicable federal, state or local laws, all such rights being hereby expressly reserved.

(d) Rights Cumulative; Payments. Landlord's rights under this Indemnity shall be in addition to all rights of Landlord under the Ground Lease.

(e) No Limitation on Liability. Tenant and Guarantor hereby consent and agree that Landlord may at any time and from time to time without further consent from either of them exercise any of its rights or remedies as set forth herein or in the Ground Lease, whether at law or in equity, and the liability of Tenant and Guarantor under this Indemnity shall be unconditional and absolute and shall in no way be impaired or limited by any of the following events, whether occurring with or without notice to Tenant or Guarantor or with or without consideration: (i) any extensions of time for performance required by any of the Ground Lease; (ii) any sale or transfer of the Property; (iii) any change in the composition of Tenant, including, without limitation, the withdrawal or removal of Guarantor from any current or future position of ownership, management or control of Tenant; (iv) the accuracy or inaccuracy of the representations and warranties made by Tenant or Guarantor herein or by Tenant in any of the Ground Lease; (v) the release of Tenant or of any other Person from performance or observance of any of the agreements, covenants, terms or conditions contained in the Ground Lease by operation of law, Landlord's voluntary act or otherwise; (vi) the modification of the terms of Ground Lease; or (vii) the taking or failure to take any action of any type whatsoever. No such action which Landlord shall take or fail to take in connection with the Ground Lease, nor any course of dealing with Tenant or any other Person, shall limit, impair or release Tenant's or Guarantor's obligations hereunder, affect this Indemnity in any way or afford Tenant or Guarantor any recourse against Landlord. Nothing contained in this Section shall be construed to require Landlord to take or refrain from taking any action referred to herein.

(f) Entire Agreement; Amendment; Severability. This Indemnity contains the entire agreement between the parties respecting the matters herein set forth and supersedes (except as to the Ground Lease Documents) all prior agreements, whether written or oral, between the parties respecting such matters. Any amendments or modifications hereto, in order to be effective, shall be in writing and

executed by the parties hereto. If any provision under this Indemnity or the application thereof to any Person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Indemnity and the application of the provisions hereof to other entities, Persons or circumstances shall not be affected thereby and shall be enforced to the fullest extent permitted by law.

(g) Governing Law. THIS INDEMNITY IS, AND SHALL BE DEEMED TO BE, A CONTRACT ENTERED INTO UNDER AND PURSUANT TO THE LAWS OF THE STATE OF NEW YORK AND SHALL BE IN ALL RESPECTS GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS. TENANT AND GUARANTOR EACH ACKNOWLEDGE THAT FINAL JUDGMENT AGAINST IT IN ANY ACTION, SUIT OR PROCEEDING REFERRED TO IN THIS PARAGRAPH SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN ANY OTHER JURISDICTION BY SUIT ON THE JUDGMENT, A CERTIFIED OR EXEMPLIFIED COPY OF WHICH SHALL BE CONCLUSIVE EVIDENCE OF THE FACT AND OF THE AMOUNT OF TENANT'S AND GUARANTOR'S OBLIGATIONS HEREUNDER AND THEREUNDER.

(h) Binding Effect; Waiver of Acceptance. This Indemnity shall bind Tenant and Guarantor and the heirs, personal representatives, successors and assigns of each of them and shall inure to the benefit of each Indemnified Party and the officers, directors, shareholders, agents and employees of such Indemnified Party and their respective heirs, successors and assigns. Notwithstanding the foregoing, neither Tenant nor Guarantor shall assign any of its rights or obligations under this Indemnity without the prior written consent of Landlord, which consent may be withheld, conditioned or delayed by Landlord in its sole discretion. Tenant and Guarantor hereby each waive any acceptance of this Indemnity by the Indemnified Party, and this Indemnity shall immediately be binding upon Tenant and Guarantor.

(i) Notice. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be given and become effective as provided in the Ground Lease, provided that the address of Guarantor shall be as follows:

Jacob Schwimmer
80 Middleton Street
Brooklyn, New York 11206

With a copy to:
Jeffrey Zwick & Associates, P.C.
266 Broadway, Suite 403
Brooklyn, New York 11211
Attention: Jeffrey Zwick, Esq.

(j) No Waiver; Time of Essence. The failure of any party hereto to enforce any right or remedy hereunder, or to promptly enforce any such right or remedy, shall not constitute a waiver thereof nor give rise to any estoppel against such party nor excuse any of the parties hereto from their respective obligations hereunder. Any waiver of such right or remedy must be in writing and signed by the party to be bound. This Indemnity is subject to enforcement at law or in equity, including actions for damages or specific performance. Time is of the essence hereof.

(k) Captions for Convenience. The captions and headings of the sections and paragraphs of this Indemnity are for convenience of reference only and shall not be construed in interpreting the provisions hereof.

(l) Attorneys' Fees. In the event it is necessary for Landlord to retain the services of an attorney or any other consultants in order to enforce this Indemnity, or any portion thereof, Tenant and Guarantor agree to pay to Landlord any and all costs and expenses, including, without limitation, attorneys' fees (together with appellate counsel fees, if any), incurred by Landlord as a result thereof and such costs, fees and expenses shall be included in Indemnified Liabilities.

(m) Successive Actions. A separate right of action hereunder shall arise each time Landlord acquires knowledge of any matter indemnified by Tenant or Guarantor under this Indemnity. Separate and successive actions may be brought hereunder to enforce any of the provisions hereof at any time and from time to time. No action hereunder shall preclude any subsequent action, and Tenant and Guarantor hereby each waive and covenant not to assert any defense in the nature of splitting of causes of action or merger of judgments.

(n) Joint and Several Liability. Notwithstanding anything to the contrary contained herein, the representations, warranties, covenants and agreements made by each of Tenant and Guarantor herein, and the liability of each them hereunder, is joint and several.

(o) Reliance. Landlord would not enter into the Ground Lease without this Indemnity. Accordingly, Tenant and Guarantor intentionally and unconditionally enters into the covenants and agreements as set forth above and understands that, in reliance upon and in consideration of such covenants and agreements, the Ground Lease shall be made and, as part and parcel thereof, specific monetary and other obligations have been, are being and shall be entered into which would not be made or entered into but for such reliance.

(p) Counterparts. This Indemnity may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Indemnity may be detached from any counterpart of this Indemnity without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Indemnity identical in form hereto but having attached to it one or more additional signature pages. Executed counterparts of any signature page delivered by electronic transmission shall be deemed an original and considered binding and shall be due evidence of a Person's execution and delivery of this Indemnity.

(q) Waiver. Each of Tenant and Guarantor covenants and agrees that upon the commencement of a voluntary or involuntary bankruptcy proceeding by or against Tenant, neither Tenant nor Guarantor shall seek a supplemental stay or otherwise pursuant to 11 U.S.C. §105 or any other provision of the Bankruptcy Reform Act of 1978, as amended, or any other debtor relief law (whether statutory, common law, case law, or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the ability of Landlord to enforce any rights of Landlord against Guarantor by virtue of any this Indemnity or otherwise.

12. Payment of Expenses, etc. Tenant and Guarantor each agree to pay for all out-of-pocket costs and expenses of Landlord arising in connection with (a) defending against any of the Indemnified

Liabilities, (b) any amendment of this Indemnity, (c) the administration of this Indemnity, (d) the exercise or enforcement of any of the rights of an Indemnified Party under this Indemnity, and (e) the failure by Tenant or Guarantor to perform or observe any of the provisions of this Indemnity. This Section shall survive the termination of this Indemnity. No delay on Landlord's part in exercising any right, power or privilege hereunder shall operate as a waiver of any such privilege, power or right.

13. **Submission to Jurisdiction; Waiver of Jury Trial.**(a) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST TENANT OR GUARANTOR ARISING OUT OF OR RELATING TO THIS INDEMNITY SHALL AT LANDLORD'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN NEW YORK COUNTY, NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW. TENANT AND GUARANTOR EACH WAIVE ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND EACH OF THEM HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. NOTWITHSTANDING THE FOREGOING, LANDLORD SHALL HAVE THE RIGHT TO INSTITUTE ANY LEGAL SUIT, ACTION OR PROCEEDING FOR THE ENFORCEMENT OF THIS INDEMNITY OR ANY COLLATERAL THEREFOR IN ANY FEDERAL OR STATE COURT IN ANY JURISDICTION(S) THAT LANDLORD MAY ELECT IN ITS SOLE AND ABSOLUTE DISCRETION, AND GUARANTOR WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND GUARANTOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. (b) TENANT AND GUARANTOR, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS AGREEMENT OR ANY CONDUCT, ACT OR OMISSION OF LANDLORD TENANT OR GUARANTOR, OR ANY OF THEIR DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH LANDLORD TENANT OR GUARANTOR, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

[Signature(s) follow.]

IN WITNESS WHEREOF, the undersigned have duly executed this Indemnity as of the day and year first above set forth.

TENANT:

138 BRUCKNER REALTY LLC,
a New York limited liability company

By: _____
Name: _____
Title: _____

GUARANTOR:

Name: Jacob Schwimmer

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

On the _____ day of _____ in the year 20____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) and that by his/her/their signature(es) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument

Notary Public

EXHIBIT E

Form of Completion Guaranty

**GUARANTY OF PAYMENT OF COMPLETION COSTS
(GROUND LEASE)**

This **GUARANTY OF PAYMENT OF COMPLETION COSTS** (this “*Guaranty*”), dated as of January __, 2022 (the “*Effective Date*”) made by **JACOB SCHWIMMER**, an individual having an address at 80 Middleton Street, Brooklyn, New York 11206 (“*Guarantor*”), in favor of **138 BRUCKNER GROUND LESSOR, LLC**, a Delaware limited liability company, having an address at c/o MSP Capital Investments, L.L.C., Woodlawn Hall at Old Parkland, 3953 Maple Ave., Suite 350, Dallas, Texas 75219 (together with its successors and assigns, “*Landlord*”).

R E C I T A L S:

A. Landlord is the owner of the fee simple estate in and to the real property described in Schedule A attached to this Agreement (the “*Property*”);

B. Landlord leased the Property to 138 BRUCKNER REALTY LLC, a New York limited liability company (“*Tenant*”), pursuant to that certain Ground Lease, dated as of January __, 2022 by and between Tenant, as tenant, and Landlord, as landlord (as amended and/or assigned, the “*Ground Lease*”);

C. Pursuant to the Ground Lease and the Work Letter (as defined in the Ground Lease), Tenant has agreed to construct and Complete (as defined in the Ground Lease) the Project (as defined in the Ground Lease) (the Ground Lease, the Work Letter, and the Project Guaranties (as defined in the Ground Lease), and any other documents executed by Tenant and/or Guarantor in connection with the Construction Project, are collectively referred to herein as the “*Ground Lease Documents*”);

D. As a condition to Landlord entering into the Ground Lease with Tenant, Landlord is requiring that Guarantor execute and deliver to Landlord this Guaranty; and

E. Guarantor hereby acknowledges that Guarantor owns direct or indirect ownership interests in Tenant and, accordingly, Guarantor will materially benefit from Landlord’s agreeing to enter into the Ground Lease.

NOW, THEREFORE, in consideration of the premises set forth herein and as an inducement for and in consideration of the agreement of Landlord to enter into the Ground Lease with Tenant, Guarantor hereby agrees, covenants, represents and warrants to Landlord as follows:

1. Definitions.

(a) All capitalized terms used and not defined herein shall have the respective meanings given such terms in the Ground Lease.

(b) The term “*Guaranteed Obligations*” means the obligations of
Tenant:

(i) to cause any liens entered or filed against the Property in connection with the Project to be removed or bonded on or before the date Tenant is required to do so pursuant to the Ground Lease Documents.

(ii) with respect to any lien entered or filed against the Property in connection with the Project and not timely removed or bonded to the extent required pursuant to clause (i) above, to fully reimburse Landlord, within ten (10) Business Days after written demand by Landlord, for any and all sums expended or incurred by any of Landlord or Construction Lender to pay or discharge any such liens, including any and all costs, damages, interest, expenses and reasonable attorneys' fees that Landlord or Construction Lender actually incurs by reason thereof.

