

**260 WEST 126<sup>TH</sup> STREET**

**NEW YORK, NEW YORK**

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# **Brownfield Cleanup Program Application**

**Submitted to:**

New York State Department of Environmental Conservation

Division of Environmental Remediation

Site Control Section

625 Broadway, 11<sup>th</sup> Floor

Albany, NY 12233-7020

**Prepared for:**

S & F 126 ST. LLC

320 Roebling Street, Suite 749

Brooklyn, NY 11211

**Prepared by:**



121 West 27<sup>th</sup> Street, Suite 303

New York, NY 10001

[mahmed@tenen-env.com](mailto:mahmed@tenen-env.com)

(646) 606-2332

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**September 2025**

260 West 126<sup>th</sup> Street

Brownfield Cleanup Program Application

Table of Contents

Brownfield Cleanup Program Application	Page 3
Supplemental and Supporting Information	Page 32
Exhibit A – Site Drawings	Page 42
Exhibit B – Data Summary Tables	Page 49
Exhibit C – Data Drawings	Page 53
Exhibit D – Environmental Reports (Submitted as Standalone PDFs)	Page 57
Exhibit E – NYS Department of State Registration	Page 58
Exhibit F – Lease Agreement and Access Agreement	Page 61
Exhibit G – Site Contact List and Repository Confirmation	Page 196



**SUBMITTAL INSTRUCTIONS:**

1. Compile the application package in the following manner:
  - a. one file in non-fillable PDF which includes a Table of Contents, the application form, and supplemental information (excluding the previous environmental reports and work plans, if applicable);
  - b. one individual file (PDF) of each previous environmental report; and,
  - c. one file (PDF) of each work plan being submitted with the application, if applicable.
2. \*OPTIONAL: Compress all files (PDFs) into one zipped/compressed folder
3. Submit the application to the Site Control Section either via NYSDEC dropbox or ground mail, as described below.

**Please select only ONE submittal method – do NOT submit both via dropbox and ground mail.**

a. VIA SITE CONTROL DROPBOX:

- [Request an invitation](#) to upload files to the Site Control submittal dropbox.
- In the “Title” field, please include the following: “New BCP Application - *Proposed Site Name*”.
- After uploading files, an automated email will be sent to the submitter’s email address with a link to verify the status of the submission. Please do not send a separate email to confirm receipt.
- Application packages submitted through third-party file transfer services will not be accepted.

b. VIA GROUND MAIL:

- Save the application file(s) and cover letter to an external storage device (e.g., thumb drive, flash drive). Do NOT include paper copies of the application or attachments.
- Mail the external storage device to the following address:  
Chief, Site Control Section  
Division of Environmental Remediation  
625 Broadway, 12<sup>th</sup> Floor  
Albany, NY 12233-7020

**SITE NAME:** 260 West 126th Street

**Is this an application to amend an existing BCA with a major modification?** Please refer to the application instructions for further guidance related to BCA amendments.

If yes, provide existing site number: \_\_\_\_\_

☐

Yes

☒

No

**Is this a revised submission of an incomplete application?**

If yes, provide existing site number: C231164

☒

Yes

☐

No



**BROWNFIELD CLEANUP PROGRAM (BCP)  
APPLICATION FORM**

BCP App Rev 16.1 – March 2025

**SECTION I: Property Information**

PROPOSED SITE NAME **260 West 126th Street**

ADDRESS/LOCATION **260 West 126th Street**

CITY/TOWN **Manhattan**

ZIP CODE **10027**

MUNICIPALITY (LIST ALL IF MORE THAN ONE) **Manhattan**

COUNTY **New York**

SITE SIZE (ACRES) **0.287**

LATITUDE

LONGITUDE

40° 48' 37.10" 73° 57' 0.28"

Provide tax map information for all tax parcels included within the proposed site boundary below. If a portion of any lot is to be included, please indicate as such by inserting "p/o" in front of the lot number in the appropriate box below, and only include the acreage for that portion of the tax parcel in the corresponding acreage column.

**ATTACH REQUIRED TAX MAPS PER THE APPLICATION INSTRUCTIONS.**

Parcel Address	Section	Block	Lot	Acreage
260 West 126th Street	1	1931	56	0.287

1. Do the proposed site boundaries correspond to tax map metes and bounds? If no, please attach an accurate map of the proposed site including a metes and bounds description.	<input checked="" type="radio"/> Y	<input type="radio"/> N
2. Is the required property map, provided in electronic format, included with the application? (Application will not be processed without a map)	<input checked="" type="radio"/> Y	<input type="radio"/> N
3. Is the property within a designated Environmental Zone (En-zone) pursuant to Tax Law 21(b)(6)? (See <a href="#">DEC's website</a> for more information) If yes, identify census tract: 222 Percentage of property in En-zone (check one): <input type="radio"/> 0% <input type="radio"/> 1-49% <input type="radio"/> 50-99% <input checked="" type="radio"/> 100%	<input checked="" type="radio"/> Y	<input type="radio"/> N
4. Is the project located within a disadvantaged community? See application instructions for additional information.	<input checked="" type="radio"/> Y	<input type="radio"/> N
5. Is the project located within a NYS Department of State (NYS DOS) Brownfield Opportunity Area (BOA)? See application instructions for additional information.	<input type="radio"/> Y	<input checked="" type="radio"/> N
6. Is this application one of multiple applications for a large development project, where the development spans more than 25 acres (see additional criteria in application instructions)? If yes, identify names of properties and site numbers, if available, in related BCP applications:	<input type="radio"/> Y	<input checked="" type="radio"/> N



SECTION I: Property Information (continued)		Y	N
7. Is the contamination from groundwater or soil vapor solely emanating from property other than the site subject to the present application?		<input type="radio"/>	<input checked="" type="radio"/>
8. Has the property previously been remediated pursuant to Titles 9, 13 or 14 of ECL Article 27, Title 5 of ECL Article 56, or Article 12 of Navigation Law? If yes, attach relevant supporting documentation.		<input type="radio"/>	<input checked="" type="radio"/>
9. Are there any lands under water? If yes, these lands should be clearly delineated on the site map.		<input type="radio"/>	<input checked="" type="radio"/>
10. Has the property been the subject of or included in a previous BCP application? If yes, please provide the DEC site number: _____		<input type="radio"/>	<input checked="" type="radio"/>
11. Is the site currently listed on the Registry of Inactive Hazardous Waste Disposal Sites (Class 2, 3, or 4) or identified as a Potential Site (Class P)? If yes, please provide the DEC site number: _____ Class: _____		<input type="radio"/>	<input checked="" type="radio"/>
12. Are there any easements or existing rights-of-way that would preclude remediation in these areas? If yes, identify each here and attach appropriate information.  <div style="display: flex; justify-content: space-between;"> <div><u>Easement/Right-of-Way Holder</u></div> <div><u>Description</u></div> </div>		<input type="radio"/>	<input checked="" type="radio"/>
13. List of permits issued by the DEC or USEPA relating to the proposed site (describe below or attach appropriate information):  <div style="display: flex; justify-content: space-between;"> <div><u>Type</u></div> <div><u>Issuing Agency</u></div> <div><u>Description</u></div> </div>		<input type="radio"/>	<input checked="" type="radio"/>
14. Property Description and Environmental Assessment – please refer to the application instructions for the proper format of each narrative requested. Are the Property Description and Environmental Assessment narratives included in the prescribed format?		<input checked="" type="radio"/>	<input type="radio"/>
<b>Note: Questions 15 through 17 below pertain ONLY to proposed sites located within the five counties comprising New York City.</b>			
15. Is the Requestor seeking a determination that the site is eligible for tangible property tax credits? If yes, Requestor must answer the Supplemental Questions for Sites Seeking Tangible Property Credits Located in New York City ONLY on pages 11-13 of this form.		<input checked="" type="radio"/>	<input type="radio"/>
16. Is the Requestor now, or will the Requestor in the future, seek a determination that the property is Upside Down?		<input type="radio"/>	<input checked="" type="radio"/>
17. If you have answered YES to Question 16 above, is an independent appraisal of the value of the property, as of the date of application, prepared under the hypothetical condition that the property is not contaminated, included with the application?		<input type="radio"/>	<input type="radio"/>
<b>NOTE:</b> If a tangible property tax credit determination is not being requested at the time of application, the applicant may seek this determination at any time before issuance of a Certificate of Completion by using the BCP Amendment Application, except for sites seeking eligibility under the underutilized category.			
<b>If any changes to Section I are required prior to application approval, a new page, initialed by each Requestor, must be submitted with the application revisions.</b> <b>Initials of each Requestor:</b> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div>_____</div> <div>_____</div> <div>_____</div> <div>_____</div> <div>_____</div> <div>_____</div> </div>			

## SECTION II: Project Description

1. The project will be starting at: ☒ Investigation ☐ Remediation

If the project is proposed to start at the remediation stage, at a minimum, a Remedial Investigation Report (RIR) must be included, resulting in a 30-day public comment period. If an Alternatives Analysis and Remedial Action Work Plan (RAWP) are also included (see [DER-10, Technical Guidance for Site Investigation and Remediation](#) for further guidance), then a 45-day public comment period is required.

2. If a final RIR is included, does it meet the requirements in ECL Article 27-1415(2)?

☐ Yes ☐ No ☒ N/A

3. Have any draft work plans been submitted with the application (select all that apply)?

☒ RIWP ☐ RAWP ☐ IRM ☐ No

4. Please provide a short description of the overall project development, including the date that the remedial program is to begin, and the date by which a Certificate of Completion is expected to be issued.

Is this information attached? ☒ Yes ☐ No

Beginning January 1, 2024, all work plans and reports submitted for the BCP shall address Green and Sustainable Remediation (GSR) and DER-31 (see [DER-31, Green Remediation](#)). Work plans, reports and design documents will need to be certified in accordance with DER-31.

5. Please provide a description of how Green and Sustainable Remediation will be evaluated and incorporated throughout the remedial phases of the project including Remedial Investigation, Remedial Design/Remedial Action, and Site Management and reporting efforts.

Is this information attached? ☒ Yes ☐ No

6. If the project is proposed to start at the remediation stage (Section 2, Item 1, above), a climate change screening or vulnerability assessment must have been completed. Is this attached?

☐ Yes ☐ No

## SECTION III: Ecological Concerns

- |   | Y                                | N                                |
|---|----------------------------------|----------------------------------|
| 1. Are there fish, wildlife, or ecological resources within a ½-mile radius of the site?  | <input type="radio"/>            | <input checked="" type="radio"/> |
| 2. Is there a potential path for contamination to potentially impact fish, wildlife or ecological resources?  | <input type="radio"/>            | <input checked="" type="radio"/> |
| 3. Is/are there a/any Contaminant(s) of Ecological Concern?   | <input type="radio"/>            | <input checked="" type="radio"/> |
| If any of the conditions above exist, a Fish and Wildlife Resources Impact Analysis (FWRIA) Part I, as outlined in DER-10 Section 3.10.1, is required. The applicant may submit the FWRIA with the application or as part of the Remedial Investigation Report. |                                  |                                  |
| 4. Is a Fish and Wildlife Resources Impact Analysis Part I included with this application?  | <input checked="" type="radio"/> | <input type="radio"/>            |








N/A ☒

**SECTION IV: Land Use Factors**

1. What is the property's current municipal zoning designation? <u>C4-4D</u>		
2. What uses are allowed by the property's current zoning (select all that apply)? Residential <input checked="" type="checkbox"/> Commercial <input checked="" type="checkbox"/> Industrial <input type="checkbox"/>		
3. Current use (select all that apply): Residential <input type="checkbox"/> Commercial <input type="checkbox"/> Industrial <input type="checkbox"/> Recreational <input type="checkbox"/> Vacant <input checked="" type="checkbox"/>		
4. Please provide a summary of current business operations or uses, with an emphasis on identifying possible contaminant source areas. If operations or uses have ceased, provide the date by which the site became vacant. Is this summary included with the application?	Y <input checked="" type="radio"/>	N <input type="radio"/>
5. Reasonably anticipated post-remediation use (check all that apply): Residential <input checked="" type="checkbox"/> Commercial <input checked="" type="checkbox"/> Industrial <input type="checkbox"/>  If residential, does it qualify as single-family housing? N/A <input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
6. Please provide a statement detailing the specific proposed post-remediation use. Is this summary attached?	<input checked="" type="radio"/>	<input type="radio"/>
7. Is the proposed post-remediation use a renewable energy facility? See application instructions for additional information.	<input type="radio"/>	<input checked="" type="radio"/>
8. Do current and/or recent development patterns support the proposed use?	<input checked="" type="radio"/>	<input type="radio"/>
9. Is the proposed use consistent with applicable zoning laws/maps? Please provide a brief explanation. Include additional documentation if necessary.	<input checked="" type="radio"/>	<input type="radio"/>
10. Is the proposed use consistent with applicable comprehensive community master plans, local waterfront revitalization plans, or other adopted land use plans? Please provide a brief explanation. Include additional documentation if necessary.	<input checked="" type="radio"/>	<input type="radio"/>

**SECTION V: Current and Historical Property Owner and Operator Information**

CURRENT OWNER Thomas Memorial Wesleyan Methodist Church, Inc.		
CONTACT NAME Margaret Edwards		
ADDRESS 260-270 West 126th Street		
CITY New York	STATE NY	ZIP CODE 10027
PHONE 212-493-7088	EMAIL magsed@verizon.net	
OWNERSHIP START DATE Unknown		
CURRENT OPERATORS S & F 126 ST. LLC		
CONTACT NAME Usher Goldman		
ADDRESS 320 Roebling Street, Suite 749		
CITY Brooklyn	STATE NY	ZIP CODE 11211
PHONE 646-256-2188	EMAIL ushi@heartfeltbuilders.com	
OPERATION START DATE 6/24/2023		

## SECTION VI: Property's Environmental History

All applications **must include** an Investigation Report (per ECL 27-1407(1)). The report must be sufficient to establish that contamination of environmental media exists on the site above applicable Standards, Criteria and Guidance (SCGs) based on the reasonably anticipated use of the site property and that the site requires remediation. To the extent that existing information/studies/reports are available to the requestor, please attach the following (***please submit information requested in this section in electronic format ONLY***):

1. **Reports:** an example of an Investigation Report is a Phase II Environmental Site Assessment report prepared in accordance with the latest American Society for Testing and Materials standard ([ASTM E1903](#)). **Please submit a separate electronic copy of each report in Portable Document Format (PDF). Please do NOT submit paper copies of ANY supporting documents.**
2. **SAMPLING DATA:** Indicate (by selecting the options below) known contaminants and the media which are known to have been affected. Data summary tables should be included as an attachment, with laboratory reports referenced and included.

CONTAMINANT CATEGORY	SOIL	GROUNDWATER	SOIL GAS
Petroleum	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Chlorinated Solvents	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other VOCs	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
SVOCs	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Metals	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pesticides	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PCBs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PFAS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1,4-dioxane	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other – indicated below	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

\*Please describe other known contaminants and the media affected:

3. For each impacted medium above, include a site drawing indicating:

- Sample location
- Date of sampling event
- Key contaminants and concentration detected
- For soil, highlight exceedances of reasonably anticipated use
- For groundwater, highlight exceedances of 6 NYCRR part 703.5
- For soil gas/soil vapor/indoor air, refer to the NYS Department of Health matrix and highlight exceedances that require mitigation

These drawings are to be representative of all data being relied upon to determine if the site requires remediation under the BCP. Drawings should be no larger than 11"x17" and should only be provided electronically. These drawings should be prepared in accordance with any guidance provided.

Are the required drawings included with this application?

☒ YES

☐ NO

4. Indicate Past Land Uses (check all that apply):

<input type="checkbox"/> Coal Gas Manufacturing	<input type="checkbox"/> Manufacturing	<input type="checkbox"/> Agricultural Co-Op	<input type="checkbox"/> Dry Cleaner
<input type="checkbox"/> Salvage Yard	<input type="checkbox"/> Bulk Plant	<input type="checkbox"/> Pipeline	<input type="checkbox"/> Service Station
<input type="checkbox"/> Landfill	<input type="checkbox"/> Tannery	<input type="checkbox"/> Electroplating	<input type="checkbox"/> Unknown

Other: Residential, lumber storage, religious (church)

SECTION VII: Requestor Information					
NAME S & F 126 ST. LLC					
ADDRESS 320 Roebling Street, Suite 749					
CITY/TOWN Brooklyn		STATE NY	ZIP CODE 11211		
PHONE 646-256-2188		EMAIL ushi@heartfeltbuilders.com			
				Y	N
1. Is the requestor authorized to conduct business in New York State (NYS)?				<input checked="" type="radio"/>	<input type="radio"/>
2. If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS DOS to conduct business in NYS, the requestor's name must appear, exactly as given above, in the <a href="#">NYS Department of State's Corporation &amp; Business Entity Database</a> . A print-out of entity information from the database must be submitted with this application to document that the requestor is authorized to conduct business in NYS. Is this attached?				<input checked="" type="radio"/>	<input type="radio"/>
3. If the requestor is an LLC, a list of the names of the members/owners is required on a separate attachment. Is this attached? N/A <input type="radio"/>				<input checked="" type="radio"/>	<input type="radio"/>
4. Individuals that will be certifying BCP documents, as well as their employers, must meet the requirements of Section 1.5 of <a href="#">DER-10: Technical Guidance for Site Investigation and Remediation</a> and Article 145 of New York State Education Law. Do all individuals that will be certifying documents meet these requirements? <b>Documents that are not properly certified will not be approved under the BCP.</b>				<input checked="" type="radio"/>	<input type="radio"/>

SECTION VIII: Requestor Contact Information				
REQUESTOR'S REPRESENTATIVE Usher Goldman				
ADDRESS 320 Roebling Street, Suite 749				
CITY Brooklyn		STATE NY	ZIP CODE 11211	
PHONE 646-256-2188		EMAIL ushi@heartfeltbuilders.com		
REQUESTOR'S CONSULTANT (CONTACT NAME) Mohamed Ahmed, Ph.D., PG, CPG				
COMPANY Tenen Environmental, LLC				
ADDRESS 121 West 27th Street, Suite 303				
CITY New York		STATE NY	ZIP CODE 10001	
PHONE 646-606-2332		EMAIL mahmed@tenen-env.com		
REQUESTOR'S ATTORNEY (CONTACT NAME) Michael Bogin				
COMPANY Sive, Paget, & Riesel, PC				
ADDRESS 560 Lexington Avenue, 15th Floor				
CITY New York		STATE NY	ZIP CODE 10022	
PHONE 646-378-7210		EMAIL mbogin@sprlaw.com		

**SECTION IX: Program Fee**

Upon submission of an executed Brownfield Cleanup Agreement to the Department, the requestor is required to pay a non-refundable program fee of \$50,000. Requestors may apply for a fee waiver with supporting documentation.

	Y	N
1. Is the requestor applying for a fee waiver?	<input type="radio"/>	<input checked="" type="radio"/>
2. If yes, appropriate documentation must be provided with the application. See application instructions for additional information.		
Is the appropriate documentation included with this application?	N/A <input checked="" type="radio"/>	<input type="radio"/>

**SECTION X: Requestor Eligibility**

If answering "yes" to any of the following questions, please provide appropriate explanation and/or documentation as an attachment.

	Y	N
1. Are any enforcement actions pending against the requestor regarding this site?	<input type="radio"/>	<input checked="" type="radio"/>
2. Is the requestor subject to an existing order for the investigation, removal or remediation of contamination at the site?	<input type="radio"/>	<input checked="" type="radio"/>
3. Is the requestor subject to an outstanding claim by the Spill Fund for this site? Any questions regarding whether a party is subject to a spill claim should be discussed with the Spill Fund Administrator.	<input type="radio"/>	<input checked="" type="radio"/>
4. Has the requestor been determined in an administrative, civil or criminal proceeding to be in violation of (i) any provision of the ECL Article 27; (ii) any order or determination; (iii) any regulation implementing Title 14; or (iv) any similar statute or regulation of the State or Federal government?	<input type="radio"/>	<input checked="" type="radio"/>
5. Has the requestor previously been denied entry to the BCP? If so, please provide the site name, address, assigned DEC site number, the reason for denial, and any other relevant information regarding the denied application.	<input type="radio"/>	<input checked="" type="radio"/>
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?	<input type="radio"/>	<input checked="" type="radio"/>
7. Has the requestor been convicted of a criminal offence (i) involving the handling, storing, treating, disposing or transporting of contaminants; or (ii) that involved 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?	<input type="radio"/>	<input checked="" type="radio"/>
8. Has the requestor knowingly falsified statements or concealed material facts in any matter within the jurisdiction of DEC, or submitted a false statement or made use of a false statement in connection with any document or application submitted to DEC?	<input type="radio"/>	<input checked="" type="radio"/>
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?	<input type="radio"/>	<input checked="" type="radio"/>
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?	<input type="radio"/>	<input checked="" type="radio"/>
11. Are there any unregistered bulk storage tanks on-site which require registration?	<input type="radio"/>	<input checked="" type="radio"/>



**SECTION X: Requestor Eligibility (continued)**

12. The requestor must certify that he/she/they is/are 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 hazardous waste or discharge of petroleum, 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 hazardous waste or discharge of petroleum.

☐**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 selecting this option, 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; and, (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.**

13. If the requestor is a volunteer, is a statement describing why the requestor should be considered a volunteer attached?

☒ Yes

☐ No

☐ N/A

14. Requestor relationship to the property (check one; if multiple applicants, check all that apply):

☐ Previous Owner ☐ Current Owner ☐ Potential/Future Purchaser ☒ Other: Tenant/Operator

If the requestor is not the current owner, **proof of site access sufficient to complete remediation must be provided.** 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 environmental easement on the site.

Is this proof attached?

☒ Yes

☐ No

☐ N/A

**Note:** A purchase contract or lease agreement does not suffice as proof of site access.

## SECTION XI: Property Eligibility Information

	Y	N
1. Is/was the property, or any portion of the property, listed on the National Priorities List? If yes, please provide additional information.	<input type="radio"/>	<input checked="" type="radio"/>
2. Is/was the property, or any portion of the property, listed on the NYS Registry of Inactive Hazardous Waste Disposal Site pursuant to ECL 27-1305? If yes, please provide the DEC site number: _____ Class: _____	<input type="radio"/>	<input checked="" type="radio"/>
3. Is/was the property subject to a permit under ECL Article 27, Title 9, other than an Interim Status facility? If yes, please provide: Permit Type: _____ EPA ID Number: _____  Date Permit Issued: _____ Permit Expiration Date: _____	<input type="radio"/>	<input checked="" type="radio"/>
4. If the answer to question 2 or 3 above is <b>YES</b> , is the site owned by a volunteer as defined under ECL 27-1405(1)(b), or under contract to be transferred to a volunteer? If yes, attach any available information related to previous owners or operators of the facility or property and their financial viability, including any bankruptcy filings and corporate dissolution documents. <div style="text-align: right;">N/A <input checked="" type="radio"/></div>	<input type="radio"/>	<input type="radio"/>
5. Is the property subject to a cleanup order under Navigation Law Article 12 or ECL Article 17 Title 10? If yes, please provide the order number: _____	<input type="radio"/>	<input checked="" type="radio"/>
6. Is the property subject to a state or federal enforcement action related to hazardous waste or petroleum? If yes, please provide additional information as an attachment.	<input type="radio"/>	<input checked="" type="radio"/>

## SECTION XII: Site Contact List

To be considered complete, the application must include the Brownfield Site Contact List in accordance with *DER-23: Citizen Participation Handbook for Remedial Programs*. Please attach, at a minimum, the names and mailing addresses of the following:

- The chief executive officer and planning board chairperson of each county, city, town and village in which the property is located.
- Residents, owners, and occupants of the property and adjacent properties.
- Local news media from which the community typically obtains information.
- The public water supplier which services the area in which the property is located.
- Any person who has requested to be placed on the contact list.
- The administrator of any school or day care facility located on or near the property.
- The location of a document repository for the project (e.g., local library). **If the site is located in a city with a population of one million or more, add the appropriate community board as an additional document repository.** In addition, attach a copy of an acknowledgement from each repository indicating that it agrees to act as the document repository for the site.
- For sites located in the five counties comprising New York City, the Director of the Mayor's Office of Environmental Remediation.



**SECTION XIII: Statement of Certification and Signatures**

(By requestor who is an individual)

If this application is approved, I hereby acknowledge and agree: (1) to execute a Brownfield Cleanup Agreement (BCA) within 60 days of the date of DEC's approval letter; (2) to the general terms and conditions set forth in the DER-32, Brownfield Cleanup Program Applications and Agreements; and (3) that in the event of a conflict between the general terms and conditions of participation and terms contained in a site-specific BCA, the terms in the site-specific BCA shall control. Further, 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.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_


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

(By a requestor other than an individual)

I hereby affirm that I am **Representative** (title) of **S & F 126 ST. LLC** (entity); that I am authorized by that entity to make this application and execute a Brownfield Cleanup Agreement (BCA) and all subsequent documents; that this application was prepared by me or under my supervision and direction. If this application is approved, I hereby acknowledge and agree: (1) to execute a Brownfield Cleanup Agreement (BCA) within 60 days of the date of DEC's approval letter; (2) to the general terms and conditions set forth in the DER-32, Brownfield Cleanup Program Applications and Agreements; and (3) that in the event of a conflict between the general terms and conditions of participation and terms contained in a

site-specific BCA, the terms in the site-specific BCA shall control. Further, 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.

Date: 07/29/2025

Signature: 

Print Name: Usher Goldman

**PLEASE REFER TO THE APPLICATION COVER PAGE AND BCP APPLICATION INSTRUCTIONS FOR  
DETAILS OF PAPERLESS DIGITAL SUBMISSION REQUIREMENTS.**

**FOR SITES SEEKING TANGIBLE PROPERTY CREDITS IN NEW YORK CITY ONLY (continued)**

5. If you are seeking a formal determination as to whether your project is eligible for Tangible Property Tax Credits based in whole or in part on its status as an affordable housing project (defined below), you must attach the regulatory agreement with the appropriate housing agency (typically, these would be with the *New York City Department of Housing, Preservation and Development*; the *New York State Housing Trust Fund Corporation*; the *New York State Department of Housing and Community Renewal*; or the *New York State Housing Finance Agency*, though other entities may be acceptable pending Department review).

**Check appropriate box below:**

- ☐ Project is an Affordable Housing Project – regulatory agreement attached
- ☒ Project is planned as Affordable Housing, but agreement is not yet available
- ☐ This is not an Affordable Housing Project

**From 6 NYCRR 375-3.2(a) as of August 12, 2016:**

- (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.
- (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’ household’s annual gross income.
- (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 homeowners at a defined maximum percentage of the area median income.
- (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.

**FOR SITES SEEKING TANGIBLE PROPERTY CREDITS IN NEW YORK CITY ONLY (continued)**

6. Is the site a planned renewable energy facility site as defined below?

☐ Yes – planned renewable energy facility site with documentation

☐ Pending – planned renewable energy facility awaiting documentation

\*Selecting this option will result in a “pending” status. The appropriate documentation will need to be provided to the Department and the Brownfield Cleanup Agreement will need to be amended prior to issuance of the CoC in order for a positive determination to be made.

☒ No – not a planned renewable energy facility site

If yes, please provide any documentation available to demonstrate that the property is planned to be developed as a renewable energy facility site.

**From ECL 27-1405(33) as of April 9, 2022:**

“Renewable energy facility site” shall mean real property (a) this is used for a renewable energy system, as defined in section sixty-six-p of the public service law; or (b) any co-located system storing energy generated from such a renewable energy system prior to delivering it to the bulk transmission, sub-transmission, or distribution system.

**From Public Service Law Article 4 Section 66-p as of April 23, 2021:**

(b) “renewable energy systems” means systems that generate electricity or thermal energy through use of the following technologies: solar thermal, photovoltaics, on land and offshore wind, hydroelectric, geothermal electric, geothermal ground source heat, tidal energy, wave energy, ocean thermal, and fuel cells which do not utilize a fossil fuel resource in the process of generating electricity.

7. Is the site located within a disadvantaged community, within a designated Brownfield Opportunity Area, and plans to meet the conformance determinations pursuant to subdivision ten of section nine-hundred-seventy-r of the general municipal law?

☐ Yes - \*Selecting this option will result in a “pending” status, as a BOA conformance determination has not yet been made. Proof of conformance will need to be provided to the Department and the Brownfield Cleanup Agreement will need to be amended prior to issuance of the CoC in order for a positive determination to be made.

☒ No

**From ECL 75-0111 as of April 9, 2022:**

(5) “Disadvantaged communities” means communities that bear the burdens of negative public health effects, environmental pollution, impacts of climate change, and possess certain socioeconomic criteria, or comprise high-concentrations of low- and moderate-income households, as identified pursuant to section 75-0111 of this article.

**NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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**BROWNFIELD CLEANUP PROGRAM (BCP)  
INSTRUCTIONS FOR COMPLETING AND SUBMITTING A BCP APPLICATION**

The New York State Department of Environmental Conservation (DEC) strongly encourages all applicants to schedule a pre-application meeting with DEC staff to review the benefits, requirements, and procedures for completing a project in the BCP. Contact your [Regional Office](#) to schedule a meeting. To add a party to an existing BCP Agreement, use the [BCP Agreement Amendment Application](#).

**For further information regarding the determination of a complete application, please refer to the guidance following these instructions, as well as the [NYSDEC BCP website](#).**

**SUBMITTAL INSTRUCTIONS**

- Compile the application package in the following manner:
  - one file in non-fillable portable document format (PDF) which includes a Table of Contents, the application form, and supplemental information (excluding the previous environmental reports and work plans, if applicable);
  - one individual file (PDF) of each previous environmental report; and,
  - one file (PDF) of each work plan being submitted with the application, if applicable.
- \*OPTIONAL: Compress all files (PDFs) into one zipped/compressed folder
- Submit the application to the Site Control Section either via NYSDEC dropbox or ground mail, as described below.

**Please select only ONE submittal method - do NOT submit both via dropbox and via ground mail.**

**VIA SITE CONTROL DROPBOX:**

- Click [here](#) to request an invitation to upload files to the Site Control submittal dropbox.
- In the "Title" field, please include the following: "New BCP Application - *Proposed Site Name*".
- After uploading files, an automated email will be sent to the submitter's email address with a link to verify the status of the submission. Please do not send a separate email to confirm receipt.
- Application packages submitted through third-party file transfer services will not be accepted.

**VIA GROUND MAIL:**

- Save the application file and cover letter to an external storage device (e.g., flash drive). **DO NOT INCLUDE PAPER COPIES OF THE APPLICATION OR ATTACHMENTS.**
- Mail the external storage device to the following address:

Chief, Site Control Section  
Division of Environmental Remediation  
625 Broadway, 12th Floor  
Albany, NY 12233-7020

SECTION I: Property Information	
<b>PLEASE NOTE</b>	<b>If any changes to SECTION I are required prior to application approval, a new page 2, initialed by each requestor, must be submitted with the revisions.</b>
<b>Proposed Site Name</b>	Provide a name for the proposed site. The name could be an owner's name, current or historical operations (i.e., ABC Furniture) or the general location of the property. Consider whether the property is known by DEC by a particular name, and if so, use that name.
<b>Site Address</b>	Provide a street address, city/town, zip code, and each municipality and county in which the site is located.
<b>Site Size</b>	Provide the approximate acreage of the site.
<b>GIS Information</b>	Provide the latitude and longitude for the approximate center of the property. Show the latitude and longitude in degrees, minutes and seconds.
<b>Tax Parcel Information</b>	Provide the tax parcel address/section/block/lot information and map. Tax map information may be obtained from the tax assessor's office for all tax parcels that are included in the property boundaries. Attach a county tax map with identifier numbers, along with any figures needed to show the location and boundaries of the property. Include a USGS 7.5-minute quad map on which the property appears and clearly indicate the proposed site's location.
<b>Tax Map Boundaries</b>	State whether the boundaries of the site correspond to the tax map boundaries. If no, a metes and bounds description of the property must be attached. The site boundary can occupy less than a tax lot or encompass portions of one or more tax lots and may be larger or smaller than the overall redevelopment/ reuse project area. A site survey with metes and bounds will be required to establish the site boundaries before the Certificate of Completion can be issued.
<b>Site Map</b>	Provide a property base map(s) of sufficient detail, clarity and accuracy to show the following: (i) map scale, north arrow orientation, date, and location of the property with respect to adjacent streets and roadways; and (ii) proposed brownfield property boundary lines, with adjacent property owners clearly identified.
<b>En-zone</b>	If any part of the site is located within an En-zone, please provide a map showing the location of the site with the En-zone overlay. For information on En-zones, please see <a href="#">DEC's website</a> . Note that new En-zone boundaries are effective January 1, 2023.
<b>Disadvantaged Communities</b>	If the site is located within a Disadvantaged Community, please provide a map showing the location of the site with the Disadvantaged Community overlay. For additional information on disadvantaged communities, please refer to the <a href="#">Climate Leadership and Community Protection Act website</a> .