(iii) if an Event of Default occurs prior to Completion of the Project, to pay to Landlord, an amount (determined as of any date selected by Landlord in its sole discretion so long as such date is no earlier than the date of such Event of Default and not later than the ninetieth (90th) day following the date that the Landlord has terminated the Ground Lease following the commencement of such Event of Default) equal to the aggregate amount of Total Project Costs that would be reasonably required as of such date to be paid in order to achieve Completion of the Project (as determined by Landlord in consultation with the Construction Consultant), including those Total Project Costs occasioned by, or arising as a result of, any Event of Default (even if any such Total Project Costs are not included in the Project Budget) (such amount being referred to herein as the "***Liquidated Completion Amount***").

For purposes of the preceding clause (iii), (x) Total Project Costs shall be equal to the amount of such Total Project Costs as estimated by the Construction Consultant in its good faith discretion and approved by Landlord and any such amount estimated by the Construction Consultant shall, in the absence of manifest error, be conclusive and binding on Guarantor and (y) Total Project Costs shall be determined in good faith by Landlord based on the period of time that the Construction Consultant, estimates it would take for Landlord with the exercise of reasonable diligence to achieve Completion of the Project given all relevant factors (and assuming for such purpose that Landlord were to seek to undertake same, regardless of whether Landlord actually intends to undertake same), and any such amounts so determined by Landlord shall, in the absence of manifest error, be conclusive and binding on Guarantor.

Guarantor agrees that the following provisions shall in all events govern Guarantor's obligations under this clause (iii):

(I) Guarantor shall be liable to pay to Landlord the Liquidated Completion Amount regardless of whether or not Landlord or its affiliate intends to complete the Project and whether or not Landlord or its affiliate actually completes the Project;

(II) Subject to clause (IV) below, Guarantor's liability to pay to Landlord the Liquidated Completion Amount shall survive (and shall not be released, reduced or otherwise impaired by reason of) the termination of the Ground Lease or any discharge of Tenant in a Bankruptcy Action;

(III) Guarantor's liability to pay to Landlord the Liquidated Completion Amount shall not be released, reduced or otherwise impaired by reason of the fact that completion of the Project (were it to be completed) would increase the value of the Property by less than the Liquidated Completion Amount or not at all, it being agreed that the amount to be paid by Guarantor pursuant to this clause (iii) is intended to constitute *liquidated damages* for Tenant's failure to complete the Project as required under the Ground Lease Documents; and

(IV) If Landlord or its affiliate acquires title to the Property by reason of the exercise of its remedies and/or any termination of the Ground Lease (including in a Bankruptcy Action), then, to the maximum extent permitted by law, Guarantor's liability under this clause (iii) shall not be released, reduced or otherwise impaired by reason of any determination that the deficiency resulting from any such foreclosure is less than the Liquidated Completion Amount, it being agreed that the amount to be paid by Guarantor pursuant to this clause (iii) is intended to constitute *liquidated damages* for Tenant's failure to complete the Project as required under the Ground Lease Documents (it being agreed that Landlord's ultimate loss by reason of Tenant's failure to complete the Project in the circumstance described in this clause (IV) is not possible to ascertain with certainty at the time of such acquisition of title to the Property, and Guarantor and Landlord have agreed that the Liquidated Completion Amount is fair and reasonable compensation to Landlord under such circumstances regardless of the amount of how such amount relates to the amount of any deficiency).

(iv) to fully indemnify, defend and hold harmless Landlord, the Construction Consultant and Construction Lender from and against any and all actual out-of-pocket costs, claims, actions, causes of action, losses, liabilities or expenses, including reasonable attorneys' fees and court costs and damages arising out of any claim made against Landlord by any Person that directly or indirectly relates to or results or arises from the construction of the Project, except to the extent arising solely from the gross negligence or willful misconduct of Landlord, Construction Lender or a Person acting at the direction of Landlord or Construction Lender.

(v) to reimburse Landlord for any Total Project Costs or other payments made by Landlord to achieve Completion of the Project, provided that Guarantor shall not be obligated to pay any of the foregoing amounts to Landlord if and to the extent Guarantor have then already paid the Liquidated Completion Amount to Landlord and such foregoing amounts described in this clause (v) were taken into account in calculating the amount described in Section 1(b)(iii) above.

(vi) to pay any and all amounts required to be funded by Tenant to cure the Out of Balance Condition as and when Tenant is required to fund the same in accordance with the Ground Lease.

2. Guaranty.

(a) Guarantor hereby irrevocably, absolutely and unconditionally guarantees to Landlord (i) the full, prompt and complete payment when due of the Guaranteed Obligations and (ii) to the extent applicable pursuant to the terms of the Ground Lease Documents, the full, prompt and complete performance when required of the Guaranteed Obligations.

(b) All sums payable to Landlord under this Guaranty shall be payable on demand and without reduction for any offset, claim, counterclaim or defense.

(c) Guarantor hereby agrees to pay, protect, indemnify, defend and save harmless Landlord from and against any and all fees, costs, losses, liabilities, obligations, claims, causes of action, suits, demands, judgments, expenses and damages, including reasonable attorneys' fees and disbursements, of any nature or description which Landlord may suffer or incur, or which otherwise may arise in connection with the enforcement by Landlord of the Ground Lease Documents and/or by reason of Tenant's or Guarantor's failure to pay or perform any of the Guaranteed Obligations when due, irrespective of whether such fees, costs, losses, liabilities, claims, causes of action, expenses or damages are incurred by Landlord prior or subsequent to (i) Landlord's declaring the Losses, interest and other sums evidenced or secured by the Ground Lease Documents to be due and payable, (ii) the commencement or completion of a judicial or non-judicial foreclosure of the Leasehold Mortgage or (iii) Landlord terminating the Lease pursuant to the Ground Lease.

(d) Guarantor agrees that no portion of any sums applied (other than sums received from Guarantor in full or partial satisfaction of its obligations hereunder), from time to time, under the Ground Lease shall be deemed to have been applied in reduction of the Guaranteed Obligations, it being the intention hereof that the Guaranteed Obligations shall be the last portion of the Ground Lease Documents to be deemed satisfied. It is understood that the obligations of Tenant to Landlord may at any time and from time to time exceed the liability of Guarantor hereunder without impairing this Guaranty and Guarantor and Landlord agrees, as between themselves, that regardless of the manner of application of payments made by Tenant to Landlord, all such payments shall be deemed to be applied first to the portion of the obligations of Tenant which are not guaranteed hereunder and last to the portion of the such obligations which are guaranteed hereunder.

(e) No payments received by Landlord on account of the Guaranteed Obligations shall be deemed to be a payment under this Guaranty unless such payment was specifically identified by Guarantor, at the time of payment, as a payment from Guarantor under this Guaranty.

(f) The liabilities of Guarantor under this Section 2 shall not be limited by the Ground Lease, but shall be determined, solely by the cost of the Guaranteed Obligations.

(g) If any action shall be brought against Landlord based upon any of the matters for which Landlord is indemnified hereunder, Landlord shall notify Guarantor in writing thereof and Guarantor shall promptly assume the defense thereof, including the employment of counsel acceptable to Landlord and the negotiation of any settlement; provided,

however, that any failure of Landlord to notify Guarantor of such matter shall not impair or reduce the obligations of Guarantor hereunder. Landlord shall have the right, at the expense of Guarantor (which expense shall be included in the Guaranteed Obligations), to employ separate counsel in any such action and to participate in the defense thereof. In the event Guarantor shall fail to discharge or undertake to defend Landlord against any claim, loss or liability for which Landlord is indemnified hereunder, Landlord may, at its sole option and election, defend or settle such claim, loss or liability. The liability of Guarantor to Landlord hereunder shall be conclusively established by such settlement, provided such settlement is made in good faith, the amount of such liability to include both the settlement consideration and the costs and expenses, including attorneys' fees and disbursements, incurred by Landlord in effecting such settlement. In such event, such settlement consideration, costs and expenses shall be included in the Guaranteed Obligations and Guarantor shall pay the same as hereinafter provided. Landlord's good faith in any such settlement shall be conclusively established if the settlement is made on the advice of independent legal counsel for Landlord. Guarantor shall not, without the prior written consent of Landlord: (i) settle or compromise any action, suit, proceeding or claim or consent to the entry of any judgment that does not include as an unconditional term thereof the delivery by the claimant or plaintiff to Landlord of a full and complete written release of Landlord (in form, scope and substance satisfactory to Landlord in its sole discretion) from all liability in respect of such action, suit, proceeding or claim and a dismissal with prejudice of such action, suit, proceeding or claim; or (ii) settle or compromise any action, suit, proceeding or claim in any manner that may adversely affect Landlord or obligate Landlord to pay any sum or perform any obligation as determined by Landlord in its sole discretion.

3. Representations and Warranties. Guarantor hereby represents and warrants to Landlord as follows (which representations and warranties shall be given as of the date Effective Date and shall survive the execution and delivery of this Guaranty):

(a) **Execution.** This Guaranty has been duly executed and delivered by Guarantor.

(b) **Enforceability.** This Guaranty constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally.

(c) **No Violation.** The execution, delivery and performance by Guarantor of its obligations under this Guaranty do not and will not violate any law, regulation, order, writ, injunction or decree of any court or governmental body, agency or other instrumentality applicable to Guarantor, or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any mortgage, lien, charge or encumbrance of any nature whatsoever upon any of the assets of Guarantor pursuant to the terms of any mortgage, indenture, agreement or instrument to which Guarantor is a party or by which it or any of its properties is bound. Guarantor is not in default under any other guaranty which it has provided to Landlord.

(d) **No Litigation.** There are no actions, suits or proceedings at law or at equity, pending or, to Guarantor's knowledge, threatened against or affecting Guarantor or

which involve or might involve the validity or enforceability of this Guaranty or which might materially adversely affect the financial condition of Guarantor or the ability of Guarantor to perform any of its obligations under this Guaranty. Guarantor is not in default beyond any applicable grace or cure period with respect to any order, writ, injunction, decree or demand of any Governmental Authority which might materially adversely affect the financial condition of Guarantor or the ability of Guarantor to perform any of its obligations under this Guaranty.

(e) **Consents.** All consents, approvals, orders or authorizations of, or registrations, declarations or filings with, all Governmental Authorities (collectively, the “**Consents**”) that are required in connection with the valid execution, delivery and performance by Guarantor of this Guaranty have been obtained and Guarantor agrees that all Consents required in connection with the carrying out or performance of any of Guarantor’s obligations under this Guaranty will be obtained when required.

(f) **Financial Statements and Other Information.** All financial statements of Guarantor heretofore delivered to Landlord are true and correct in all material respects and fairly present the financial condition of Guarantor as of the respective dates thereof, and no materially adverse change has occurred in the financial conditions reflected therein since the respective dates thereof. None of the aforesaid financial statements or any certificate or statement furnished to Landlord by or on behalf of Guarantor in connection with the transactions contemplated hereby, and none of the representations and warranties in this Guaranty contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained therein or herein not misleading. Guarantor is not insolvent within the meaning of the United States Bankruptcy Code or any other applicable law, code or regulation and the execution, delivery and performance of this Guaranty will not render Guarantor insolvent.

(g) **Consideration.** Guarantor is the owner, directly or indirectly, of certain legal and beneficial equity interests in Tenant.

4. Financial Statements. Guarantor shall deliver to Landlord:

(a) within ninety (90) days after the end of each calendar year of Guarantor, (i) a complete copy of Guarantor’s annual financial statements prepared by a certified public accountant reasonably acceptable to Landlord, including statements of income and expense and a balance sheet for Guarantor and (ii) a certificate of Guarantor (y) setting forth in reasonable detail the Net Worth and Liquid Assets (each as defined below) of Guarantor as of the end of such prior calendar year in form, content, level of detail and scope reasonably acceptable to Landlord (and disclosing any contingent liabilities of Guarantor) and (z) certifying that such annual financial statements are true, correct, accurate and complete in all material respects and fairly present the financial condition of Guarantor;

(b) intentionally omitted;

(c) within twenty (20) days after the date filed, a complete copy of Guarantor’s United States tax returns each prepared by an independent certified public accountant, certified by Guarantor and in form, content, level of detail and scope reasonably acceptable to Landlord; and

(d) within twenty (20) days after request by Landlord, such other financial information with respect to Guarantor as Landlord may reasonably request.