**SECTION I: Property Information (continued)**

<b>Brownfield Opportunity Area (BOA)</b>	If the site is located within a NYS Department of State designated Brownfield Opportunity Area, please provide a map showing the location of the site with the BOA overlay. For more information on designated BOAs, please refer to the <a href="#">NYS DOS website</a> . Additional information on BOA conformance determinations can be found at the <a href="#">Office of Planning and Development website</a> . A BOA conformance determination cannot be made until a Decision Document has been issued for the site.
<b>Multiple Applications</b>	Generally, only one application can be submitted, and one BCA executed, for a development project. In limited circumstances, the DEC may consider multiple applications/BCAs for a development project where (1) the development project spans more than 25 acres; (2) the approach does not negatively impact the remedial program, including timing, ability to appropriately address areas of concern, and management of off-site concerns; and (3) the approach is not advanced to increase the value of future tax credits (i.e., circumvent the tax credit caps provided under New York State Tax Law Section 21).
<b>Previous BCP Applications</b>	If all or part of the proposed site has been the subject of a previous BCP application (whether accepted, denied or withdrawn), please provide the assigned DEC site number from the previous application as well as any relevant information regarding why the property is not currently in the program.
<b>Registry Listing and P-site Status</b>	If all or part of the proposed site is now or ever was listed on the Registry of Inactive Hazardous Waste Disposal Sites or is currently the subject of investigation as a Potential Site, please provide the assigned DEC site number.

## SECTION I: Property Information (continued)

### Property Description Narrative

Provide a property description in the format provided below. Each section should be no more than one paragraph long.

#### Location:

Example: "The XYZ Site is located in an {urban, suburban, rural} area." {Add reference points if address is unspecific; e.g., "The site is approximately 3.5 miles east of the intersection of County Route 55 and Industrial Road."}

#### Site Features:

Example: "The main site features include several large, abandoned buildings surrounded by former parking areas and roadways. About one quarter of the site area is wooded. Little Creek passes through the northwest corner."

#### Current Zoning and Land Use: (Ensure the current zoning is identified)

Example: "The site is currently inactive and is zoned for commercial use. The surrounding parcels are currently used for a combination of commercial, light industrial, and utility rights-of-way. The nearest residential area is 0.3 miles east on Route 55."

Past Use of the Site: include source(s) of contamination and remedial measures (site characterizations, investigations, Interim Remedial Measures, etc.) completed outside of the current remedial program (e.g., work under a petroleum spill incident).

Example: "Until 1992 the site was used for manufacturing wire and wire products (e.g., conduit, insulators) and warehousing. Prior uses that appear to have led to site contamination include metal plating, machining, disposal in a one-acre landfill north of Building 7, and releases of wastewater into a series of dry wells."

When describing the investigations/actions performed outside of the remedial program, include the major chronological remedial events that lead to the site entering a remedial program. The history should include the first involvement by government to address hazardous waste/petroleum disposal. Do not cite reports. Only include remedial activities which were implemented PRIOR to the BCA. Do not describe sampling information.

#### Site Geology and Hydrogeology:

As appropriate, provide a very brief summary of the main hydrogeological features of the site including depth to water, groundwater flow direction, etc.



## SECTION I: Property Information (continued)

<b>Environmental Assessment</b>	<p>The goal of this section is to describe the nature and extent of contamination at the site. When describing the nature of contamination, identify just the primary contaminants of concern (i.e., those that will likely drive remedial decisions/actions). If there are many contaminants present within a group of contaminants (i.e., volatile organic compounds, semi-volatile organic compounds, metals), identify the group(s) and one or two representative contaminants within the group. When addressing the extent of contamination, identify the areas of concern at the site, contaminated media (i.e., soil, groundwater, etc.), relative concentration levels, and a broad-brush description of contaminated areas/depths. The reader should be able to know if contamination is widespread or limited and if concentrations are marginally or greatly above Standards, Criteria and Guidance (SCGs) for the primary contaminants. If the extent is described qualitatively (e.g., low, medium, high), representative concentrations should be given and compared with appropriate SCGs. For soil contamination, the concentrations should be compared with the soil cleanup objectives (SCOs) for the intended use of the site.</p> <p><b>A typical Environmental Assessment would look like the following:</b></p> <p>Based upon investigations conducted to date, the primary contaminants of concern for the site include cadmium and trichloroethene (TCE).</p> <p><i>Soil</i> - Cadmium is found in shallow soil, mostly near a dry well at the northeast end of the property. TCE is found in deeper soil, predominantly at the north end of the site. Concentrations of cadmium found on site (approximately 5 ppm) slightly exceed the soil cleanup objective (SCO) for unrestricted use (2.5 ppm). Concentrations of TCE found on site (5 ppm to 300 ppm) significantly exceed the soil cleanup objectives for the protection of groundwater (0.47 ppm).</p> <p><i>Groundwater</i> - TCE and its associated degradation products are also found in groundwater at the north end of the site, moderately exceeding groundwater standards (typically 5 ppb), with a maximum concentration of 1500 ppb. A moderate amount of TCE from the site has migrated 300 feet down-gradient off-site. The primary contaminant of concern for the off-site area is TCE, which is present at a maximum concentration of 500 ppb, at 10 feet below the groundwater table near Avenue A.</p> <p><i>Soil Vapor &amp; Indoor Air</i> - TCE was detected in soil vapor at elevated concentrations and was also detected in indoor air at concentrations up to 1,000 micrograms per cubic meter.</p>
<b>Questions 15-17: New York City Sites</b>	<p>These questions pertain ONLY to sites located within the five counties comprising New York City. If the requestor is seeking a determination that the site is eligible for tangible property tax credits, this section and the <i>Supplemental Questions for Sites Seeking Tangible Property Credits in New York City</i> <b>must</b> be completed.</p>

SECTION II: Project Description		
<b>Question 3: Inclusion of Work Plans</b>	If a work plan is to be released for public comment concurrently with the BCP application, <u>the work plan must be submitted at the time of application submittal</u> . Work plans submitted during the completeness review phase will require a separate public comment period and will not be released with the application.	
<b>Question 4: Post-Remediation Use and Project Schedule</b>	As a separate attachment, provide complete and detailed information about the project (remedial and post-remediation development), including the purpose of the project, the date the remedial program is to start, and the date the issuance of the Certificate of Completion is anticipated.	
<b>Questions 5-6: Green and Sustainable Remediation</b>	As a separate attachment, provide complete and detailed information about the GSR principles to be evaluated and incorporated into each phase of the project.	
	<b>Remedial Investigation/ Alternatives Analysis</b>	The description must provide information on how GSR will be incorporated into RI project planning, the proposed environmental footprint analysis tool, and how climate resiliency will be included. Potential end uses such as greenways and pollinator habitats should be considered as appropriate.
	<b>Remedial Design</b>	The description must provide information on how GSR will be incorporated into RD project planning and refine the environmental footprint analysis as the baseline to track metrics. RD documents should add or incorporate GSR techniques to ensure reduced impacts on core metrics. Climate resiliency design measures should also be incorporated.
	<b>Remedial Action</b>	The description must provide information on how GSR will be implemented into the construction and how metrics will be tracked. Methods of reporting should be included.
	<b>Site Management</b>	The description must provide information on how GSR will be incorporated into SM, including use of DEC's SM template, resource and energy consumption reduction, waste minimization, and climate resiliency evaluation within PRRs and RSOs.
	<b>Redevelopment</b>	The description must provide details of any planned renewable energy, energy efficient equipment, greenways, green roofs, community spaces and any re-use or recycling of on-site materials in redevelopment or remediation.
	<b>Climate Screening/ Climate Vulnerability Assessment</b>	The description must provide an initial Climate Screening checklist. If the screening suggests a Climate Vulnerability Assessment will be required, list additional references for the assessment.

SECTION III: Ecological Concerns
Please refer to <a href="#">DER-10</a> Section 3.10.1 for the requirements of a Fish and Wildlife Impact Assessment.

#### SECTION IV: Land Use Factors

In addition to eligibility information, site history, and environmental data/reports, the application requires information regarding the current, intended and reasonably anticipated future land use.

This information consists of responses to the “land use” factors to be considered relative to the “Land Use” section of the BCP application. The information will be used to determine the appropriate land use in conjunction with the investigation data provided, in order to establish eligibility for the site based on the definition of a “brownfield site” pursuant to ECL 27-1405(2).

This land use information will be used by DEC, in addition to all other relevant information provided, to determine whether the proposed use is consistent with the currently identified, intended and reasonably anticipated future land use of the site at this stage. Further, this land use finding is subject to information regarding contamination at the site or other information which could result in the need for a change in this determination being borne out during the remedial investigation.

<b>Zoning and Current Use</b>	Provide the current municipal zoning designation and uses permitted by that designation. Provide a summary of the current use of the site, including identifying possible contaminant source areas. If the site is no longer in use, provide the date by which operations ceased.
<b>Anticipated Use</b>	Identify the anticipated post-remediation use of the site and provide a detailed description of the specific anticipated post-remediation use as an attachment.
<b>Renewable Energy Facility Site</b>	Indicate if the post-remediation use of the site is proposed to be a renewable energy facility. A “renewable energy facility site” shall mean real property (a) this is used for a renewable energy system, as defined in section sixty-six-p of the public service law; or (b) any co-located system storing energy generated from such a renewable energy system prior to delivering it to the bulk transmission, sub-transmission, or distribution system. Section 66-p of the Public Service Law: "Renewable energy systems" means systems that generate electricity or thermal energy through use of the following technologies: solar thermal, photovoltaics, on land and offshore wind, hydroelectric, geothermal electric, geothermal ground source heat, tidal energy, wave energy, ocean thermal, and fuel cells which do not utilize a fossil fuel resource in the process of generating electricity. Provide any detailed plans or documentation to support this. Appropriate documentation must be provided as follows: for planned renewable energy facilities generating/storing less than twenty-five (25) megawatts, a local land use approval must be provided. For planned renewable energy facilities generating/storing twenty-five (25) megawatts or greater, a permit issued by the Office of Renewable Energy Siting must be provided.
<b>Compliance with Zoning Laws, Recent Development, and Community Master Plans</b>	Provide an explanation to support the responses to each of these items. Attach additional documentation if applicable.

## SECTION V: Current and Historical Property Owner and Operator Information

<b>Owner Information</b>	Provide requested information of the current owner of the property. List <u>all</u> parties holding an interest in the property and, if the requestor is not the current owner, describe the requestor's relationship to the current owner. If the property consists of multiple parcels, be sure to include the ownership start date of each.
<b>Operator Information</b>	Provide requested information of the current operator(s). If multiple operators, attach the requested information for each operator, including the date each operator began utilizing the property.
<b>Historical Owners and Operators</b>	Provide a list of previous owners and a list of previous operators, including dates of ownership or operation and last-known addresses and phone numbers. Describe the requestor's relationship to each previous owner and operator; if no relationship, indicate "none". When describing the requestor's relationship to current and historical owners and operators, include any relationship between the requestor's corporate members and the previous owners and operators.

## SECTION VI: Property's Environmental History

For all sites, an investigation report is required that is sufficient to demonstrate the site requires remediation in order to meet the requirements of the program, and that the site is a brownfield site at which contaminants are present at levels exceeding the soil cleanup objectives or other health-based or environmental standards, criteria or guidance adopted by DEC that are applicable based on the reasonably anticipated use of the property, in accordance with applicable regulations. Required data include site drawings and data summary tables requested in Section VI, #3 of the BCP application form. Specific instructions regarding the data summary tables are attached at the end of these instructions.

## SECTION VII: Requestor Information

<b>Requestor Name</b>	<p>Provide the name of the person(s)/entity requesting participation in the BCP (if more than one, attach additional sheets with requested information.) The requestor is the person or entity seeking DEC review and approval of the remedial program.</p> <p>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 in the <a href="#">NYS Department of State's Corporation &amp; Business Entity Database</a>. A print-out of entity information from the database must be submitted to DEC with the application, to document that the requestor is authorized to do business in NYS.</p>
<b>Address, etc.</b>	Provide the requestor's mailing address, telephone number and e-mail.
<b>LLC Information</b>	If the requestor(s) is/are an LLC, the names of the members/owners need to be provided on a separate attachment.

**SECTION VII: Requestor Information (continued)**

<b>Document Certification</b>	<p>All documents, which are prepared in final form for submission to DEC for approval, are to be prepared and certified in accordance with Section 1.5 of <a href="#">DER-10</a>. Persons preparing and certifying the various work plans and reports identified in Section 1.5 include:</p> <ul style="list-style-type: none"><li>• New York State licensed professional engineers (P.E.s), as defined at 6 NYCRR 375-1.2(aj) and paragraph 1.3(b)47. Engineering documents must be certified by a P.E. with current license and registration for work that was done by them or those under their direct supervision. The firm by which the P.E. is employed must also be authorized to practice engineering in New York State;</li><li>• qualified environmental professionals as defined at 6 NYCRR 375-1.2(ak) and DER-10 paragraph 1.3(b)49;</li><li>• remedial parties, as defined at 6 NYCRR 375-1.2(ao) and DER-10 paragraph 1.3(b)60; or</li><li>• site owners, which are the owners of the property comprising the site at the time of the certification.</li></ul>
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**SECTION VIII: Requestor Contact Information**

<b>Requestor's Representative</b>	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 of applicants determined to be Participants unless another contact name and address is provided with the application.
<b>Requestor's Consultant and Requestor's Attorney</b>	Provide all requested information.

**SECTION IX: Program Fee**

If the requestor is applying for a fee waiver, sufficient documentation must be provided to demonstrate the basis for such request. Depending on the basis for the fee waiver, this may be provided in the form of financial statements, not-for-profit designation paperwork, a statement waiving the requestor's right to tax credits, a statement that the project will be a 100% affordable housing project, or any other documentation that the Department may require. Some bases for the fee waiver will be memorialized in the Brownfield Cleanup Agreement, and may result in termination of the Agreement if not complied with.

If the requestor is applying for a fee waiver based on the requestor's status as a not-for-profit entity, please provide documentation of non-profit designation.

## SECTION X: Requestor Eligibility

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.

<b>Volunteer Statement</b>	If the requestor's liability arises solely as a result of ownership, operation of, or involvement with the site, and requests consideration for volunteer status, the requestor must submit a statement describing why they should be considered a volunteer. Describe in detail how the requestor's potential liability arose subsequent to the discharge of contaminants at the potential site and how the requestor took reasonable steps to (i) stop any continuing release; (ii) prevent any threatened future release; and (iii) prevent or limit human, environmental or natural resource exposure to any previously released contamination. Be specific as to the appropriate action taken, and provide information to support this, such as date of purchase, date and source of knowledge of contamination, and steps taken to protect human health and the environment from such contaminants (e.g., notification of authorities of the contamination, restricting site access, monitoring and addressing lessee conduct, preventing deterioration of site conditions, etc.).
<b>Proof of Site Access</b>	If a requestor is not the current owner of the entirety of the site, a site access agreement <b>must be provided</b> that demonstrates that the requestor will have access to the property before signing the BCA and throughout the BCP project. Additionally, the access agreement must include language allowing the requestor the ability to place an environmental easement on the site should the requestor not be the owner at the time remediation is complete and a Track 1 cleanup has not been achieved. If the requestor is the current property owner, include a copy of the deed as proof of ownership and access.

## SECTION XI: Property Eligibility Information

As a separate attachment, provide complete and detailed information in response to the following eligibility questions answered in the affirmative. It is permissible to reference specific sections of existing property reports; however, it is requested that that information be summarized.

<b>CERCLA / NPL Listing</b>	Has any portion of the property ever been listed on the National Priorities List (NPL) established under CERCLA? If so, provide relevant information.
<b>Registry Listing</b>	Has any portion of the property ever been listed on the New York State Registry of Inactive Hazardous Waste Disposal Sites established under ECL 27-1305? If so, please provide the site number and classification. See the Division of Environmental Remediation (DER) <a href="#">website</a> for a database of sites with classifications.
<b>RCRA Listing</b>	Does the property have a Resource Conservation and Recovery Act (RCRA) TSD Permit in accordance with the ECL 27-0900 et seq? If so, please provide the EPA Identification Number, the date the permit was issued, and its expiration date. Note: for purposes of this application, interim status facilities are not deemed to be subject to a RCRA permit.



**SECTION XI: Property Eligibility Information (continued)**

<b>Registry/RCRA Sites Owned by Volunteers</b>	If the answer to question 2 or 3 above is yes, is the site owned by a volunteer as defined under ECL 27- 1405(1)(b), or under contract to be transferred to a volunteer? Attach any information available to the requestor related to previous owners or operators of the facility or property and their financial viability, including any bankruptcy filing and corporate dissolution documentation.
<b>Existing Order</b>	Is the property subject to an order for cleanup under Article 12 of the Navigation Law or Article 17 Title 10 of the ECL? If so, please provide information on an attachment. Note: if the property is subject to a stipulation agreement, relevant information should be provided; however, property will not be deemed ineligible solely on the basis of the stipulation agreement.
<b>Pending Enforcement Actions</b>	Is the property subject to an enforcement action under Article 27, Titles 7 or 9 of the ECL or subject to any other ongoing state or federal enforcement action related to the contamination which is at or emanating from the property? If so, please provide information as an attachment.

**SECTION XII: Site Contact List**

Provide the names and addresses of the parties on the Site Contact List (SCL) and a letter from the repository acknowledging agreement to act as the document repository for the proposed BCP project. For sites located in a city with a population of one million or more, the appropriate community board must be included as an additional document repository, and acknowledgement of their agreement to act as such must also be provided.

For sites located in Region 2 (the five counties comprising New York City), the Site Contact List must also include the Director of the Mayor's Office of Environmental Remediation.

**SECTION XIII: Statement of Certification and Signatures**

The requestor must sign the application or designate a representative who is authorized to sign. The requestor's consultant or attorney cannot sign the application. If there are multiple parties applying, then each requestor must sign a signature page. 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 entity's name must appear exactly as given in the NYS Department of State's Corporation & Business Entity Database.

## DATA SUMMARY TABLE INSTRUCTIONS

Data summary tables should include the following columns:

Soil Table:

Analytes > SCOs <sup>a</sup>	Detections > SCOs <sup>b</sup>	Max. Detection (ppm) <sup>c</sup>	SCO (ppm) <sup>d</sup>	Depth (ft bgs)
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Groundwater Table:

Analytes > AWQS <sup>e</sup>	Detections > AWQS <sup>f</sup>	Max. Detection (ppb) <sup>c</sup>	AWQS (ppb) <sup>g</sup>
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Soil Gas Table:

Analytes <sup>h</sup>	Total Detections	Max. Detection (ug/m3) <sup>c</sup>	Type <sup>i</sup>
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<sup>a</sup> Include all contaminants over the applicable soil cleanup objectives (SCOs). Column header should specify which SCOs are being compared to. (i.e., "RRSCOs" for Restricted Residential SCOs)

<sup>b</sup> Number of detections over applicable SCOs. Specify which SCOs are being compared to in column header.

<sup>c</sup> Maximum detection in parts per million (ppm) for soil, parts per billion (ppb) for groundwater, or micrograms per cubic meter (ug/m3) for soil gas.

<sup>d</sup> List the respective SCO. Specify which SCOs are being compared to in column header.

<sup>e</sup> Include all contaminants over Class GA Ambient Water Quality Standards (AWQS).

<sup>f</sup> Number of detections over AWQS.

<sup>g</sup> List the respective AWQS.

<sup>h</sup> Include all chlorinated volatile organic compound (VOCs) detections.

<sup>i</sup> Specify type: soil vapor, sub-slab or indoor air.



## Example Data Summary Tables

**Soil Table:**

Analytes > RR SCOs	Detections > RR SCOs	Maximum Detection (ppm)	RR SCO (ppm)	Depth (ft bgs)
Benzo(a)anthracene	3	11	1	5 – 7
Benzo(a)pyrene	4	15	1	5 – 7
Benzo(b)fluoranthene	5	15	1	5 – 7
Benzo(k)fluoranthene	1	5.3	3.9	5 – 7
Indeno(1,2,3-cd)pyrene	7	8.4	0.5	5 – 7
barium	2	967	400	0.5 – 2.5
cadmium	2	94.1	4.3	6 – 8
lead	3	1,790	400	0.5 – 2.5

**Groundwater Table:**

Analytes > AWQS	Detections > AWQS	Max. Detection (ppb)	AWQS (ppb)
Benz(a)anthracene	2	0.2	0.002
Benzo(a)pyrene	2	0.221	ND
Benzo(b)fluoranthene	2	0.179	0.002
Benzo(k)fluoranthene	2	0.189	0.002
Indeno(1,2,3-cd)pyrene	2	0.158	0.002
Tetrachloroethene (PCE)	1	12	5

**Soil Gas Table:**

Analytes	Total Detections	Max. Detection (µg/m³)	Type
Carbon tetrachloride	1	0.84	Soil vapor
Methylene chloride	1	2.6 J	Soil vapor
Tetrachloroethene	2	47	Soil vapor
Trichloroethene	1	1.2	Soil vapor
Trichlorofluoromethane	1	21	Soil vapor

**NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

**DETERMINATION OF A COMPLETE APPLICATION**

1. The first step in the application review and approval process is an evaluation to determine if the application is complete. To help ensure that the application is determined complete, requestors should review the list of common application deficiencies and carefully read these instructions.
2. DEC will send a notification to the requestor within 30 calendar days of receiving the application, indicating whether such application is complete or incomplete.
3. An application must include the following information relative to the site identified by the application, necessary for making an eligibility determination, or it will be deemed incomplete. (Please note: the application as a whole requires more than the information outlined below to be determined complete). The application must include:
  - a. for all sites, an investigation report sufficient to demonstrate the site requires remediation in order to meet the requirements of the program, and that the site is a brownfield site at which contaminants are present at levels exceeding the soil cleanup objectives or other health-based or environmental standards, criteria or guidance adopted by DEC that are applicable based on the reasonably anticipated use of the property, in accordance with applicable regulations. Required data includes site drawings requested in Section VI, #3 of the BCP application form.
  - b. for those sites described below, documentation relative to the volunteer status of all requestors, as well as information on previous owners or operators that may be considered responsible parties and their ability to fund remediation of the site. This documentation is required for:
    - i. real property listed in the registry of inactive hazardous waste disposal sites as a class 2 site, which may be eligible provided that DEC has not identified any responsible party for that property having the ability to pay for the investigation or cleanup of the property prior to the site being accepted into the BCP; or
    - ii. real property that was a hazardous waste treatment, storage or disposal facility having interim status pursuant to the Resource Conservation and Recovery Act (RCRA) program, which may be eligible provided that DEC has not identified any responsible party for that property having the ability to pay for the investigation or cleanup of the property prior to the site being accepted into the BCP.
  - c. for sites located within the five counties comprising New York City, in addition to (a) and if applicable (b) above, if the application is seeking a determination that the site is eligible for tangible property tax credits, sufficient information to demonstrate that the site meets one or more of the criteria identified in ECL 27 1407(1-a). If this determination is not being requested in the application to participate in the BCP, the applicant may seek this determination at any time before issuance of a certificate of completion, using the BCP Amendment Application, except for sites seeking eligibility under the underutilized category.
  - d. for sites previously remediated pursuant to Titles 9, 13, or 14 of ECL Article 27, Title 5 of ECL Article 56, or Article 12 of Navigation Law, relevant documentation of this remediation.

## DETERMINATION OF A COMPLETE APPLICATION (CONTINUED)

4. If the application is found to be incomplete:
  - a. the requestor will be notified via email or phone call regarding minor deficiencies. The requestor must submit information correcting the deficiency to DEC within the 30-day review time frame; or
  - b. the requestor will receive a formal Letter of Incomplete Application (LOI) if an application is substantially deficient, if the information needed to make an eligibility determination identified in #3 above is missing or found to be incomplete, or if a response to a minor deficiency is not received within the 30-day period. The LOI will detail all of the missing information and request submission of the information. If the information is not submitted within 30 days from the date of the LOI, the application will be deemed withdrawn. In this case, the requestor may resubmit the application without prejudice.
5. If the application is determined to be complete, DEC will send a Letter of Complete Application (LOC) that includes the dates of the public comment period. The LOC will:
  - a. include an approved public notice to be sent to all parties on the Contact List included with the application;
  - b. provide instructions for publishing the public notice in the newspaper on the date specified in the letter, and instructions for mailing the notice to the Contact List;
  - c. identify the need for a certification of mailing form to be returned to DEC along with proof of publication documentation; and
  - d. specify the deadline for publication of the newspaper notice, which must coincide with, or occur before, the date of publication in the Environmental Notice Bulletin (ENB).
    - i. DEC will send a notice of the application to the ENB. As the ENB is only published on Wednesdays, DEC must submit the notice by the Wednesday before it is to appear in the ENB.
    - ii. The mailing to parties on the Contact List must be completed no later than the Tuesday prior to ENB publication. If the mailings, newspaper notice and ENB notice are not completed within the timeframes established by the LOC, the public comment period on the application will be extended to ensure that there will be the required comment period.
    - iii. Marketing literature or brochures are prohibited from being included in mailings to the Contact List.

New York State Department of Environmental Conservation  
BROWNFIELD CLEANUP PROGRAM

BROWNFIELD CLEANUP PROGRAM APPLICATION  
SUPPLEMENTAL AND SUPPORTING INFORMATION

For

260 WEST 126<sup>TH</sup> STREET  
NEW YORK, NY

S & F 126 ST. LLC

September 2025

## Section I – Property Information

The following maps have been attached as Exhibit A.

- USGS 7.5-minute quadrangle map, indicating the site's location
- Tax Map
- Surrounding Property Owner Map
- Land Use Map
- EN-Zone Map
- Disadvantaged Communities Map

### I.3 - Is the project within a designated Environmental Zone (En-zone) pursuant to Tax Law 21(b)(6)?

The entirety of the Site is located within a Type A En-zone, per the 2022 En-zone map released by NYSDEC. The Site is located in census tract 222, which has a 24.3% poverty rate and an unemployment rate of 8.1%.

### I.4 - Is the project located within a disadvantaged community?

The entirety of the Site is located within a disadvantaged community, per the March 27, 2023 criteria determined by the Climate Justice Working Group (CJWG). As noted above, the Site is located in census tract 222, which has a 24.3% poverty rate and an unemployment rate of 8.1%.

### I.14 – Property Description and Environmental Assessment Narrative

Location: The Site, located at 260 West 126<sup>th</sup> Street, New York, New York (Tax Block 1931, Lot 56), is a rectangular-shaped parcel located on the southern side of West 126<sup>th</sup> Street, between Frederick Douglass Boulevard (formerly Eighth Avenue) and Adam C. Powell Boulevard. The Site is approximately 12,490 square feet (SF), has approximately 125 feet of frontage along West 126<sup>th</sup> Street, and extends approximately 100 feet back from West 126<sup>th</sup> Street.

Site Features: The Site lot is currently developed with a vacant two-story church building with a full cellar level covering approximately 2,725 SF of the western portion of the property. The remainder of the property is a paved, vacant parking lot.

Current Zoning and Land Use: The Site lot is zoned C4-4D, denoting a commercial contextual district that has bulk and density regulations and also allows for some residential uses. The property is currently vacant and was most recently utilized as a church.

Past Uses of the Site: The Site lot has been developed since at least 1902. In 1902, the Site lot was divided into six separate tax parcels with six tightly grouped four-story residential buildings present on the north side of the Site, along West 126<sup>th</sup> Street. By 1951, the residential buildings had been demolished, and the Site was mostly undeveloped except for the western portion of the Site, where a four-story storefront building with lumber storage remained. By 1962, the existing two-story church building with a full cellar level was present on the western portion of the Site. The Site has generally remained unchanged through current day with a two-story church building on the western portion of the Site and licensed parking on the eastern portion of the Site.

Site Geology and Hydrogeology: The Site is located at an average elevation of approximately 32 feet above mean sea level (ft-amsl) and is relatively flat. The Site is underlain by a continuous layer of historic fill consisting of brown, sand with silt, gravel, ash, and crushed brick extending from grade to at least 12 feet below grade (ft-bg) below the paved parking lot in the eastern portion of the Site and extending to four feet

below the cellar foundation in the western portion of the Site. Soil below 12 ft-bg in the parking lot and 4 ft-bg in the cellar was not investigated as part of previous investigations at the Site; therefore, soil types below these depths are presently unknown. Groundwater at the Site was measured at approximately 23 to 25 ft-bg, and groundwater flow is generally towards the south. Groundwater flow in this area of Manhattan would be expected to move in an easterly direction; the unexpected groundwater flow direction at the Site is likely due to the presence of sub-grade structures.

Prior Investigations: Based on the previous investigation conducted at the Site, the primary contaminants of concern for the Site are chlorinated volatile organic compounds (cVOCs), petroleum-related VOCs, polyaromatic hydrocarbons (PAHs), and metals (barium and lead). One subsurface investigation has been completed at the Site and is described below.

A Remedial Investigation (RI) was completed for the Site by Environmental Business Consultants (EBC) on behalf of Velocity Framers in November 2016 (Remedial Investigation Report dated December 2016). The RI was conducted in accordance with the requirements of the New York City Mayor's Office of Environmental Remediation (OER) E-Designation program and consisted of the installation of eight soil borings, the collection of 17 soil samples (including quality assurance/quality control [QA/QC] samples), the installation of four groundwater monitoring wells, the collection of four groundwater samples (including QA/QC samples), the installation of five soil vapor points, and the collection of five soil vapor samples. All soil and groundwater samples collected during the 2016 RI were analyzed for VOCs, semivolatile organic compounds (SVOCs), target analyte list (TAL) metals (total metals for groundwater), pesticides, and polychlorinated biphenyls (PCBs). All soil vapor samples collected during the 2016 RI were analyzed for TO-15 VOCs. Summary tables of sampling data for all media are included in Exhibit B. Sampling location plans and data diagrams are included in Exhibit C.

### Environmental Assessment

#### **Soil:**

Several SVOCs, most notably PAHs, were detected in one shallow (0-2 ft-bg) soil sample collected from the parking lot at concentrations exceeding the Protection of Groundwater SCOs (PGWSCOs) and/or Restricted-Residential Use SCOs (RRSCOs). Detected PAHs exceeding applicable SCOs in the shallow soil sample include benzo(a)anthracene [max. 1.1 parts-per-million (ppm) with a PGWSCO and RRSCO of 1 ppm], benzo(a)pyrene [max. 1.1 ppm with a PGWSCO of 22 ppm and a RRSCO of 1 ppm], benzo(b)fluoranthene [max. 1.1 ppm with a PGWSCO of 1.7 ppm and a RRSCO of 1 ppm], chrysene [max. 1.3 ppm with a PGWSCO of 1 ppm and a RRSCO of 3.9 ppm], and indeno(1,2,3-cd)pyrene [max. 0.81 ppm with a PGWSCO of 8.2 ppm and a RRSCO of 0.5 ppm]. No other SVOCs were detected in exceedance of PGW SCOs or RRSCOs in any soil samples.

Various metals, specifically barium, lead, mercury, and nickel, were detected in one or more soil samples at concentrations exceeding their respective PGWSCOs or RRSCOs. Barium was detected in exceedance of its PGWSCO in two shallow (0-2 ft-bg) and one deep (10-12 ft-bg) soil samples and in exceedance of its RRSCO in four shallow (0-2 ft-bg) and one deep (10-12 ft-bg) soil samples [max. 2,760 ppm at 0-2 ft-bg with a PGWSCO of 820 ppm and a RRSCO of 400 ppm]; lead was detected in exceedance of its PGWSCO and RRSCO in four shallow (0-2 ft-bg) and one deep (10-12 ft-bg) soil samples [max. 2,040 ppm at 0-2 ft-bg with a PGWSCO of 450 ppm and a RRSCO of 400 ppm]; mercury was detected in exceedance of its PGWSCO in one deep (10-12 ft-bg) soil sample [concentration of 0.75 ppm with a PGWSCO of 0.73 ppm and a RRSCO of 0.81 ppm]; and nickel was detected in exceedance of its PGWSCO in one shallow (0-2 ft-bg) soil sample [concentration of 228 ppm with a PGWSCO of 130 ppm and a RRSCO of 310 ppm]. No other metals were detected in exceedance of PGWSCOs or RRSCOs in any soil samples.

VOCs, pesticides, and PCBs were not detected in exceedance of PGWSCOs or RRSCOs in any soil samples.

#### **Groundwater:**

A variety of SVOCs, specifically PAHs, were detected slightly in exceedance of their respective Ambient Water Quality Standards and Guidance Values (AWQSGVs) for Class GA waters in groundwater samples collected from the southern portion of the Site, including benzo(a)anthracene [max. 0.38 parts-per-billion (ppb)], benzo(a)pyrene [concentration of 0.38 ppb], benzo(b)fluoranthene [concentration of 0.34 ppb], benzo(k)fluoranthene [concentration of 0.3 ppb], chrysene [concentration of 0.39 ppb], and indeno(1,2,3-cd)pyrene [concentration of 0.26 ppb]. All of the aforementioned analytes have an AWQSGV of 0.002 ppb. No other SVOCs were detected in exceedance of the AWQSGVs in any groundwater samples.

A variety of metals were detected in exceedance of the AWQSGVs in unfiltered groundwater samples across the Site. Arsenic [max. 65 ppb with an AWQSGV of 25 ppb], barium [max. 5,620 ppb with an AWQSGV of 1,000 ppb], beryllium [max. 28 ppb with an AWQSGV of 3 ppb], cadmium [max. 17 ppb with an AWQSGV of 5 ppb], chromium [max. 710 ppb with an AWQSGV of 50 ppb], copper [max. 2,400 ppb with an AWQSGV of 200 ppb], iron [max. 376,000 ppb with an AWQSGV of 300 ppb], lead [max. 535 ppb with an AWQSGV of 25 ppb], magnesium [max. 146,000 ppb with an AWQSGV of 35,000 ppb], manganese [max. 84,700 ppb with an AWQSGV of 300 ppb], nickel [max. 1,330 ppb with an AWQSGV of 300 ppb], and sodium [max. 226,000 with an AWQSGV of 20,000 ppb] were each detected in exceedance of the AWQSGVs in all four groundwater monitoring wells and thallium (max. 1 ppb with an AWQSGV of 0.5 ppb) was detected in exceedance of the AWQSGV in one groundwater monitoring well. No other metals were detected in exceedance of the AWQSGVs in any unfiltered groundwater samples. Filtered groundwater samples were not analyzed as part of the 2016 RI.

VOCs, pesticides, and PCBs were not detected above the AWQS in any groundwater samples.

#### **Soil Vapor:**

A variety of cVOCs were detected in soil vapor across the Site, including tetrachloroethene (PCE) [max. 16.5 micrograms per cubic meter (ug/m<sup>3</sup>)], trichloroethene (TCE) [max. 0.62 ug/m<sup>3</sup>], carbon tetrachloride [max. 0.52 ug/m<sup>3</sup>], and chloroform [max. 7.76 ug/m<sup>3</sup>]. In general, the highest concentrations of cVOCs were detected in the soil vapor sample collected from the southern portion of the parking lot, along the southern perimeter of the Site.

A variety of petroleum-related VOCs were detected in soil vapor across the Site, including benzene [max. 11.3 ug/m<sup>3</sup>], toluene [max. 16.5 ug/m<sup>3</sup>], ethylbenzene [max. 3.95 ug/m<sup>3</sup>], p/m-xylene [max. 13.6 ug/m<sup>3</sup>], o-xylene [max. 4.95 ug/m<sup>3</sup>], 1,2,4-trimethylbenzene [max. 4.69 ug/m<sup>3</sup>], 1,3,5-trimethylbenzene [concentration of 1.29 ug/m<sup>3</sup>], 4-methyl-2-pentanone [concentration of 2.86 ug/m<sup>3</sup>], 4-ethyltoluene [concentration of 1.11 ug/m<sup>3</sup>], heptane [concentration of 2.58 ug/m<sup>3</sup>], styrene [concentration of 1.09 ug/m<sup>3</sup>], cyclohexane [max. 15.2 ug/m<sup>3</sup>], and propylene [max. 445 ug/m<sup>3</sup>]. In general, the highest concentrations of petroleum-related VOCs were detected in the southern portions of the onsite building and parking lot.

A variety of other VOCs were detected in one or more soil vapor samples, including 2-hexanone [concentration of 3.84 ug/m<sup>3</sup>], ethyl acetate [max. 3.02 ug/m<sup>3</sup>], hexane [max. 16.1 ug/m<sup>3</sup>], methyl ethyl ketone [max. 1,060 ug/m<sup>3</sup>], chloromethane [concentration of 1.02 ug/m<sup>3</sup>], tetrahydrofuran [max. 8.52 ug/m<sup>3</sup>], isopropanol [max. 15.4 ug/m<sup>3</sup>], trichlorofluoromethane [max. 1.62 ug/m<sup>3</sup>], dichlorodifluoromethane [max. 2.6 ug/m<sup>3</sup>], acetone [max. 311 ug/m<sup>3</sup>], and ethanol [max. 2,840 ug/m<sup>3</sup>]. Of these, acetone and ethanol are common laboratory artifacts.

## **Section II - Project Description**

## II.4 - Narrative Description

### Proposed Redevelopment

The subject property will be redeveloped with a new 14-story mixed-use residential and community facility building with a full cellar that will encompass the entirety of the Site. Based on present design and plans, the redevelopment will include approximately 20-25 affordable residential units at 80% area median income (AMI) utilizing the Voluntary Inclusionary Housing (VIH) and 421-a programs. Demolition of the existing Site structure (two-story building with a full cellar) will be completed to facilitate site remediation as part of the redevelopment. The building design and plans are still being developed for the project; however, it is anticipated that excavation for development will extend approximately 30 feet below grade (ft-bg) across the Site. The water table was encountered at approximately 23 to 25 ft-bg and is expected to be encountered during excavation. The proposed development is consistent with the existing zoning and the recent development in this area of Manhattan.

### Schedule

As part of the project, the property will be remediated and redeveloped with a new 33-story mixed-use commercial, residential, and community facility building. Additional remedial investigation (RI) activities will be completed upon entry into the BCP. A draft Remedial Investigation Work Plan (RIWP) is being submitted concurrent with this BCP Application. Implementation of the RI will occur upon NYSDEC approval of the RIWP, after which a draft Remedial Investigation Report (RIR) and a draft Remedial Action Work Plan (RAWP) will be prepared. Following approval of the RAWP, the remedial action (RA) will be implemented. A Final Engineering Report (FER) and Site Management Plan (SMP), if required, will be prepared following completion of the RA. The Certificate of Completion is anticipated by the end of 2026. Below is a detailed estimated project schedule:

Estimated Project Schedule  
(Reasonable BCP dates)

Task / Month	July 2025 - August 2025	September 2025 - October 2025	November 2025	December 2025	January 2026 - February 2026	March 2026 - September 2026	August 2026 - November 2026	End of 2026
BCP Application and RIWP Review and Completeness								
BCP App and RIWP, Public Comment and Approval								
Implement Remedial Investigation								
RIR and RAWP Review and Completeness								
RAWP Public Comment and RIR and RAWP Approval								
Implement Remedial Action								



Task / Month	July 2025 - August 2025	September 2025 - October 2025	November 2025	December 2025	January 2026 - February 2026	March 2026 - September 2026	August 2026 - November 2026	End of 2026
Prepare FER/SMP, NYSDEC Approval								
Certificate of Completion								

II.5 – Green and Sustainable Remediation: Green remediation principles and techniques will be implemented, to the extent feasible, in the remedial investigation, remedial design, remedial action implementation, and site management phases of the remedy in accordance with DER-31. The major green remediation components are as follows:

- Considering the environmental impacts of treatment technologies and remedy stewardship over the long term;
- Reducing direct and indirect greenhouse gases and other emissions;
- Increasing energy efficiency and minimizing use of non-renewable energy;
- Conserving and efficiently managing resources and materials;
- Reducing waste, increasing recycling and increasing reuse of materials that would otherwise be considered a waste;
- Maximizing habitat value and creating habitat where possible;
- Fostering green and healthy communities and working landscapes which balance ecological, economic, and social goals;
- Integrating the remedy with the end use where possible and encouraging green and sustainable redevelopment; and,
- Incorporating the GSR principles and techniques, to the extent feasible, in the future development at the Site (i.e., future onsite buildings shall be constructed, at a minimum, to meet the 2020 energy Conservation Construction Code of New York to improve energy efficiency of construction.

To evaluate the remedy with respect to GSR principles as part of the remedial program, a Best Management Practice (BMP) assessment will be conducted in accordance with the ASTM Guide for Standard Cleanups, and an environmental footprint analysis will be conducted for each remedial alternative using SEFA (Spreadsheets for Environmental Footprint Analysis, USEPA). The results of the environmental footprint analysis will be provided in the future RAWP.

BMPs for the project related to these GSR metrics, and BMPs for minimizing community impacts, protecting habitats and natural and cultural resources, and promoting environmental justice, will be incorporated into the remedial program, as appropriate and as described below.

#### Waste Generation

Waste generation considers the management of waste associated with remedial activities and any waste reduction projects including, but not limited to, material reuse and recycling. Several waste streams will be generated during implementation of the remedy (e.g., potential dewatering fluids, soil, polyethylene sheets used for stockpile coverage and separating types of contamination, nitrile gloves for endpoint sampling, disposable sampling bottle ware, acetate liners from drilling operations, tubing and buckets from groundwater sampling, investigation derived waste [IDW] from remedial investigation activities, and decontamination materials). When possible, an effort will be made to minimize the consumption/generation of such materials. If feasible, decontamination and reuse of applicable materials will be considered.

Electronic methods of data collection (e.g., tablets) will also be used to reduce paper consumption when possible.

#### Electrical Energy Use

Energy usage considers the electricity usage needed for remediation activities. Energy will be required for charging field equipment (e.g., photoionization detector [PID], air monitoring equipment, and groundwater sampling equipment). Battery-powered equipment will be turned off when not in use to limit charging activities.

#### Emissions

Emissions tracking considers fuel usage for transportation of personnel to and from the Site, trucks used for export of contaminated material or import of backfill materials, equipment and laboratory sample couriers, and construction equipment.

To reduce fuel usage, trucks and heavy machinery operators will be encouraged to reduce idling time and shut down vehicles or equipment when not in use. The contractor will also be encouraged to perform routine, on-time maintenance to improve fuel efficiency. Trucks used for exports/imports will also use low sulfur emitting fuels.

When possible, personnel will be encouraged to take public transport, and equipment/sample deliveries and pickups will be consolidated to reduce transport needs.

#### Water Usage

Water usage considers sources of water for tasks such as decontamination, irrigation, etc. The public water supply will be used when water is required for decontamination activities or dust suppression. This will be required for effective implementation of the remedy and the protection of human health. Water will only be consumed when necessary, and consumption will be in accordance with local regulations.

#### Land and/or Ecosystems

Land and/or ecosystems consider any disturbances and restoration of land and/or ecosystems as part of the implementation/operation of the remedy. During implementation of the proposed remedy, the Site cover will be restored to an impervious condition. No ecosystems will be disturbed during construction.

A BMP assessment and an environmental footprint analysis will also be conducted at the completion of the remedy. As practicable, water consumption, greenhouse gas emissions, renewable and non-renewable energy use, waste reduction, and material use will be estimated at the end of the remediation phase. Progress with respect to GSR metrics will be tracked during the implementation of the remedial action and reported in the Final Engineering Report (FER).

### **Section IV – Land Use Factors**

IV.4 – Summary of Current Business Operations or Uses: The Site is currently developed with a two-story church building with a full cellar level covering approximately 2,725 SF of the western portion of the property. The church building recently experienced a fire that rendered it unsafe to occupy and is currently vacant. The remainder of the property is a paved, vacant parking lot.

IV.6 – Reasonably Anticipated Use Post-Remediation: The anticipated post-remedial use is a mixed-use commercial, residential, and community facility building.

IV.9 – Proposed Use Consistency with Applicable Zoning Laws/Maps: The property will be redeveloped with a new, 33-story mixed-use commercial, residential, and community facility building with a full cellar.

The proposed development is consistent with the existing zoning and the recent development in this area of Manhattan.

IV.10 – Proposed Use Consistency with Applicable Comprehensive Community Master Plans, Local Waterfront Revitalization Plans, or Other Adopted Land Use Plans: The proposed use is not inconsistent with any applicable comprehensive community master plans, local waterfront revitalization plans, or other adopted land use plans.

#### **Section V – Current and Historical Property Owner and Operator Information**

The current owner and operator of the subject property is the Thomas Memorial Wesleyan Methodist Church with offices at 270 West 126<sup>th</sup> Street, New York, NY 10027.

The information below includes the known owners and operators of current Lot 56 (formerly Lots 56, 57, 58, 59 & 60).

<b>Previous Owners – Current Lot 56</b>			
<b>Name</b>	<b>Last Known Contact Information</b>	<b>Relationship to Applicant</b>	<b>Ownership</b>
Beatrice Bishop Berle (former Lots 56 & 57)	142 East 19 <sup>th</sup> Street, New York, NY 10003	None	Unknown – March 19, 1950
Unison Health Corporation (former Lots 58 & 59)	595 Madison Avenue, New York, NY 10022	None	Unknown – May 9, 1952
Henrietta A. Thornton (former Lot 60)	22-67 21 <sup>st</sup> Street, Astoria, NY 11105	None	Unknown – September 15, 1953
Thomas Memorial Wesleyan Methodist Church	270 West 126 <sup>th</sup> Street, New York, NY 10027	Landlord	March 19, 1950 (former Lots 56 & 57); May 9, 1952 (former Lots 58 & 59); September 15, 1953 (former Lot 60) – Current

<b>Previous Operators – Current Lot 56</b>			
<b>Name</b>	<b>Last Known Contact Information</b>	<b>Relationship to Applicant</b>	<b>Operation (known years)</b>
Thomas Memorial Wesleyan Methodist Church	270 West 126 <sup>th</sup> Street, New York, NY 10027	Landlord	March 19, 1950 (former Lots 56 & 57); May 9, 1952 (former Lots 58 & 59); September 15, 1953 (former Lot 60) – June 24, 2023
S & F 126 ST. LLC	320 Roebling Street, Suite 749, Brooklyn, NY 11211	Applicant	June 24, 2023 – Current

## **Section VI – Property’s Environmental History**

### VI.1 – Environmental Reports

The environmental reports and/or data deliverables prepared for the Site include the following, which are included in Exhibit D.

1. Phase I Environmental Site Assessment Report for 260 West 126<sup>th</sup> Street, Manhattan, NY, prepared by Environmental Business Consultants, dated October 2016.
2. Remedial Investigation Report for 260 West 126<sup>th</sup> Street, Manhattan, NY; prepared by Environmental Business Consultants, dated December 2016.

Both of the above-mentioned reports were prepared for Velocity Framers by EBC.

### VI.2 – Sampling Data

The laboratory reports containing sampling data are contained in the investigation reports referenced above. Summary tables of all sampling data are included as Exhibit B.

### VI.3 – Site Drawings

The site drawings for soil, groundwater, and soil vapor are attached as Exhibit C. The data for these drawings is in the reports and laboratory deliverables that are referenced above.

## **Section VII – Requestor Information**

S & F 126 ST. LLC is a NYS business entity. The New York State Department of State's Corporation & Business Entity Database printout is included in Exhibit E.

S & F 126 ST. LLC has a sole member:

- 260 West 126<sup>th</sup> Member LLC, a New York limited liability company

## **Section X – Requestor Eligibility**

### X.13 – Volunteer Statement

The Requestor’s liability arises solely as a result of its tenancy, operation of, and/or involvement with the Site following the release of any hazardous substances. The Requestor is not responsible for the release of any hazardous substances on or from the Site, has no relationship to any prior owners or operators, and is ground leasing the Site from the current owner, Thomas Memorial Wesleyan Methodist Church. While the Requestor entered into a Ground Lease Agreement with the current Site owner as of October 5, 2016, the Site owner retained possession and control over the property until the occurrence of the Surrender Date / Commencement Date under the Lease on June 24, 2023. Since June 24, 2023, when the Requestor took exclusive possession and control over the property, the Requestor has ceased all Site operations including the former on-site parking use, did not contribute to or exacerbate the Site contamination, and subsequently applied to the Brownfield Cleanup Program. Thus, the Requestor has exercised appropriate care with respect to the hazardous substances it has discovered at the Site. The Requestor is prepared to perform all necessary investigation and remediation of the Site under the BCP. Based on these reasons, the Requestor qualifies as a Volunteer pursuant to ECL § 27-1405(1).

### X.14 – Proof of Site Access

See Lease Agreement, as amended, and BCP Site Access Agreement between the Applicant and Site owner in Exhibit F.

## **Section XII – Contact List Information**

See contact list in Exhibit G.

Exhibit A  
Site Drawings (Property Information)



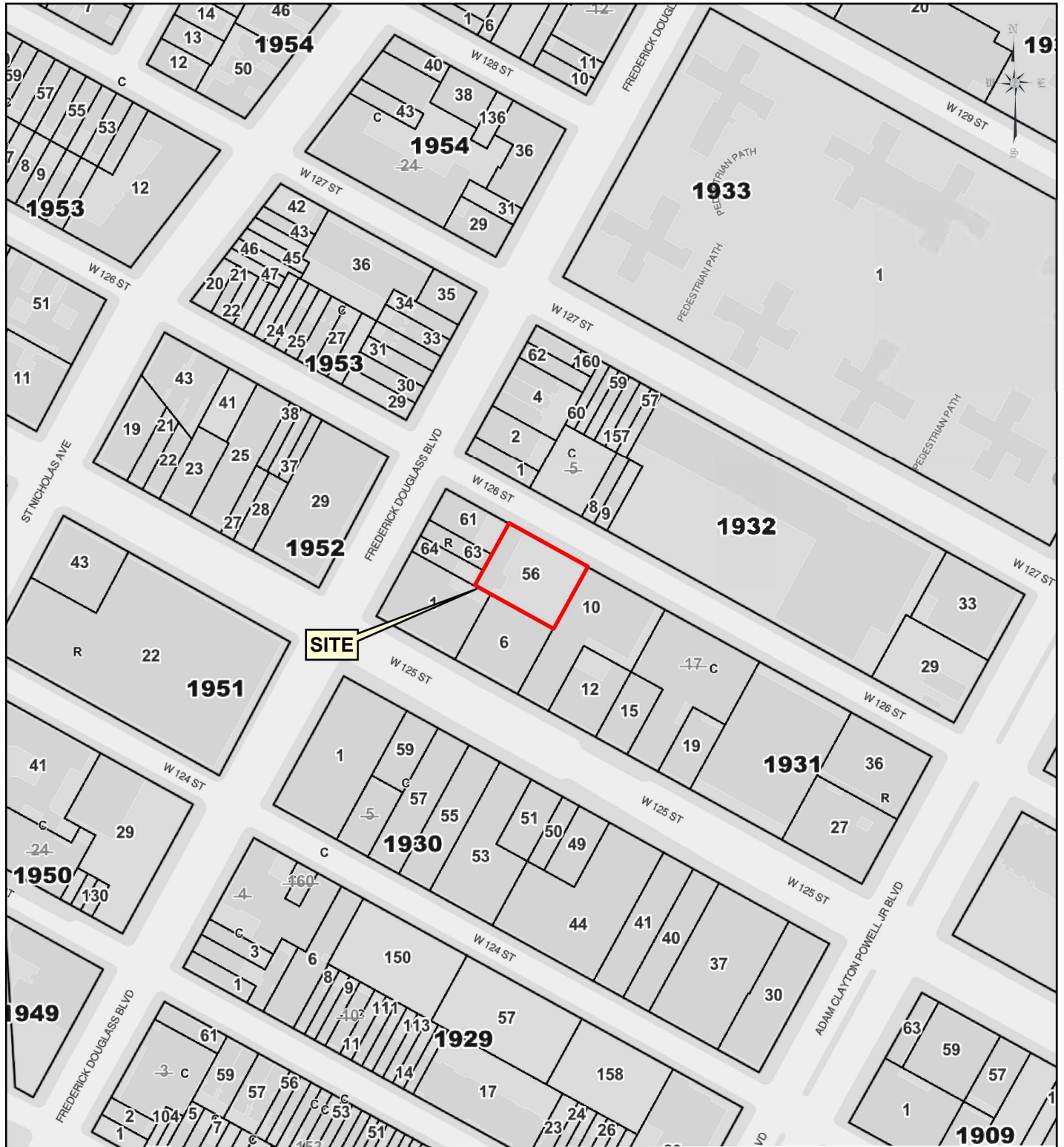


Basemap: USGS Topographic Map, 7.5 Minute Quadrangle: Central Park, NY

0 1,000 2,000 4,000 Feet

<p>Drawing No.</p> <p><b>Figure 1</b></p>	<p>Drawn By</p> <p>LM</p> <p>Checked By</p> <p>AP</p>	<p><b>TENEN</b> ENVIRONMENTAL</p> <p>Tenen Environmental, LLC 121 West 27th Street, Suite 303 New York, NY 10001 O: (646) 606-2332; F: (646) 606-2379</p>	<p><b>260 West 126th Street New York, New York Block 1931, Lot 56</b></p>
<p>Drawing Title</p> <p><b>Site Location Map</b></p>	<p>Date</p> <p>March 2024</p> <p>Scale</p> <p>As Noted</p>		





NYC Department of Finance Property Information Portal

0 100 200 400 Feet


<p>Drawing No.</p> <p><b>Figure 2</b></p>	<p>Drawn By</p> <p>LM</p> <p>Checked By</p> <p>AP</p>	 <p>Tenen Environmental, LLC 121 West 27th Street, Suite 303 New York, NY 10001 O: (646) 606-2332; F: (646) 606-2379</p>	<p><b>260 West 126th Street New York, New York Block 1931, Lot 56</b></p>
<p>Drawing Title</p> <p><b>Tax Map</b></p>	<p>Date</p> <p>March 2024</p> <p>Scale</p> <p>As Noted</p>		



#### Adjacent Property Owners - 260 West 126th Street

ID	OWNER	ADDRESS
A	Apollo Theatre Redevelopment Corporation	253 West 125th Street
B	Commonwealth Local Development Corp.	261 West 125th Street
C	Bishop S.C. Madison, Trustee	2330 Frederick Douglass Boulevard
D	United House of Prayer	2338 Frederick Douglass Boulevard
E	Amnews Corporation	2340 Frederick Douglass Boulevard
F	United House of Prayer	2342 Frederick Douglass Boulevard
G	NYC Housing Preservation & Development	2350 Frederick Douglass Boulevard
H	HCCI Balton Housing Development Fund Corporation	267 West 126th Street
I	Bow Realty LLC	261 West 126th Street
J	Trinity Ame Church	259 West 126th Street
K	NYC Department of Education	257 West 126th Street

0 75 150 300 Feet


Drawing No. <b>Figure 3</b>	Drawn By LM	 Tenen Environmental, LLC 121 West 27th Street, Suite 702 New York, NY 10001 O: (646) 606-2332; F: (646) 606-2379	<b>260 West 126th Street</b> <b>New York, New York</b> <b>Block 1931, Lot 56</b>
	Checked By AP		
Drawing Title <b>Surrounding Property Owner Map</b>	Date March 2024		
	Scale As Noted		

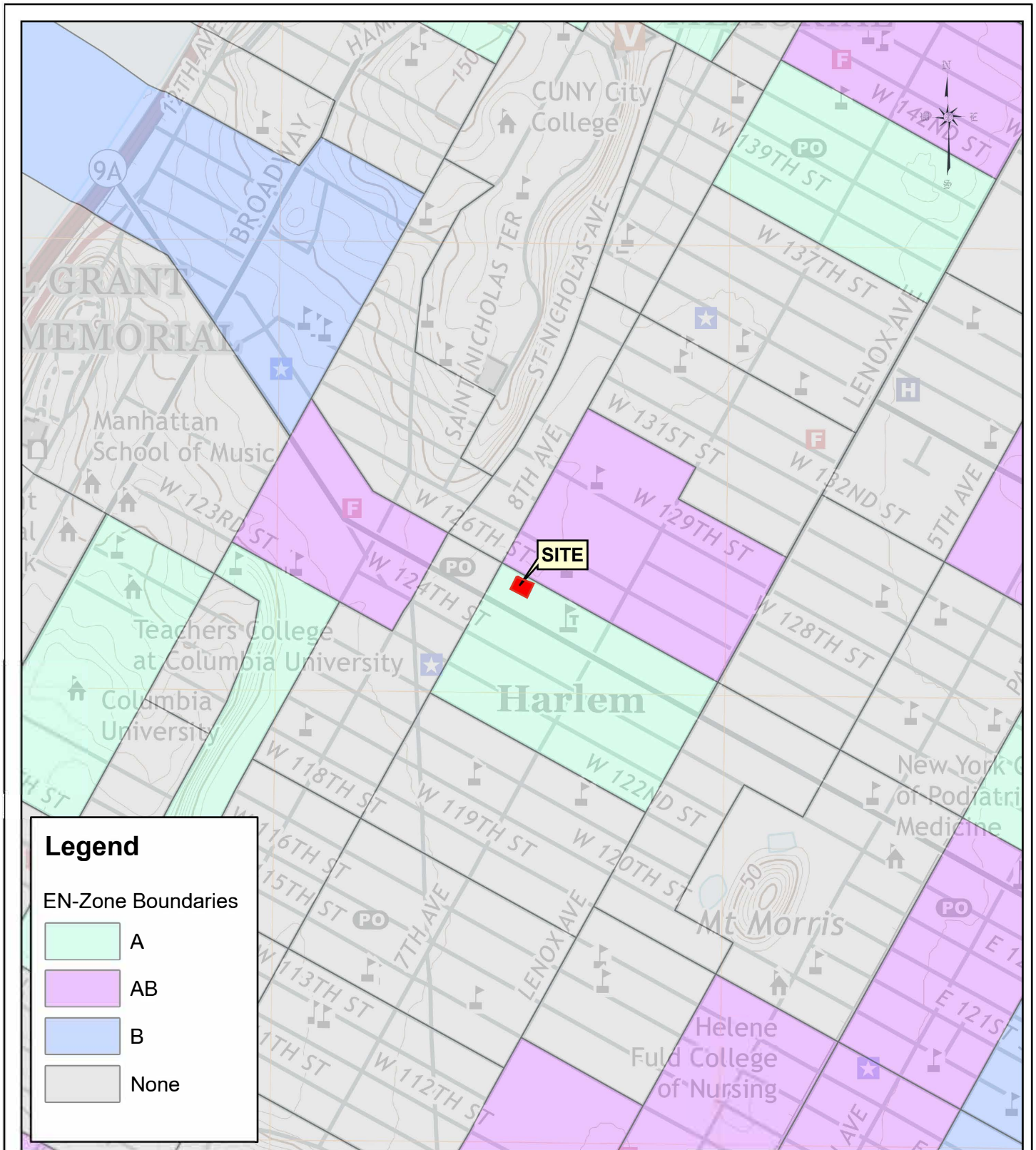




0 100 200 400 Feet


NYC OpenData, State of New Jersey, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA

Drawing No.  <b>Figure 4</b>	Drawn By LM	 Tenen Environmental, LLC 121 West 27th Street, Suite 303 New York, NY 10001 O: (646) 606-2332; F: (646) 606-2379	<b>260 West 126th Street New York, New York Block 1931, Lot 56</b>
Drawing Title  <b>Land Use Map</b>	Checked By AP		
	Date March 2024  Scale As Noted		

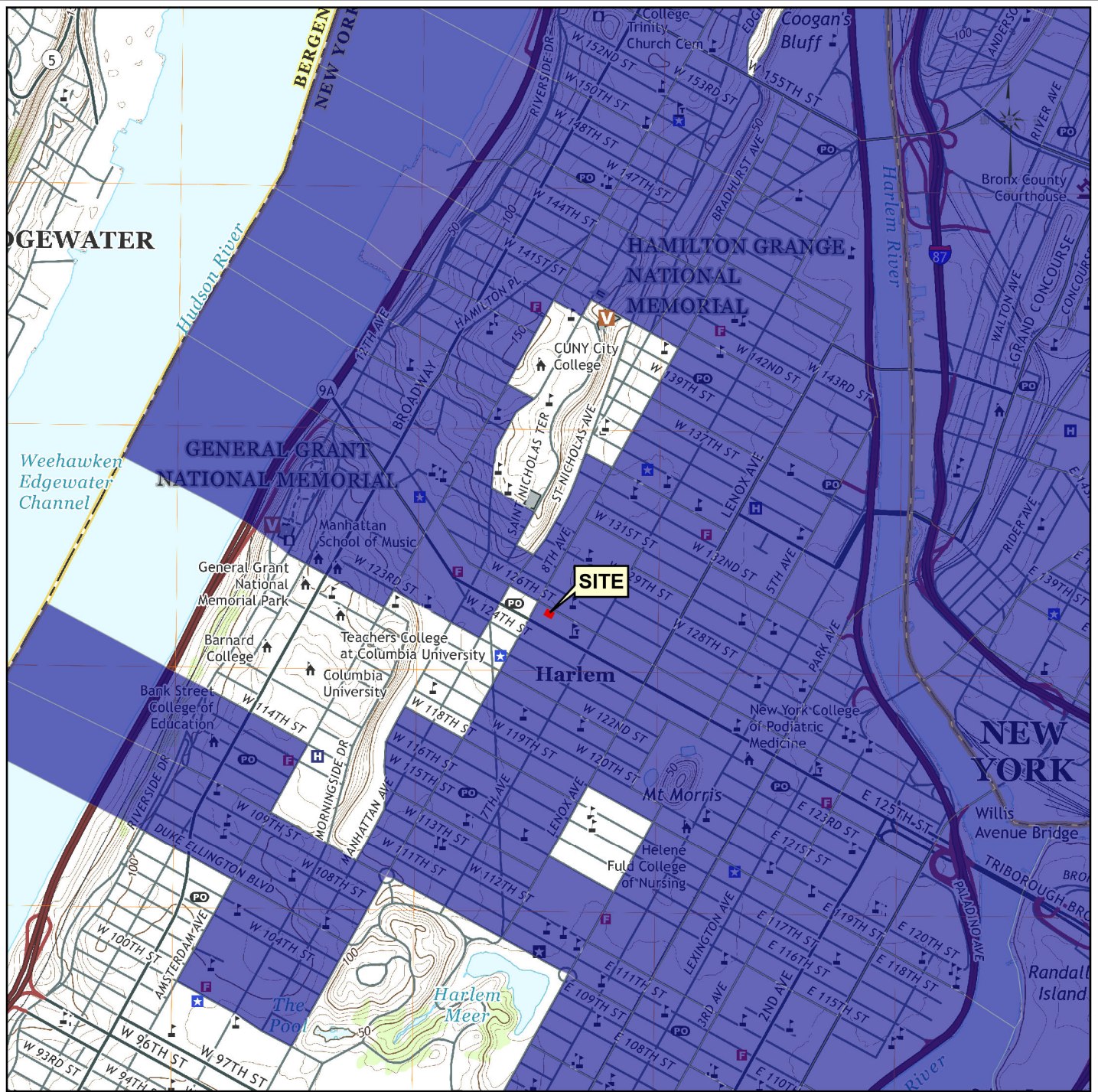


Basemap: USGS Topographic Map, 7.5 Minute Quadrangle: Central Park, NY  
 NYSDEC - NYS 2022 EN-Zone Boundaries

0 500 1,000 2,000 Feet


Drawing No.	Drawn By	LM	 <b>TENEN</b> ENVIRONMENTAL Tenen Environmental, LLC 121 West 27th Street, Suite 303 New York, NY 10001 O: (646) 606-2332; F: (646) 606-2379	<b>260 West 126th Street</b> <b>New York, New York</b> <b>Block 1931, Lot 56</b>
	Checked By	AP		
Drawing Title	Date	March 2024		
	Scale	As Noted		
<b>Figure 5</b>				
<b>EN-Zone Map</b>				





Sources:  
 USGS Topographic Map, 7.5 Minute Quadrangle: Central Park, NY  
[services7.arcgis.com/ZR2wjW0JGwgm9bhz/ArcGIS/rest/services/Final\\_DAC\\_Designated/FeatureServer](https://services7.arcgis.com/ZR2wjW0JGwgm9bhz/ArcGIS/rest/services/Final_DAC_Designated/FeatureServer)



Drawing No.  <b>Figure 6</b>	Drawn By <b>LM</b>	 Tenen Environmental, LLC 121 West 27th Street, Suite 303 New York, NY 10001 O: (646) 606-2332; F: (646) 606-2379	<b>260 West 126th Street          New York, New York          Block 1931, Lot 56</b>
	Checked By <b>AP</b>		
Drawing Title  <b>Disadvantaged Communities</b>	Date <b>August 2025</b>		
	Scale <b>As Noted</b>		

# Exhibit B

## Data Summary Tables

Soil Analytical Summary Table  
260 West 126th Street - New York, NY  
Brownfield Cleanup Program Application

Analytes in Exceedance of SCOs	Number of Detections in Exceedance of PGWSCOs	Number of Detections in Exceedance of RRSCOs	Maximum Detection (ppm)	PGWSCO (ppm)	RRSCO (ppm)	Depth (ft-bg)*
Benzo(a)anthracene	1	1	1.1	1	1	0-2
Benzo(a)pyrene	0	1	1.1	22	1	0-2
Benzo(b)fluoranthene	0	1	1.1	1.7	1	0-2
Chrysene	1	0	1.3	1	3.9	0-2
Indeno(1,2,3-cd)pyrene	0	1	0.81	8.2	0.5	0-2
Barium	3	5	2,760	820	400	0-2 & 10-12
Lead	5	5	2,040	450	400	0-2
Mercury	1	0	0.75	0.73	0.81	10-12
Nickel	1	0	228	130	300	0-2

**Notes:**

PGWSCOs = 6 NYCRR Part 375 Protection of Groundwater Soil Cleanup Objectives

RRSCOs = 6 NYCRR Part 375 Restricted-Residential Use Soil Cleanup Objectives

\* = All depths with exceedances of PGWSCOs or RRSCOs for the specified analyte are listed

ppm = parts per million

ft-bg = feet below grade



Groundwater Analytical Summary Table  
260 West 126th Street - New York, NY  
Brownfield Cleanup Program Application

Analytes in Exceedance of AWQSGV	Number of Detections in Exceedance of AWQSGV	Maximum Detection (ppb)	AWQSGV (ppb)
Benzo(a)anthracene	2	0.38	0.002
Benzo(a)pyrene	1	0.38	0.002
Benzo(b)fluoranthene	1	0.34	0.002
Benzo(k)fluoranthene	1	0.3	0.002
Chrysene	1	0.39	0.002
Indeno(1,2,3-cd)pyrene	1	0.26	0.002
Arsenic, Unfiltered	4	65	25
Barium, Unfiltered	4	5,620	1,000
Beryllium, Unfiltered	4	28	3
Cadmium, Unfiltered	4	17	5
Chromium, Unfiltered	4	710	50
Copper, Unfiltered	4	2,400	200
Iron, Unfiltered	4	376,000	300
Lead, Unfiltered	4	535	25
Magnesium, Unfiltered	4	146,000	35,000
Manganese, Unfiltered	4	84,700	300
Nickel, Unfiltered	4	1,330	300
Sodium, Unfiltered	4	226,000	20,000
Thallium, Unfiltered	1	1	0.5