5. Unconditional Character of Obligations of Guarantor.

(a) The obligations of Guarantor hereunder shall be irrevocable, absolute and unconditional, irrespective of the validity, regularity or enforceability, in whole or in part, of the other Ground Lease Documents or any provision thereof, or the absence of any action to enforce the same, any waiver or consent with respect to any provision thereof, the recovery of any judgment against Tenant, Guarantor or any other Person or any action to enforce the same, any failure or delay in the enforcement of the obligations of Tenant under the other Ground Lease Documents or Guarantor under this Guaranty, or any setoff or counterclaim, and irrespective of any other circumstances which might otherwise limit recourse against Guarantor by Landlord or constitute a legal or equitable discharge or defense of a guarantor or surety. Landlord may enforce the obligations of Guarantor under this Guaranty by a proceeding at law, in equity or otherwise, independent of any loan foreclosure, termination of the Ground Lease, or similar proceeding or any deficiency action against Tenant or any other Person at any time, either before or after an action against the Property or any part thereof, Tenant or any other Person. **This Guaranty is a guaranty of payment and performance and not merely a guaranty of collection.** If the Guaranteed Obligations are partially paid or discharged by reason of the exercise of any of the remedies available to Landlord, this Guaranty shall nevertheless remain in full force and effect, and Guarantor shall remain liable for all remaining Guaranteed Obligations, even though any rights which Guarantor may have against Tenant may be destroyed or diminished by the exercise of any such remedy; and if the Guaranteed Obligations are otherwise partially paid or discharged for any reason, including voluntary payment or prepayment, application of insurance proceeds or condemnation awards, additional financing or refinancing, or sale of any collateral for the Ground Lease or a portion thereof, with or without the consent or cooperation of Landlord, this Guaranty shall nevertheless remain in full force and effect, and Guarantor shall remain liable for all remaining Guaranteed Obligations.

(b) The obligations of Guarantor under this Guaranty, and the rights of Landlord to enforce the same by proceedings, whether by action at law, suit in equity or otherwise, shall not be in any way affected by any of the following:

(i) any insolvency, bankruptcy, liquidation, reorganization, readjustment, composition, dissolution, receivership, conservatorship, winding up or other similar proceeding involving or affecting Tenant, the Property or any part thereof, Guarantor or any other Person;

(ii) any failure by Landlord or any other Person, whether or not without fault on its part, to perform or comply with any of the terms of the Ground Lease, or any other Ground Lease Documents, or any document or instrument relating thereto;

(iii) the sale, transfer or conveyance of the Property or any interest therein to any Person, whether now or hereafter having or acquiring an interest in the Property or any interest therein and whether or not pursuant to any foreclosure, trustee sale or similar proceeding against Tenant or the Property or any interest therein;

(iv) the conveyance to Landlord, any Affiliate of Landlord or Landlord's nominee of the Property or any interest therein;

(v) the release of Tenant or any other Person from the performance or observance of any of the agreements, covenants, terms or conditions contained in any of the Ground Lease Documents by operation of law or otherwise;

(vi) the taking or accepting of any other security or guaranty for any or all of the Ground Lease;

(vii) the release in whole or in part of any collateral for any or all Guaranteed Obligations or for the Ground Lease or any portion thereof;

(viii) Tenant's or any other Person's lack of authority or lawful right to enter into any of the Ground Lease Documents or any officers' or representatives' lack of authority or right to enter into Ground Lease Documents on its behalf;

(ix) any modification, supplement, extension, consolidation, restatement, waiver or consent provided by Landlord with respect to any of the Ground Lease Documents including, without limitation, the grant of extensions of time for payment or performance;

(x) any adjustment, indulgence, forbearance or compromise that might be granted or given by Landlord to Tenant or Guarantor;

(xi) the failure to record any Ground Lease Document or to perfect any security interest intended to be provided thereby;

(xii) the release, surrender, exchange, subordination, deterioration, waste, loss, impairment or substitution, in whole or in part, of any Secured Collateral, the failure to protect, secure or insure any Secured Collateral, the acceptance of additional collateral for the Ground Lease or the failure of Landlord or any other party to exercise diligence or reasonable care in the preservation, protection, enforcement, sale or other handling or treatment of all or any part of any Secured Collateral;

(xiii) the existence of any claim, setoff, counterclaim, defense or other rights which Guarantor may have against Tenant, Landlord or any other Person, whether in connection with the Ground Lease or any other transaction;

(xiv) the accuracy or inaccuracy of the representations and warranties made by Tenant, Guarantor or any other Person in any of the Ground Lease Documents;

(xv) any adjustment, indulgence, forbearance or compromise that might be granted or given by Landlord or any Landlord to Tenant, Guarantor or any other Person;

(xvi) any sale, lease or transfer of any or all of the assets of Tenant, Guarantor or any other Person;

(xvii) the Guaranteed Obligations, or any part thereof, exceeding the amount permitted by law or violating any usury law;

(xviii) the illegality or unenforceability of, or the inability to collect, the Guaranteed Obligations; or

(xix) any of the Ground Lease Documents being irregular or not genuine or authentic.

(c) Except as otherwise specifically provided in this Guaranty, and to the extent permitted by law, Guarantor hereby expressly and irrevocably waives and agrees not to assert or take advantage of (as a defense or otherwise):

(i) Any defense based upon diligence, notice of acceptance of this Guaranty, filing of claims with any court, or any proceeding to enforce any provision of any other Ground Lease Document, against Guarantor, Tenant or any other Person;

(ii) All defenses in an action brought by Landlord to enforce this Guaranty based on claims of waiver, release, surrender, alteration or compromise and all setoffs, reductions, or impairments, whether arising hereunder or otherwise;

(iii) Any right to require Landlord to proceed against Tenant or any other Person or to proceed against or exhaust any security (including the Property) held by Landlord at any time or to pursue any other remedy in Landlord's power or under any other agreement before proceeding against Guarantor hereunder;

(iv) The defense of the statute of limitations in any action hereunder;

(v) Any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other Person or Persons or the failure of Landlord to file or enforce a claim against the estate (including in any Bankruptcy Action) of any other Person or Persons;

(vi) Any failure on the part of Landlord to ascertain the extent or nature of any property (whether real or personal), rights, estates and interests now or at any time hereafter securing payment under the Ground Lease and/or the other obligations of Tenant under any of the Ground Lease Documents whether held by Landlord or by any Person or entity on Landlord's behalf or for Landlord's account (the "***Secured Collateral***") or any insurance or other rights with respect thereto, or the liability of any party liable for the Ground Lease Documents or the obligations evidenced or secured thereby;

(vii) Demand, presentment for payment, notice of nonpayment, protest, notice of protest and all other notices of any kind, or the lack of any thereof, including notice of the existence, creation or incurring of any new or additional

indebtedness or obligation or of any action or non-action on the part of Tenant, Landlord, any endorser or creditor of Tenant or of Guarantor or on the part of any other Person whomsoever under this or any other instrument in connection with any obligation or evidence of indebtedness held by Landlord;

(viii) Any defense based upon an election of remedies by Landlord;

(ix) Any right or claim of right to cause a marshalling of the assets of Guarantor;

(x) Any principle or provision of law, statutory or otherwise, which is or might be in conflict with the terms and provisions of this Guaranty;

(xi) Any duty on the part of Landlord to disclose to Guarantor any facts Landlord may now or hereafter know about Tenant or the Property, regardless of whether Landlord has reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume or has reason to believe that such facts are unknown to Guarantor or has a reasonable opportunity to communicate such facts to Guarantor, it being understood and agreed that Guarantor is fully responsible for being and keeping informed of the financial condition of Tenant, of the condition of the Property and of any and all circumstances bearing on the risk that liability may be incurred by Guarantor hereunder;

(xii) Any lack of notice of disposition or of manner of disposition of any Secured Collateral;

(xiii) Failure to properly record any document or any other lack of due diligence by Landlord in creating or perfecting a security interest in or collection, protection or realization upon any Secured Collateral or in obtaining reimbursement or performance from any Person or entity now or hereafter liable for the Ground Lease Documents or any obligation secured thereby;

(xiv) The inaccuracy of any representation or other provision contained in the Ground Lease;

(xv) Any assignment of any of the Ground Lease Documents, or any interest therein;

(xvi) Any sale or assignment by Tenant of any Secured Collateral, or any portion thereof or interest therein, whether or not consented to by Landlord;

(xvii) Any lack of commercial reasonableness in dealing with any Secured Collateral;

(xviii) Any deficiencies in any Secured Collateral or any deficiency in the ability of Landlord to collect or to obtain performance from any Persons now or hereafter liable for the payment and performance of any obligation hereby guaranteed;

(xix) An assertion or claim that the automatic stay provided by 11 U.S.C. § 362 (arising upon a Bankruptcy Action of Tenant) or any other stay provided under any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, shall operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of Landlord to enforce any of its rights, whether now or hereafter acquired, which Landlord may have against Guarantor or any Secured Collateral;

(xx) Any modifications of any of the Ground Lease Documents or any obligation of Tenant relating to the Ground Lease by operation of law or by action of any court, whether pursuant to any Bankruptcy Action, or any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, or otherwise;

(xxi) Any change in the composition of Tenant, including the withdrawal or removal of Guarantor from any current or future position of ownership, management or control of Tenant; and

(xxii) Any action, occurrence, event or matter consented to by Guarantor under any other provision hereof, or otherwise.

(d) Landlord may deal with Tenant and Affiliate of Tenant in the same manner and as freely as if this Guaranty did not exist and shall be entitled, among other things, to grant Tenant or any other Person such extension or extensions of time to perform any act or acts as may be deemed advisable by Landlord, at any time and from time to time, without terminating, affecting or impairing the validity of this Guaranty or the obligations of Guarantor hereunder.

(e) No compromise, alteration, amendment, modification, extension, renewal, release or other change of, or waiver, consent, delay, omission, failure to act or other action with respect to, any liability or obligation under or with respect to, or of any of the terms, covenants or conditions of, the Ground Lease Documents shall in any way alter, impair or affect any of the obligations of Guarantor hereunder, and Guarantor agrees that if any Ground Lease Documents are modified with Landlord's consent, the Guaranteed Obligations shall automatically be deemed modified to include such modifications.

(f) Landlord may proceed to protect and enforce any or all of its rights, powers, and remedies under this Guaranty by suit in equity or action at law (including termination of the Ground Lease), whether for the specific performance of any covenants or agreements contained in this Guaranty or otherwise, or to take any action authorized or permitted under applicable law (in any order), and shall be entitled to require and enforce the performance of all acts and things required to be performed hereunder by Guarantor. Each and every remedy of Landlord shall, to the extent permitted by law, be non-exclusive and cumulative and shall be in addition to any other remedy given hereunder or now or hereafter existing at law or in equity.

(g) No waiver shall be deemed to have been made by Landlord of any rights hereunder unless the same shall be in writing and signed by Landlord, and any such waiver shall be a waiver only with respect to the specific matter involved and shall in no way impair the

rights of Landlord or the obligations of Guarantor to Landlord in any other respect or at any other time.

(h) At the option of Landlord, Guarantor may be joined in any action or proceeding commenced by Landlord against Tenant in connection with or based upon any other Ground Lease Documents and recovery may be had against Guarantor in such action or proceeding or in any independent action or proceeding against Guarantor to the extent of Guarantor's liability hereunder, without any requirement that Landlord first assert, prosecute or exhaust any remedy or claim against Tenant or any other Person, or any security for the obligations of Tenant or any other Person.

(i) Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if at any time any payment is made by Tenant or Guarantor to Landlord and such payment is rescinded or must otherwise be returned by Landlord (as determined by Landlord in its sole and absolute discretion) upon insolvency, bankruptcy, liquidation, reorganization, readjustment, composition, dissolution, receivership, conservatorship, winding up or other similar proceeding involving or affecting Tenant or Guarantor, all as though such payment had not been made.

(j) In the event that Guarantor shall advance or become obligated to pay any sums under this Guaranty or in connection with the Guaranteed Obligations or in the event that for any reason whatsoever Tenant or any subsequent owner of the Property or any part thereof is now, or shall hereafter become, indebted to Guarantor, Guarantor agrees that (i) the amount of such sums and of such indebtedness and all interest thereon shall at all times be subordinate as to lien, the time of payment and in all other respects to all sums, including interest and other amounts, at any time owed to Landlord under the Ground Lease Documents, and (ii) Guarantor shall not be entitled to enforce or receive payment thereof until all of the interest and other sums due pursuant to the Ground Lease Documents have been indefeasibly paid in full. Nothing herein contained is intended or shall be construed to give Guarantor any right of subrogation in or under the Ground Lease Documents or any right to participate in any way therein, or in the right, title or interest of Landlord in or to any collateral for the Ground Lease, notwithstanding any payments made by Guarantor under this Guaranty, until the expiration of ninety-one (91) days following the actual and irrevocable receipt by Landlord of indefeasible payment in full of the Total Principal, interest and other sums due with respect to the Ground Lease or otherwise payable under the Ground Lease Documents. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when any such sums due and owing to Landlord shall not have been fully and indefeasibly paid, such amount shall be paid by Guarantor to Landlord for credit and application against such sums due and owing to Landlord. In connection with the foregoing, Guarantor expressly waives, until the expiration of ninety-one (91) days following such indefeasible payment, any and all rights of subrogation to Landlord against Tenant, and Guarantor hereby waives any rights to enforce any remedy which Landlord may have against Tenant and any right to participate in any Secured Collateral.

(k) Guarantor's obligations hereunder shall survive a foreclosure, deed-in-lieu of foreclosure or similar proceeding involving the Property and the exercise by Landlord of any or all of its remedies pursuant to the Ground Lease Documents, including, without limitation, termination of the Ground Lease.

(l) Guarantor shall not have any right of recourse against Landlord by reason of any action Landlord may take or omit to take under the provisions of this Guaranty or under the provisions of any of the Ground Lease Documents.

(m) Guarantor agrees that it shall be collaterally estopped from contesting, and shall be bound conclusively in any subsequent action, in any jurisdiction, by the judgment in any action by Landlord against Tenant in connection with the Ground Lease Documents (wherever instituted) as if Guarantor were a party to such action even if not so joined as a party.

6. Covenants.

(a) As used in this Section 6, the following terms shall have the respective meanings set forth below:

(i) “**Net Worth**” shall mean, as of a given date, (A) Guarantor’s total assets located in the United States as of such date (exclusive of any interest in the Property) less (B) Guarantor’s total liabilities as of such date, determined in accordance with determined in accordance with GAAP consistently applied or other industry standard methods of accounting reasonable acceptable to Landlord.

(ii) “**Liquid Assets**” shall mean any of the following, but only to the extent owned individually and located in the United States: assets in the form of cash, cash equivalents, obligations of (or fully guaranteed as to principal and interest by) the United States or any agency or instrumentality thereof (provided the full faith and credit of the United States supports such obligation or guarantee), certificates of deposit issued by a commercial bank having net assets of not less than \$500 million, securities listed and traded on a recognized stock exchange or traded over the counter and listed in the National Association of Securities Dealers Automatic Quotations, or liquid debt instruments that have a readily ascertainable value and are regularly traded in a recognized financial market.

(b) Guarantor shall not permit his Net Worth, at any time, to be less than \$80,000,000.00.

(c) Guarantor shall not permit his Liquid Assets, at any time, to be less than \$5,000,000.00.

(d) Guarantor shall not, at any time while a default in the payment or performance of the Guaranteed Obligations has occurred and is continuing, either (i) enter into or effectuate any transaction with any Affiliate which would reduce the Net Worth of Guarantor or (ii) sell, pledge, mortgage or otherwise transfer to any Person any of Guarantor’s assets, or any interest therein for less than reasonably equivalent value.

(e) Guarantor shall give prompt notice to Landlord of any litigation or governmental proceedings pending or threatened against Guarantor which might materially adversely affect Guarantor’s condition (financial or otherwise) or business (including Guarantor’s ability to perform the Guaranteed Obligations hereunder or under the other Ground Lease Documents to which it is a party).

(f) Guarantor will use its good faith and commercially reasonable efforts to comply with the Patriot Act and all applicable requirements of Governmental Authorities having jurisdiction over Guarantor, including those relating to money laundering and terrorism.

(g) Guarantor shall, at Guarantor's sole cost and expense:

(i) cure any defects in the execution and delivery of the Ground Lease Documents to which Guarantor is a party and execute and deliver, or cause to be executed and delivered, to Landlord such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to correct any omissions in the Ground Lease Documents to which Guarantor is a party, as Landlord may reasonably require; and

(ii) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of this Guaranty and the other Ground Lease Documents to which Guarantor is a party, as Landlord may reasonably require from time to time.

7. Entire Agreement/Amendments. This instrument represents the entire agreement between the parties with respect to the subject matter hereof. The terms of this Guaranty shall not be waived, altered, modified, amended, supplemented or terminated in any manner whatsoever except by written instrument signed by Landlord and Guarantor.

8. Successors and Assigns. This Guaranty shall be binding upon Guarantor, and Guarantor's estate, heirs, personal representatives, successors and assigns, may not be assigned or delegated by Guarantor and shall inure to the benefit of Landlord and its successors and assigns.

9. Governing Law.

(a) THIS GUARANTY WAS NEGOTIATED IN THE STATE OF NEW YORK AND THE PROCEEDS OF THE IMPROVEMENT ALLOWANCE PURSUANT TO THE GROUND LEASE WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS GUARANTY AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, GUARANTOR HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS GUARANTY AND THE GROUND LEASE, AND THIS GUARANTY AND THE GROUND LEASE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO § 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LANDLORD OR GUARANTOR ARISING OUT OF OR RELATING TO THIS GUARANTY SHALL BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN NEW YORK COUNTY, NEW YORK AND GUARANTOR WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND GUARANTOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. NOTWITHSTANDING THE FOREGOING, LANDLORD SHALL HAVE THE RIGHT TO INSTITUTE ANY LEGAL SUIT, ACTION OR PROCEEDING FOR THE ENFORCEMENT OF THIS GUARANTY OR ANY COLLATERAL THEREFOR IN ANY FEDERAL OR STATE COURT IN ANY JURISDICTION(S) THAT LANDLORD MAY ELECT IN ITS SOLE AND ABSOLUTE DISCRETION, AND GUARANTOR WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND GUARANTOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING.

10. Section Headings. The headings of the sections and paragraphs of this Guaranty have been inserted for convenience of reference only and shall in no way define, modify, limit or amplify any of the terms or provisions hereof.

11. Severability. Any provision of this Guaranty which may be determined by any competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, Guarantor hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

12. WAIVER OF TRIAL BY JURY. GUARANTOR HEREBY WAIVES THE RIGHT OF TRIAL BY JURY IN ANY LITIGATION, ACTION OR PROCEEDING ARISING HEREUNDER OR IN CONNECTION THEREWITH.

13. Other Guaranties. The obligations of Guarantor hereunder are separate and distinct from, and in addition to (and shall not be limited by), the obligations of Guarantor now or hereafter arising under any other guaranties, including the Project Guaranties (collectively, the “*Other Guaranties*”), indemnification agreements or other agreements to which Guarantor is now or hereafter becomes a party. Landlord’s enforcement hereof, and receipt of any amounts hereunder with respect to the Guaranteed Obligations, shall not be limited by (a) any recovery of Landlord under any of the Other Guaranties, (b) the receipt by Landlord of any amounts paid by Tenant or any other Person (other than a payment by Guarantor of a claim expressly made by Landlord pursuant to this Guaranty) to Landlord with respect to the Ground Lease, or (c) any recovery of Landlord under any of the other Ground Lease Documents or any realization by Landlord on any collateral for the Ground Lease, provided that, notwithstanding anything to the contrary contained herein, if there are any “Guaranteed Obligations” hereunder that are also “Guaranteed Obligations” under any of the Other Guaranties, Landlord may only collect such “Guaranteed Obligations” once, although Landlord may elect in its sole discretion whether to collect such “Guaranteed Obligations” under this Guaranty or under such Other Guaranty.

14. Notices. All notices, consents, approvals and requests required or permitted hereunder (a “**Notice**”) shall be given in writing and shall be effective for all purposes if either hand delivered with receipt acknowledged, or by a nationally recognized overnight delivery service (such as Federal Express), or by certified or registered United States mail, return receipt requested, postage prepaid, or by electronic mail (with a copy delivered by one of the other methods provided for in this Section), in each case addressed as follows (or to such other address or Person as a party shall designate from time to time by notice to the other party):

If to Landlord: c/o MSP Capital Investments, L.L.C.
Woodlawn Hall at Old Parkland
3953 Maple Ave., Suite 350
Dallas, Texas 75219
Attention: Luke Pak
Email: pak@mspcm.com

With a copy to: c/o MSP Capital Investments, L.L.C.
Woodlawn Hall at Old Parkland
3953 Maple Ave., Suite 350
Dallas, Texas 75219
Attention: Max Lamont
Email: lamont@mspcm.com

And with a copy to: Duval & Stachenfeld LLP
555 Madison Avenue, 6th Floor
New York, New York 10022
Attention: Danielle Ash, Esq. and File Manager
Email: dash@dsllp.com
File No. 4308.0008

If to Guarantor: Jacob Schwimmer
80 Middleton Street
Brooklyn, New York 11206

with a copy to: Jeffrey Zwick & Associates, P.C.
266 Broadway, Suite 403
Brooklyn, NY 11211
Attention: Jeffrey Zwick, Esq.
Email: jeffrey@jzlegal.com

A notice shall be deemed to have been given: (i) in the case of hand delivery, at the time of delivery; (ii) in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; (iii) in the case of overnight delivery, upon the first attempted delivery on a Business Day; or (iv) in the case of electronic mail, upon the date of receipt.

15. Guarantor's Receipt of the Ground Lease Documents. Guarantor by its execution hereof acknowledges receipt of true copies of all of the Ground Lease Documents, the terms and conditions of which are hereby incorporated herein by reference.

16. Interest; Expenses.

(a) If Guarantor fails to pay all or any sums due hereunder upon demand by Landlord, the amount of such sums payable by Guarantor to Landlord shall bear interest from the date of demand until paid at the Default Rate in effect from time to time.

(b) Guarantor hereby agrees to pay all costs, charges and expenses, including reasonable attorneys' fees and disbursements that may be incurred by Landlord in enforcing the covenants, agreements, obligations and liabilities of Guarantor under this Guaranty.

17. Change in Residency. Guarantor hereby represents and warrants that Guarantor is a resident of the country of the United States and that Guarantor's primary domicile is in the country of United States. Guarantor shall not change Guarantor's State of residence and/or primary domicile to a State that is a community property jurisdiction unless (i) Guarantor first (A) provides Landlord at least ten (10) Business Days prior written notice thereof and (B) if Guarantor is married at the time, causes Guarantor's spouse to execute and deliver to Landlord a spousal consent with respect to this Guaranty (which spousal consent shall be in form and substance satisfactory to Landlord) (a "*Spousal Consent*") and (ii) if Guarantor is not married at the time and subsequently marries, or if Guarantor enters into a new marriage, at any time when Guarantor is a resident (and/or has a primary domicile) in a community property jurisdiction, Guarantor causes his spouse to execute and deliver to Landlord a Spousal Consent within ten (10) days after the occurrence of any such marriage. Guarantor's failure to comply with any of the foregoing shall, at Landlord's option, constitute an "Event of Default" hereunder and under the Ground Lease.