**Notes:**

AWQSGV = NYSDEC Technical and Operational Guidance Series (TOGS) 1.1.1 Class GA Ambient Water Quality Standards and Guidance Values

ppb = parts per billion

Soil Vapor Analytical Summary Table  
260 West 126th Street - New York, NY  
Brownfield Cleanup Program Application

Analytes	Number of Detections	Maximum Detection (ug/m <sup>3</sup> )	Sample Type
Tetrachloroethene	5	16.5	Soil Vapor
Trichloroethene	3	0.62	Soil Vapor
Carbon tetrachloride	5	0.52	Soil Vapor
Chloroform	1	7.76	Soil Vapor

**Notes:**

ug/m<sup>3</sup> = micrograms per cubic meter

Exhibit C

Data Drawings (Sample Summaries)



Analyte	NY-PGW	NY-RESRR
SVOCs		
ppm		
Benzo(a)anthracene	1	1
Benzo(a)pyrene	22	1
Benzo(b)fluoranthene	1.7	1
Chrysene	1	3.9
Indeno(1,2,3-cd)pyrene	8.2	0.5
Total Metals		
Barium	820	400
Lead	450	400
Mercury	0.73	0.81
Nickel	130	310

- Notes:
- 1. Bold and shaded blue value indicates concentration exceeds NY-PGW SCOs
  - 2. Bold and shaded yellow value indicates concentration exceeds NY-RESRR SCOs
  - 3. Bold and shaded orange value indicates concentration exceeds NY-PGW and NY-RESRR SCOs
  - 4. NY-PGW = 6 NYCRR Part 375 Protection of Groundwater Soil Cleanup Objectives
  - 5. NY-RESRR = 6 NYCRR Part 375 Restricted-Residential Use Soil Cleanup Objectives
  - 6. ND = Not detected
  - 7. ppm = parts per million

- Legend
- Soil Boring Location
  - NYC Tax Lots
  - Site Boundary

260 West 126th Street  
New York, New York  
Block 1931, Lot 56



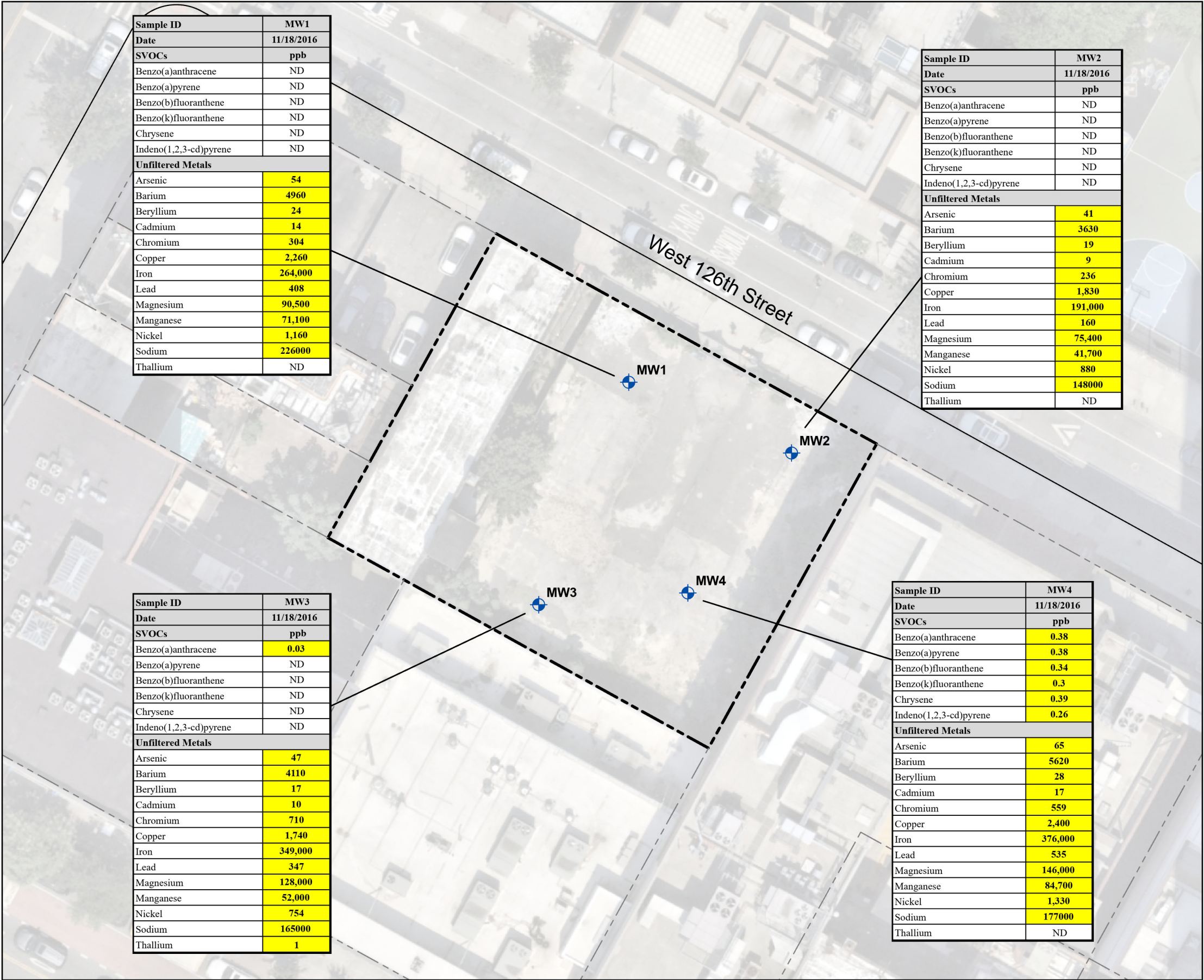
Tenen Environmental, LLC  
121 West 27th Street, Suite 303  
New York, NY 10001  
O: (646) 606-2332; F: (646) 606-2379

Drawn By	LM
Checked By	AP
Date	August 2025
Scale	As Noted

Soil Analytical Results

Figure 7





Sample ID	MW1
Date	11/18/2016
SVOCs	ppb
Benzo(a)anthracene	ND
Benzo(a)pyrene	ND
Benzo(b)fluoranthene	ND
Benzo(k)fluoranthene	ND
Chrysene	ND
Indeno(1,2,3-cd)pyrene	ND
Unfiltered Metals	
Arsenic	54
Barium	4960
Beryllium	24
Cadmium	14
Chromium	304
Copper	2,260
Iron	264,000
Lead	408
Magnesium	90,500
Manganese	71,100
Nickel	1,160
Sodium	226000
Thallium	ND

Sample ID	MW2
Date	11/18/2016
SVOCs	ppb
Benzo(a)anthracene	ND
Benzo(a)pyrene	ND
Benzo(b)fluoranthene	ND
Benzo(k)fluoranthene	ND
Chrysene	ND
Indeno(1,2,3-cd)pyrene	ND
Unfiltered Metals	
Arsenic	41
Barium	3630
Beryllium	19
Cadmium	9
Chromium	236
Copper	1,830
Iron	191,000
Lead	160
Magnesium	75,400
Manganese	41,700
Nickel	880
Sodium	148000
Thallium	ND

Sample ID	MW3
Date	11/18/2016
SVOCs	ppb
Benzo(a)anthracene	0.03
Benzo(a)pyrene	ND
Benzo(b)fluoranthene	ND
Benzo(k)fluoranthene	ND
Chrysene	ND
Indeno(1,2,3-cd)pyrene	ND
Unfiltered Metals	
Arsenic	47
Barium	4110
Beryllium	17
Cadmium	10
Chromium	710
Copper	1,740
Iron	349,000
Lead	347
Magnesium	128,000
Manganese	52,000
Nickel	754
Sodium	165000
Thallium	1

Sample ID	MW4
Date	11/18/2016
SVOCs	ppb
Benzo(a)anthracene	0.38
Benzo(a)pyrene	0.38
Benzo(b)fluoranthene	0.34
Benzo(k)fluoranthene	0.3
Chrysene	0.39
Indeno(1,2,3-cd)pyrene	0.26
Unfiltered Metals	
Arsenic	65
Barium	5620
Beryllium	28
Cadmium	17
Chromium	559
Copper	2,400
Iron	376,000
Lead	535
Magnesium	146,000
Manganese	84,700
Nickel	1,330
Sodium	177000
Thallium	ND

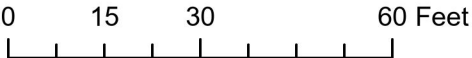


Analyte	NY-AWQSGV
SVOCs	ppb
Benzo(a)anthracene	0.002
Benzo(a)pyrene	0.002
Benzo(b)fluoranthene	0.002
Benzo(k)fluoranthene	0.002
Chrysene	0.002
Indeno(1,2,3-cd)pyrene	0.002
Total Metals	
Arsenic	25
Barium	1,000
Beryllium	3
Cadmium	5
Chromium	50
Copper	200
Iron	300
Lead	25
Magnesium	35,000
Manganese	300
Nickel	300
Sodium	20,000
Thallium	0.5

- Notes:
- 1. Bold and shaded yellow value indicates concentration exceeds NY-AWQSGV
  - 2. NY-AWQSGV = NYSDEC Division of Technical and Operational Guidance Series (TOGS) 1.1.1 Ambient Water Quality Standards and Guidance Values (AWQSGV)
  - 3. ND = Not detected
  - 4. ppb = parts per billion

Legend

- MW
- NYC Tax Lots
- Site Boundary



Reference:  
2021 Aerial: orthos.its.ny.gov  
Parcel Boundaries: Contributing counties, NYS Office of Information Technology Services GIS Program Office (GPO) and NYS Department of Taxation and Finance's Office of Real Property Tax Services (ORPTS).

260 West 126th Street  
New York, New York  
Block 1931, Lot 56



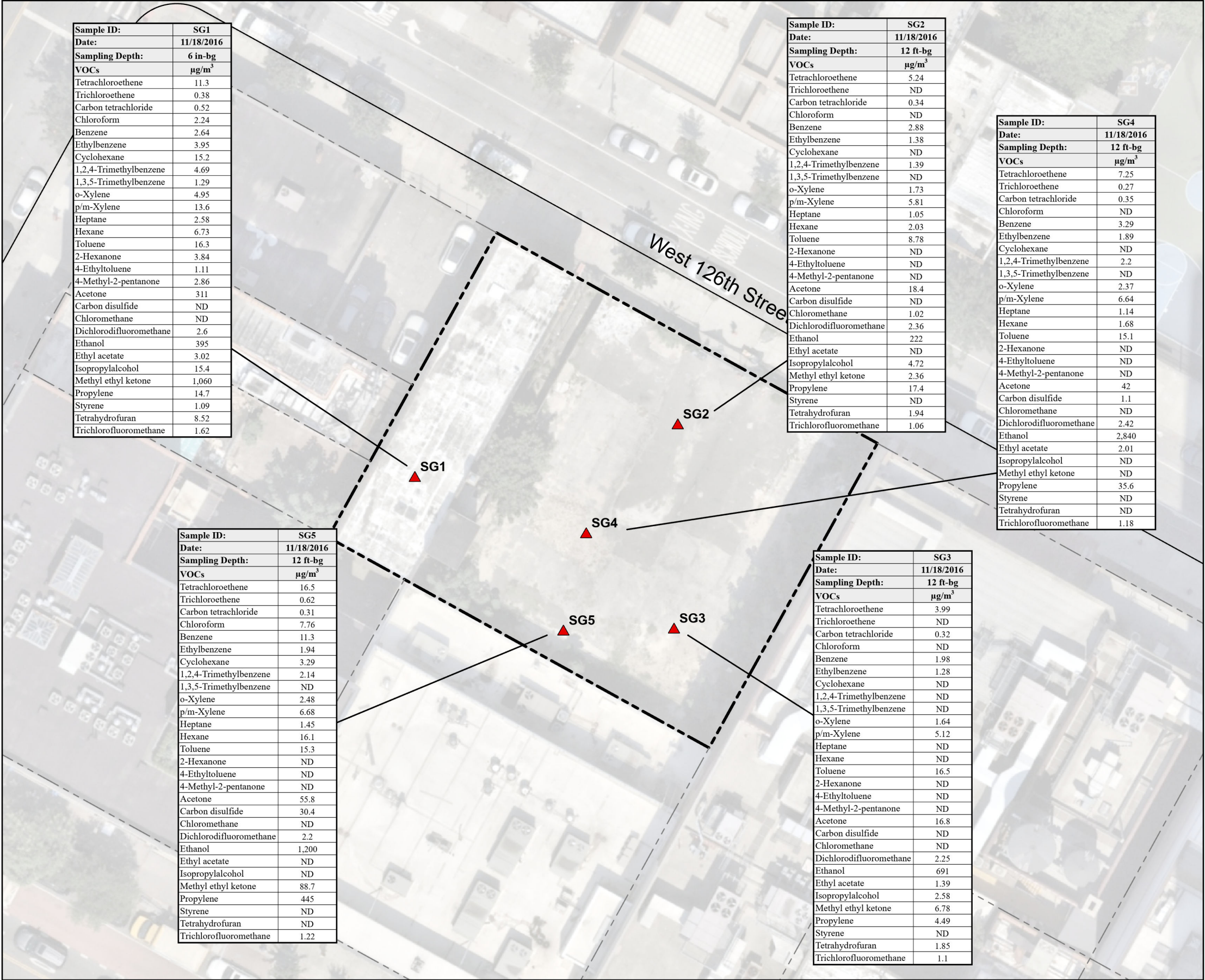
Tenen Environmental, LLC  
121 West 27th Street, Suite 303  
New York, NY 10001  
O: (646) 606-2332; F: (646) 606-2379

Drawn By	LM
Checked By	AP
Date	August 2025
Scale	As Noted

Groundwater Analytical Results

Figure 8





Notes:	
1.	ND = Not Detected
2.	µg/m³ = micrograms per cubic meter
3.	ft-bg = feet below grade
4.	in-bg = inches below grade

Legend

▲

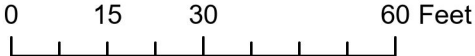
SV

----

NYC Tax Lots

⬜

Site Boundary



Reference:  
2021 Aerial: [orthos.its.ny.gov](https://orthos.its.ny.gov)  
Parcel Boundaries: Contributing counties, NYS Office of Information Technology Services GIS Program Office (GPO) and NYS Department of Taxation and Finance's Office of Real Property Tax Services (ORPTS).

260 West 126th Street  
New York, New York  
Block 1931, Lot 56

TENEN

ENVIRONMENTAL

Tenen Environmental, LLC  
121 West 27th Street, Suite 303  
New York, NY 10001  
O: (646) 606-2332; F: (646) 606-2379

Drawn ByLM

Checked ByAP

DateAugust 2025

ScaleAs Noted

Soil Vapor Analytical Results

Figure 9

Exhibit D  
Environmental Reports

Exhibit E  
NYS Department of State Registration





# Department of State

## Division of Corporations

### Entity Information

[Return to Results](#)[Return to Search](#)

#### Entity Details



**ENTITY NAME:** S & F 126 ST. LLC  
**DOS ID:** 5004761  
**FOREIGN LEGAL NAME:**  
**FICTITIOUS NAME:**  
**ENTITY TYPE:** DOMESTIC LIMITED LIABILITY COMPANY  
**DURATION DATE/LATEST DATE OF DISSOLUTION:**  
**SECTION OF LAW:** 203 LLC - LIMITED LIABILITY COMPANY LAW  
**ENTITY STATUS:** ACTIVE  
**DATE OF INITIAL DOS FILING:** 09/07/2016  
**REASON FOR STATUS:**  
**EFFECTIVE DATE INITIAL FILING:** 09/07/2016  
**INACTIVE DATE:**  
**FOREIGN FORMATION DATE:**  
**STATEMENT STATUS:** PAST DUE DATE  
**COUNTY:** KINGS  
**NEXT STATEMENT DUE DATE:** 09/30/2018  
**JURISDICTION:** NEW YORK, UNITED STATES  
**NFP CATEGORY:**

[ENTITY DISPLAY](#)[NAME HISTORY](#)[FILING HISTORY](#)[MERGER HISTORY](#)[ASSUMED NAME HISTORY](#)

Service of Process on the Secretary of State as Agent

**The Post Office address to which the Secretary of State shall mail a copy of any process against the corporation served upon the Secretary of State by personal delivery:**

**Name:** S & F 126 ST. LLC

**Address:** 116 NOSTRAND AVE, BROOKLYN, NY, UNITED STATES, 11205

**Electronic Service of Process on the Secretary of State as agent: Not Permitted**

Chief Executive Officer's Name and Address

**Name:**

**Address:**

Principal Executive Office Address

**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

Exhibit F  
Lease Agreement

## ***ACCESS AGREEMENT***

ACCESS AGREEMENT made as of this 25<sup>th</sup> day of July 2025, by and between THOMAS MEMORIAL WESLEYAN METHODIST CHURCH, INC., a New York religious corporation ("**Grantor**"), and S & F 126 ST. LLC, a New York limited liability company ("**Grantee**").

WHEREAS, Grantor is the fee owner of that certain real property commonly known as 260 West 126<sup>th</sup> Street, New York, New York 10027 (Manhattan, Block 1931, Lot 56), together with the building and improvements thereon (collectively, "**Grantor's Property**"); and

WHEREAS, Grantor, as landlord, and Grantee, as tenant, have entered into that certain Agreement of Lease ("**Lease**"), dated October 5, 2016, as amended as of January 18, 2017 and amended again as of October 27, 2016, for Grantor's Property; and

WHEREAS, the "Commencement Date" of the Lease, as defined in the Lease, occurred on June 24, 2023; and

WHEREAS, Grantor and Grantee mutually desire for Grantee to apply to have Grantor's Property admitted to the New York State Brownfield Cleanup Program ("**BCP**"); and

WHEREAS, following admission of Grantor's property to the BCP, Grantee may require access to Grantor's Property to carry out certain investigatory, remedial and other related tasks required by the BCP (collectively, the "**Work**"); and

WHEREAS, Grantor desires to grant Grantee such access to perform the Work, to the extent not otherwise granted under the Lease, as amended; and

WHEREAS, Grantor and Grantee acknowledge and agree that the indemnification provision in Article 15 of the Lease shall apply to the access permitted herein.

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration, the receipt of which is hereby acknowledged, Grantor and Grantee agree as follows:

1. Grantor hereby grants reasonable access and a license upon, into, under or through Grantor's Property for the purpose of the entry thereon by Grantee, its agents, employees, architects, engineers, contractors and consultants (collectively, the "**Grantee Related Parties**" and each a "**Grantee Related Party**"), vehicles, equipment and materials required by Grantee to satisfy tasks and obligations required by any Brownfield Cleanup Agreement entered into between Grantee and the New York State Department of Environmental Conservation.

2. Grantee Related Parties shall perform the Work in a workmanlike manner and in accordance with industry standards and in accordance with applicable laws, rules and regulations. The rights granted pursuant to paragraph 1 of this Agreement are nonexclusive, it being understood and agreed that Grantor, its agents, employees, workers, contractors and tenants will have full authority to come upon and have unfettered access to Grantor's Property

during the performance of the Work. The performance of the Work will not interfere unreasonably with the quiet enjoyment of Grantor's building by the tenants thereof, as applicable. Grantor agree that it will use commercially reasonable efforts to avoid unreasonable interference with Grantee's exercise of its rights hereunder.

3. Grantee shall provide reasonable notice to Grantor prior to Grantee's need for access to Grantor's Property to perform the Work.

4. Grantee shall be responsible for obtaining all federal, state or local governmental approvals and providing all notices in relation to the Work.

5. Grantor hereby also grants Grantee the right and authority to place an environmental easement pursuant to Article 71, Title 36 of the Environmental Conservation Law ("ECL") on Grantor's Property, should an environmental easement be deemed necessary as an element of the site remediation under the BCP, and to record such environmental easement with the Office of the City Register of New York City.

6. This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Any proceedings initiated by either party to enforce the terms of or otherwise related to this Agreement shall be brought in the Supreme Court, State of New York.

IN WITNESS WHEREOF, this Agreement has been executed by Grantor and Grantee and is effective as of the date set forth above.

**GRANTOR:**

THOMAS MEMORIAL WESLEYAN  
METHODIST CHURCH, INC.

By: 

Name: TREVOR SAMUEL  
Title: PRESIDENT.

**GRANTEE:**

S & F 126 ST. LLC

By: 

Name: Usher Goldman  
Title: Representative

---

AGREEMENT OF LEASE

by and between

THOMAS MEMORIAL WESLEYAN METHODIST CHURCH, INC.

as LANDLORD

and

S & F 126 ST. LLC,  
A New York Limited Liability Company

as TENANT

Premises: 260-270 West 126<sup>th</sup> Street  
New York, New York 10027

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## TABLE OF CONTENTS

ARTICLE 1 PREMISES DEMISED.....	1
ARTICLE 2 TERM OF LEASE; PERMITTED USE.....	2
ARTICLE 3 RENT .....	4
ARTICLE 4 PAYMENT OF TAXES, ASSESSMENTS, IMPOSITIONS, ETC .....	6
ARTICLE 5 DEMOLITION AND CONSTRUCTION OF NEW BUILDING .....	11
ARTICLE 6 INSURANCE.....	14
ARTICLE 7 DAMAGE OR DESTRUCTION.....	17
ARTICLE 8 REPAIRS AND MAINTENANCE.....	20
ARTICLE 9 COMPLIANCE WITH LAWS, ORDINANCES, ETC .....	22
ARTICLE 10 CHANGES AND ALTERATIONS BY TENANT.....	24
ARTICLE 11 DISCHARGE OF LIENS.....	25
ARTICLE 12 WASTE.....	26
ARTICLE 13 USE OF PROPERTY .....	26
ARTICLE 14 RIGHT OF ENTRY ON PROPERTY BY LANDLORD .....	28
ARTICLE 15 INDEMNIFICATION OF LANDLORD .....	29
ARTICLE 16 CONDEMNATION.....	30
ARTICLE 17 VAULT SPACE .....	33
ARTICLE 18 MORTGAGES, ASSIGNMENTS AND SUBLETTING .....	34
ARTICLE 19 LEASEHOLD LENDER PROTECTIONS.....	34
ARTICLE 20 ASSIGNMENT, SUBLEASE AND NON-DISTURBANCE.....	40
ARTICLE 21 DEFAULT, INSOLVENCY EVENTS AND CONDITIONS OF LIMITATION .....	44
ARTICLE 22 REMEDIES .....	45
ARTICLE 23 NO IMPAIRMENT OF LANDLORD'S TITLE.....	48

ARTICLE 24 LIMITATION OF LIABILITY .....	49
ARTICLE 25 END OF TERM.....	49
ARTICLE 26 NOTICES.....	50
ARTICLE 27 INVALIDITY OF PARTICULAR PROVISIONS .....	52
ARTICLE 28 QUIET ENJOYMENT .....	52
ARTICLE 29 UNAVOIDABLE DELAYS AND FORCE MAJEURE.....	52
ARTICLE 30 [INTENTIONALLY OMITTED].....	53
ARTICLE 31 EXCAVATION AND SHORING.....	53
ARTICLE 32 LANDLORD’S RIGHT TO ASSIGN RENTS .....	54
ARTICLE 33 [INTENTIONALLY OMITTED].....	54
ARTICLE 34 LANDLORD’S RIGHT TO PERFORM TENANT’S COVENANTS.....	54
ARTICLE 35 AMENDMENTS TO LEASE .....	55
ARTICLE 36 LANDLORD DELAYS.....	55
ARTICLE 37 ESTOPPEL CERTIFICATES .....	56
ARTICLE 38 BROKER .....	56
ARTICLE 39 ENVIRONMENTAL.....	57
ARTICLE 40 MISCELLANEOUS .....	58
ARTICLE 41 COVENANTS BINDING .....	60



SCHEDULE 1.01	Excluded Personal Property
SCHEDULE 3.02(b)	Base Rent
EXHIBIT A	Legal Description of Demised Premises
EXHIBIT B	Permitted Encumbrances
EXHIBIT C	Description of Project
EXHIBIT D	Preliminary Drawings
EXHIBIT E	Confirmation of Rent Commencement Date Certificate
EXHIBIT F	Project Financing Terms
EXHIBIT G	Form of Construction Completion Guaranty from Chaskiel Strulovitch
EXHIBIT H	Value of Fee Estate
EXHIBIT I	Form of Subordination, Non-Disturbance and Attornment Agreement
EXHIBIT J	Form of Escrow Agreement

THIS LEASE (this "**Lease**"), executed the 5<sup>th</sup> day of October, 2016 (the "**date of this Lease**" or the "**date hereof**" and/or the "**effective date of this Lease**"), between THOMAS MEMORIAL WESLEYAN METHODIST CHURCH, INC., a religious corporation having an address at 260-270 West 126<sup>th</sup> Street, New York, New York 10027 (hereinafter called the "**Landlord**") and S & F 126 ST. LLC a New York limited liability company, having an address at 116 Nostrand Avenue, Brooklyn, New York 11205 (hereinafter called the "**Tenant**"),

W I T N E S S E T H:

**ARTICLE 1**

**PREMISES DEMISED**

Section 1.01 The Landlord, for and in consideration of the rents, covenants and agreements hereinafter reserved on the part of Tenant, its successors and assigns, to be paid and performed, does hereby lease and demise unto Tenant, and Tenant does hereby hire from Landlord, upon and subject to the conditions hereinafter expressed, all the following (collectively, the "**Demised Premises**");

All that certain plot, piece or parcel of land, with the buildings erected, and/or to be erected thereon or thereunder, situate, lying and being in the City of New York, County of New York, State of New York, bounded and described on the annexed **Exhibit A** ("**Premises**") and shown on the New York City Tax Map as Section 7, Block 1931, Lot 56;

Together with all bulk, floor area and floor area ratio (as such three terms are defined in Section 12-10 of the New York City Zoning Resolution) and all other zoning and development rights appurtenant to the Premises (collectively, the "**Development Rights**");

Together with all easements, appurtenances, hereditaments, air rights or other rights or privileges now or hereafter belonging or now or hereafter appurtenant to the Premises; and

Together with all right, title and interest of Landlord in and to the land lying in the streets and roads in front of and adjoining the Premises to the center lines thereof; and

All the foregoing subject, however, solely to the Permitted Encumbrances, as set forth with greater specificity on **Exhibit B** attached hereto and made a part hereof.

Section 1.02 The term "**Demised Premises**" as hereinafter used in this Lease includes the Premises and all property or rights described in Section 1.01 hereof and any spaces over, on and beneath the street level of the land and any building or buildings and improvements erected at any time on the Premises. Notwithstanding anything herein contained to the contrary, all personal property as more fully set forth in Schedule 1.01 annexed hereto and incorporated herein by reference shall be excluded from the Premises (the "**Excluded Personal Property**") and such Excluded Personal Property shall be removed from the Premises by Landlord prior to Tenant's demolition of the buildings and improvements now situated on the Demised Premises in accordance with the terms hereof, including, without limitation Section 2.03 and Section 5.02 hereof; provided that Landlord may, thereafter install and utilize the Excluded Personal Property

as part of the Church Unit (as such term is defined and used in Exhibit C attached hereto and made a part hereof); provided, further, that title to the Excluded Personal Property shall at all times remain vested in the Landlord.

## ARTICLE 2

### TERM OF LEASE; PERMITTED USE

Section 2.01. TO HAVE AND TO HOLD the same for a term hereof (the "**Term**"), subject to termination as provided in Section 2.03 below, which shall commence on the Surrender Date (as defined in Section 2.03 below) (the "**Commencement Date**") and end (unless sooner terminated pursuant to the covenants, conditions and agreements of this Lease or pursuant to law) on the date (the "**Expiration Date**") that is the first Quarterly Payment Date, as defined hereinbelow, immediately following the ninety-ninth (99th) anniversary of the Rent Commencement Date, as defined hereinbelow, yielding and paying the rents, additional rents and other payments hereinafter set forth and upon and subject to the agreements and provisions herein set forth, all of which Tenant covenants and agrees to perform and observe.

Section 2.02. Subject to the provisions of applicable laws and Article 13 of this Lease, Tenant may use and occupy the Demised Premises throughout the Term of this Lease for any and all legal purposes, including without limitation a residential housing, and including without limitation uses ancillary to the foregoing such as health club, gymnasium, retail space, parking garage and storage lockers.

Section 2.03. Tenant acknowledges that Landlord presently operates a house of worship and certain related activities in the buildings and improvements presently located on the Demised Premises (the "**Church**"); and that, from the date hereof until the Surrender Date (as hereinafter defined), Landlord shall (a) continue to have the exclusive right to use the building and improvements for the Church, without charge therefor or offset against Tenant's obligation to pay Base Rent, Additional Rent or other sums due hereunder; (b) continue to have the sole responsibility to maintain, at its sole cost and expense, the Demised Premises (including its buildings and all improvements built thereon) in good operating order and condition, free and clear of any and all liens, claims and encumbrances; and (c) retain all rights of ownership with respect to the Demised Premises, free and clear of all claims of Tenant under this Lease, subject only to (i) Tenant's right to access the Demised Premises for the purposes of taking measurements, performing inspections and due diligence; provided that Tenant (x) indemnifies Landlord with respect to all claims, demands, judgments and losses arising out of and/or resulting from Tenant's access to the Demised Premises prior to the Surrender Date and (y) delivers to Landlord insurance certificates for coverages and in amounts specified in Section 6.01(b) hereof with respect to Tenant's access to the Demised Premises prior to the Surrender Date; and (ii) Tenant's right to possession of the Demised Premises from and after the Surrender Date in accordance with the terms and conditions of this Lease. For the purposes hereof, the Surrender Date shall mean the date on which the Landlord surrenders and gives Tenant full and exclusive possession of the Demised Premises, free and clear of all tenancies, in the condition required by the terms of this Lease, including (a) the removal of all movable personal property of the Landlord, including without limitation, the Excluded Personal Property, and (b) all portions of the Demised Premises used for parking shall be delivered clean of vehicles and debris with all occupancy or signage

rights agreements expired or terminated. Any delay in vacating the Demised Premises shall be considered a Landlord Delay for purposes of this Lease and the Development Agreement. The Surrender Date shall be the Commencement Date of this Lease; provided that the parties acknowledge and agree that the Surrender Date shall occur no sooner than sixty (60) days after the Approval Date (as defined in Section 2.04 below) and no later than ninety (90) days after the Approval Date.

Section 2.04. Landlord and Tenant each acknowledge and agree that this Lease and the commencement of the Term is contingent upon compliance with NY Religious Corporations Law Section 12, pursuant to which Landlord shall (a) commence a special proceeding in the Supreme Court of the State of New York, County of New York (the "**Court**") to obtain the Court's approval of the Lease (the "**Court Approval**"); and (b) obtain and deliver to Tenant the approval of the Department of Law, Office of the Attorney General, of the State of New York (the "**Attorney General Approval**"). For purposes hereof, the Court Approval and the Attorney General Approval are referred to herein collectively as the "**Legal Approvals**." For purposes hereof, the "**Approval Date**" shall be the date that Landlord delivers to Tenant the Legal Approvals. Within thirty (30) days following the date of this Lease, Landlord shall commence all actions legally required to obtain and diligently pursue the issuance of the Legal Approvals. In the event that the final, non-appealable Legal Approvals have not been obtained by a date that is on or prior to the date that is two hundred ten (210) days following the date on which the Landlord has submitted its completed application(s) for the Legal Approvals, with all required documentation (the "**Initial Legal Approval Deadline**"), after the exercise of diligent good faith efforts by Landlord, Landlord may, by written notice to Tenant delivered not less than ten (10) Business Days (as defined herein) following the Initial Legal Approval Deadline ("**Landlord's Initial Approval Election**") elect to either (a) continue to diligently pursue the Legal Approvals at the sole cost and expense of Landlord or (b) subject to the reinstatement rights of Tenant provided hereinbelow, terminate this Lease. In the event that Landlord elects to terminate this Lease as provided hereinabove, Tenant may, by written notice to Landlord delivered not less than ten (10) Business Days following the receipt of Landlord's Initial Approval Election, void Landlord's election to terminate this Lease in which event Tenant may make or continue the application for the Legal Approvals at the sole cost and expense of Tenant in the name of the Landlord, for which purpose the Landlord hereby grants to Tenant an irrevocable power of attorney, coupled with an interest, for the sole and express limited purpose of obtaining the Legal Approvals. Notwithstanding the foregoing and the grant of the power of attorney as provided herein, in the event that Tenant elects to make application for the Legal Approvals, Landlord shall cooperate with Tenant and execute any documents reasonably required by Tenant to obtain the Legal Approvals; provided, further, that all efforts to be undertaken by Tenant in the name of the Landlord with respect to the prosecution of any applications and/or appeals in connection with any applications for the Legal Approvals shall be subject to Landlord's review and comments, prior to the submission of or proposed action to be taken by Tenant. In the event Tenant is unable to obtain the Legal Approvals by a date that is one hundred eighty (180) days following the Initial Legal Approval Deadline (the "**Outside Legal Approval Deadline**") subject to extension for Landlord Delays, either Landlord or Tenant may terminate this Lease by written notice to the other delivered not later than thirty (30) days following the Outside Legal Approval Deadline. In the event that neither Landlord or Tenant has delivered written notice on or prior to the date that is thirty (30) days following the Outside Legal Approval Deadline, this Lease shall be terminated and neither party shall have any further obligations under

this Lease or the Development Agreement, except that Landlord shall promptly cause the Escrow Agent (as hereinafter defined) to pay and return to Tenant the Escrow Funds (as hereinafter defined). As used in this Agreement, the term "**Business Days**" shall mean all days except Saturdays, Sundays and the days observed as public holidays by the Federal or the New York State or City governments, as well as the following Jewish holidays: Rosh Hashanah, Yom Kippur, Sukkot, Shemini Atzeret Simchat Torah, Hanukkah, Purim, Passover and Shavuot.