18. Joint and Several Obligations. If Guarantor consists of more than one Person, each such Person shall have joint and several liability for the obligations of Guarantor hereunder.

19. Gender; Number; General Definitions. All references to sections and schedules are to sections and schedules in or to this Guaranty unless otherwise specified. All uses of the word "including" or "include" or similar words shall mean "including, without limitation" unless the context shall indicate otherwise. Unless otherwise specified, the words "hereof," "herein" and "hereunder" and words of similar import when used in this Guaranty shall refer to this Guaranty as a whole and not to any particular provision of this Guaranty. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined. The phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all reasonable attorneys', paralegal and law clerk fees and disbursements, including fees and disbursements at the pre-trial, trial and appellate levels, incurred or paid by Landlord in protecting its interest in the Property and/or in enforcing its rights hereunder.

20. COMMERCIAL WAIVER. GUARANTOR ACKNOWLEDGES THAT THE TRANSACTIONS TO WHICH THIS GUARANTY RELATES ARE COMMERCIAL TRANSACTIONS. GUARANTOR HEREBY VOLUNTARILY AND KNOWINGLY WAIVES HIS RIGHTS TO NOTICE AND HEARING UNDER ANY NEW YORK STATUTES, AS AMENDED AND IN EFFECT ON THE EFFECTIVE DATE, OR AS OTHERWISE ALLOWED BY ANY STATE OR FEDERAL LAW WITH RESPECT TO ANY PREJUDGMENT REMEDY OR OTHER RIGHT OR REMEDY THAT LANDLORD MAY ELECT TO USE OR OF WHICH IT MAY AVAIL ITSELF. GUARANTOR FURTHER WAIVES, TO THE GREATEST EXTENT PERMITTED BY LAW, THE BENEFITS OF ALL PRESENT AND FUTURE VALUATION, APPRAISEMENT, EXEMPTION, STAY, REDEMPTION AND MORATORIUM LAWS.

21. CPLR Section 3213. Guarantor acknowledges and agrees that this Guaranty is, and is intended to be, an instrument for the payment of money only, as such phrase is used in Section 3213 of the New York Civil Practice Law and Rules, and Guarantor has been fully advised by its counsel of Landlord's rights and remedies pursuant to said Section 3213.

22. Landlord Transferees; Secondary Market Activities; No Transfer by Guarantor. Guarantor acknowledges and agrees that Landlord, without notice to Guarantor or any Guarantor's prior consent, may assign all or any portion of its rights hereunder in connection with any transfer or assignment of the Ground Lease or servicing rights related to the Ground Lease, each grant of participations in the Ground Lease, or a contract for the servicing of the Ground Lease; provided, however, that only Landlord shall be entitled to exercise Landlord's rights and remedies hereunder. Guarantor irrevocably waives all rights it may have under applicable law, if any, to prohibit the disclosure of any information Landlord may have in connection with the Ground Lease or any Affiliate of Tenant, including, without limitation, any right of privacy. No Guarantor may assign any of its rights, powers, duties and obligations hereunder, or substitute another Person in lieu of itself as an obligor hereunder.

23. WAIVERS. GUARANTOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM, AND HEREBY WAIVES ANY CLAIM, AGAINST LANDLORD OR ANY OTHER PERSON INDEMNIFIED UNDER THIS GUARANTY ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES. GUARANTOR EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY LANDLORD PURSUANT TO THIS GUARANTY OR ANY OF THE GROUND LEASE DOCUMENTS, ANY AND EVERY RIGHT IT MAY HAVE TO (A) INTERPOSE ANY COUNTERCLAIM THEREIN UNLESS UNDER THE APPLICABLE RULES OF COURT SUCH COUNTERCLAIM MUST BE ASSERTED IN SUCH PROCEEDING, OR (B) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING UNLESS UNDER THE APPLICABLE RULES OF COURT SUCH SUIT, ACTION OR PROCEEDING MUST BE CONSOLIDATED WITH THE PROCEEDING BROUGHT BY LANDLORD.

24. RELEASE. GUARANTOR HEREBY ACKNOWLEDGES AND AGREES THAT AS OF THE EFFECTIVE DATE IT HAS NO DEFENSE, COUNTERCLAIM, OFFSET, CROSS-COMPLAINT, CLAIM OR DEMAND OF ANY

KIND OR NATURE WHATSOEVER THAT CAN BE ASSERTED TO REDUCE OR ELIMINATE ALL OR ANY PART OF ITS LIABILITY TO REPAY THE GUARANTEED OBLIGATIONS OR TO SEEK AFFIRMATIVE RELIEF OR DAMAGES OF ANY KIND OR NATURE FROM LANDLORD. TO THE EXTENT PERMITTED BY APPLICABLE LAW, GUARANTOR HEREBY VOLUNTARILY AND KNOWINGLY RELEASES AND FOREVER DISCHARGES LANDLORD AND EACH OF ITS PREDECESSORS, AGENTS, EMPLOYEES, AFFILIATES, ATTORNEYS, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE “RELEASED PARTIES”) FROM ALL CLAIMS WHATSOEVER, WHETHER KNOWN OR UNKNOWN, ANTICIPATED OR UNANTICIPATED, SUSPECTED OR UNSUSPECTED, FIXED, CONTINGENT OR CONDITIONAL, OR AT LAW OR IN EQUITY, IN ANY CASE ORIGINATING IN WHOLE OR IN PART ON OR BEFORE THE DATE THIS GUARANTY IS EXECUTED THAT GUARANTOR MAY NOW OR HEREAFTER HAVE AGAINST THE RELEASED PARTIES, IF ANY, IRRESPECTIVE OF WHETHER ANY SUCH CLAIMS ARISE OUT OF CONTRACT, TORT, VIOLATION OF LAW OR REGULATIONS, OR OTHERWISE, AND THAT ARISE FROM THE GROUND LEASE, THE EXERCISE OF ANY RIGHTS AND REMEDIES UNDER THIS GUARANTY OR ANY OF THE OTHER GROUND LEASE DOCUMENTS, AND/OR THE NEGOTIATION FOR AND EXECUTION OF THIS GUARANTY, INCLUDING ANY CONTRACTING FOR, CHARGING, TAKING, RESERVING, COLLECTING OR RECEIVING INTEREST IN EXCESS OF THE HIGHEST LAWFUL RATE APPLICABLE. GUARANTOR ACKNOWLEDGES THAT THE FOREGOING RELEASE IS A MATERIAL INDUCEMENT TO LANDLORD’S DECISION TO EXTEND TO TENANT THE FINANCIAL ACCOMMODATIONS UNDER THE GROUND LEASE DOCUMENTS AND HAS BEEN RELIED UPON BY LANDLORD IN AGREEING TO ENTER INTO THE GROUND LEASE.

[NO FURTHER TEXT ON THIS PAGE]

SCHEDULE A

LEGAL DESCRIPTION

(Attached hereto)

EXHIBIT F

Example Calculations of Base Rent

[See Attached]

GROUND RENT CALCULATION - BASE RENT EXAMPLE			
Calculation		Notes	
<u>RENT ESCALATION (year 6, and every five years thereafter)</u>			
Year 1 Base Rent	\$2,000,000.00	On the first day of every fifth (5th) Lease Year, starting with the sixth (6th) Lease Year (i.e., on the sixth (6th) Lease Year, the eleventh (11th) Lease Year, the sixteenth (16th) Lease Year, and so on) (each such date, an “Adjustment Date”), the Base Rent shall increase to an amount equal to 110% of the Base Rent that was in effect for the prior Lease Year.	
Rent Escalation (every 5 years)	10.00%		
Year 6 Base Rent	\$2,200,000.00		
<u>CPI ESCALATION (year 21, and every 10 years thereafter)</u>			
Year 21 CPI Adjustment Cap	180.61%	Commencing on the first day of the twenty-first (21 st) Lease Year and continuing every ten (10) Lease Years thereafter (i.e., on the twenty-first (21 st) Lease Year, the thirty-first (31 st) Lease Year, the forty-first (41 st) Lease Year, and so on) (each such Lease Year, a “ <u>CPI Adjustment Year</u> ”), Base Rent shall increase to the greater of (x) the Base Rent in effect during the immediately preceding Lease Year, increased by the Rent Escalation or (y) (A) in the case of the first CPI Adjustment Year (i.e., the twenty-first (21 st) Lease Year), the Base Rent for the Lease Year occurring twenty (20) years prior to such Lease Year (i.e., the first (1 st) Lease Year) or, for all other CPI Adjustment Years, the Base Rent for the Lease Year occurring ten (10) years prior to such Lease Year, <i>multiplied by</i> (B) the then-applicable CPI Increase Percentage (any such increase, the “ <u>CPI Escalation</u> ”).	
Year 31 CPI Adjustment Cap	141.06%		
Example:			
Year 1 CPI	100		
Year 20 CPI	176		
CPI Increase Percentage	176.00%		
Year 1 Base Rent	\$2,000,000.00		
Year 21 Base Rent after applied CPI Increase Percentage	\$3,520,000.00		

EXHIBIT G

Form of Memorandum of Lease

Record and Return to:

Duval & Stachenfeld LLP
555 Madison Avenue, 6th Floor
New York, NY 10022
Attention: Danielle Ash, Esq.

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (this “Memorandum”), is made as of January [___], 2022, between 138 BRUCKNER GROUND LESSOR, LLC, a Delaware limited liability company (“Landlord”), having an office at c/o MSP Capital Investments, L.L.C., Woodlawn Hall at Old Parkland, 3953 Maple Ave., Suite 350, Dallas, Texas 75219, and 138 BRUCKNER REALTY LLC, a New York limited liability company (“Tenant”), having an address 199 Lee Avenue, Suite 103, Brooklyn, New York 11211.

RECITALS

WHEREAS, Landlord and Tenant have executed a certain Lease, dated as of the date hereof (the “Lease”), under which Landlord leases to Tenant that certain real property commonly known as 138 Bruckner Boulevard and 107 Saint Ann’s Avenue, Bronx, New York, and more particularly described in Exhibit A attached hereto (the “Land”);

WHEREAS, the term of the Lease is for a period beginning on the date hereof through and including [_____], 2121; and

WHEREAS, Landlord and Tenant desire to enter into this Memorandum to be recorded in order that third parties will have notice of the existence of the Lease.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and for other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, and intending to be legally bound hereby, Landlord and Tenant agree as follows:

1. Recitals Incorporated. The foregoing recitals are incorporated by reference into this Section as if set forth in the Section in full.

2. Incorporation of the Lease. The Lease is unrecorded and is herein expressly incorporated by reference for a complete statement of the rights and obligations of Landlord and Tenant with respect to the Leased Premises. Any conflict between this Memorandum and the Lease shall be governed by the terms of the Lease.

3. Release. The parties agree to promptly execute and record a release of this Memorandum of Lease at any time after the Lease expires or is terminated in accordance with its terms.