### ARTICLE 3 RENT

Section 3.01. Tenant, in consideration of the lease of the Demised Premises as aforesaid by Landlord to Tenant, covenants and agrees to pay to Landlord, in such currency of the United States of America, as, at the time of payment, shall be legal tender for the payment of public and private debts, at the Landlord's place of business as set forth in this Lease, or at such other address of which notice, in writing, shall have been given by Landlord to Tenant, annual net rental and additional payments as follows:

(a) Tenant shall pay to Landlord the following sums upon the occurrence of each of the events stated below: (i) upon the execution and delivery of this Lease the sum of Five Hundred Thousand Dollars (\$500,000), of which (A) One Hundred Fifty Thousand (\$150,000) shall be paid directly to the Landlord and shall be non-refundable and may be retained by Landlord in the event that this Lease is terminated in accordance with the terms hereof, and (B) the balance of Three Hundred Fifty Thousand (\$350,000) Dollars (herein sometimes referred to as the "**Initial Escrow Funds**") shall be paid into escrow to, and held by, Biancone & Wilinsky, LLP (the "**Escrow Agent**"), counsel to the Landlord, until the earlier of Approval Date or the termination of this Lease as provided herein (in which case said funds shall be released to the Landlord or the Tenant all in the manner and as provided in the Escrow Agreement, in the form attached hereto as **Exhibit J**); (ii) within sixty (60) days of Landlord's commencement of the special proceeding in the Court to obtain the Court Approval an additional sum of Two Hundred Fifty Thousand Dollars (\$250,000) (herein sometimes referred to as the "**First Installment of Additional Escrow Funds**") be paid into escrow to, and held by the Escrow Agent, until the earlier of (x) the Surrender Date, (y) the Release Date (as defined herein) or (z) the termination of this Lease as provided herein (in which case said funds shall be released to the Landlord or the Tenant all in the manner and as provided in the Escrow Agreement, in the form attached hereto as **Exhibit J**); and (iii) on the earlier to occur of (x) one hundred twenty (120) days after Landlord's commencement of the special proceeding in the Court to obtain the Court Approval or (y) the Approval Date, an additional sum of Two Hundred Fifty Thousand Dollars (\$250,000) (herein sometimes referred to as the "**Second Installment of Additional Escrow Funds**") be paid into escrow to, and held by the Escrow Agent, until the earlier of (x) the Surrender Date or (y) the termination of this Lease as provided herein (in which case said funds shall be released to the Landlord or the Tenant all in the manner and as provided in the Escrow Agreement, in the form attached hereto as **Exhibit J**); provided, further, that if Tenant fails to deposit the Second Installment of Additional Escrow Funds with the Escrow Agent on or before the earlier to occur of (x) one hundred twenty (120) days after Landlord's commencement of the special proceeding in the Court to obtain the Court Approval or (y) the Approval Date, the First Installment of Additional Escrow Funds shall be disbursed by the Escrow Agent to Landlord as provided in the Escrow Agreement, in the form attached hereto as **Exhibit J**, and shall be non-refundable and retained by Landlord in the event that this Lease is

terminated in accordance with the terms hereof (the "**Release Date**"). (The foregoing sums set forth in (i), (ii) and (iii) above together with the Additional Upfront Rent Payment provided in Section 5.01 hereof (if such Additional Upfront Rent Payment becomes due and payable in accordance with the terms hereof) are referred to collectively herein as the "**Upfront Rent Payments**"). There shall be no further Rent due for the period from the Commencement Date through the Rent Commencement Date.

(b) Tenant covenants and agrees to diligently and in good faith comply with the Financing Terms set forth in Exhibit F attached to this Lease and by this reference made a part hereof (the "**Financing Terms**"). For the period beginning on the Rent Commencement Date and continuing for each Lease Year throughout the Term of this Lease, Tenant shall pay to Landlord, without notice or demand and without abatement, set-off or deduction whatsoever, the Base Rent as shown on Schedule 3.01(b) attached hereto (the "**Base Rent**"). "**Lease Year**" shall mean (a) the period commencing on the Rent Commencement Date and ending on the day before the first (1st) anniversary of the Rent Commencement Date, and (b) each succeeding twelve-month period.

Section 3.02. All Base Rent and Additional Rent (as defined in Section 3.05 below) are collectively referred to herein as Rent. Any quarterly payments of Base Rent a portion of which is included within the term of this Lease and a portion of which is not, shall be equitably apportioned over such quarter with the last payment of Base Rent due and payable on the Expiration Date.

Section 3.03.(a) The annual Rent payable hereunder shall be paid in equal quarterly installments, in advance, on the first day of the first month preceding each calendar quarter for which it is being paid, *i.e.*, on or before January 1 for the January 1 - March 31 calendar quarter, on or before April 1 for the April 1 - June 30 calendar quarter, on or before July 1 for the July 1 - September 30 calendar quarter and on or before October 1 for the October 1-December 31 calendar quarter (each, a "**Quarterly Payment Date**"). The "**Rent Commencement Date**" shall be the date upon which the first temporary certificate of occupancy shall be issued by the New York City Department of Buildings for the New Building (as defined in Section 5.01(a) hereof) erected on the Demised Premises other than any unoccupied retail or commercial space, if any. Tenant shall pay, on the first Quarterly Payment Date immediately following the Rent Commencement Date (the "**Initial Rent Payment Date**"), an installment of Rent then due and owing under this Lease, pro-rated on a *per diem* basis, covering the period of time from the Rent Commencement Date to the day before the next Quarterly Payment Date. Thereafter, Tenant shall pay to Landlord equal quarterly installments of the Rent then due and payable under this Lease on each succeeding Quarterly Payment Date, covering each succeeding calendar quarter, throughout the Term of this Lease.

(b) Landlord and Tenant shall acknowledge in writing the date of the Rent Commencement Date. Landlord shall prepare and deliver to Tenant for execution a Rent Commencement Date Certificate in the form shown in Exhibit E attached to this Lease and by reference made a part hereof (the "**Rent Commencement Date Certificate**") Tenant agrees that it shall be deemed to have accepted the Rent Commencement Date specified in the Rent Commencement Date Certificate in the event Tenant fails, within ten (10) Business Days after Tenant's receipt of the Rent Commencement Date Certificate, (i) to execute and return the Rent Commencement Date Certificate to Landlord, or (ii) to inform Landlord in writing of the reasons Tenant does not agree with the Rent Commencement Date specified in the Rent Commencement

Date Certificate, if such is the case. Notwithstanding the foregoing, the failure of the Landlord and Tenant to execute and delivery a Rent Commencement Date Certificate shall have no effect on the validity of enforceability of this Lease, and this instrument shall constitute a binding contract, enforceable in accordance with its terms, effective as of the date hereof.

Section 3.04. The Base Rent referred to herein shall be paid in full to Landlord without notice or demand and without abatement, set-off or deduction whatsoever.

Section 3.05. In addition, Tenant will also pay, without notice and without abatement, deduction or set-off as additional rent, all sums, costs, expenses and other payments that Tenant in any of the provisions of this Lease assumes or agrees to pay (such sums, costs, expenses and other payments, together with Impositions, as defined hereinbelow, are collectively referred to hereinafter as "**Additional Rent**") and, in the event of any non-payment of any such Additional Rent, after notice thereof as hereafter set forth and expiration of the applicable grace periods, Landlord shall have all the rights and remedies provided for herein or by law in the case of nonpayment of the Rent. Notwithstanding the foregoing, any item of Additional Rent that is asserted by Landlord as due with respect to which Tenant has no prior actual notice from Landlord or a third party will require written notice not less than thirty (30) days from Landlord to Tenant as a precondition to payment.

Section 3.06. If any installment of Base Rent or any Additional Rent is not paid within ten (10) Business Days of the date due under this Lease, Tenant shall pay Landlord, as Additional Rent, a late charge equal to a fixed fee in the amount of five percent (5%) of the overdue amount for, among other things, defraying the expenses incident to handling such delinquent payments. Such charge shall be in addition to, and not in lieu of, any other remedy Landlord may have under this Lease or by law; provided, however, that the late charge shall not be imposed on the first overdue amount in any calendar year during the Term of this Lease.

Section 3.07. In addition to the above-described late charge, any installment of Base Rent, Additional Rent and other money due and payable to Landlord under this Lease which is not paid as and when due shall bear interest at the rate of the Prime Rate (as defined in Section 34.02 hereinbelow) plus five percent (5%) per annum from and after the fifteenth (15th) business day after notice of non-payment shall have been given by Landlord to Tenant, until full payment is made. Such interest shall be in addition to, and not in lieu of, any other remedy Landlord may have.

## ARTICLE 4

### PAYMENT OF TAXES, ASSESSMENTS, IMPOSITIONS, ETC.

Section 4.01.(a) "**Impositions**" shall mean, collectively, (a) all real estate taxes, all special assessments and all other property assessments, including all assessments for public improvements or betterments, whether or not commenced or completed within the term of this Lease and all Business Improvement District ("**BID**") charges and assessments, (b) all ad valorem, sales and use taxes, (c) all rent and occupancy taxes and all similar taxes, (d) all personal property and other taxes on personal property owned by Tenant in connection with the use and operation of the New Building, (e) all water, sewer, and other utility charges imposed by any Taxing Authority, as



defined herein, (f) all fines, fees, charges, penalties, and interest imposed by any Taxing Authority or utility on Tenant's delinquent payments, and (g) all other governmental charges and taxes, in each case of any kind or nature whatsoever, general or special, foreseen or unforeseen, ordinary or extraordinary, which are at any time during or with respect to the Term assessed, levied, charged, confirmed or imposed with respect to the Demised Premises, or the use, leasing, ownership or operation thereof by Tenant, or become payable out of or become a lien upon the Demised Premises, the sidewalks or streets adjoining the Demised Premises, or the Tenant's personal property or the rents or income therefrom by Tenant. Notwithstanding the foregoing, to the extent that the Demised Premises are exempt from real property taxes under Section 421-a of the New York Real Property Tax Law, Section 11-246 of the New York City Administrative Code or any applicable similar or successor statute, and for as long as such exemption shall be applicable to the Demised Premises, Impositions shall be limited to those assessed under Section 421-a(2) of the New York Real Property Tax Law or any similar provision in any applicable similar or successor statute.

(b) For purposes of this Lease, "**Taxing Authority**" shall mean any government, or instrumentality thereof, that shall be authorized to impose Impositions.

Section 4.02. Throughout the Term, Tenant will pay, or cause to be paid, all Impositions as and when the same shall become due and payable, provided, however, that:

(a) Tenant may avail itself of any and all exemptions from Impositions that may be available;

(b) if, by law, any Imposition may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments and, in such event, Tenant shall pay such installments as they become due during the term of this Lease, as the same respectively become due and before any fine, penalty, further interest or cost may be added thereto; and

(c) if Landlord shall fail to pay, to obtain a full exemption from or otherwise to discharge any Imposition for which Landlord is responsible as provided in Section 4.07 hereof as and when aforesaid, within ten (10) Business Days after receipt of a notice from Tenant or any Taxing Authority, then Tenant or any Leasehold Lender (as hereinafter defined) may pay such Imposition on behalf of Landlord, in which event such amount paid by Tenant shall bear interest at the rate of the Prime Rate (as defined in Section 34.02 hereinbelow) plus five percent (5%) per annum from and after the fifteenth (15th) Business Day after notice of non-payment shall have been given by Tenant to Landlord, and shall be credited against the next payments of Rent payable under this Lease.

Section 4.03. If any of the Impositions are paid, levied or assessed on a fiscal year basis, and if the Commencement Date occurs on a day other than the first day of such fiscal year or the Expiration Date occurs on a day other than the last day of such fiscal year, such Impositions shall be apportioned between Landlord and Tenant on a *per diem* basis as of the Commencement Date and/or Expiration Date, as the case may be. To the extent any assessments payable in installments affect the Premises at the Commencement Date or Expiration Date, (a) installments payable prior

to the Commencement Date and after the Expiration Date shall be payable by Landlord, (b) installments payable after the Commencement Date and before the Expiration Date shall be payable by Tenant, and (c) any installment payable with respect to a fiscal period in which the Commencement Date or Expiration Date occurs shall be apportioned between Landlord and Tenant on a *per diem* basis.

Section 4.04. Nothing contained in this Lease shall require Tenant or Landlord to pay any of the following taxes or governmental impositions, and none of the following shall be deemed to constitute "**Impositions**":

(a) any estate, inheritance, devolution, succession, transfer, legacy or gift tax;

(b) any capital stock tax or other tax imposed for the privilege or franchise of doing business as a corporation or for the transfer of any stock in such corporation or as a partnership, general or limited, or any other entity;

(c) any income tax levied upon or against the income of Landlord or Tenant, including any rent income derived by Landlord or Tenant or from the Demised Premises; and

(d) if Landlord, Tenant or any agent of Landlord or Tenant shall occupy space in the Demised Premises for the conduct of its business, any occupational, license, or other tax imposed with respect to such occupancy or the conduct of its business in such space; or

(e) any gross receipts tax levied against rent or other income;

provided, however, that in any case where a tax may be levied, assessed or imposed upon rent income in lieu of, or as a substitute, in whole or in part, for taxes levied, assessed or imposed upon real property constituting an Imposition, the same shall be considered an Imposition to the extent of such substitution. For the purposes hereof, such tax will be payable as if each party's interest in the Demised Premises were the only property of such party subject to such tax and as if the rents received were the sole income of such party.

Section 4.05. Tenant shall deliver to Landlord, promptly upon request, copies of the receipted bills or other evidence reasonably satisfactory to Landlord showing the payment of such Impositions. If a Leasehold Mortgage requires escrow payments of any of the Impositions to the holder of such Leasehold Mortgage, Tenant may pay such Impositions to such holder; provided that the foregoing shall not relieve Tenant of its obligation to cause all Impositions to be timely paid to the applicable Taxing Authorities or to provide Landlord with proof of timely payment. Notwithstanding the foregoing, Landlord may ask any Taxing Authority to send it copies (but not originals) of Tenant's tax bills and notices of assessed value, and Tenant covenants and agrees that Tenant shall, within ten (10) Business Days after written request from Landlord, send to Landlord a copy of any tax bills or notices of assessed value within its possession.

Section 4.06. (a) If the Demised Premises are encumbered by a Fee Mortgage (as defined in Section 19.15 hereof) that is not prohibited by the terms of this Lease, the following shall apply: If any Fee Lender requires that amounts (estimated and/or actual) necessary to pay any Impositions and/or insurance premiums be deposited with it in advance (which right, if any, shall be subject to

the rights of the holder of any Leasehold Mortgage), Tenant, upon at least thirty (30) days' prior written notice from Landlord, shall pay the amounts so required to the Fee Lender in accordance with the requirements of such Fee Lender. Payment by Tenant of such amounts to the Fee Lender in accordance with the requirements of such Fee Lender shall constitute full satisfaction of Tenant's obligations hereunder with respect to the amounts paid to the Fee Lender. If any Imposition for which such payment is timely made to the Fee Lender is not paid when due, Landlord (and not Tenant) shall take such steps as are necessary to cause the same to be paid. If any Imposition for which such payment has been made to the Fee Lender becomes delinquent, Tenant may, but shall not be obligated to, pay the same and deduct the amount of such payment, plus any interest and penalties and any other reasonable expenses of Tenant incurred in connection therewith, from the next ensuing installment or installments of Rent.

(b) Each party shall have the right to contest the amount or validity, in whole or in part, of any Imposition, by application therefor or by appropriate proceedings diligently conducted in good faith but only after payment of such Imposition unless such payment would operate as a bar to such contest or interfere materially with the prosecution thereof, in which event, notwithstanding the preceding provision, such party may postpone or defer payment of such Imposition if neither the Demised Premises nor this Lease nor any part thereof or interest therein or herein would by reason of such postponement or deferment be in immediate danger of being forfeited or lost, or which may constitute a default under any leasehold mortgage. Upon the ultimate termination of any such proceedings, the contesting party shall pay the amount of such Imposition as finally determined in such proceedings, together with any costs, fees, interest, penalties or other liabilities in connection therewith.

(c) Each party hereto shall cooperate reasonably with any such contest by the other party hereto, including without limitation by joining therein if requested to do so, on condition that such cooperating party shall not thereby be subjected to any liability for the payment of any costs or expenses in connection with any such proceedings, and the contesting party shall indemnify and save harmless the cooperating party from any such costs and expenses.

Section 4.07. Tenant may at any time, to the extent permitted by law or regulation, seek to cause Landlord's and Tenant's interests in the Demised Premises and/or this Lease to be divided into separate tax lots, in which event Landlord shall, on a timely basis, cooperate with Tenant in such efforts, including without limitation by executing and delivering any documents as may reasonably be required therefor. In any such effort, each party will pay its own costs and expenses, including attorneys, surveyors' and other professionals' fees and disbursements and fees to the Taxing Authorities, provided that if any such fees to the Taxing Authorities are not allocated by the Taxing Authorities between Landlord and Tenant, then Landlord and Tenant shall each pay half of the same. The resulting separate tax bills shall constitute presumptively correct but rebuttable allocations of all Impositions between the Leasehold Impositions and the Fee Impositions, provided that either party may, as hereinafter provided, contest any aspect of its bill and the assessed value of its such interest, including without limitation the allocations between Landlord and Tenant of the components of any assessed values. Either party may ask any Taxing Authority to send it copies (but not originals) of the other party's tax bills and notices of assessed value, and each party shall, within ten (10) Business Days after written request from the other

party, send the other party a copy of any tax bills or notices of assessed value within its possession.

Section 4.08. Notwithstanding anything herein to the contrary, Landlord shall be solely responsible for the payment of all Impositions (a) that are assessed against all or any portion of the Demised Premises prior to the Surrender Date; (b) that may be imposed directly against Landlord or the interest of Landlord in the Demised Premises or this Lease or the Base Rent and Additional Rent to be received by Landlord under this Lease and (c) all costs and charges imposed on the Church Unit pursuant to the Condominium Documents (as defined in Section 4.12 below), subject only to the limitations provided in Section 4.12 below. If all or any part of an Imposition is refunded to either party (whether through cash payment or credit against Impositions), the party who paid the Imposition to which the refund relates shall be entitled to such refund to the extent such refund relates to any Imposition paid by such party. If either party receives a refund (whether by cash payment or credit) to which the other party is entitled, the receiving party shall promptly pay the amount of such refund or credit to the entitled party, less the receiving party's expenses, if any, in obtaining such refund or credit.

Section 4.09. The certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition, of non-payment of such Imposition shall be *prima facie* but rebuttable evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill.

Section 4.10. Landlord shall not, without the consent of Tenant, permit the tax lot for the Demised Premises or the Demised Premises or its interest therein to be combined with any other tax lot.

Section 4.11. Tenant shall timely and fully pay any and all New York State Real Estate Transfer Tax and New York City Real Property Transfer Tax that may be due and payable for the creation, execution or delivery of this Lease or the recording of a memorandum hereof. If Tenant shall fail to pay any of the same as and when due aforesaid within ten (10) Business Days after receipt of a notice from Landlord or any Taxing Authority, then Landlord or any Leasehold Lender may pay the same on behalf of Tenant, in which event such amount paid by Landlord, with interest at the rate of 9% per annum, shall be added the next payments of Basic Rent payable under this Lease. Both parties shall, simultaneously with the execution and delivery of this Lease, execute and deliver any and all transfer tax forms required by Taxing Authorities.

Section 4.12. Landlord acknowledges and agrees that Tenant shall subject the New Building to a condominium regime (in which event Landlord shall cooperate in the execution, delivery and recording of any documents related to the establishment of condominium, including without limitation a declaration of condominium and related documents (collectively, the "**Condominium Documents**")), provided that the Condominium Documents shall impose only the following categories of expense on the Church Unit created pursuant to the Condominium Documents: (a) repairs and maintenance, (b) services and supplies, (c) management fee, (d) reasonable legal and auditing fees, (e) administration, (f) insurance and (g) contingency (collectively, the "**Church Unit CAC**"); provided, further, that the Church Unit CAC shall be calculated solely with respect to expenses incurred in connection with the common areas of the New Building and expressly excluding any and all expenses incurred by the Condominium Association (as defined herein) with respect to the Residential Unit and/or the Commercial Unit;

provided, further, that the Condominium Documents shall cap the Church Unit CAC at One Thousand Five Hundred Dollars (\$1,500) per month; subject to annual increases not to exceed three percent (3%) per annum. The percentage interest allocated to the Church Unit shall be determined based upon a fraction, the denominator of which shall be the gross floor area allocated to the Church Unit and the numerator of which shall be the gross floor area of the New Building. Tenant shall obtain and pay for all meters required for all utilities serving the New Building, including, without limitation the Church Unit, including, without limitation, fuel, gas, electric, water and sewer service. From and after the date of delivery of the Church Unit to Landlord, Landlord shall obtain and pay for all utilities directly from and to the utilities and vendors serving the Church Unit, including, without limitation, fuel, gas, electric, water and sewer service. Notwithstanding anything herein contained to the contrary, in the event that New Building is not accepted as a condominium regime, by virtue of the rejection of the Condominium Documents through no fault of the Landlord and/or Tenant, Tenant shall be authorized and obligated to sublease (i) the residential units to residential tenants, (ii) the Commercial Unit to a commercial tenant, subject, however, to Article 13 of this Lease concerning Prohibited Uses (as defined hereinbelow), and (iii) the Church Unit to the Landlord (the "**Church Unit Sublease**"); provided that the Church Unit Sublease shall establish the sub-rent with respect to the Church Unit at One Thousand Five Hundred Dollars (\$1,500) per month for the first five (5) years and thereafter be subject to increases of three percent (3%) per annum for each successive five (5) year period of the Church Unit Sublease; provided, further, the terms of the Church Unit Sublease shall be subject to the approval of Landlord and Tenant, which approval shall not be reasonably withheld, delayed or conditioned.

## ARTICLE 5

### DEMOLITION AND CONSTRUCTION OF NEW BUILDING

Section 5.01.(a) Tenant shall, subject to compliance with all governmental laws, rules and regulations and the terms and conditions of this Lease, demolish the buildings and improvements now situated on the Demised Premises and shall replace the same with a new building which shall be approximately 12 stories, containing approximately 90,000 gross square feet (more or less) and used primarily for residential apartments (the "**New Building**"); provided that the New Building shall be an independent, free standing structure located entirely within the boundaries of the Premises; provided, further, that the demolition of the buildings and improvements now situated on the Demised Premises and the construction of the New Building shall be effected at Tenant's sole cost and expense in accordance with the terms and conditions of that certain Development Agreement between Landlord and Tenant of even date herewith (the "**Development Agreement**"). Tenant anticipates that the overall project contemplated by this Lease (the "Project") will consist of constructing the New Building which will be divided into not more than three (3) separate Units, namely the Church Unit, a Residential Apartment Unit, and a Commercial Unit all as more particularly described on Exhibit C ("Description of Project") and Exhibit D ("Preliminary Drawings"), attached hereto; and that the overall development costs shall be not less than Twenty-Five Million (\$25,000,000) Dollars (the "**Development Costs**"). As a material inducement to the execution of this Lease, the Landlord and Tenant mutually acknowledge and agree that the Description of the Project as set forth in Exhibit C and the schematic drawings and plans set forth

in **Exhibit D** are generally acceptable to both parties and reflect an agreement in principle as to the overall scope, size, dimensions and aesthetic look of the Project; that they have been reviewed and approved by their respective principals and their architects and engineers; and that, from and after the date of this Lease, no significant or substantive changes in, or alterations to, said plans shall be permitted without the prior written consent of both parties in their sole and absolute discretion. Notwithstanding anything herein contained to the contrary, Tenant anticipates submitting the New Building to a condominium regime, containing three (3) units as more particularly described on **Exhibit C** attached hereto (the “**Condominium Units**”). The Commercial Unit (as defined in **Exhibit C** attached hereto) shall be designed by Tenant for uses to be determined based on the Tenant’s assessment of market conditions subject, however, to Article 13 of this Lease concerning Prohibited Uses (as defined hereinbelow). The Church Unit shall be comprised of not less than eight thousand five hundred (8,500) square feet of space (as defined in **Exhibit C** attached hereto). The Church Unit shall be conveyed to the Landlord, without charge therefor, not later than ten (10) Business Days after substantial completion of the Church Unit as provided in the Development Agreement. As further stated in the Development Agreement, for purposes hereof, the “substantial completion of the Church Unit” shall mean that the core and shell of the Church Unit shall have been completed by Tenant. Landlord shall cooperate in the execution, delivery and recording of any declaration of condominium and related documents as long as Landlord’s economic and other material rights and benefits hereunder are not thereby materially impaired and Landlord’s economic and other material obligations hereunder are not thereby materially increased); provided, further that Landlord shall not be required to incur any expenses in connection with the execution, delivery and recording of the Condominium Documents except attorneys and consultants fees incurred in connection with the review of such documents. In the event either Landlord or Tenant is required to enforce their respective rights under this Lease with respect to the review and approval of the Condominium Documents by legal action in a court of law the prevailing party shall be entitled to recover the reasonable attorneys’ fees and expenses incurred in connection therewith (including all appellate proceedings) from the non-prevailing party.

(b) In the event that the New Building has not been completed so as to obtain the issuance of a temporary certificate of occupancy from the Department of Buildings by a date on or before the third (3<sup>rd</sup>) anniversary of the closing of the construction loan financing (the “**New Building Delivery Date**”), Tenant shall pay to Landlord the sum of One-Hundred Seventy Five Thousand Dollars (\$175,000), which amount shall constitute an additional Upfront Rent Payment (the “**Additional Upfront Rent Payment**”).

(c) In the event that the New Building has not been completed so as to obtain the issuance of a temporary certificate of occupancy by the date occurring one hundred eighty (180) days following the New Building Delivery Date, the Initial Rent Payment Date shall be deemed to occur on the following Quarterly Payment Date.

Section 5.02. Tenant shall not commence the demolition of the buildings and improvements now situated on the Demised Premises and the construction of the New Building until Tenant has met each and all of the following conditions:

(a) Tenant has obtained the Loan Commitment, as defined in **Exhibit F**, with respect to the Project Construction Loan and delivered a copy to Landlord, such Loan Commitment is in

full force and effect, and Tenant has complied with all of the material terms and conditions of the Loan Commitment; and

(b) Tenant has furnished to Landlord evidence reasonably satisfactory to Landlord that Tenant has sufficient funds available to it to build and complete the New Building; and

(c) Tenant has delivered to Landlord copies of all permits, approvals, and authorizations then required by the New York City Building Department and all other governmental authorities having jurisdiction over the construction of the New Building; and

(d) Tenant has obtained, and has caused its general contractors, construction managers, architects, and subcontractors to obtain, the insurance required by Article 6 and has delivered to Landlord certificates (in form reasonably acceptable to Landlord) evidencing such insurance.

(e) Tenant has delivered to Landlord the Construction Completion Guaranty from Chaskiel Strulovitch in the form annexed hereto as **Exhibit G**; and

(f) Tenant has delivered to Landlord a fully executed and delivered construction contract with a general contractor, or a fully executed and delivered design-build contract, together with executed and delivered contracts for each of the Major Contractors, as defined in Section 5.03(b), or a fully executed and delivered construction management contract together with executed and delivered contracts for each of the Major Contractors (collectively, the "**Construction Contracts**"), for the construction of the New Building, meeting the requirements of this Lease; and

(g) Subject to the rights of the Leasehold Lenders and any Fee Lenders, an assignment to Landlord of all of Tenant's right, title and interest in and to (a) the Construction Contracts and Design Contracts, (b) all preliminary, final, and working plans, specifications, and drawings and construction documentation prepared in connection therewith, and (c) all intellectual property rights in any of the foregoing, which assignment shall be in form reasonably satisfactory to Landlord (provided that Landlord shall not exercise its rights as assignee unless and until this Lease has been terminated and each Leasehold Lender has failed to exercise its right to a New Lease (as defined herein)) (the "**Subordinated Collateral Assignment**"); provided, however that in the event that the Tenant after commercially reasonable good faith efforts cannot procure the consent of the lender providing the construction financing for the New Building to deliver the Subordinated Collateral Assignment the condition set forth in this subparagraph shall be deemed waived and shall not be a condition to commencement of construction.

Section 5.03. The following terms, as used in this Lease and in all amendments to this Lease, shall have the meanings set forth below:

(a) **Construction Security**: The Construction Security shall consist of a guaranty (the "**Construction Completion Guaranty**") in the form annexed hereto as **Exhibit G**,

(b) **Major Contractors**: Those contractors and/or subcontractors performing the following work at the Premises: structural steel, if any; curtain walls, concrete, masonry,

carpentry/drywall, HVAC, electrical, roofing, plumbing and any contractors and/or subcontractors with a base contract exceeding Five Hundred Thousand (\$500,000.00) Dollars.

## ARTICLE 6

### INSURANCE

Section 6.01. During the term of this Lease, Tenant, at its sole cost and expense, will keep and maintain policies of insurance hereafter described:

(a) Builders Risk Completed Value insurance during the course of the construction of the New Building as provided in Article 5 hereof, and, after the completion of the New Building, insurance on the New Building against loss or damage by fire and against loss or damage by other risks now embraced by Extended Coverage Endorsement, as presently adopted for use with the New York Standard Fire Insurance Policy, in amounts at all times sufficient to prevent Landlord or Tenant from becoming a co-insurer under the terms of the applicable policies, but in any event in an amount not less than ninety per centum (90%) of the then full insurable value of the New Building. The term "**full insurable value**" shall mean actual replacement value without deduction or allowance for depreciation (exclusive of cost of excavation, foundations and footings). Such "full insurable value" shall be determined from time to time (but not more frequently than once in any thirty-six calendar months) at the request of Landlord, by one of the insurers or, at the option of Tenant, by a reputable appraiser, engineer, architect or contractor paid for by Tenant. In the event of any change in the co-insurance requirements applicable to the Demised Premises by the New York Fire Insurance Rating organization or any similar body, or by statute, the policies to be furnished by Tenant shall comply with such changes.

(b) general public liability insurance protecting and indemnifying Tenant and Landlord against any and all claims for damages to person or property or for loss of life or of property occurring upon, in, or about the Demised Premises and the adjoining streets, such insurance to afford immediate protection against any and all claims for bodily injury, death or property damages to the limits of not less than \$3,000,000 in respect of bodily injury or death arising out of any one occurrence, \$1,000,000 for property damage arising out of any one occurrence, and \$5,000,000 in the aggregate, together with an umbrella or excess coverage policy increasing the per-incident coverage to \$5,000,000 for bodily injury or death, \$3,000,000 for property damage and a total aggregate of \$8,000,000; provided, however that the amounts and types of coverage provided in this Section 6.01(b) shall be subject to increase in terms of the nature and amount of coverage, from time-to-time, consistent with other buildings of comparable construction, class and use in the City, County and State of New York; provided such increases in the nature and amount of such coverages shall not occur more frequently than every ten (10) years during the Term of this Lease.

(c) workers' compensation insurance as required by law and which shall include employer's liability insurance for all employees of Tenant, in accordance with the statutory limits



required by Law;

(d) To the extent any Leasehold Lender may require Tenant to obtain any insurance coverage not required by this Lease, or require additional insurance coverage, or require a different or more highly rated insurance company to issue the insurance, or impose any requirement relating to Tenant's insurance that is more stringent than the requirements of this Lease, Tenant shall comply with such Leasehold Lender's insurance requirements;

(e) loss of rent or use and occupancy or rental value insurance covering risk of loss due to the occurrence of any of the hazards described in subdivision (a) and (d) of this Section 6.01 in an amount sufficient to prevent Landlord and Tenant from becoming co-insurers and in an amount not less than the aggregate requirements for a period of one (1) year following such insured casualty for (i) Rent then payable hereunder, (ii) Impositions and (iii) premiums for the insurance required under this Article, which insurance shall be payable to the Insurance Trustee (as hereinafter defined). If the New Building shall be destroyed or damaged, the proceeds thereof when collected by the Insurance Trustee, shall be held in trust and applied first to the payment of such Base Rent and Additional Rent then due and unpaid by Tenant, then to the payment of any debt charges then due and payable under any Leasehold Mortgage, and any balance shall be held by the Insurance Trustee to be applied to the payment of the Base Rent and Additional Rent hereunder as well as any debt charges under any such Leasehold Mortgage as the same may thereafter become due and payable, and to the performance by Tenant of all the covenants, agreements, terms and provisions of this Lease until the repair, restoration or reconstruction of the New Building shall be completed as provided for in Article 7 hereof. After and upon such completion, said proceeds or balance thereof shall be paid to Tenant, it being understood, however, that except to the extent otherwise provided for in this subdivision (c), nothing herein contained shall release Tenant from any of its obligations with respect to the payment of Base Rent or Additional Rent under this Lease; and

(f) at all times on and after the installation and initial inspection thereof, boiler and pressure apparatus liability insurance to the limit of not less than Tenant's reasonable estimate of the value of the boiler and machinery in the New Building in respect of any one accident, provided, however, that if the New Building shall be constructed without boiler and pressure apparatus, no such insurance shall be required.

Section 6.02. All insurance provided for in Section 6.01 shall name Landlord and the holder of any Fee Mortgage, deed of trust or like instrument encumbering the Demised Premises, as additional insureds ("**Additional Insureds**"), and, if readily obtainable, shall be effected under standard form policies, issued by insurers of recognized responsibility authorized to do business in the State of New York which are rated A- or better, financial category class of VIII or higher by A.M. Best (or similarly rated by any other reputable regional or national insurance ratings company). If any of such policies shall not be commercially practicable to obtain, the same may be issued by stock or mutual company insurers of recognized responsibility, licensed to do business in the United States, which are well rated by national rating organizations as referenced hereinabove. Tenant agrees not to insure with any company for which the aggregate amount of the insurance provided by such company to meet the requirements of this Article 6 exceeds ten per

centum (10%) of such company's policy holder surplus.

Section 6.03. Any policies of insurance of the character described in Section 6.01(a) and (d) shall expressly provide that any losses thereunder shall be adjusted with and approved by Tenant and the holders of any Leasehold Mortgages, as their interests may appear. All such insurance shall be carried in the name of Tenant, and may provide for payment to one or more holders of Leasehold Mortgages, as their interests may appear, and loss thereunder, if in the amount of \$5,000,000 or less, shall be paid to Tenant for application by Tenant to restoration and repair of the New Building or, if in an amount in excess of \$5,000,000, shall be paid to the Insurance Trustee on behalf of Tenant and/or the holders of any Leasehold Mortgage(s) pursuant to a NY Standard Mortgage Clause, without contribution, if obtainable. The term "**Insurance Trustee**" shall mean any bank or trust company, which is a corporation organized and doing business under the banking laws of the United States or the state of New York, having a place of business in the Borough of Manhattan, City of New York, and a combined capital and surplus of at least \$75,000,000, designated by the holder of the first Leasehold Mortgage or (if there is no Leasehold Mortgage) by Tenant. Such insurance proceeds shall be held by Tenant in trust for the purpose of paying the cost of restoration and repair of the Demised Premises. If paid to the Insurance Trustee, such Insurance Trustee shall hold, apply and make available to Tenant (or, to the extent required under any Leasehold Mortgages, the Leasehold Lenders), the amount of such insurance proceeds in the manner set forth in Article 7 hereinbelow, and the Insurance Trustee may deduct from such insurance proceeds a reasonable charge for so acting and any reasonable out-of-pocket expenses incurred by it.

Section 6.04. Upon termination of this Lease after any Event of Default, and if the Leasehold Lenders shall not exercise their right to obtain a New Lease (as defined hereinbelow) pursuant to Article 19 hereof, the Insurance Trustee, upon presentation by Landlord of proof thereof, shall pay first to all Leasehold Lenders (until all Leasehold Lenders are paid in full) and second to the Fee Mortgagee and to Landlord, as their interests may appear, the insurance proceeds then in the hands of the Insurance Trustee.

Section 6.05. In the event of the exercise by the holder of a Leasehold Mortgage of a right to receive a New Lease on the same terms and conditions as contained in this Lease, pursuant to Article 19 hereof, then upon the execution and delivery of said new lease, any amounts held by Insurance Trustee shall be deemed to be held pursuant to the terms of the New Lease.

Section 6.06. The Insurance Trustee and each Leasehold Lender shall be protected in acting upon any notice, certificate, document or other proof believed by it to be genuine and to have been signed by the proper party or parties or by a person authorized to act on its or their behalf. The Insurance Trustee and each Leasehold Lender may consult with counsel, and the Insurance Trustee and each Leasehold Lender shall not be liable for any action taken or suffered by it in good faith or in accordance with the advice of such counsel.

Section 6.07. Thirty (30) days prior to the Surrender Date, certificates or copies of such policies with evidence of payment of premiums shall be delivered by Tenant to Landlord.

Section 6.08. Nothing in this Article 6 shall prevent Tenant from taking out insurance of the kind and in the amount provided for under this Article 6 under a blanket insurance policy or

policies which cover other properties owned, operated or managed by Tenant or its affiliates or any property manager or its affiliates as well as the Demised Premises; provided, however, that any such policy of blanket insurance of the kind provided for by Section 6.01 shall specify therein, or Tenant shall furnish Landlord and the holder of any Leasehold Mortgage with a written statement from the insurers under such policies specifying therein, the minimum amounts of insurance available to the New Building or with respect to related liabilities. Each such amount shall be not less than the amount required by this Article to be carried. Tenant covenants to furnish to Landlord and to the holder of any Fee Mortgage and any Leasehold Mortgage, copies of the schedule or make-up of all property affected by any such policy of blanket insurance within thirty (30) days after the later to occur of (x) the filing thereof with any insurance rate-making body, or (y) Landlord's notice requesting the same.

Section 6.09. To the extent commercially available during the Term of this Lease, Tenant agrees that each policy delivered hereunder shall contain an agreement or endorsement by the insurer that such policy shall not be cancelled or surrendered without at least thirty (30) days prior written notice to Landlord and to any mortgagee named in such policy, if Tenant can obtain such agreement or endorsement from its preferred insurer without incurring additional premiums.

Section 6.10. Each policy of insurance procured by Tenant shall contain a provision waiving subrogation against Landlord, if Tenant can obtain such agreement or endorsement from its preferred insurer without incurring additional premiums. Tenant hereby releases Landlord from any liability that Landlord may have for damage by fire or other casualty with respect to which Tenant shall be insured under a policy of insurance containing such provision waiving subrogation.

## **ARTICLE 7**

### **DAMAGE OR DESTRUCTION**

Section 7.01. If, at any time during the term of this Lease, the New Building, or any part thereof, shall be damaged or destroyed by fire or other casualty (including any casualty for which insurance coverage was not obtained or obtainable) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen (other than (a) casualties and/or damages caused by the negligence or misconduct of the Landlord, or any of its agents, contractors, servants, employees, sublessees, licensees or invitees, or (b) casualties and/or damages caused by the destruction of the Church Unit after the conveyance of the Church Unit to the Landlord, which casualties, damages or destruction of the Church Unit are caused solely as result of negligence or misconduct of the Landlord, or any of its agents, contractors, servants, employees, sublessees, licensees or invitees in either if which events the Tenant shall have no obligations under the provisions of this section 7.01), Tenant, at its sole cost and expense, and regardless of whether the insurance proceeds, if any, shall be sufficient for the purpose, shall proceed with reasonable diligence (subject to a reasonable time allowance for the purposes of adjusting the insurance loss, preparing Plans and hiring architects, engineers and contractors and for Unavoidable Delay) to repair, alter, restore, replace or rebuild the New Building as nearly as possible to its value, condition and character immediately prior to such damage or destruction, subject to such changes or alterations as Tenant may elect. Such repair, alteration, replacement or rebuilding, including such changes and alterations as aforementioned and including temporary repairs for the protection of other property pending the completion of any thereof, are sometimes referred to in this Article 7 as the

**“Restoration Work”.**

Section 7.02.If any building now on the Demised Premises on the date hereof, shall be partially or totally damaged or destroyed by fire or other casualty, Tenant, at Tenant's election, in lieu of restoring, rebuilding or repairing same, may, at Tenant's sole cost and expense, demolish and not rebuild the same (or any part thereof) as part of the demolition of the existing buildings and construction of the New Building as provided for in Article 5 hereof. Tenant's election pursuant to this Section 7.02 not to restore, rebuild or repair any damaged or destroyed building shall not require Tenant to demolish on any date earlier than that required by Article 5 hereof any building which shall not have been so damaged or destroyed or which Tenant shall elect to restore, rebuild or repair.

Section 7.03.If Tenant shall elect not to restore, rebuild or repair any buildings currently existing on the date hereof which shall be damaged or destroyed as aforesaid, the proceeds of insurance resulting from such damage or destruction shall belong to Tenant, but if such proceeds shall be in excess of Five Million Dollars (\$5,000,000), the same shall be held by Insurance Trustee, to be applied toward such demolition, any other contemplated demolition and the construction of the New Building.

Section 7.04.Except as otherwise provided in this Article 7, the conditions under which any Restoration Work is to be performed and the method of proceeding with and performing the same shall be governed by all of the provisions of this Lease.

Section 7.05.All insurance money paid to the Insurance Trustee on account of damage or destruction under the policies of insurance provided for in Article 6, less the cost, if any, incurred in connection with the adjustment of the loss and the collection thereof (herein sometimes referred to as the **“insurance proceeds”**), shall be applied by the Insurance Trustee to the payment of the cost of the Restoration Work and shall be paid out to or for the account of Tenant from time to time as such Restoration Work progresses. The Insurance Trustee shall make such payments or disbursement upon the written request by Tenant when accompanied by the following (subject to changes to the following, copies of which shall promptly be delivered to Landlord to comply with the requirements of any Leasehold Lender):

(a)a certificate dated not more than fifteen (15) Business Days prior to such request, signed by Tenant and by an architect, licensed in New York State, in charge of the Restoration Work, who shall have been selected by Tenant, setting forth that the sum then requested either has been paid by Tenant, or is justly due to the fire or loss adjuster, contractors, subcontractors, materialmen, architects, engineers or other persons who have rendered services or furnished materials in connection with the Restoration Work, giving a brief description of the services and materials and the several amounts so paid or due and stating that no part thereof has been made the basis in any previous or then pending request or has been paid out of any other proceeds of insurance received by Tenant; and

(b)a certificate (which may be an on an informational basis only and need not constitute title insurance) dated not more than fifteen (15) Business Days prior to such request, of First American Title Insurance Company or other reputable title company then doing business in the City of New York, covering the period from the date of this Lease (or the date of the last such

certificate furnished pursuant to this paragraph or any of the applicable provisions of this Lease) to the date of such certificate, setting forth that there are no liens, chattel mortgages, conditional bills of sale, title retention documents, or encumbrances of record of any kind on the Demised Premises except (i) those permitted by the terms of this Lease, (ii) such as will be discharged by payment of the amount then requested or (iii) mechanic's liens or other liens which are being contested by Tenant pursuant to Article 11 hereof; and

(c) a partial or final lien waiver, as the case may be, covering each disbursement of the insurance proceeds in connection with the Restoration Work; and

(d) for the final disbursement of insurance proceeds, if exterior walls or other structures have been repaired or erected, a perimeter survey showing no material encroachments upon any real property not constituting part of the Demised Premises, except that any encroachment existing before a restoration may be continued or restored.

Section 7.06. (a) Upon compliance with the foregoing provisions of Section 7.05, the Insurance Trustee shall pay, or cause to be paid, to Tenant, or to the persons named by Tenant in the certificate, out of such insurance proceeds, the respective amounts stated therein to have been paid by or to be due to Tenant or them, as the case may be. All sums so paid to Tenant and any other insurance proceeds received or collected by or for the account of Tenant (other than by way of reimbursement to Tenant for sums theretofore paid by Tenant) shall be held by Tenant in trust for the purpose of paying the cost of such Restoration Work.

(b) Upon receipt by the Insurance Trustee of evidence satisfactory to it of the character required by Section 7.05 that the Restoration Work has been completed and paid for in full and that there are no liens of the character referred to therein (other than those permitted pursuant to Section 7.05(b)), the Insurance Trustee shall pay to Tenant (or, to the extent previously designated by Tenant, one or more Leasehold Lenders) any remaining balance of said insurance proceeds.

(c) If the insurance proceeds received by the Insurance Trustee shall be insufficient to pay the entire cost of the Restoration Work, unless estimated otherwise by the holder of the Leasehold Mortgage with the first priority lien, Tenant shall contribute the amount of any such deficiency and shall apply the same to the payment of the cost of the Restoration Work pro rata with each disbursement of the insurance proceeds held by the Insurance Trustee. Under no circumstances shall Landlord be obligated to make any payment, disbursement or contribution toward the cost of the Restoration Work.

Section 7.07. Subject to Tenant's election pursuant to Section 7.03 hereof, the Restoration Work shall be commenced within one hundred eighty (180) days after the insurance adjustment and payment thereof to Tenant, and such Restoration Work shall thereafter proceed in a reasonably continuous manner, unless there be an Unavoidable Delay.

Section 7.08. If, after an Event of Default or default under a Leasehold Mortgage, a Leasehold Lender shall move, either itself or through a receiver, to take possession of the Demised Premises and to continue the Restoration Work, and if this Lease shall not have terminated or if a Leasehold Lender shall have exercised its right to obtain a New Lease, pursuant to Article 19

hereof then the Insurance Trustee shall pay over to the Leasehold Lender (or its designee) or such receiver, as the case may be, the proceeds of insurance pursuant to Section 7.05 or the Condemnation Proceeds pursuant to Article 16, upon receipt from the Leasehold Lender (or its designee), or such receiver, of the certificates of the character required from Tenant under Section 7.05.

Section 7.09. Except as expressly provided herein to the contrary, in no event shall Tenant be entitled to any abatement, allowance, reduction or suspension of Rent because part or all of the Demised Premises shall be untenable owing to the partial or total destruction thereof. No such damage or destruction shall affect in any way the obligation of Tenant to pay the Base Rent, Additional Rent and other charges herein reserved or required to be paid, nor release Tenant of or from any obligation imposed upon Tenant under this Lease, except to the extent that such Base Rent, Additional Rent and other charges have been or will be paid by the insurance carrier(s).

Section 7.10. If within ten (10) years prior to the Expiration Date, the New Building, or any replacement thereof, shall be damaged or destroyed by fire or other casualty, and the estimated cost of restoration exceeds \$5,000,000.00, Tenant shall have the option of:

(a) restoring, repairing, replacing, rebuilding or altering the New Building, or any replacement thereof, as provided for in this Lease; or

(b) terminating this Lease by written notice to Landlord given within thirty (30) days after such destruction or damage, accompanied by payment to Landlord of the Base Rent and any Additional Rent and other charges payable by Tenant under this Lease for the period up to and including the date of such termination. In such event, Tenant shall not be entitled to any portion of the insurance proceeds including any rent insurance, all of which shall become the property of Landlord, except that so much of the proceeds of rent insurance, as shall cover loss of rental income up to the date of termination shall belong to Tenant.

Section 7.11. Tenant hereby waives any and all rights granted by Section 227 of Chapter 50 of the Consolidated Laws of New York known as the Real Property Law, or any other law of like import now or hereafter enacted.

## **ARTICLE 8**

### **REPAIRS AND MAINTENANCE**

Section 8.01. Subject to Section 8.04 hereinbelow, during the term of this Lease, Tenant, at its sole cost and expense, will take good care of the Demised Premises (other than the interior of the Church Unit following its conveyance to the Landlord, unless such repairs to the interior of the Church Unit are necessitated by the negligent acts or omissions or willful misconduct of Tenant, or any of its agents, contractors, servants, employees, sublessees, licensees or invitees), all alleyways and passageways and the sidewalks, curbs and vaults adjoining the Demised Premises and Tenant shall keep all of the foregoing in good order and condition, ordinary wear and tear excepted, and make all necessary repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, and foreseen and unforeseen. Tenant shall also keep the



sidewalks and curbs in good order, repair and condition. Tenant shall also keep the Demised Premises and sidewalks adjacent to the Demised Premises free and clean of rubbish, ice and snow and shall not encumber or obstruct same or allow same to be encumbered or obstructed, except to the extent reasonably required during construction or any repairs. When used in this Article the term "repairs" shall include all necessary replacements, renewals, alterations and additions. All repairs made by Tenant shall be reasonably comparable in quality and class to the original work. Tenant will do or cause others to do all necessary shoring of foundations and walls of the New Building and every other act or thing for the safety and preservation thereof which may be necessary by reason of any excavation or other building operation upon any adjoining property or street, alley or passageway if obligated to do so by law. Tenant shall make all repairs necessary to avoid any structural damage or injury to the Demised Premises.

Section 8.02. The necessity for and adequacy of repairs to any building on the Demised Premises pursuant to Section 8.01 of this Article shall be measured by the standard that is appropriate for buildings of comparable construction, class and use.

Section 8.03. Tenant has leased the Demised Premises after a full and complete examination thereof, as well as of the title thereto. Tenant accepts the same in the condition or state in which they now are, as of the date hereof, without any representation or warranty by Landlord and without recourse to Landlord regarding the nature, condition or usability of the Demised Premises or the use or uses to which the Demised Premises or any part thereof may be put; provided, however that notwithstanding the foregoing, Landlord represents and warrants that to the best of Landlord's knowledge there is no litigation pending or threatened against the Landlord or state of facts that with the giving of notice or passage of time could form the base for a claim against Landlord or the Demised Premises. Tenant, however, reserves all rights against Landlord respecting any deficiencies in Landlord's title to the Demised Premises, (i) which arise after the date hereof as a result of any act or omission on the part of Landlord, (ii) regarding those items in a title policy, procured by Tenant, excepting the Landlord's representations relating to tenants-in-possession of the present building and (iii) regarding such items embraced in any notice of violation dated prior to the date of this Lease and any other items which have been brought to the attention of Landlord and remain uncorrected or unresolved as of the date hereof. Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations in or to the Demised Premises, throughout the term of this Lease, Tenant hereby assuming, subject to Section 8.04 below, the full and sole responsibility for the condition, construction, operation, repair, demolition, replacement, maintenance and management of the Demised Premises. In the event that any defects or deficiencies in Landlord's title to the Demised Premises, (a) Tenant shall pursue all claims relating to such defect or deficiency against the title insurance company or companies issuing a title insurance policy insuring the Tenant's interest in the Demised Premises or third parties asserting adverse claims or holding rights adverse to the interest of Tenant in the Demised Premises and (b) Landlord shall cooperate with Tenant in making any claims or asserting defenses relating to any of the foregoing at no cost or expense to Landlord.

Notwithstanding any provisions of this Article 8 to the contrary, Landlord acknowledges and agrees that after the submission of the New Building to the condominium regime as evidenced by the recording of the Condominium Documents in the public record and the transfer of control of the condominium to the condominium association or equivalent governing body contemplated by the Condominium Documents (the "**Condominium Association**") (the "**Transfer of Control**")

Event”), (a) Tenant’s obligations under this Article 8 shall be assumed by the Condominium Association; (b) following the Transfer of Control Event, Tenant shall be deemed to have no further obligations under this Article 8 and Landlord shall be deemed to have waived all rights and remedies against Tenant by reason of the failure of the Condominium Association to perform the obligations under this Article 8; (c) following the Transfer of Control Event, Landlord, as owner of the Church Unit, shall exercise remedies for failure to perform under this Article solely against the Condominium Association pursuant to the terms of the Condominium Documents and (d) following the Transfer of Control Event, Landlord shall have no right to exercise the remedies under this Lease arising from a default in the performance of this Article 8, including, without limitation, the right to terminate this Lease. Notwithstanding the forgoing, to the extent that (a) the Condominium Documents obligate Tenant to have continuing obligations with respect to the Residential Unit and/or the Commercial Unit and/or (b) Tenant and or its agents cause, by virtue of their acts or omissions, damage to any portion of the New Building, including, without limitation, the Church Unit, which necessitates any repairs or ongoing maintenance obligations with respect thereto, Tenant shall not be relieved of its obligations under Article 8. Notwithstanding anything herein contained to the contrary, in the event that New Building is not accepted as a condominium regime, by virtue of the rejection of the Condominium Documents through no fault of the Landlord and/or Tenant, and there is no Transfer of Control Event, Tenant shall remain obligated pursuant to the terms and conditions of this Article 8, subject to the terms and conditions of the Church Unit Sublease.

## **ARTICLE 9**

### **COMPLIANCE WITH LAWS, ORDINANCES, ETC.**

Section 9.01. Subject to Section 9.05 below, following the commencement of construction of the New Building, Tenant, at its sole cost and expense, will promptly comply with all present and future laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, departments, commissions, boards and officers, which may be applicable to the Demised Premises and the sidewalks, alleyways, passageways, curbs and vaults adjoining the Demised Premises or to the use or manner of use of the Demised Premises by the owners, tenants or occupants thereof, whether or not such law, ordinance, order, rule, regulation or requirement shall necessitate structural changes or improvements or interfere with the use and enjoyment of the Demised Premises. If the situations above described are within premises held by tenants in-possession or sub-tenants, then Tenant shall take the necessary steps to compel such sub-tenants to comply with this section, but if the situation had been brought to the attention of the Landlord prior to the execution of this Lease, then the cost thereof shall be paid by the Landlord otherwise, responsibility for payment shall be that of the Tenant.

Section 9.02. Subject to Section 9.05 below, Tenant shall likewise observe and comply or exert commercially reasonable efforts to enforce compliance by subtenants with the requirements of all policies of public liability, fire and all other policies of insurance at any time in force with respect to any building now or hereafter on the Demised Premises, and Tenant shall, in the event of any violation or any attempted violation of the provisions of this section by Tenant or any subtenant, exert commercially reasonable efforts, promptly upon knowledge of such violation or attempted violation, to remedy or prevent the same as the case may be. However, unless

specifically brought to the attention of the Tenant, the Tenant shall not be responsible for enforcement of this section with respect to those facts, details, or conditions within the premises of the subtenants. If a subtenant does not comply with the provisions of any of the policies of insurance at any time in force covering the Demised Premises and if such failure of compliance is brought to the attention of the Tenant, then the Tenant shall exert commercially reasonable effects to enforce such compliance.

Section 9.03. Tenant shall have the right, after ten (10) Business Days prior written notice to Landlord, to contest, by appropriate legal proceedings, in the name of Tenant or Landlord or both, but without cost or expense to Landlord, the validity or application of any law, ordinance, certificate, order, rule, regulation or requirement of the nature referred to in Section 9.01 hereinabove, and, if by the terms of such law, ordinance, certificate, order, rule, regulation or requirement compliance therewith may legally be held in abeyance without the occurrence of any lien, charge or liability of any kind against the fee of the Demised Premises and without subjecting Landlord to any criminal liability, of whatsoever nature, for failure so to comply therewith, Tenant may postpone compliance therewith until the final determination of any such proceeding, provided, that all such proceedings shall be prosecuted with due diligence and dispatch. If any lien, charge or civil liability is incurred by reason of noncompliance, Tenant may, nevertheless, make the contest aforesaid and delay compliance as aforesaid, provided that Tenant furnish to Landlord security, reasonably satisfactory to Landlord, against any loss or injury by reason of such non-compliance or delay therein, and prosecutes the contest aforesaid with due diligence and dispatch. Landlord shall execute and deliver any appropriate papers prepared by Tenant, which may be necessary or proper to permit Tenant so to contest the validity or application of any of the matters hereinabove described.

Section 9.04. If within ten (10) years prior to the expiration of the term of this Lease, Tenant shall be required to comply with any legal requirement affecting the Demised Premises or any insurance requirements, and the estimated cost of such compliance shall be \$5,000,000 or more, Tenant shall have the option, within thirty (30) days after the commencement of the period within which Tenant shall be so required to comply, and, providing there is no existing and unremedied default on the part of Tenant under any of the terms, provisions or conditions of this Lease, to terminate this Lease by notice in writing addressed to Landlord, specifying a termination date not less than sixty (60) days from the giving of such notice. In such event, Tenant shall, on the date of such termination, make payment of Base Rent and Additional Rent, and other charges payable by Tenant hereunder justly apportioned to the date of such termination. Tenant shall then be deemed relieved from compliance and of all obligations arising under this Lease after the effective date of such termination. Tenant shall surrender the Demised Premises to Landlord in the condition and manner in this Lease provided as in the case of the expiration hereof.

Notwithstanding any provisions of this Article 9 to the contrary, Landlord acknowledges and agrees that after the Transfer of Control Event, (a) Tenant's obligations under this Article 9 shall be assumed by the Condominium Association; (b) following the Transfer of Control Event, Tenant shall be deemed to have no further obligations under this Article 9 and Landlord shall be deemed to have waived all rights and remedies against Tenant by reason of the failure of the Condominium Association to perform the obligations under this Article 9; (c) following the Transfer of Control Event, Landlord, as owner of the Church Unit, shall exercise remedies for failure to perform under this Article 9 solely against the Condominium Association pursuant to the

terms of the Condominium Documents and (d) following the Transfer of Control Event, Landlord shall have no right to exercise the remedies under this Lease arising from a default in the performance of this Article 9, including, without limitation, the right to terminate this Lease. Notwithstanding the forgoing, to the extent that the Condominium Documents obligate Tenant to have continuing obligations with respect to the Residential Unit and/or the Commercial Unit, Tenant shall not be relieved of its obligations under Article 9. Notwithstanding anything herein contained to the contrary, in the event that New Building is not accepted as a condominium regime, by virtue of the rejection of the Condominium Documents through no fault of the Landlord and/or Tenant, and there is no Transfer of Control Event, Tenant shall remain obligated pursuant to the terms and conditions of this Article 9, subject to the terms and conditions of the Church Unit Sublease.

## **ARTICLE 10**

### **CHANGES AND ALTERATIONS BY TENANT**

Section 10.01. Tenant shall have the right at any time, and from time to time, during the Term of this Lease, to make, at its sole cost and expense, changes and alterations in or of the New Building, subject, however, in all cases to the following:

(i) No alteration or repair which would change the general character, design or the structure (but the installation or removal of interior partitions shall not be deemed structural) or reduce the size or rentable area of the New Building (as set forth in Section 5.01 hereof) substantially below the lesser of (x) the size or rentable area of the New Building at the time of the issuance of the certificate of occupancy for the New Building and (y) the size or rentable area prior to such alteration shall be made in any event without the prior written consent of Landlord, which consent Landlord agrees not to unreasonably withhold. For the purposes of this Section 10.01, the demolition of the New Building to be erected on the said Demised Premises pursuant to Article 5 hereof and the erection of any substitute building, or restoration of the New Building or substitute building shall be deemed a structural alteration which shall not require Landlord's consent, and shall be governed by the terms and provisions of Article 5 hereinabove.

(ii) No alteration or repair shall be undertaken until Tenant shall have procured and paid for, so far as the same may be required from time to time, any and all permits and authorizations of all municipal departments and governmental subdivisions having jurisdiction. Landlord shall join in the application for such permits or authorizations whenever such action is necessary at no cost to Landlord so long as such repairs or alterations do not relate to the Church Unit or are not required by reason of the actions or omissions of Landlord.

(iii) Any structural alteration or repair to the New Building involving an estimated cost of \$500,000.00 (which amount shall be increased each Lease Year in proportion to each increase in the Base Rent) or more or which affects the plumbing, heating, electrical and other systems and facilities of the New Building, shall (a) be made in accordance with plans, specifications and cost estimates, prepared by an architect or engineer selected by Tenant, and furnished to Landlord and (b) to the extent required by a Leasehold Lender, be conducted under the supervision of such architect or engineer or the duly appointed representative of the Leasehold

Lender. Notwithstanding the furnishing of same to Landlord, Landlord shall not be deemed to have any right of approval or disapproval thereof.

(iv)Any alteration or repair shall, when completed, be of such a character as not materially to reduce the value of the New Building and/or the Demised Premises below its value immediately before such alteration or repair.

(v)Any alteration or repair shall be made promptly (Unavoidable Delays excepted) and in a good and workmanlike manner and in compliance with all applicable permits and authorizations and building and zoning laws and with all other laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, departments, commissions, boards, and officers, and in accordance with the orders, rules and regulations of the National Board of Fire Underwriters, the New York Board of Fire Underwriters or any other body or bodies hereafter exercising similar functions.

(vi)The cost of any such alteration or repair shall be paid by Tenant so that the Demised Premises shall at all times be free of liens for labor and materials supplied or claimed to have been supplied to the Demised Premises, subject to Tenant's right to contest the same pursuant to Article 11 hereof.

(vii)No alteration or repair which would change the general character, design or the structure of the Church Unit shall be made in any event without the prior written consent of Landlord, which consent may be withheld only in Landlord's reasonable discretion.

## **ARTICLE 11**

### **DISCHARGE OF LIENS**

Section 11.01.Tenant shall not create or suffer to be created or to remain, and shall discharge, any mechanic's, laborer's or materialman's lien which might be or become a lien, encumbrance or charge upon the Demised Premises or any part thereof or the income therefrom and Tenant will not suffer any other matter or thing arising out of Tenant's use and occupancy of the Demised Premises whereby the estate, rights and interest of Landlord in the Demised Premises or any part thereof might be impaired, except as herein set forth.

Section 11.02.If any mechanic's, laborer's or materialmen's or broker's lien shall at any time be filed against the Demised Premises or any part thereof, Tenant, within the earlier period of (a) forty-five (45) days after notice by the Landlord to the Tenant of the filing thereof or (b) such period as may be required pursuant to the terms of the Leasehold Mortgage encumbering the Demised Premises, shall commence to cause such lien to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant elects to pay such lien, then Landlord shall consent to the release out of the funds deposited with Insurance Trustee as security for the completion and payment for the New Building or restoration thereof or alterations to the extent of the amount of the lien. If Tenant shall fail to commence to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Landlord may, upon prior written notice to Tenant, 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.

Any amount so paid by Landlord and the costs and expenses incurred by Landlord in connection therewith, together with interest thereon at the prime rate plus five percent (5%) per annum from the respective dates of Landlord's payment or incurring the cost and expense, shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord within thirty (30) days after demand. This Section 11.02 shall not be applicable in relation to a mechanic's lien for work, materials or labor not ordered or contracted for by Tenant. Tenant may contest any or all of the aforescribed liens, at its own cost and expense.

Section 11.03. Nothing in this Lease contained 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 Demised Premises or any part thereof. Notice is herein given that Landlord shall not be liable for any work, labor, services or materials furnished or to be furnished to Tenant upon credit, and that no mechanic's or other lien for any such work, labor, services or materials shall attach to or affect the reversionary or other estate or interest of Landlord in and to the land and any building included in the Demised Premises.

## **ARTICLE 12**

### **WASTE**

Section 12.01. Tenant covenants, that it will not do or suffer any waste or damage or injury to the present buildings or the New Buildings and improvements contemplated in Article 5 hereof or any part thereof or to any building or improvement thereafter erected on the Demised Premises, but the foregoing shall not be deemed a restriction preventing Lessee from demolishing existing structures or the New Building for the purpose of erecting the New Building as permitted elsewhere in this Lease.

## **ARTICLE 13**

### **USE OF PROPERTY**

Section 13.01. Tenant covenants and agrees that it shall not use, occupy or allow the Demised Premises or any part thereof to be used or occupied for any unlawful purpose or in material violation of any certificate of occupancy covering or affecting the use of the Demised Premises or any part thereof and will not suffer any act to be done or any condition to exist on the Demised Premises or any part thereof or any article to be brought thereon which may be dangerous or extra-hazardous, unless safeguarded as required by law, or which may, in law, constitute a nuisance, public or private, or which may make void or voidable any insurance then in force with respect thereto. In furtherance of the foregoing, the Demised Premises or any part thereof, including, without limitation the Commercial Unit and the Church Unit, shall not be used (1) as an agency or department of any governmental authority that provides retail level benefits offices of the type which would be handling unemployment claims, welfare applications or providing any type of public assistance or substance abuse counseling or Department of Motor Vehicles type services; (2) as an employment agency, executive search firm or similar enterprise, labor union, or for-profit vocational training center; (3) to conduct or permit any fire, auction, going-out-of-



business or bankruptcy sale; (4) to sell, rent or display for sale or rent any pornographic, x-rated or obscene material, or as an "adult book store" or adult video store, or as a so-called "sex shop", or as an establishment which permits or presents obscene, nude or semi-nude performances or modeling intended for appeal to prurient interests or such other uses defined as obscene pursuant to NY Penal Law, provided that the foregoing restriction shall not apply to businesses primarily engaged in the sale of books, magazines or educational material of general interest; (5) to sell tickets for lotteries (other than lottery tickets sponsored by the lottery commission of the State of New York or any successor thereto), games of chance or otherwise permit the Demised Premises to be used for gambling; (6) for the sale, rental, warehousing, repair or service of automobiles (or other type of vehicle) or any parts thereof (including automobile tires), or for the sale or storage of gasoline or any other type of fuel or petroleum product; (7) for the unlawful possession or storage of liquor, narcotics or other controlled substances; (8) to set up tables or chairs or any other installations or equipment outside the Premises (except as may be permitted for occasional sidewalk sales or pursuant to the terms of a sublease with a restaurant or other food service provider for outdoor seating); (9) as a drug rehabilitation facility or clinic; (10) as an office, store, reading room, headquarters, center or other facility devoted or opposed to the promotion, advancement, representation, purpose or benefit of: (a) any political party, political movement or political candidate, or (b) any "cause" of any type or nature whatsoever; (11) as an unemployment, counseling or other similar social services office; (12) for a "swap shop" selling merchandise that is used, damaged or discontinued; (13) as a ballroom, dance hall or discotheque and/or a bar or restaurant that promotes or presents itself to the general public as a venue available for the on-premises consumption of alcoholic beverages; (14) as a funeral parlor; (15) as an arcade, amusement center or billiard hall; (16) as a pawn shop, auction house, pawn broker, car title lender (which, for purposes of this limitation, will not include auto loans made by a state or federally chartered bank or thrift), or any similar type of lending activity by a party other than a state or federally chartered bank; (17) for film processing; (18) as an operation or business which emits or causes strong, unusual or obnoxious odors, fumes, dust or vapors or objectionable noises or sounds or which is a public or private nuisance; (19) as a sports or other entertainment viewing facility; (20) as a locale in which tobacco products are sold for on-site consumption; (21) for any use in violation of any document recorded against the Premises; (22) for installation or display of any billboard, advertising signage, or other signage on the roof of any building at the Premises, without the prior written consent of the Landlord, which consent the Landlord agrees not to unreasonably withhold, delay or condition, but this prohibition shall not prevent the installation of signage (identifying the business of and tenant or any occupant of the Premises) on the doors and exterior walls of any building in accordance with applicable laws; (23) for manufacturing of any kind; (24) for the sale at retail of smoking or drug paraphernalia in a format commonly known as a "head shop"; (25) for use by a "dollar store" or other discount store operating in a similar business format; (26) for the sale, for off-premises consumption, of beer, wine or liquor; (27) for the sale of any firearms, ammunition or weapons, or a shooting gallery of any type; (28) for the marketing of products or services not available on the premises; (29) for office uses on the ground floor (but not prohibiting offices ancillary to a use not prohibited hereunder or offices for professional use); (30) primarily for medical uses (but not prohibiting pharmacies, "doc-in-a-box" operations or operations like a CityMD or other, similar facilities, as well as medical, dental or other professional offices provided they do not do business on Sundays or other Church holidays), (31) for massage parlors (excluding massage services offered as part of complete spa services), (32) for escort services, dating services, or similar matchmaking or companion services; (33) for the sale of

fireworks, except as an incidental part of another primary business; (34) for pay day lending activities, pay day advances, pay check advances, or any similar type of lending activity; (35) for check cashing services, except as an incidental part of another primary business or incident to the banking activities of a state or federally chartered bank or thrift; (36) for debt collection activities, debt consolidation services, credit repair or credit restoration activities, except as such activities are incidental to banking activities conducted by a state or Federally chartered bank or thrift; (37) for bail bond services of any kind, or any activities of a bail bond agent; (38) for the sale, distribution, marketing, or production of medical marijuana, medical cannabis or any constituent cannabinoids such as THC (this limitation applies broadly, regardless of whether the activity is conducted by collectives, collective caregivers, co-ops, growers, or any other entity or organization or the possession or consumption of marijuana is decriminalized and/or legally permitted in the State of New York during the Term of the Lease; (39) for businesses based predominantly on inbound or outbound telemarketing activities, except as such calls are an incidental part of another primary business; and (40) for multi-level marketing activities, the sale of multi-level business opportunities or network marketing activities (all of the foregoing, collectively, the “**Prohibited Uses**”). Notwithstanding the foregoing or any term of this Lease to the contrary, the violation of the Prohibited Uses by any tenant or occupant of the Residential Unit or Commercial Unit other than the Tenant named herein shall not constitute a default by Tenant under this Lease.