[Remainder of Page Intentionally Left Blank; Signatures Follow]

TENANT:

138 BRUCKNER REALTY LLC,
a New York limited liability company

By:_____

Name:

Title:

STATE OF _____)
)
COUNTY OF _____) SS.:

On the ____ day of _____ in the year 2022, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

Exhibit A to Form of Memorandum of Lease

Legal Description

EXHIBIT H

Permitted Encumbrances

[See Attached]

PERMITTED ENCUMBRANCES

1. Covenants, conditions, easements, leases, agreements of record, etc., more fully set forth herein.

As to Parcel 1:

A. Easement and Conditions recorded in Reel 701 Page 78; Policy affirmative insures there is no condition or right of reentry or other provision for forfeiture that the insured can be cut off, subordinated or otherwise disturbed

As to Parcel 2:

- B. \$1 Condemnation Clause recited in Reel 29 Page 318, Reel 106 Page 75, Reel 178 Page 359, Reel 179 Page 403, Reel 179 Page 413, Reel 226 Page 590, Reel 631 Page 74 and Reel 2015 Page 25; policy insures no bed of the property lies within the affected area.
- C. C&R's recorded in Liber 692 Page 250; Policy affirmative insures there is no condition or right of reentry or other provision for forfeiture that the insured can be cut off, subordinated or otherwise disturbed

2. Survey made by kaBA Surveying dated 11/11/2021 shows

As to Lot 10

One story and lower level brick with 2 story brick and no other variations or encroachments except the following:

1. Building on premises lies on southerly record line;
2. Building entrance encroaches on East 132nd Street;
3. Building on westerly record line;
4. Building encroaches 0.2' north on Bruckner Boulevard;
5. Cellar entrance encroaches 4.4' north on Bruckner Boulevard;
6. Steps encroach 1.7' north on Bruckner Boulevard;

As to Lot 19

Vacant land with asphalt pavement with no other variations or encroachments except the following:

1. Chain link fence with gate encroaches 0.7' south on East 132nd Street and lies up to 0.2' north of southerly record line;
2. Neighboring chimneys lie 0.5' south of northerly record line;
3. Chain link fence along easterly record line lies up to 0.3' West of easterly record line;
4. Concrete pavement east on St. Ann's Avenue;

3. Terms, covenants, conditions, and provisions contained in that certain [Agreement of Lease] dated as of January 13, 2022, made by and among 138 Bruckner Ground Lessor, LLC, a Delaware limited liability company as lessor, and 138 Bruckner Realty LLC, as lessee, as evidenced by that certain Memorandum of Lease made by and among 138 Bruckner Ground Lessor, LLC, a Delaware limited liability company as lessor, and 138 Bruckner Realty LLC, as lessee dated as of January 13, 2022, and to be duly recorded in the Office of the Bronx County Register of the City of New York.
4. This Policy will be issued contemporaneously with policy number O-NY0122-6412422775 of First Nationwide Title as Agent for AmTrust Financial Company. At the time liability for any loss shall have been fixed pursuant to the conditions of this policy, this Company shall not be liable to the insured for a greater portion of the loss than the amount that this policy bears to the whole amount of insurance held by the insured as aforesaid as referenced in the co-insurance endorsement.

DDOS ENTITYY

January 6, 2022 | 4:00 pm

COVID-19 Vaccines

Vaccine appointments are available at New York State mass vaccination sites for children ages 5- 11. Vaccines are also widely available through your child's pediatrician, family physician, local county health department, FQHC, or pharmacy.

FIND PROVIDER >

Department of State
Division of Corporations

Entity Information

Return to Results

Return to Search

Entity Details

ENTITY NAME:

138 BRUCKNER REALTY LLC

FOREIGN LEGAL NAME:

ENTITY TYPE:

DOMESTIC LIMITED LIABILITY COMPANY

SECTION OF LAW:

LIMITED LIABILITY COMPANY LAW - 203 LIMITED LIABILITY COMPANY LAW - LIMITED LIABILITY COMPANY LAW

DATE OF INITIAL DOS FILING:

07/16/2021

EFFECTIVE DATE INITIAL FILING:

07/16/2021

FOREIGN FORMATION DATE:

COUNTY:

Kings

JURISDICTION:

New York, United States

DOS ID:

6221160

FICTITIOUS NAME:

DURATION DATE/LATEST DATE OF DISSOLUTION:

ENTITY STATUS:

Active

REASON FOR STATUS:

INACTIVE DATE:

STATEMENT STATUS:

CURRENT

NEXT STATEMENT DUE DATE:

07/31/2023

NFP CATEGORY:

ENTITY DISPLAY

NAME HISTORY

FILING HISTORY

MERGER HISTORY

ASSUMED NAME HISTORY

Service of Process Name and Address

Name: 138 BRUCKNER REALTY LLC

Address: 199 LEE AVENUE, SUITE 1088, BROOKLYN, NY, United States, 11211

Chief Executive Officer's Name and Address

Name:

Address:

Principal Executive Office Name and Address

Name:

Address:

Registered Agent Name and Address

Name:

Address:

Entity Primary Location Name and Address

Name:

Address:

Farmcorpflag

Is The Entity A Farm Corporation: No

Stock Information

Share Value	Number Of Shares	Value Per Share
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VOLUNTEER STATUS STATEMENT

Brownfield Cleanup Program Amendment #1
138 Bruckner Boulevard
BCP Site C203127

Volunteer Status Statement:

The prospective Brownfield Cleanup Agreement (BCA) Holder qualifies as a “Volunteer” in the Brownfield Cleanup Program because it has no connection with any prior owner or operator and therefore, did not cause, contribute, or permit the disposal of any contaminants at the Site, and did not control the Site when such contamination occurred. The prospective BCA Holder did not observe and is not aware of any continuing release; upon taking a leasehold interest in the Site. The prospective BCA Holder will take the necessary steps to secure the property and prevent any threatened future release, and prevent and limit human, environmental or natural resource exposure to any previously released contamination at the Site. As such, the requestor qualifies as a Volunteer as designed in ECL 27-1405(1)(b).

OPERATING AGREEMENTS

OPERATING AGREEMENT

OF

138 BRUCKNER JS LLC

This Operating Agreement (this “Agreement”) of 138 BRUCKNER JS LLC (the “Company”) is entered into as of December __ 2021 by Jacob Schwimmer (the “Member”), as the sole member of the Company.

Pursuant to and in accordance with the Limited Liability Company Law of the State of New York, as amended from time to time (the “Act”), the Member hereby states as follows:

1. Name. The name of the limited liability company shall be 138 BRUCKNER JS LLC.
2. Office. The principal office of the Company is 199 Lee Avenue, Suite1088, Brooklyn, NY 11211 or such other place or places as the Member shall determine.
3. Term. The term of the Company shall commence as of the date of filing of the Articles of Organization of the Company with the Department of State of the State of New York and the Company shall be dissolved and its affairs wound up as provided in said Articles, in this Agreement or as otherwise provided in said Articles, in this Agreement or as otherwise provided in the Act.
4. Purpose. The Company is a single purpose entity formed for the purpose of owning one hundred percent (100%) of the membership interests in 138 Bruckner Realty LLC (the “Borrower”) together with any and all activities necessary or incidental to the foregoing, and Borrower holds a leasehold interest in that certain property located at 138 Bruckner Blvd, Bronx, NY (the “Property”).
5. Members. The name and the mailing address of the Member is as follows:

<u>Name</u>	<u>Address</u>	<u>Interest</u>
Jacob Schwimmer	80 Middleton Street, Brooklyn, New York	100%

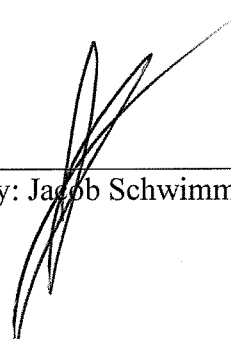
The Member is authorized to admit additional Members and/or create different classes of Members, unless otherwise provided by the provisions of the Construction Loan Documents (“Loan Documents”), between S3 RE 138 Bruckner Funding LLC, as Lender (“Lender”) and Borrower, and/or that certain Ground Lease (“Ground Lease”), between 138 Bruckner Ground Lessor LLC, as Landlord (“Landlord”), and Borrower as Tenant (“Tenant”).

6. Management Powers. The business and affairs of the Company shall be managed by Jacob Schwimmer (sometimes herein referred to as the “Manager”). The Manager is authorized to execute any and all documents on behalf of the Company necessary or appropriate in connection with the acquisition, financing, operation, management or development of the business and any property of the Company.
7. Capital Contributions. The initial capitalization of the Company shall consist of \$100 contributed by the Member.

8. Additional Contributions. The Member is not required to make any additional capital contribution to the Company, provided however, that additional capital contribution may be made at such time and in such amounts as the Member shall determine.
9. Allocation of Profits and Losses. The Company's profits and losses shall be allocated 100% to the Member.
10. Distributions. Distributions shall be made to the Member at the times and in the aggregate amounts determined by the Managing Member and in accordance with the same percentages as profits and losses are allocated.
11. Assignments. The Member may assign or transfer in whole or in part his interest in the Company, unless otherwise provided by the provisions of the Loan Documents and/or the Ground Lease.
12. Withdrawal of a Members; Termination of the Company. So long as they are the only members, the Members may withdraw from the Company, provided that such withdrawal from the Company shall result in the constructive termination of the Company, unless otherwise provided by the provisions of the Loan Documents and/or the Ground Lease. If there is more than one member, then no members shall be permitted to withdraw from the Company or demand a return or payment of his capital contribution.
13. Admission of Additional Members. The Member may cause the Company to admit one or more additional members to the Company, unless otherwise provided by the provisions of the Loan Documents and/or the Ground Lease.
14. Liability of Members. The Member shall not have any liability for the obligation or liabilities of the Company except to the extent provided in the Act.
15. Governing Law. This Agreement shall be governed by, and constructed under, the laws of the State of New York, all rights and remedies being governed by said laws.
16. Pledge. Notwithstanding anything contained herein to the contrary and for so long as those certain building and project loans (as the same may be modified, amended, consolidated or extended, collectively, the "Total Loan") made by S3 RE 138 Brucker Funding LLC, a Delaware limited liability company (together with its successors and assigns, "Lender") and further secured by the pledge (the "Pledge") of 100% of the limited liability interests in Borrower is outstanding, the Company explicitly permits the Pledge, the foreclosure on the Pledge by the holder thereof, and that upon such foreclosure, the pledgee shall be admitted as a Member of the Borrower.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the undersigned, intending to be legally bonded hereby has duly executed this Operating Agreement.



By: Jacob Schwimmer

OPERATING AGREEMENT

OF

138 BRUCKNER REALTY LLC

This Operating Agreement (this “Agreement”) of 138 BRUCKNER REALTY LLC (the “Company”) is entered into as of January __ 2022 by 138 Bruckner JS LLC (the “Member”), as the member of the Company, and C. Anthony Shippam, a natural person, in his capacity as Independent Manager.

Pursuant to and in accordance with the Limited Liability Company Law of the State of New York, as amended from time to time (the “Act”), the Member hereby states as follows:

1. Name. The name of the limited liability company shall be 138 Bruckner Realty LLC.
2. Office. The principal office of the Company is 199 Lee Avenue, Suite 1088, Brooklyn, NY 11211 or such other place or places as the Member shall determine.
3. Term. The term of the Company shall commence as of the date of filing of the Articles of Organization of the Company with the Department of State of the State of New York and the Company shall be dissolved and its affairs wound up as provided in said Articles, in this Agreement or as otherwise provided in said Articles, in this Agreement or as otherwise provided in the Act.
4. Purpose. The Company is a single purpose entity formed for the purpose of owning, leasing, ground leasing, being the ground tenant of, operating and managing real property and improvements located or to be located at 138 Bruckner Blvd and 107 Saint Ann’s Avenue, Bronx, NY (the “Property”) and any and all activities necessary or incidental to the foregoing.
5. Members.

- (a) Member. The name and the mailing address of the Member is as follows:

<u>Name</u>	<u>Address</u>	<u>Interest</u>
138 Bruckner JS LLC	199 Lee Avenue, Suite 1088, Brooklyn, NY	100%

(b) Springing Member. Upon the occurrence of any event that causes the Member to cease to be a member of the Company (other than upon continuation of the Company without dissolution upon (i) an assignment by the Member of all of its limited liability company interest in the Company and the admission of the transferee pursuant to this Agreement and the Loan Documents, or (ii) the resignation of the Member and the admission of an additional member of the Company pursuant to this Agreement and the Loan Documents) (a “Member Cessation Event”), the Independent Manager pursuant to Section 18 shall, without any action of any Person, and simultaneously with the Member Cessation Event, automatically be admitted to the Company as a Springing Member, and shall continue the Company without dissolution. The Springing Member may not resign from the Company or transfer her rights as Springing Member unless (i) a successor Springing Member has been admitted to the Company as Springing Member by executing a counterpart to this Agreement and (ii) such successor has also accepted his, her or its appointment

as a Springing Member; provided, however, the Springing Member shall automatically cease to be a member of the Company upon the admission to the Company of a substitute Member. The Springing Member shall be a member of the Company that has no interest in the profits, losses and capital of the Company and has no right to receive any distributions of Company assets. Pursuant to Section 18-301 of the Act, the Springing Member shall not be required to make any capital contributions to the Company and shall not receive a limited liability company interest in the Company. The Springing Member, in his, her or its capacity as Springing Member, may not bind the Company. Except as required by any mandatory provision of the Act, the Springing Member, in his, her or its capacity as Springing Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating, to, the Company, including, without limitation, the merger, consolidation or conversion of the Company. In order to implement the admission to the Company of the Springing Member, each Person acting as Independent Manager pursuant to Section 18 shall execute a counterpart to this Agreement. Prior to his, her or its admission to the Company as Springing Member, a Person acting as Independent Manager pursuant to Section 18 shall not be a member of the Company.