Section 13.02. Tenant further covenants and agrees that it shall not clean, nor require, permit, suffer or allow any window or windows on the Demised Premises to be cleaned from the outside, in violation of Section 202 of the New York Labor Law or of the Rules of the New York State Industrial Board of Appeals or of any other state, county or municipal department, board or body having or asserting jurisdiction in which the Demised Premises are located.

Section 13.03. Tenant shall not suffer or permit the Demised Premises to be used by the public, as such, in such manner as might impair Landlord’s title to the Demised Premises or any portion thereof, or in such manner as might make possible a claim or claims of adverse usage or adverse possession by the public, as such, or of implied dedication, of the Demised Premises or any portion thereof, except Tenant may provide public areas in the New Building for convenience of sub-tenants, employees and visitors and/or as a trade-off for greater height or capacity or other concessions.

Section 13.04. Tenant covenants, that it shall not, without the prior written consent of Landlord, accept prepayment of rent under any sublease, for the whole or any part of the Demised Premises, for a period of more than one (1) month in advance, unless such sum shall be security under a sublease or otherwise constitute a contribution to any operating reserve, capital improvement reserve or any such other reserve or account for the benefit of the Condominium Association.

## **ARTICLE 14**

### **RIGHT OF ENTRY ON PROPERTY BY LANDLORD**

Section 14.01. Tenant prior to the Transfer of Control Event will permit Landlord and its authorized representatives to enter the Demised Premises, but not any of Units and/or the residential apartments units that might comprise the Residential Apartment Unit of the Demised

Premises, at all reasonable times for the purposes of inspecting the same and (to the extent expressly permitted by the other provisions of this Lease) making any necessary repairs thereto and performing any work therein that may be necessary by reason of Tenant's failure to make any such repairs or perform any work. Nothing herein shall imply any duty upon the part of Landlord to do any such work; and performance thereof by Landlord shall not constitute a waiver of Tenant's default in failing to perform the same.

Section 14.02. At any time within twelve (12) months prior to the expiration of the term of this Lease, Landlord shall have the right to enter solely the common areas of the New Building, and not any of the Units and/or residential apartments that might comprise the New Building, at all reasonable times during usual business hours for the purpose of showing the same to prospective purchasers or mortgagees of the Demised Premises, and for the purpose of showing the same to prospective tenants.

## **ARTICLE 15**

### **INDEMNIFICATION OF LANDLORD**

Section 15.01. Tenant shall and hereby does indemnify and save harmless Landlord against and from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including reasonable architects and attorney's fees, which may be imposed upon or incurred by or asserted against Landlord or the fee or reversionary interest of Landlord in the Demised Premises by reason of any of the following occurring during the term of this Lease:

(i) any work or thing done in, on or about the Demised Premises or any part thereof, except (x) by or on behalf of Landlord or (y) for the negligence of Landlord or the default of Landlord hereunder;

(ii) any use, possession, occupation, condition, operation, maintenance or management of the Demised Premises or any part thereof or any street, alley, sidewalk, curb, vault, passageway or space adjacent thereto (other than by Landlord or its agents or invitees);

(iii) any negligence on the part of Tenant or any of its agents, contractors, servants, employees, sublessees, licenses or invitees; or

(iv) any accident, injury or damage to any person or property occurring in, on or about the Demised Premises or any part thereof or any street, alley, sidewalk, curb, vault, passageway or space adjacent thereto, except for the negligence of Landlord or its agents, contractors, servants, employees, sublessees, licenses or invitees;

(v) any act, omission, negligence, or misconduct of Tenant and/or any of Tenant's officers, directors, employees, partners, members, agents, contractors, invitees, or Subtenants except to the extent that any of the foregoing arise, in whole or in part, from the negligence or willful misconduct of Landlord;

(vi) any holdover by Tenant, or by any Person(s) holding through Tenant, after the Expiration Date, excluding owners or tenants of the Commercial Unit or Residential Unit under valid

leases;

(vii) any claims made by any subtenant(s) during or after the Term (including claims for return of security deposits and prepaid rent), except to the extent such claims arise out of Landlord's negligence or misconduct;

(viii) any breach or default by Tenant under this Lease except to the extent that any of the foregoing arise, in whole or in part, from the negligence or willful misconduct of Landlord;

(ix) any act, omission, negligence, or misconduct of Tenant and/or any of Tenant's officers, directors, employees, partners, members, agents, contractors, invitees, or Subtenants except to the extent that any of the foregoing arise, in whole or in part, from the negligence or willful misconduct of Landlord.

Section 15.02. In case any action, claim or proceeding is brought or made against Landlord by reason of any such claim, Tenant, upon ten (10) Business Days written notice from Landlord, shall, at Tenant's expense, defend such action, claim or proceeding. If Tenant fails to defend such claim, action or proceeding by counsel, then Landlord may employ its counsel in defense of such claim, action or proceeding and any and all reasonable legal fees and disbursements, or judgments recovered in connection with such claim, action or proceeding as above defined, shall be paid for in full by Tenant on demand and if not so paid, the same shall, at the option of Landlord, be added to the next succeeding month's rent and become part thereof.

## ARTICLE 16

### CONDEMNATION

Section 16.01. The following basic terms, as used in this Lease and in all amendments to this Lease (unless otherwise specified or unless the context otherwise requires), shall have the meanings set forth below:

(a) The term "**Taking**" shall mean a taking during the Term of all or any part of the Demised Premises, or any interest therein or right accruing thereto including any right of access, by or on behalf of any Governmental Authority or by any entity granted the authority to take property through the exercise of a power of eminent domain granted by statute, any agreement that conveys to the condemning authority all or any part of the Demised Premises as the result of, or in lieu of, or in anticipation of the exercise of a right of condemnation or eminent domain, or a change of grade affecting the Demised Premises. The date of the Taking shall be deemed to be the date that title vests in the condemning authority or its designee.

(b) The term "**Award**" shall mean the condemnation award and/or proceeds of the Taking, including any interest earned on the Award.

(c) The term "**Value of the Fee Estate**" means the Market Value of Landlord's fee estate in the Demised Premises, determined as if (i) the Demised Premises were unimproved, encumbered by this Lease, and unencumbered by any lien representing a monetary obligation, and (ii) no Taking was pending, threatened or under consideration plus the Market Value of the Church Unit, as such term is defined in Exhibit C, whether or not tenant elects to subdivide the New

Building into condominium units. The Value of the Fee Estate shall be determined immediately prior to title vesting in the condemning authority or its designee. For purposes of this Article, the Value of the Fee Estate shall, at a minimum, equal the applicable value set forth on Exhibit H to this Lease.

(d)The term “**Value of the Improvements**” means the value of the New Building minus the value of the Church Unit. The Value of the Improvements shall be determined immediately prior to title vesting in the condemning authority or its designee.

Section 16.02.Landlord and Tenant shall each notify the other if it becomes aware of a threatened or possible Taking (including any letter of interest from the condemning authority or its designee), or the commencement of any proceedings or negotiations which might result in a Taking. Landlord and Tenant shall have the right to appear in such proceedings, as their interests may appear, and be represented by their respective counsel.

Section 16.03.If there is a Taking of the entire Demised Premises or of more than thirty-five percent (35%) of the rentable area of the New Building, (a “**Substantial Taking**”), the Term of the Lease shall cease and terminate on the date of the Taking as fully and completely as if such date were the originally stated Expiration Date of this Lease. The Award for a Substantial Taking (other than a Temporary Taking that involves a Substantial Taking, which is provided for below) shall be allocated as follows, subject to the rights of the Leasehold Lender as provided in Article 19 hereof:

(a)Landlord shall be entitled to claim and recover from the condemning authority the Value of the Fee Estate;

(b)Tenant shall be entitled to claim and recover from the condemning authority an amount equal to the Value of the Improvements, multiplied by a fraction, the numerator of which is the number of months (and any fractional part thereof) occurring between the date of the Taking and the Expiration Date and the denominator of which is the number of months (and any fractional part thereof) occurring between the Commencement Date and the Expiration Date; and

(c)the balance of the Award, if any, shall be paid to Landlord.

Section 16.04.If all or any portion of the Demised Premises is taken temporarily (a “**Temporary Taking**”), the following shall apply, subject to the rights of the Leasehold Lender as provided in Article 19 hereof. If (i) the Temporary Taking (whether or not a Substantial Taking) ends prior to the then Expiration Date or (ii) a portion of the Demised Premises is Taken for a period that will end after the then Expiration Date but such Taking is not a Substantial Taking, then:

(a)This Lease shall remain in full force and effect, including as to the portion Taken and there shall be no change in Tenant’s obligations under this Lease; and

(b)There shall be no reduction in Rent; and

(c)If clause (i) of Section 16.04 applies, the entire Award shall be paid to Tenant;

and

(d) If clause (ii) of Section 16.04 applies, the portion of the Award allocable to the period prior to the Expiration Date shall be paid to Tenant and the portion of the Award allocable to the period after the Expiration Date shall be paid to Landlord.

Notwithstanding the foregoing, in the event that the Temporary Taking involves a Substantial Taking and the term of the Temporary Taking extends beyond the then Expiration Date, Tenant may, at its option, but subject to the rights of the Leasehold Lender, terminate this Lease as of the date of the Taking, by notice given prior to the date of the Taking, in which event this Lease shall be terminated as of the date of the Taking as fully and completely as if such date were the stated Expiration Date of this Lease and Landlord shall be entitled to the entire Award. If Tenant does not so elect to terminate this Lease, this Lease shall remain in full force and effect, there shall be no reduction in Rent and clause (d) above shall govern the distribution of the Award.

Section 16.05. If the Taking is not a Substantial Taking or a Temporary Taking (a **"Partial Taking"**), this Lease shall remain in full force and effect; provided, however, that on the date of such Taking this Lease shall terminate as to the portion of the Demised Premises taken, which portion shall no longer be deemed part of the Demised Premises. From and after the date of such Partial Taking, the Base Rent shall be reduced proportionately based on the portion of the Award actually paid to Landlord. Whether or not the Award is sufficient to restore the Improvements, Tenant shall promptly restore the Improvements, to the extent reasonably practicable given the nature and scope of the Taking and the requirements of applicable Law, to their condition immediately prior to such Partial Taking in accordance with the provisions of this Lease and to a standard and quality no less than the construction of the original Improvements (the **"Condemnation Restoration"**). The Award for the Partial Taking shall be allocated as follows, subject to the rights of the Leasehold Lender as provided in Article 19 hereof:

(a) If the Partial Taking includes any of the Improvements (including any parking area), the Award shall first be applied to effect the Condemnation Restoration. The balance of the Award (if any) shall be allocated between Tenant and Landlord as follows:

1. Landlord shall be entitled to an amount equal to the diminution in the Value of the Fee Estate,
2. Tenant shall be entitled to an amount equal to the diminution in the Value of the Improvements, and
3. the balance of the Award, if any, shall be paid to Landlord.

If there is a Leasehold Lender, the portion of the Award to be applied to Condemnation Restoration shall be paid to the Leasehold Lender and applied to such restoration in accordance with the procedures established in the Leasehold Mortgage, and Tenant's portion of the Award shall be paid in accordance with the provisions of the Leasehold Mortgage. If no Leasehold Mortgage encumbers the Demised Premises at the time of the Partial Taking, then (y) if the cost of the Condemnation Restoration, as reasonably estimated, is less than \$5,000,000, the portion of the Award needed to effect the Condemnation Restoration shall be paid to Tenant, who shall effect the Condemnation Restoration, and (z) if the cost of effecting the Condemnation Restoration is equal to or greater than \$5,000,000,



the portion of the Award needed for restoration of the Improvements shall be paid to a depository, who shall distribute such portion of the Award to Tenant as the Condemnation Restoration progresses in the same manner as provided in Article 7 with respect to insurance proceeds and subject to the same conditions.

(b) If the Partial Taking does not include any portion of the Improvements, the entire Award shall be paid to the Landlord.

Section 16.06. Notwithstanding the foregoing: To the extent any Award is allocated to reimbursement for real estate taxes and assessments that have been paid with respect to periods after the date title vests in the condemning authority or its designee, such portion shall be paid to the party who paid such taxes and assessments. To the extent any Award is allocated to reimbursement of prepayment penalties, such portion shall be paid to (a) Tenant with respect to any Leasehold Mortgage and (b) Landlord with respect to any Fee Mortgage.

Section 16.07. Landlord's and Tenant's rights under this Article shall be subject and subordinate to the rights of all Leasehold Lenders.

Section 16.08. If this Lease terminates pursuant to this Article, Landlord, within ten (10) Business Days after this Lease terminates, shall return to Tenant all Rent previously paid that is attributable to the period after such termination. The termination of this Lease shall not affect those obligations and liabilities of Tenant under this Lease that accrued before the termination of this Lease or that relate to periods before such termination, which obligations shall survive termination.

Section 16.09. Nothing in this Article is included for the benefit of the condemning authority, the intent being only to set out the rights of the parties *vis`a vis* one another.

## **ARTICLE 17**

### **VAULT SPACE**

Section 17.01. All vaults, areas and other structures, whether below or above the street level, if any, now or hereafter built extending beyond the building line of the Demised Premises are not included within the Demised Premises by this Lease, but Tenant may (and Landlord shall not) occupy and use the same during the term of this Lease, subject to such laws, permits, orders, rules and regulations and to the payment of such fees and charges as may be imposed by appropriate governmental authorities with respect thereto.

Section 17.02. No revocation on the part of any governmental department or authority of any license or permit to maintain and use any such vaults and areas or other structures shall in any way affect this Lease or the amount of the rent or other charge payable by Tenant hereunder. If any such license or permit shall be revoked, Tenant will, at its sole cost and expense, do and perform all such work as may be necessary to comply with any order revoking the same.

## ARTICLE 18

### MORTGAGES, ASSIGNMENTS AND SUBLETTING

Section 18.01. Intentionally omitted.

Section 18.02. Tenant may, from time to time, grant to any Institutional Lender (as defined herein) providing financing or refinancing to Tenant with respect to the Demised Premises a mortgage lien encumbering Tenant's interest in the Premises and its interest in, to and under this Lease, together with an assignment of leases and rents and a security interest in any personal property owned by Tenant, in order to secure the repayment of such financing, including interest thereon, and the performance of all of the terms, covenants and agreements on the Tenant's part to be performed or observed under all agreements executed in connection with such financing or refinancing (collectively, a "**Leasehold Mortgage**"; and each holder of a Leasehold Mortgage, a "**Leasehold Lender**"). No such Leasehold Mortgage, lien or security interest shall attach to Landlord's interest in this Lease or the Demised Premises or to any personal property owned by Landlord nor shall any such assignment affect Landlord's interest in this Lease, or in any leases and rents or other proceeds from the Premises. Tenant may have one or more Leasehold Mortgages at any time.

## ARTICLE 19

### LEASEHOLD LENDER PROTECTIONS

Section 19.01. Tenant shall give Landlord prompt notice of each Leasehold Mortgage, together with contact information for notices to the Leasehold Lender (such notice and/or any notice given by a Leasehold Lender to Landlord of its contact information, collectively, the "**Lender Notice**"). Tenant promptly shall furnish Landlord with a complete copy of each Leasehold Mortgage (including all documents and instruments comprising the Leasehold Mortgage) and all amendments, extensions, modifications and consolidations thereof, certified as such by Tenant.

Section 19.02. After receipt of a Lender Notice, Landlord shall give such Leasehold Lender, in the manner provided by the notice provisions of this Lease, a copy of each notice of default given by Landlord to Tenant, at the same time that Landlord gives such notice of default to Tenant or promptly thereafter. No such notice of default given by Landlord to Tenant shall be effective unless and until a copy of such notice shall have been so given to each such Leasehold Lender at the last address furnished to Landlord. Notice to a Leasehold Lender shall be deemed given on the date received by the Leasehold Lender. The Leasehold Lender shall have the right, but not the obligation (except as provided in the next section), to cure such default or to cause such default to be cured, within the time periods set out in Section 19.03 below.

Section 19.03. Landlord shall not exercise its right to terminate this Lease following a default by Tenant if:

(a) As to a monetary default, the Leasehold Lender cures such default on or before the date that is the later of (i) thirty (30) days after the date such default is required to be cured by Tenant under the terms of this Lease and (ii) thirty (30) days after the date Leasehold Lender is given notice

of Tenant's default; and

(b)As to a non-monetary default, (i) Landlord receives written notice from the Leasehold Lender (the "**Lender Cure Notice**"), within thirty (30) days after Leasehold Lender is given Landlord's notice of Tenant's default, that Leasehold Lender agrees to remedy the default, and (ii) Lender cures such default on or before the date that is the later of (A) sixty (60) days after the date such default is required to be cured by Tenant under the terms of this Lease, and (B) sixty (60) days after the date Leasehold Lender is given notice of Tenant's default, provided, however, that if any non-monetary default is not capable of being remedied by the Leasehold Lender within such time period, Leasehold Lender shall have such greater period of time as is necessary to cure such default if Leasehold Lender shall:

(i)commence to remedy the default within such period and shall diligently continue to prosecute such cure to completion, using its best efforts to take all steps necessary to cure such default, or

(ii)if possession of the Demised Premises is required in order to cure such default, institutes judicial or non-judicial foreclosure proceedings within such sixty (60) day period and diligently prosecutes such proceedings in order to obtain possession directly or through a receiver, and, upon obtaining such possession, commences promptly to cure the default and diligently prosecutes the same to completion, provided that, during the period in which such action is being taken and any foreclosure proceedings are pending, all of the other obligations of Tenant under this Lease, to the extent they are reasonably susceptible to being performed by Leasehold Lender, shall be performed.

If such non-monetary default is of such a nature that it cannot be cured by Leasehold Lender (for example, the bankruptcy of Tenant), and if Leasehold Lender succeeds Tenant to the position of tenant hereunder, Landlord shall not terminate this Lease by reason of such default unless the Leasehold Lender consents in writing to such termination.

Section 19.04. At any time after the delivery of the Lender Cure Notice, Leasehold Lender may notify Landlord, in writing, that it has relinquished possession of the Demised Premises, or that it will not institute foreclosure proceedings, or, if such proceedings have been commenced, that it has discontinued or will discontinue such proceedings, and that it relinquishes all right to a New Lease (the "**Abandonment Notice**"). In such event, Leasehold Lender shall have no further obligation to cure Tenant's default(s). Landlord may, at any time after receipt of such Abandonment Notice or upon Leasehold Lender's failure to comply with the requirements of Section 19.03 above, terminate this Lease in accordance with the terms thereof, without any obligation to give Leasehold Lender a New Lease.

Section 19.05. Subject to the preceding sections, no Leasehold Lender shall become liable under the provisions of this Lease, or any lease executed pursuant to this Article, unless and until such time as it becomes, and then only for as long as it remains, the tenant under the leasehold estate created by this Lease. No Leasehold Lender or designated affiliate of a Leasehold Lender (each, a "**Lender Affiliate**") shall have any personal liability under this Lease except to the extent of its interest in this Lease, even if it becomes Tenant or assumes the obligations of Tenant under this Lease.

Section 19.06. Subject to Section 19.03, a Leasehold Lender has no obligation to cure any

default of Tenant under the Lease.

Section 19.07.If this Lease is terminated for any reason, or if this Lease is rejected or disaffirmed pursuant to any bankruptcy, insolvency or other law affecting creditors' rights, Landlord shall give prompt notice thereof to each of the then Leasehold Lenders whose contact information Landlord has received in a Lender Notice, in the manner provided by the notice provisions of this Lease. Landlord, upon written request of any such Leasehold Lender (or if more than one Leasehold Lender makes such request, the Leasehold Lender whose Leasehold Mortgage has the most senior lien), made any time within thirty (30) days after the giving of such notice by Landlord, shall promptly execute and deliver to such Leasehold Lender a new lease of the Premises (the "**New Lease**"), naming such Leasehold Lender or its designee as the tenant under this Lease, for the remainder of the Term upon all of the terms, covenants, and conditions of this Lease (including options to extend the term of this Lease, if any) except for such provisions that must be modified to reflect such termination, rejection or disaffirmance and the passage of time, if such Leasehold Lender shall pay to Landlord, concurrently with the delivery of such New Lease, all unpaid Rent due under this Lease up to and including the date of the commencement of the term of such New Lease. Leasehold Lender or its designee or Lender Affiliate shall execute and deliver to Landlord such New Lease within thirty (30) days after delivery of such New Lease by Landlord to Leasehold Lender. Upon execution and delivery of such New Lease, Leasehold Lender shall cure or cause to be cured all defaults existing under this Lease which are capable of being cured by such Leasehold Lender or its designee promptly and with diligence after the delivery of such New Lease.

Section 19.08.The New Lease and the leasehold estate thereby created shall, subject to the terms and conditions of this Lease, have the same priority as this Lease with respect to any mortgage, of the Demised Premises or any leasehold interest therein or any other lien, charge or encumbrance thereon, whether or not the same shall then be in existence. Landlord shall execute, and shall use commercially reasonable efforts to cause any Fee Lender to execute, any instruments reasonably necessary to maintain such priority. Concurrent with the execution and delivery of such New Lease, Landlord shall pay (or shall cause any depository or Fee Lender to pay) to the tenant named in the New Lease, any moneys (including insurance and condemnation proceeds) then held by Landlord (and/or such depository or Fee Lender) that would have been payable to Tenant as of the date of execution of the New Lease but for the termination of this Lease. With respect to any moneys held by Landlord under the terms of this Lease that would not be payable to Tenant if the Lease had not been terminated, Landlord shall continue to hold, and to disburse such moneys, in accordance with the terms of this Lease.

Section 19.09.If a Leasehold Lender has timely requested a New Lease, Landlord shall not, between the date of termination of this Lease and the date of execution of the New Lease, without the written consent of such Leasehold Lender, terminate any sublease, disturb the occupancy, interest or quiet enjoyment of any subtenant, or accept any cancellation, termination or surrender of such sublease (unless such termination or disturbance shall be effected as a matter of law on the termination of this Lease or is pursuant to the provisions of such sublease(s)) or enter into any lease of all or part of the Premises (other than a new lease with a subtenant entitled to a new lease pursuant to the terms of a subordination, non-disturbance and attornment agreement or similar agreement), which consent of such Leasehold Lender shall not be unreasonably withheld, conditioned or delayed. Upon the execution and delivery of a New Lease under this Article, all security deposits of Subtenants and all prepaid rent moneys of Subtenants that are in Landlord's possession shall be transferred to the tenant under the New Lease, and all such leases that have been made by Landlord, shall be assigned and

transferred, without recourse, by Landlord to the tenant named in such New Lease.

Section 19.10.If more than one Leasehold Lender has requested a New Lease, and the Leasehold Lender whose Leasehold Mortgage had the most senior lien does not execute a New Lease or does not fully comply with the provisions of this Article regarding the delivery of such New Lease, Landlord shall continue to offer, seriatim in order of the priority of their respective Leasehold Mortgages, such New Lease to the remaining requesting Leasehold Lenders, who shall have ten (10) Business Days from the date of receipt of such offer to execute such New Lease and to fully comply with the provisions regarding the delivery of such New Lease, until the earlier of (a) the execution and delivery of a New Lease and (b) the expiration of the offer period for the requesting Leasehold Lender whose lien is most junior. As long as any Leasehold Lender shall have the right to enter into a New Lease with Landlord pursuant to this section, Landlord shall not, without the prior written consent of all Leasehold Lender(s) that continue to have potential succession rights to a New Lease, terminate any Sublease, disturb the possession, interest or quiet enjoyment of any Subtenant, or accept any cancellation, termination or surrender of any such Sublease (unless such termination or disturbance shall be effected as a matter of law on the termination of this Lease or is pursuant to the provisions of such Sublease(s)) or enter into a lease of all or part of the Premises (except for a New Lease with a Leasehold Lender entitled to such New Lease or a new lease with a subtenant entitled to a new lease pursuant to the terms of a subordination, non-disturbance and attornment agreement or similar agreement). If no Leasehold Lender has the right to be offered a New Lease, Landlord shall be free of all obligations to the Leasehold Lenders and shall be free to lease all or any part of the Premises at Landlord's sole discretion.

Section 19.11.Landlord's agreement to enter into a New Lease with Leasehold Lender shall be unaffected by the rejection of this Lease in any bankruptcy proceeding by either Landlord or Tenant. The provisions of this Article shall survive the termination, rejection or disaffirmance of this Lease and shall continue in full force and effect thereafter to the same extent as if this Article were a separate and independent contract made by Landlord, Tenant and Leasehold Lender. The provisions of this Article are for the benefit of Leasehold Lender and may be relied upon and shall be enforceable by Leasehold Lender as if Leasehold Lender were a party to this Lease.

Section 19.12.Until each Leasehold Lender has been given a Lender Cure Notice and this Lease has been terminated, Landlord shall have no right and expressly waives any right arising under applicable Law in and to the rentals, fees, and other amounts payable to Tenant under any Sublease, to the extent such rentals and fees are assigned by Tenant to Leasehold Lender.

Section 19.13.If one or more Leasehold Mortgages is in effect, then, without the prior written consent of every Leasehold Lender that has delivered the Lender Notice to Landlord: (a) this Lease shall not be modified, amended or terminated by the parties hereto, and (b) the Premises shall not be surrendered by Tenant, and Landlord shall not accept any such surrender of this Premises by Tenant. Notwithstanding the foregoing, (i) this Lease may be terminated by the parties, and the Premises surrendered by Tenant in connection with such termination, in connection with a casualty or condemnation in accordance with the terms of this Lease, and (ii) Landlord may terminate this Lease by reason of Tenant's default in accordance with the terms and conditions of this Lease, subject to the Leasehold Lender's rights under this Article. If a Leasehold Lender becomes the owner of the leasehold estate, such Leasehold Lender shall not be bound by any modification, amendment, or termination of this Lease made subsequent to the date of its Leasehold Mortgage and delivery to Landlord of the Lender Notice except for (i) a termination effected in connection with a casualty or

condemnation in accordance with the terms of this Lease, and (ii) a termination occurring by reason of Tenant's default in accordance with the terms and conditions of this Lease, subject to the Leasehold Lender's rights under this Article, and (iii) a modification or amendment effected with such Leasehold Lenders' consent.

Section 19.14.If and when a Leasehold Lender or its designee succeeds Tenant as the tenant under this Lease or becomes the tenant under a New Lease, as the case may be, it may assign this Lease and/or sublease all or part of the Premises without the consent of Landlord; provided that Tenant shall use commercially reasonable efforts to cause a Leasehold Lender to provide Landlord prior written notice reasonably in advance of such Leasehold Lender's or its designee's succession as the tenant under this Lease or becoming a tenant under a New Lease .

Section 19.15.If one or more Leasehold Mortgages is in effect, the following shall apply: All Fee Mortgages shall be expressly subject and subordinate to this Lease, any New Lease, and all amendments, modifications, and extensions thereof; and shall include the Fee Lender's agreement to execute and deliver to the Leasehold Lender's designee, for recording, with respect to any New Lease, a subordination agreement containing such terms as are reasonably acceptable to the Leasehold Lender. Landlord shall not enter into any mortgage encumbering the fee estate of Landlord in the Demised Premises (a "**Fee Mortgage**"). Tenant shall not subordinate this Lease to any Fee Mortgage without the prior written consent of all Leasehold Lenders. Nothing herein shall be construed to prohibit Landlord from encumbering its right, title and interest in and to the Church Unit following conveyance of the Church Unit to Landlord.

Section 19.16. Landlord shall, within ten (10) Business Days after it receives the request of any Leasehold Lender or prospective Leasehold Lender, provide an estoppel certificate as to such matters pertaining to this Lease as are reasonably requested by such Leasehold Lender or prospective Leasehold Lender.

Section 19.17.Leasehold Lender shall have the right to participate in the adjustment of losses with any insurance company with respect to any damage or destruction of the Premises or any improvements thereon and Leasehold Lender shall have the right to supervise and control the receipt and disbursements of all insurance proceeds. All insurance proceeds shall be applied to restore the Premises, subject to Leasehold Lender's right to supervise and control receipt and disbursement of all insurance proceeds in accordance with the terms of the Leasehold Mortgage, or, if there is more than one Leasehold Mortgage, with the terms of the Leasehold Mortgage that has the senior lien. Unless this Lease is terminated, Tenant shall be entitled to the balance of any insurance proceeds available after full and satisfactory completion of the Restoration Work and payment of the debt secured by all Leasehold Mortgages.

Section 19.18. If there is a Taking, Leasehold Lender shall have the right to participate in any condemnation proceedings and settlement discussions and shall have the right to supervise and control the receipt and disbursement of all Awards payable to Tenant. All Awards payable to Tenant shall be applied in accordance with the terms of the Leasehold Mortgage, or, if there is more than one Leasehold Mortgage, with the terms of the Leasehold Mortgage that has the senior lien.

Section 19.19.If a Substantial Taking occurs, Tenant's share of the Award shall be at least equal to the total Award less the Value of the Fee Estate; and Tenant shall only be entitled to the balance of the Award available (if any) after payment of the debt secured by all Leasehold Mortgages



and after payment to Landlord of the portion of the Award payable to Landlord.

Section 19.20.If there is a Partial Taking, the Award shall first be applied to effect the Condemnation Restoration, subject to Leasehold Lender's right to supervise and control receipt and disbursement of the proceeds of the Award in accordance with the terms of the Leasehold Mortgage, or, if there is more than one Leasehold Mortgage, with the terms of the Leasehold Mortgage that has the senior lien. The balance of the Award (if any) shall be allocated between Tenant and Landlord as follows: (i) Landlord shall be entitled to claim and recover from the condemning authority the diminution in the Value of the Fee Estate, (ii) Tenant shall be entitled to claim and recover from the condemning authority the diminution in Value of the Leasehold Estate, and (iii) the balance of the Award, if any, shall be paid to Landlord.

Section 19.21.If there is a Temporary Taking that does not extend beyond the then Expiration Date, this Lease shall continue and the entire Award shall be payable to Tenant, subject to the provisions of the Leasehold Mortgage, or, if there is more than one Leasehold Mortgage, with the terms of the Leasehold Mortgage that has the senior lien. If there is a Temporary Taking of a portion of the Premises for a period that will end after the then Expiration Date but such Taking is not a Substantial Taking, the portion of the Award allocable to periods after the Expiration Date shall be paid to Landlord and the portion of the Award allocable to the period prior to the Expiration Date shall be paid to Tenant, subject to the provisions of the Leasehold Mortgage, or, if there is more than one Leasehold Mortgage, with the terms of the Leasehold Mortgage that has the senior lien. If there is a Temporary Taking that extends beyond the then Expiration Date and such Taking is a Substantial Taking, this Lease shall terminate as of the date the condemning authority or its designee takes occupancy of the Premises, as fully and completely as if such date was the stated Expiration Date of this Lease, and Landlord shall be entitled to the entire Award.