6. Management Powers. The business and affairs of the Company shall be managed by Jacob Schwimmer (sometimes herein referred to as the “Manager”). The Manager is authorized to execute any and all documents on behalf of the Company necessary or appropriate in connection with the acquisition, financing, operation, management or development of the business and any property of the Company.

7. Capital Contributions. The initial capitalization of the Company shall consist of \$100 contributed by the Member.

8. Additional Contributions. The Member is not required to make any additional capital contribution to the Company, provided however, that additional capital contribution may be made at such time and in such amounts as the Member shall determine.

9. Allocation of Profits and Losses. The Company’s profits and losses shall be allocated 100% to the Member.

10. Distributions. Distributions shall be made to the Member at the times and in the aggregate amounts determined by the Managing Member and in accordance with the same percentages as profits and losses are allocated.

11. Assignments. The Member may assign or transfer in whole or in part his interest in the Company, unless otherwise provided by the provisions of the Construction Loan Documents (“Loan Documents”), between S3 RE 138 Bruckner Funding LLC, as Lender (“Lender”) and the Company as Borrower (“Borrower”) and/or that certain Ground Lease (“Ground Lease”), between 138 Bruckner Ground Lessor LLC, as Landlord (“Landlord”), and Company as Tenant (“Tenant”).

12. Withdrawal of a Members; Termination of the Company. So long as they are the only members, the Members may withdraw from the Company, provided that such withdrawal from the Company shall result in the constructive termination of the Company, unless otherwise provided by the provisions of the Loan Documents and/or the Ground Lease. If there is more than one member, then no members shall be permitted to withdraw from the Company or demand a return or payment of his capital contribution.

13. Admission of Additional Members. The Member may cause the Company to admit one or more additional members to the Company. The Member is authorized to admit additional Members and/or create different classes of Members, unless otherwise provided by the provisions of the Loan Documents and/or the Ground Lease.

14. Liability of Members. The Member shall not have any liability for the obligation or liabilities of the Company except to the extent provided in the Act.

15. Governing Law. This Agreement shall be governed by, and constructed under, the laws of the State of New York, all rights and remedies being governed by said laws.

16. Lender Provisions.

(a) Special Purpose Bankruptcy Remote Entity. Notwithstanding anything contained herein to the contrary and for so long as those certain leasehold mortgage loans (as the same may be modified, amended, consolidated or extended, collectively, the "Total Loan") made by S3 RE 138 Bruckner Funding LLC, a Delaware limited liability company (together with its successors and assigns, "Lender") to the Company and secured by leasehold mortgages on the Property is outstanding, the Company shall comply with certain provisions in order to qualify the Company as a Special Purpose Bankruptcy Remote Entity. A "Special Purpose Bankruptcy Remote Entity" shall mean a corporation, limited partnership or limited liability company which at all times since its formation and at all times thereafter:

(i) was and will be organized solely for the purpose of owning the Property;

(ii) has not engaged and will not engage in any business unrelated to (A) the ownership of the Property, (B) acting as general partner of the limited partnership that owns the Property or (C) acting as a member of the limited liability company that owns the Property, as applicable;

(iii) has not had and will not have any assets other than those related to the Property or its partnership or member interest in the limited partnership or limited liability company that owns the Property, as applicable;

(iv) has not engaged, sought or consented to and will not engage in, seek or consent to any dissolution, division, winding up, liquidation, consolidation, merger, asset sale (except as expressly permitted by this Agreement), transfer of partnership or membership interests or the like, or amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation or operating agreement (as applicable);

(v) if such entity is a limited partnership, has and will have, as its only general partners, Special Purpose Bankruptcy Remote Entities that are corporations;

(vi) intentionally omitted;

(vii) intentionally omitted;

(viii) if such entity is a limited liability company, has and will have articles of organization, a certificate of formation and/or an operating agreement, as

applicable, providing that (A) such entity will dissolve only upon the bankruptcy of the managing member, (B) the vote of a majority-in-interest of the remaining members is sufficient to continue the life of the limited liability company in the event of such bankruptcy of the managing member and (C) if the vote of a majority-in-interest of the remaining members to continue the life of the limited liability company following the bankruptcy of the managing member is not obtained, the limited liability company may not liquidate the Property without the consent of the Lender for as long as the Total Loan is outstanding;

(ix) has not, and without the unanimous consent of all of its partners, directors or members, as applicable, will not, with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest (A) file a bankruptcy, insolvency or reorganization petition or otherwise institute insolvency proceedings or otherwise seek any relief under any laws relating to the relief from debts or the protection of debtors generally, (B) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for such entity or for all or any portion of such entity's properties, (C) make any assignment for the benefit of such entity's creditors or (D) take any action that might cause such entity to become insolvent;

(x) has remained and intends to remain solvent and has maintained and intends to maintain adequate capital in light of its contemplated business operations;

(xi) has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;

(xii) has maintained and will maintain its accounts, books and records separate from any other Person and will file its own Tax returns;

(xiii) has maintained and will maintain its books, records, resolutions and agreements as official records;

(xiv) has not commingled and will not commingle its funds or assets with those of any other Person;

(xv) has held and will hold its assets in its own name;

(xvi) has conducted and will conduct its business in its name;

(xvii) has maintained and will maintain its financial statements, accounting records and other entity documents separate from any other Person;

(xviii) has paid and will pay its own liabilities, including the salaries of its own employees, out of its own funds and assets;

(xix) has observed and will observe all partnership, corporate or limited liability company formalities, as applicable;

(xx) has maintained and will maintain an arm's-length relationship with its Affiliates;

(xxi) (a) if such entity owns the Property, has not and will not have any indebtedness other than Permitted Indebtedness, or (b) if such entity acts as the general partner of a limited partnership which owns the Property, has not and will not have any indebtedness other than unsecured trade payables in the ordinary course of business relating to acting as general partner of the limited partnership which owns the Property which (1) do not exceed, at any time, \$10,000 and (2) are paid within thirty (30) days of the date incurred, or (c) if such entity acts as a managing member of a limited liability company which owns the Property, has and will have no indebtedness other than unsecured trade payables in the ordinary course of business relating to acting as a member of the limited liability company which owns the Property which (1) do not exceed, at any time, \$10,000 and (2) are paid within sixty (60) days of the date incurred;

(xxii) has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except for the Total Loan;

(xxiii) has not and will not acquire obligations or securities of its partners, members or shareholders;

(xxiv) has allocated and will allocate fairly and reasonably shared expenses, including shared office space, and uses separate stationery, invoices and checks;

(xxv) except in connection with the Total Loan, has not pledged and will not pledge its assets for the benefit of any other Person;

(xxvi) has held itself out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name and not as a division or part of any other Person;

(xxvii) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(xxviii) has not made and will not make loans to any Person;

(xxix) has not identified and will not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it;

(xxx) has not entered into or been a party to, and will not enter into or be a party to, any transaction with its partners, members, shareholders or Affiliates except in the ordinary course of its business and on terms which are intrinsically fair and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party;

(xxxi) has and will have no obligation to indemnify its partners, officers, directors, or members, as the case may be, or has such an obligation that is fully subordinated to the Total Debt and will not constitute a claim against it if cash flow in excess of the amount required to pay the Total Debt is insufficient to pay such obligation;

(xxxii) has and will have an express acknowledgment in its organizational documents that Lender is an intended third-party beneficiary of the “special purpose” provisions of such organizational documents; and

(xxxiii) will consider the interests of its creditors in connection with all corporate, partnership or limited liability company actions, as applicable.

(b) Indemnification. Any indemnification shall be fully subordinated to any obligations respecting the Property and shall not constitute a claim against the Company in the event that cash flow is insufficient to pay such obligations.

(c) Dissolution. The vote of a majority-in-interest of the remaining members is sufficient to continue the life of the Company. If such vote is not obtained, for so long as the Total Loan is outstanding, the Company shall not liquidate the collateral without first obtaining approval of the Lender. Lender may continue to exercise all of its rights under the Loan Documents until the Debt has been paid in full or otherwise completely discharged.

(d) Voting. When acting on matters subject to the vote of the Members, notwithstanding that the Company is not then insolvent, all of the Members shall take into account the interest of the company’s creditors, as well as those of the Members.

(e) Pledge. Notwithstanding anything contained herein to the contrary and for so long as the Total Loan made by Lender to the Company and further secured by the pledge (the “Pledge”) of 100% of the limited liability interests in the Company is outstanding, the Company and Member explicitly permit the Pledge, the foreclosure on the Pledge by the holder thereof, and that upon such foreclosure, the pledgee shall be admitted as a Member of the Company.

17. Definitions. All capitalized terms used and not defined herein shall have the respective meanings given such terms in the Loan Documents. “Loan Documents” shall mean all documents now or hereafter governing, evidencing or securing the Total Loan, as the same may be amended from time to time, including that certain Building Loan Agreement, dated as of January __, 2022, between the Company and Lender.

18. Independent Managers.

(a) Each person identified herein as an Independent Manager is hereby designated and hereby agrees to serve as an Independent Manager of the Company in conformity with the provisions of this Section 18 as long as the Total Loan is outstanding, or until his or her successor as an Independent Manager is designated and shall become an Independent Manager of the Company.

(b) As long as the Total Loan is outstanding, the Member and Manager shall cause the Company at all times to have at least one (1) Independent Manager. The Independent Manager will be appointed by the Member; or in the event a vacancy in the position of an Independent Manager occurs at a time when there is no Member other than a Special Member, the successor Independent Manager will then be appointed by the Manager. To the fullest extent permitted by law, including Section 18-1101(c) of the Act, the Independent Manager shall consider only the interests of the Company, including its creditors, in acting or otherwise voting on the matters referred to in Section 16(d). Except for duties to the Company as set forth in the

immediately preceding sentence (including duties to the Member and the Company's creditors solely to the extent of their respective economic interests in the Company but excluding (i) all other interests of the Member, (ii) the interests of other Affiliates of the Company, and (iii) the interests of any group of Affiliates of which the Company is a part), the Independent Manager shall not have any fiduciary duties to the Member or any other Person bound by this Agreement; provided, however, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing. No resignation or removal of an Independent Manager, and no appointment of a successor Independent Manager, shall be effective until such successor shall have accepted his or her appointment as an Independent Manager by executing a counterpart to this Agreement. In the event of a vacancy in the position of an Independent Manager, the Member (or the Manager if applicable) shall, as soon as practicable, appoint a successor Independent Manager. All right, power and authority of the Independent Manager shall be limited to the extent necessary to exercise those rights and perform those duties specifically set forth in this Agreement. No Independent Manager shall at any time serve as trustee in bankruptcy for any Affiliate of the Company. Upon the dissolution, withdrawal or other event that causes the Independent Manager to cease to be a manager of the Company, a new manager of the Company shall be appointed and such appointment must meet the Rating Agency Condition. Each Independent Manager is hereby designated as a "manager" of the Company within the meaning of 18-101(10) of the Act solely for the purpose of exercising an Independent Manager's limited rights set forth in this Agreement.

(c) Notwithstanding anything to the contrary contained in this Agreement, no Independent Manager shall be removed or replaced without Cause and unless the Company provides the Lender with no less than three (3) business days' prior written notice of (a) any proposed removal of such Independent Manager and (b) the identity of the proposed replacement Independent Manager, together with a certification that such replacement satisfies the requirements for an Independent Manager set forth in this Agreement. As used herein, the term "Cause" means, with respect to an Independent Manager, (i) acts or omissions by such Independent Manager that constitute willful disregard of, or gross negligence with respect to such Independent Manager's duties, (ii) such Independent Managers have engaged in or has been charged with or has been indicted or convicted for any crime or crimes of fraud or other acts constituting a crime under any law applicable to such Independent Manager, (iii) such Independent Manager has breached its fiduciary duties of loyalty and care as and to the extent of such duties in accordance with the terms of the Company's organizational documents, (iv) there is a material increase in the fees charged by such Independent Manager or a material change to such Independent Manager's terms of service, (v) such Independent Manager is unable to perform his or her duties as an Independent Manager due to death, disability or incapacity, or (vi) such Person no longer meets the criteria provided in the definition of Independent Manager.

19. LLC Interests

(a) Article 8 Opt-In. Each limited liability company interest in the Company (an "LLC Interest") shall constitute and shall remain a "security" within the meaning of, and governed by, (i) Article 8 of the Uniform Commercial Code as in effect from time to time in the State of York, and (ii) Article 8 of the Uniform Commercial Code of any other applicable jurisdiction that now or hereafter substantially includes the 1994 revisions to Article 8 thereof as adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association on February 14, 1995, and the Company hereby "opts in" to such provisions for the purpose of the Uniform Commercial Code in each of the foregoing states. The Company shall maintain books for the purpose of registering the transfer of LLC Interests. Notwithstanding any provision of this Agreement to the contrary, to

the extent that any provision of this Agreement is inconsistent with any non-waivable provision of Article 8 of the Uniform Commercial Code as in effect in the State of New York (the “UCC”), such provision of Article 8 of the UCC shall control. So long as any pledge of any limited liability company interest is in effect, this Section 8 shall not be amended and any purported amendment to this provision shall not take effect and shall be null and void until all outstanding LLC Interest Certificates (as defined below) have been surrendered for cancellation. In addition to the foregoing, Member hereby specifically acknowledges that so long as any pledge of any limited liability company interest is in effect, Member has given to the pledgee thereunder its irrevocable proxy, to vote, to amend, or to approve or consent to any amendments to this Agreement that would have the effect of “opting” into Article 8 of the Uniform Commercial Code of any State or to otherwise have the interests in the Company be certificated and/or constitute “certificated securities” as defined in the Uniform Commercial Code as in effect from time to time in any State.

(b) LLC Interest Certificates. Upon the effectiveness of this Agreement and the issuance of any additional limited liability company interest in the Company in accordance with the provisions of this Agreement, without any further act, vote or approval of any Member, the Company shall issue one or more non-negotiable certificates in the name of the Members, substantially in the form of Exhibit A hereto (a “LLC Interest Certificate”). Such LLC Interest Certificate shall be denominated in terms of the percentage of LLC Interests evidenced by such LLC Interest Certificate and shall be signed by the Member on behalf of the Company. The LLC Interest Certificate shall bear, in effect, the following legend: “Each limited liability company interest in the Company represented by this certificate evidences an interest in the Company and shall constitute a “security” within the meaning of, and governed by, (i) Article 8 of the Uniform Commercial Code as in effect from time to time in the State of New York and (ii) Article 8 of the Uniform Commercial Code of any other applicable jurisdiction that now or hereafter substantially includes the 1994 revisions to Article 8 thereof as adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association on February 14, 1995 (and each limited liability company interest in the Company shall be treated as such a “security” for all such purposes, including, without limitation perfection of the security interest therein under Articles 8 and 9 of each applicable Uniform Commercial Code as the Company has “opted-in” to such provisions).”

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the undersigned, intending to be legally bonded hereby has duly executed this Operating Agreement.

MEMBER:

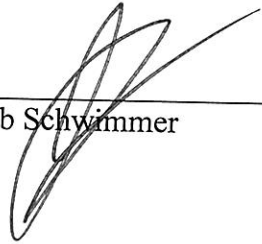
138 Bruckner JS LLC

By: 

Name: Jacob Schwimmer

Title: Managing Member

MANAGER:



Jacob Schwimmer

INDEPENDENT MANAGER

By: _____

IN WITNESS WHEREOF, the undersigned, intending to be legally bonded hereby has duly executed this Operating Agreement.

MEMBER:

138 Bruckner JS LLC

By: _____

Name: Jacob Schwimmer

Title: Managing Member

MANAGER:

Jacob Schwimmer

INDEPENDENT MANAGER



By: C. Anthony Shippam

**CERTIFICATE FOR MEMBERSHIP INTERESTS IN
138 BRUCKNER REALTY LLC**

THIS CERTIFICATE HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER THE SECURITIES ACT OF 1933 OR UNDER THE SECURITIES OR BLUE SKY LAWS OF ANY STATE. THE HOLDER OF THIS CERTIFICATE, BY ITS ACCEPTANCE HEREOF, REPRESENTS THAT IT IS ACQUIRING THIS SECURITY FOR INVESTMENT AND NOT WITH A VIEW TO ANY SALE OR DISTRIBUTION HEREOF. ANY TRANSFER OF THIS CERTIFICATE OR ANY MEMBERSHIP INTERESTS REPRESENTED HEREBY IS SUBJECT TO THE TERMS AND CONDITIONS OF THE LIMITED LIABILITY COMPANY AGREEMENT (AS DEFINED BELOW).

Certificate Number 001

100% Percentage Interest

138 Bruckner Realty LLC, a New York limited liability company (the "Company"), hereby certifies that 138 Bruckner JS LLC, a New York limited liability company (together with any assignee of this Certificate, the "Holder") is the registered owner of one hundred percent (100%) of the membership interests in the Company. The rights, powers, preferences, restrictions and limitations of the membership interests in the Company are set forth in, and this Certificate and the membership interests in the Company represented hereby are issued and shall in all respects be subject to the terms and provisions of, the Operating Agreement dated January __, 2022, as the same may be further amended or restated from time to time (the "Limited Liability Company Agreement"). By acceptance of this Certificate, and as a condition to being entitled to any rights and/or benefits with respect to the membership interests evidenced hereby, the Holder is deemed to have agreed to comply with and be bound by all the terms and conditions of the Limited Liability Company Agreement. The Company will furnish a copy of the Limited Liability Company Agreement to the Holder without charge upon written request to the Company at its principal place of business. Transfer of any or all of the membership interests in the Company evidenced by this Certificate is subject to certain restrictions in the Limited Liability Company Agreement and can be effected only after compliance with all of those restrictions and the presentation to the Company of the Certificate, accompanied by an assignment in the form appearing on the reverse side of this Certificate, duly completed and executed by and on behalf of the transferor in such Transfer, and an application for transfer in the form appearing on the reverse side of this Certificate, duly completed and executed by and on behalf of the transferee in such Transfer.

Each membership interests in the Company shall constitute a "security" within the meaning of (i) Section 8-102(a)(15) of the Uniform Commercial Code as in effect from time to time in the State of New York and (ii) the Uniform Commercial Code of any other applicable jurisdiction that now or hereafter substantially includes the 1994 revisions to Article 8 thereof as adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association on February 14, 1995 (and each membership interests in the Company shall be treated as such a "security" for all purposes, including, without limitation perfection of the security interest therein under Article 8 of each applicable Uniform Commercial Code).

THE MEMBERSHIP INTERESTS EVIDENCED HEREBY ARE SUBJECT TO AN IRREVOCABLE PROXY AGREEMENT (A COPY OF WHICH MAY BE OBTAINED FROM THE ISSUER) AND BY ACCEPTING ANY INTEREST IN SUCH MEMBERSHIP INTERESTS THE PERSON HOLDING SUCH INTEREST SHALL BE DEEMED TO AGREE TO AND SHALL BECOME BOUND BY ALL THE PROVISIONS OF SAID AGREEMENT.

This Certificate and the membership interests evidenced hereby shall be governed by and construed in accordance with the laws of the State of New York without regard to principles of conflicts of laws.

IN WITNESS WHEREOF, the Company has caused this Certificate to be executed as of the date set forth below.

138 BRUCKNER REALTY LLC,
a New York limited liability company

Dated: _____

By: _____

Name: Jacob Schwimmer
Title: Manager

(REVERSE SIDE OF CERTIFICATE)

ASSIGNMENT OF INTEREST

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto _____
(print or typewrite name of transferee), _____ (insert Social Security or other taxpayer
identification number of transferee), the following specified percentage of membership interests in the Company: one
hundred percent (100%) effective as of the date specified in the Application for Transfer of Interests below, and
irrevocably constitutes and appoints _____ and its authorized officers, as attorney-in-fact,
to transfer the same on the books and records of the Company, with full power of substitution in the premises.

Dated: _____

Transferor:

138 BRUCKNER JS LLC,
a New York limited liability company

By: _____
Name: Jacob Schwimmer
Title: Managing Member

APPLICATION FOR TRANSFER OF INTERESTS

The undersigned applicant (the "Applicant") hereby (a) applies for a transfer of the percentage of membership interests in the Company described above (the "Transfer") and applies to be admitted to the Company as a substitute member of the Company, (b) agrees to comply with and be bound by all of the terms and provisions of the Limited Liability Company Agreement, (c) represents that the Transfer complies with the terms and conditions of the Limited Liability Company Agreement, (d) represents that the Transfer does not violate any applicable laws and regulations, and (e) agrees to execute and acknowledge such instruments (including, without limitation, a counterpart of the Limited Liability Company Agreement), in form and substance satisfactory to the Company, as the Company reasonably deems necessary or desirable to effect the Applicant's admission to the Company as a substitute member of the Company and to confirm the agreement of the Applicant to be bound by all the terms and provisions of the Limited Liability Company Agreement with respect to the membership interests in the Company described above. Initially capitalized terms used herein and not otherwise defined herein are used as defined in the Limited Liability Company Agreement. The Applicant directs that the foregoing Transfer and the Applicant's admission to the Company as a Substitute Member shall be effective as of _____.

(Transferee Signature)

Dated: _____

Name of Transferee (Print)

Address: _____

The Company has determined (a) that the Transfer described above is permitted by the Limited Liability Company Agreement, (b) hereby agrees to effect such Transfer and the admission of the Applicant as a substitute member of the Company effective as of the date and time directed above, and (c) agrees to record, as promptly as possible, in the books and records of the Company the admission of the Applicant as a substitute member.

Dated: _____

138 BRUCKNER REALTY LLC,
a New York limited liability company

By: _____
Name: Jacob Schwimmer
Title: Manager

PROOF OF ACCESS

**138 Bruckner Realty LLC
199 Lee Avenue, Suite #1088
Brooklyn, NY 11211**

24 January 2022

138 Bruckner Ground Lessor LLC
Woodlawn hall at Old Parkland
3953 Maple Avenue, Suite 350
Dallas, TX 75219

RE: Site Access to Perform Brownfield Cleanup Program Work
138 Bruckner Boulevard, Bronx, NY 10454
Bronx County Block 2260, Lot 10

Dear Sir or Madam:

As you are aware, 138 Bruckner Realty LLC will be submitting an amendment to the Brownfield Cleanup Agreement (BCA) for the property located at 138 Bruckner Boulevard, Bronx, NY 10454 (Tax Block 2260, Lot 10), Brownfield Cleanup Program (BCP) Site C203127, which is currently owned by your company. As the BCP applicant, we are required to seek access to the property from the current property owner as requirement in the BCP. In order to file the amendment, we need written permission from you to access the property throughout the BCP Project and to place an environmental easement on the property should one be necessary. By execution of the site access agreement letter, you are hereby confirming that 138 Bruckner Realty LLC has been granted site access for this purpose.

Sincerely,

138 Bruckner Realty LLC

By: 

As the site owner, I hereby confirm that 138 Bruckner Realty LLC, and its contractors have been granted permission to access 138 Bruckner Boulevard, Bronx, New York 10454 (Block 2260, Lot 10), which is currently owned by 138 Bruckner Ground Lessor LLC, to perform the required BCP investigation, remediation work and/or place an environmental easement on the property should one be necessary.

138 Bruckner Ground Lessor LLC

By: 