Section 19.22.If any dispute under this Lease is required to be resolved by arbitration, every Leasehold Lender that has delivered the Lender Notice to Landlord shall have the right to participate in such proceeding and shall be given notice of its commencement at least twenty (20) Business Days prior thereto.

Section 19.23.There shall be no merger of this Lease or the leasehold estate created by this Lease with a fee interest in the Demised Premises by reason of the fact that the same Person may acquire, own or hold, directly or indirectly, this Lease or the leasehold estate created by this Lease and the fee estate in the Premises, unless and until such Person and every Leasehold Lender and Fee Lender shall join in a written instrument expressly providing for such merger and such instrument is recorded.

Section 19.24.To the extent any of the other provisions of this Lease are inconsistent with the provisions of this Article, so long as any Leasehold Mortgage remains in effect, the provisions of this Article shall control and shall be read in a manner to give the protection of the provisions hereof to the holder(s) of such Leasehold Mortgage.

Section 19.25.Landlord and Tenant shall each, from time to time, execute, acknowledge and deliver such further instruments, and perform such additional acts, as the other and/or a Leasehold Lender may reasonably request in order to effectuate the intent and purposes of this Article.

## ARTICLE 20

### ASSIGNMENT, SUBLEASE AND NON-DISTURBANCE

Section 20.01. Except as otherwise permitted by Article 18 or Section 20.02 below, Tenant may not assign, mortgage, pledge, encumber or otherwise transfer, directly or indirectly, by operation of law or otherwise (each of the foregoing, a “**Transfer**”) this Lease or sublease all substantially all of the Demised Premises in a single transaction or related transactions, or otherwise transfer (whether by operation of law or otherwise) a controlling interest in this Lease or the Demised Premises, before substantial completion of the New Building. For purposes hereof, “control” or “Control” (including the correlative meanings of the terms “controlling,” “controlled by” and “under common control with”) means with respect to any individual, sole proprietorship, corporation, partnership, joint venture, limited liability company or corporation, trust, unincorporated association, institution, public or governmental body, or any other entity including without limitation any Affiliate (as defined below) (each of the foregoing, a “**Person**”), the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, membership interests, partnership interests, by contract or otherwise. For purposes hereof, an “**Affiliate**” means with respect to any Person, any other Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such Person.

Section 20.02. Notwithstanding the provisions of Section 20.01 following the New Building Delivery Date, Tenant may Transfer this Lease or sublease all or substantially all of the Demised Premises in a single transaction or related transactions without the prior consent of Landlord; provided prior written notice of Tenant’s intention to effect such Transfer is provided to Landlord, as follows:

- (a) the Transfer of less than a controlling interest in Tenant to any third party;
- (b) the grant of a Leasehold Mortgage in accordance with the terms of this Lease, including any Transfer to the holder of such Leasehold Mortgage or its designee in connection with a foreclosure or exercise of remedies thereunder or an assignment and/or deed-in-lieu of foreclosure to any such holder, its designee or any purchaser at any foreclosure sale in connection with any of the foregoing;
- (c) any Transfer of ownership interest in Tenant, or any of its direct or indirect equity owners, to any Person who at that time directly or indirectly owns an interest in Tenant that does not result in a transfer of Control;
- (d) the submission to a Condominium Regime as contemplated by Section 20.08 of this Lease;
- (e) the Transfer of all or any of the rights and obligations under this Lease to the Condominium Association, including, without limitation, a Transfer in connection with a Transfer of Control Event;
- (f) the Transfer or conveyance of any interest in and to any Condominium Unit,

including a subdivision of any Condominium Unit, including without limitation, the lease of the Commercial Unit or the lease of residential dwelling units in the Residential Unit; or

(g) the Transfer of a controlling interest in Tenant to a Person having a tangible net worth of not less than a sum equal to the Base Rent payable under this Lease for the five (5) years following the effective date of the Transfer and recognized real estate development experience for projects of the size and nature of the Improvements to be constructed (or being constructed) thereon.

The foregoing are referred to in this Lease as “**Permitted Transfers**” and the transferees as “**Permitted Transferees**”.

Section 20.03. Tenant may sublet all or any part of the Demised Premises without the consent of Landlord; provided, however, that no sublease of all or any part of the Demised Premises shall be deemed effective unless it contains substantially the following provisions; provided, further, that prior written notice of Tenant’s intention to enter into a sublease affecting all or any part of the Demised Premises is provided to Landlord:

This lease [sublease] is subject and subordinate to the underlying Lease between S & F 126 St. LLC, as tenant, and Thomas Memorial Wesleyan Methodist Church, Inc., as landlord (“Overlandlord”), dated October 5, 2016, as same has been amended, modified, extended and/or assigned (the “Ground Lease”), and to all matters to which the Ground Lease is subordinate. In the event of a default by the tenant under the Ground Lease that results in the termination of the Ground Lease, the tenant [subtenant] hereunder shall, at the option of Overlandlord, and subject to the rights of any Leasehold Lender (as such term is defined in the Ground Lease), attorn to and recognize Overlandlord as the landlord hereunder and shall, promptly upon the Overlandlord’s request, execute and deliver all instruments necessary or appropriate to confirm such attornment and recognition, but any failure to execute such instruments shall not affect such attornment and recognition. Notwithstanding such attornment and recognition, Overlandlord shall not be: (i) liable for any previous act or omission of the landlord hereunder; (ii) subject to any offset or defense that shall have accrued to the tenant hereunder against said landlord; or (iii) bound by any prepayment of more than one month’s rent or for any security deposit which shall not have been delivered to Overlandlord. The tenant hereunder hereby waives all rights under any present or future law to elect, by reason of the termination of the Overlease, to terminate this lease or surrender possession of the premises demised hereby; and subject to the rights of any Leasehold Lender: If Overlandlord gives the tenant hereunder notice that the landlord hereunder has defaulted in payment of any Base Rent or Additional Rent payable under the Overlease beyond any applicable grace period, the tenant hereunder shall pay all rent and additional rent payable hereunder to Overlandlord, which amounts Overlandlord shall apply to the Base Rent and Additional Rent payable under the Overlease and amounts paid to Overlandlord shall be credited against tenant’s obligations hereunder to the

landlord hereunder.

Section 20.04. In the event that Tenant desires or intends to cause a Transfer other than in connection with a Permitted Transfer, Landlord's prior approval shall be required, which approval shall not be unreasonably withheld, delayed or conditioned. In such event, Tenant shall provide written notice to Landlord at least thirty (30) days but not more than one hundred fifty (150) days prior to the date of the proposed Transfer. Together with such notice, Tenant and the proposed transferee ("**Proposed Transferee**" and, if Approved pursuant to this Section 20.04, a "**Transferee**") shall submit to Landlord the following:

(a) written request for approval of the Proposed Transferee (a "**Transfer Application**") executed by Tenant and the Proposed Transferee setting forth the full and correct legal name of the Proposed Transferee, the principal place of business of the Proposed Transferee, the name, mailing address, telephone and fax number and e mail address of the Proposed Transferee's contact person to whom Landlord may direct communications and inquiries and stating the proposed date and general terms of the proposed Transfer.

(b) Financial statements, including profit and loss and cash flow statements prepared in accordance with generally accepted accounting principles for the three (3) fiscal years of the Proposed Transferee next preceding the date of submission of the Transfer Application, or, if the last preceding fiscal year has ended less than one hundred twenty (120) days prior to the date of the Transfer Application and financial statements for such year have not been completed, financial statements for the three (3) fiscal years next preceding that year shall be provided, which financial statements, in each case, shall have been reviewed by an independent certified public accountant and certified by an officer of the Proposed Transferee to be true and complete in all material respects. In the event that a Proposed Transferee cannot demonstrate such operating history, then evidence of such operating and/or management experience by the Proposed Transferee or the principal owners/operators of the Proposed Transferee with respect to similar properties which shall be reasonably acceptable to Landlord. All of the foregoing information may be submitted under the terms of a confidentiality agreement reasonably acceptable to Landlord.

Section 20.05. Within thirty (30) Business Days following delivery of the Transfer Application, Landlord shall provide written notice (a "**Transfer Application Response**") to Tenant and the Proposed Transferee either (A) providing Landlord's approval of the Proposed Transfer, or (B) refusing to provide Landlord's Approval of the Proposed Transfer, together with a detailed description of Landlord's purported reasonable basis for its refusal to Approve same. No refusal provided by Landlord pursuant to (B) above shall preclude Tenant and/or the Proposed Transferee from seeking an adjudication of the reasonableness of Landlord's refusal or from submitting a new Transfer Application under the foregoing procedures in which Tenant and/or the Proposed Transferee attempt to provide additional evidence, documents or information to address the purported reasonable basis for Landlord's refusal. If Landlord fails to provide the Transfer Application Response within the aforesaid thirty (30) Business Day period, and no such Response is delivered within ten (10) Business Days following delivery of an additional notice to Landlord that Landlord's Approval will be deemed given as of the expiration of such ten (10) day period, Landlord will be deemed to have approved the proposed Transfer and Tenant and the Proposed Transferee shall thereafter have the absolute right to consummate the Transfer reflected in the Transfer Application. In addition to the foregoing, Tenant shall pay to Landlord all of Landlord's

third party costs and expenses related to the review and Approval of a Proposed Transfer, including without limitation reasonable attorney's fees and disbursements.

Section 20.06. A Transfer to a Permitted Transferee or Transferee approved by Landlord pursuant to Section 20.05, as evidenced by Landlord's Approval of the Transfer Documents (or if Landlord is "deemed to have Approved" a Transfer to a Permitted Transferee as provided in Section 20.05) above), shall release Tenant from any further obligation under this Lease arising after the effective date of such Transfer as to the interest transferred. Following such Transfer, Landlord shall look solely to the Transferee for performance of the obligations of Tenant arising after the effective date of such Transfer with respect to the applicable transferred interest. Landlord shall execute such documentation as may reasonably be requested by Tenant to evidence such discharge and release. Notwithstanding the foregoing, a sublease of a portion of the Premises, shall not release Tenant from any of its direct obligations to Landlord under this Lease.

Section 20.07. Tenant's obligations under this Lease shall be unaffected by (a) any modification of this Lease by Landlord and any assignee of this Lease, except that Tenant's obligations hereunder shall be determined as if such modification had not been effected unless the assignee is an Affiliate of Tenant, (b) any discharge or release of any assignee of this Lease in connection with any bankruptcy, reorganization, or other insolvency proceeding or assignment for the benefit of creditors, (c) any rejection or disaffirmation of this Lease in any bankruptcy, reorganization, or other insolvency proceeding or assignment for the benefit of creditors, or (d) any reduction, modification, impairment or limitation of the liability of any assignee of this Lease, its successors or assigns, or of Landlord's remedies under this Lease, in connection with any bankruptcy, reorganization or other insolvency proceeding or any assignment for the benefit of creditors. In addition, if Landlord is required to disgorge or pay back to the assignee's estate any payments made by the assignee under the Lease in connection with any bankruptcy, reorganization or insolvency proceeding, the assigning (or any predecessor) Tenant's obligations as to such payments shall be reinstated. If this Lease has been assigned and is rejected in connection with any bankruptcy or other insolvency proceeding by the assignee, the assignor or any predecessor Tenant shall, at the election of Landlord, enter into a new lease with Landlord upon the executory terms and conditions of this Lease as of the date of such rejection, subject to the rights of the Leasehold Lender.

Section 20.08. Landlord, at the request of Tenant, shall enter into subordination, non-disturbance and attornment agreements with one or more subtenants of Tenant in the form annexed hereto as **Exhibit I** (the "SNDA") provided all of the following conditions are met:

(a) The Subtenant is leasing at least 3,000 rentable square feet of the Improvements;  
and

(b) The Subtenant is not an Affiliate of Tenant at any time during the term of its lease with Tenant; and

(c) There is no outstanding default in payment of Base Rent or Additional Rent or other charges due in connection with this Lease and there is no outstanding Event of Default.

For purposes hereof, subtenants of Tenant shall include any tenants of the Commercial Unit.

Section 20.09. Notwithstanding anything to the contrary contained herein, Tenant may submit the leasehold estate created by this Lease to a condominium form of ownership so as to (a) create a condominium regime comprised of three (3) units as more particularly described on Exhibit C attached hereto (“**Condominium Regime**”) in accordance with applicable Legal Requirements (the “**Condominium Units**”), (b) enter into leases of any and all apartment units in the Residential Unit without the prior written consent or approval of Landlord.

## ARTICLE 21

### DEFAULT, INSOLVENCY EVENTS AND CONDITIONS OF LIMITATION

Section 21.01. This Lease and the term and estate thereof is subject to the conditional limitation set forth below. If any of the following events occur (each, an “**Event of Default**”):

(a) If Tenant fails to pay Rent to Landlord when the same is due and payable under the terms of this Lease and such failure continues for a period of ten (10) Business Days after written notice thereof is given to Tenant, or Tenant fails to discharge any mechanic’s or other lien that is its obligation to discharge under the terms of this Lease within the applicable time period provided in this Lease; or

(b) Tenant, whether by action or inaction, fails to timely perform or observe any of the other terms, covenants or conditions of this Lease and such default is not remedied within thirty (30) days after written notice thereof is given to Tenant, provided that if such default cannot, with reasonable diligence, be fully remedied within such 30-day period, Tenant shall have a reasonable extension of time to cure such default, but in no event longer than three (3) months after the date such default notice is given to Tenant, provided Tenant commences compliance within such 30-day period (or as promptly as reasonably possible in an emergency) and shall diligently continue to prosecute such cure to completion, using its best efforts to take all steps necessary to cure such default but in no event longer than three (3) months after the date such default notice is given to Tenant; or

(c) A receiver is appointed for Tenant or any property of Tenant in any action, suit, or proceeding by or against Tenant and such appointment is not vacated or annulled within ninety (90) days.

then Landlord may, at any time during the continuance of such Event of Default, give Tenant notice of termination of this Lease and, upon the date thirty (30) days after service of such notice, this Lease and the term and estate thereof (whether or not the Commencement Date shall have occurred) shall terminate and end with the same force and effect as if that day were the day herein definitely fixed for the end and expiration of this Lease, but Tenant shall remain liable for damages as provided in this Lease and Landlord may resort to and enforce any of the remedies provided in Article 22 below.

Section 21.02. This Lease and the term and estate thereof is subject to the further



conditional limitation that if any of the following events occur (“**Insolvency Events**”):

(a) Tenant makes an assignment for the benefit of its creditors, or

(b) If an involuntary petition is filed against Tenant under any bankruptcy or insolvency law or under the reorganization provisions of any law of like import, and such petition is not dismissed within one hundred twenty (120) days after the date filed; or

(c) Tenant shall file a voluntary petition under any bankruptcy or insolvency law, or whenever any court of competent jurisdiction shall approve a petition filed by Tenant under the reorganization provisions of the United States Bankruptcy Code or under the provisions of any law of like import, or whenever a petition shall be filed by Tenant under the arrangement provisions of the United States Bankruptcy Act or under the provisions of any law of like import;

then Landlord may, at any time during the continuance of such Insolvency Event, give Tenant notice of termination of this Lease and, upon the date thirty (30) days after service of such notice, this Lease and the term and estate thereof (whether or not the Commencement Date shall have occurred) shall terminate and end with the same force and effect as if that day were the day herein definitely fixed for the end and expiration of this Lease, but Tenant shall remain liable for damages as provided in this Lease and Landlord may resort to and enforce any of the remedies provided in Article 24 below.

## **ARTICLE 22**

### **REMEDIES**

If (a) this Lease is terminated pursuant to Article 21, or (b) Landlord reenters or obtains possession of the Demised Premises by summary proceedings or any other action or proceeding, or (c) Landlord reenters or obtains possession by any other legal act (which Landlord may do without further notice and without liability or obligation to Tenant or any occupant of the Demised Premises if this Lease is terminated pursuant to Article 21), all of the provisions of this Section shall apply (in addition to any other applicable provisions of this Lease):

(a) Tenant shall immediately vacate the Demised Premises and surrender the Demised Premises to Landlord in good order, condition and repair, excepting reasonable wear and tear and damage that is not Tenant’s obligation to repair; and, if Tenant fails to surrender the Demised Premises in such condition, Tenant shall reimburse Landlord for all costs incurred by Landlord to restore the Demised Premises to such condition.

(b) Landlord, at Landlord’s option, may (i) relet the Demised Premises, or any portion of the Demised Premises, from time to time, in the name of Landlord, Tenant or otherwise, as determined by Landlord, to any person and on any terms, but Landlord shall have no obligation to relet the Demised Premises, or any portion of the Demised Premises, or to collect any rent (and the failure to relet the Demised Premises, or any portion of the Demised Premises, or to collect any rent shall not impose any liability or obligation on Landlord or relieve Tenant of any obligation or liability under this Lease), and (ii) make any changes to the Demised Premises as Landlord, in Landlord’s judgment, considers advisable or necessary in connection with a reletting, without imposing any liability or obligation on Landlord or relieving Tenant of any obligation or liability

under this Lease.

(c) Tenant shall pay Landlord the following amounts:

- i. All Rent payable to the date on which this Lease is terminated or Landlord reenters or obtains possession of the Premises; and
- ii. Any deficiency between (i) the aggregate Rent for the period which otherwise would have constituted the unexpired portion of the Term (conclusively presuming the periodic Additional Rent for each year thereof to be the same as was payable for the 12 month period immediately preceding the termination, re-entry or obtaining of possession); and (ii) the rents, if any, applicable to that period collected under any reletting of any portion of the Demised Premises; and Tenant shall pay any such deficiency in monthly installments on the days specified in this Lease for payment of installments of the Base Rent, and Landlord shall be entitled to recover from Tenant each monthly deficiency as the same arises. No suit to collect the deficiency for any month shall prejudice Landlord's right to collect the deficiency for any subsequent month. Tenant shall not be entitled to any rents payable (whether or not collected) under any reletting, whether or not those rents exceed the Rent.

In lieu of any further deficiency pursuant to this subparagraph (2), Landlord may recover from Tenant, and Tenant shall pay Landlord, on request, as liquidated damages for such further deficiency, the amount by which (i) the unpaid Rent for the period which otherwise would have constituted the unexpired portion of the Term (conclusively presuming the Additional Rent for each year thereof to be the same as was payable for the 12-month period immediately preceding the termination, re-entry or obtaining of possession) exceeds (ii) the then fair market rental value of the Premises, including the Additional Rent for the same period, both discounted to present value at the annual rate of 6%.

(d) Any costs and expenses incurred by Landlord in connection with the termination, reentry or obtaining of possession, and the reletting of the Demised Premises, including all repossession costs, brokerage commissions, reasonable attorneys' fees and disbursements, alteration costs and other expenses of preparing the Demised Premises for reletting.

(e) Tenant shall deliver to Landlord all sums held by Tenant with respect to subtenants of the Premises, including prepaid rents, estimated prepayments relating to real estate taxes, operating expenses, and other expenses; all security deposits; and all guaranties of subtenant obligations (whether full or partial guaranties); and shall transfer to Landlord at Tenant's expense any letters of credit, bonds and other security instruments issued to Tenant on behalf of such Subtenants in accordance with the requirements of the issuer thereof.

Section 22.02. Tenant hereby waives (a) the service of any notice of intention to re-enter or obtain possession of the Demised Premises or to institute any legal action in connection therewith, and (b) on its own behalf and on behalf of all persons claiming under Tenant, including all creditors, any rights Tenant and all such persons might otherwise have under any Law to redeem the Demised Premises, to re-enter or repossess the Demised Premises, or to restore this Lease, after

(i) Tenant is dispossessed pursuant to any law or by any authority, (ii) Landlord reenters or obtains possession of the Demised Premises pursuant to any legal act, action or proceeding, or (iii) the date of termination of this Lease, whether by operation of law or pursuant to this Lease.

Section 22.03. Either party may seek to enjoin any breach or threatened breach of any provision of this Lease. The right of any party to exercise any particular remedy available under this Lease, at law or in equity, shall not preclude such party from exercising any other remedy it might have pursuant to this Lease, in law or in equity. Each right and remedy specified in this Lease and each other right or remedy that may exist at law, in equity or otherwise upon breach of any provision in this Lease, shall be deemed distinct, separate and cumulative; and no right or remedy, whether exercised or not, shall be deemed to be in exclusion of any other unless otherwise expressly provided in this Lease.

Section 22.04. If Landlord commences any summary proceeding against Tenant, Tenant shall not interpose any counterclaim in that proceeding (unless the failure to impose the counterclaim would preclude Tenant from asserting in a separate legal action the claim which is the subject of the counterclaim), and shall not seek to consolidate the proceeding with any other legal action.

Section 22.05. If (a) there is then an Event of Default, or (b) if Tenant fails to comply with any obligation under this Lease which in Landlord's reasonable opinion creates an emergency, Landlord may, but is not obligated to, cure the default. Tenant shall reimburse Landlord, as Additional Rent, for all Liabilities incurred by Landlord in connection therewith, within ten (10) days after Tenant is billed for such Liabilities. The term "**Liabilities**" shall mean all losses, claims, suits, demands, costs, liabilities, and expenses, including reasonable attorneys' fees, penalties, interest, fines, judgment amounts, fees, and damages, of whatever kind or nature.

Section 22.06. Tenant shall reimburse Landlord, as Additional Rent, for all costs and expenses incurred by Landlord in connection with any default by Tenant in the performance or observance of any of the terms, covenants or conditions on Tenant's part to be observed or performed under this Lease, including all costs and expenses incurred in interpreting and enforcing Landlord's rights and in instituting, prosecuting or defending any legal action by or against Tenant, including summary proceedings, or in connection with any dispute under this Lease. Such amounts shall be paid to Landlord within ten (10) days after Tenant is billed for such costs and expenses.

Section 22.07. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent shall be considered other than on account of the Rent. No endorsement or statement on any check or letter accompanying any check or payment shall prevent Landlord from cashing the check or otherwise accepting the payment, without prejudice to Landlord's right to recover the balance of the Rent or pursue any other remedy.

Section 22.08. Tenant waives Tenant's right, if any, to designate the items against which any Rent payments made by Tenant pursuant to this Lease are to be credited and Tenant agrees that Landlord may apply any payments made by Tenant to any Rent items Landlord sees fit irrespective of and notwithstanding any designation or request by Tenant as to the items against

which any such payments shall be credited.

Section 22.09. All legal actions relating to this Lease shall be adjudicated in any state court or in any federal court having jurisdiction in the City, County and State of New York. Tenant irrevocably consents to the personal and subject matter jurisdiction of those courts in any legal action relating to this Lease and waives any claim that any legal action relating to this Lease brought in any such court has been brought in an inconvenient forum. This consent to jurisdiction is self-operative and no further instrument or legal action, other than service of process in any manner permitted by Law or this Section, is necessary in order to confer jurisdiction upon the person of Tenant and the subject matter in question in any such court.

Section 22.10. The words "re-enter," "re-entry" and "re-entered" as used in this Lease shall not be considered to be restricted to their technical legal meanings.

## **ARTICLE 23**

### **NO IMPAIRMENT OF LANDLORD'S TITLE**

Section 23.01. Nothing contained in this Lease, or any action or inaction by Landlord, shall be deemed or construed to mean that Landlord has granted to Tenant any right, power or permission to do any act or to make any agreement which may create, give rise to, or be the foundation for, any right, title, interest, lien, charge or other encumbrance upon the estate of Landlord in the Premises.

Section 23.02. In amplification and not in limitation of the foregoing, Tenant shall not permit the Demised Premises to be used by any person or persons or by the public, as such, at any time or times during the term of this Lease, in such manner as might reasonably tend to impair Landlord's title to or interest in the Demised Premises or in such manner as might reasonably make possible a claim or claims of adverse use, adverse possession, prescription, dedication, or other similar claims of, in, to or with respect to the Demised Premises.

Section 23.03. Tenant shall not cause, or permit any Subtenant to cause, Landlord's fee estate in the Demised Premises to be encumbered by any lien or other encumbrance, including any lien or other encumbrance filed or recorded in favor of any mechanic, materialman, architect, or engineer with respect to work, material or services alleged to have been performed at or with respect to the Premises. If any such lien or encumbrance is filed or recorded, Tenant shall discharge any such lien or encumbrance by bond or otherwise within thirty (30) days after Tenant receives notice of such lien or encumbrance. If Tenant fails to discharge such lien or encumbrance within such thirty (30) day period, Landlord may pay the amount reflected on such lien or encumbrance (or any portion thereof) and any costs, interest, and/or penalties imposed in connection therewith or take such other action as Landlord deems necessary or desirable to remove such lien or encumbrance, without being responsible for investigating the validity thereof and without regard to any objection by Tenant. The amount so paid and costs incurred by Landlord shall be deemed Additional Rent under this Lease payable within thirty (30) days after Tenant is billed therefor. Nothing in this Lease shall be deemed in any way to: (a) constitute Landlord's consent or request, express or implied, that any contractor, subcontractor, laborer or materialman provide any labor or materials for any alteration, addition, improvement or repair of

the Premises; or (b) evidence Landlord's agreement to subject its fee estate to any such lien.

## **ARTICLE 24**

### **LIMITATION OF LIABILITY**

Section 24.01.If Landlord sells, assigns, or otherwise transfers (whether by operation of law or otherwise) all or part of its or their interest in the Demised Premises or this Lease, (a) the transferor shall be relieved of all obligations and liabilities of Landlord under this Lease accruing after the effective date of the transfer, and (b) the transferee shall be deemed to have assumed all of Landlord's obligations and liabilities under this Lease effective from and after the effective date of the transfer.

Section 24.02.If Tenant sells, assigns, or otherwise transfers (whether by operation of law or otherwise) all or part of its or their interest in the Demised Premises or this Lease, (a) the transferor shall be relieved of all obligations and liabilities of Tenant under this Lease accruing after the effective date of the transfer, and (b) the transferee shall be deemed to have assumed all of Tenant's obligations and liabilities under this Lease effective from and after the effective date of the transfer.

Section 24.03.No member, officer, director, shareholder or employee of Tenant shall be personally liable for the obligations of Tenant hereunder, and any judgment against Tenant in favor of Landlord shall be satisfied solely from the interest of Tenant in this Lease and/or Tenant's additional assets.

Section 24.04.Landlord, its partners, members, shareholders, officers, directors and principals, disclosed and undisclosed, shall have no personal liability under or in connection with this Lease. Tenant shall look only to Landlord's interest in the Demised Premises and this Lease for the satisfaction of Tenant's remedies or to collect any judgment requiring the payment of money by Landlord or such persons under or in connection with this Lease. No other assets of Landlord or such persons shall be subject to lien, levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies or the collection of any judgment under or in connection with this Lease. If Tenant acquires a lien on such other property or assets by judgment or otherwise, Tenant shall promptly release that lien by signing, acknowledging and delivering to Landlord any instrument, prepared by Landlord, required for the lien to be released.

## **ARTICLE 25**

### **END OF TERM**

Section 25.01.On the Expiration Date or such earlier date that this Lease terminates or expires, Tenant shall peaceably and quietly surrender the Demised Premises to Landlord vacant (except for those subtenants occupying under valid leases), broom clean, in good order, condition and repair excepting reasonable wear and tear and damage that is not Tenant's obligation to repair, free and clear of all subleases, liens, and other encumbrances (except for liens and encumbrances caused or expressly consented to by Landlord), and with all Personal Property acquired (or leased) by Tenant or Tenant's Affiliates and all personal property of Subtenants (except for the property of Subtenants occupying under leases with Landlord) removed. Tenant shall deliver to Landlord, on or before the Expiration Date or such earlier date that this Lease terminates or expires, upon Landlord's request, all licenses, permits, warranties, and guaranties then in effect for the Demised Premises (and shall assign same to

Landlord upon Landlord's request) and all books and records reasonably requested by Landlord. Tenant shall cooperate with Landlord to achieve an orderly transition of the Demised Premises to Landlord's control. Landlord and Tenant shall, prior to the Expiration Date, (a) adjust for Impositions and all other appropriate expenses and income of the Premises, and (b) if a Memorandum of Lease has been recorded, execute a document in recordable form evidencing the termination of this Lease and all amendments thereto.

Section 25.02. Any personal property of Tenant or any Subtenant which shall remain on the Demised Premises after the Expiration Date or such earlier date that this Lease terminates or expires, may, at the option of Landlord, be deemed to have been abandoned and either may be retained by Landlord as its property or be disposed of, without accountability, in such manner as Landlord may see fit. Tenant shall reimburse Landlord, as Additional Rent, for all costs and expenses incurred by Landlord in connection with disposing of such property.

Section 25.03. If the Demised Premises are not vacated and surrendered in accordance with this Lease on the Expiration Date or sooner termination of this Lease, Tenant shall be liable to Landlord for (a) all Liabilities incurred by Landlord in connection with such holdover, including Liabilities incurred in connection with any summary proceedings, action or proceeding to recover possession of the Demised Premises from Tenant and any Subtenants, and (b) per diem use and occupancy in respect of the Demised Premises equal to the fair rental value of the Demised Premises, and (c) all damages incurred by Landlord in connection with such holdover, including any lost opportunity damages incurred by Landlord. If only a portion of the Demised Premises is timely vacated and surrendered, Tenant shall nevertheless remain liable for per diem use and occupancy with respect to the entire Demised Premises, but any reletting proceeds received by Landlord during the period of Tenant's holdover shall be credited against Tenant's liability for use and occupancy for the entire Demised Premises. In no event shall this Section be construed as permitting Tenant (or other occupants) to remain in possession of the Demised Premises after the Expiration Date or sooner termination of this Lease. Tenant shall indemnify, defend and hold harmless Landlord against all claims made by any succeeding tenants to the extent such claims arise by reason of the failure of Tenant (and all other occupants) timely to vacate and surrender the Demised Premises (or any portion thereof) in accordance with this Lease. Landlord may recover amounts due it under this Section in any summary proceeding and/or any separate action or proceeding.

Section 25.04. No act or thing done by Landlord or Landlord's agents (including receipt of keys) during the Term shall be deemed an acceptance of a surrender of the Demised Premises, and no agreement to accept such surrender shall be valid unless in writing signed by Landlord.

## ARTICLE 26

### NOTICES

Section 26.01. Any notice, communication, request, reply or advice (collectively, "Notice") provided for or permitted by this Lease to be made or accepted by any party must be in writing. Notice may, unless otherwise provided herein, be given or served by depositing the same in the United States mail, postage paid, U.S. Express Mail, and addressed to the party to be notified, with return receipt requested, or by delivering the same to such party in person or by Federal Express, or other reputable overnight courier providing proof of delivery, or by hand delivery. Notice given by Federal Express, Express Mail or other reputable overnight courier providing

proof of delivery shall be effective one (1) business day following deposit therewith. Notice given by hand shall be effective as of the date of delivery or refusal of delivery if given on a business day or as of the business day immediately following the date of delivery. For the purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to Landlord:

Thomas Memorial Wesleyan Methodist Church, Inc.  
260-270 West 126<sup>th</sup> Street  
New York, New York 10027  
Attention: Reverend  
Telephone: (212) 493-7088

With a copy to:

Biancone & Wilinsky, LLP  
230 Park Avenue  
New York, New York 10169  
Attention: Thomas B. Wilinsky Esquire  
Telephone: (212) 661-1888  
Telecopy: (212) 661-4774

If to Tenant:

S & F 126 St. LLC  
116 Nostrand Avenue  
Brooklyn, New York 12305  
Attention: Mr. Chaskiel Strulovitch  
Telecopy: (718) 384-0864

With a copy to:

Peter Schmidt, Esq.  
P.O. Box 751  
Washington Bridge Station  
New York, NY 10033  
Facsimile: (212) 795-2943  
E-mail: punchjur@nyc.rr.com

Section 26.02. Each party and each holder of a Fee Mortgage or Leasehold Mortgage, by notice in writing, may change any address for the purpose of this Lease, which address, as changed, each party and each holder thereafter shall use in place of the former address. Notices to Fee Mortgagee or the holder of any Leasehold Mortgage shall be given in the manner as provided for hereinabove and sent to the addresses to be furnished to Landlord by the holders of such mortgages,



as provided for with greater specificity elsewhere in this Lease.

## **ARTICLE 27**

### **INVALIDITY OF PARTICULAR PROVISIONS**

Section 27.01. If any term or provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 27.02. Landlord covenants that if and so long as Tenant observes and performs each and every covenant, agreement, term, provision and condition of this Lease on the part of Tenant to be observed and performed, Tenant shall quietly enjoy the Premises without hindrance or molestation of Landlord or any Person acting through Landlord subject to the covenants, agreements, terms, provisions and conditions of this Lease.

## **ARTICLE 28**

### **QUIET ENJOYMENT**

Section 28.01. Landlord covenants that if and so long as Tenant observes and performs each and every covenant, agreement, term, provision and condition of this Lease on the part of Tenant to be observed and performed, Tenant shall quietly enjoy the Demised Premises without hindrance or molestation of Landlord or any person acting through Landlord, subject to the covenants, agreements, terms, provisions and conditions of this Lease.

## **ARTICLE 29**

### **UNAVOIDABLE DELAYS AND FORCE MAJEURE**

Section 29.01. Where Tenant is required to do any work or perform any other act, other than the payment of money, within a specified time and Tenant shall be delayed in the doing of said work or the performance of such act by an Unavoidable Delay, as said term is hereinafter defined, Tenant's time to commence doing such work and performing such act shall be extended for the duration of such Unavoidable Delay. Tenant shall not be required to commence or continue the performance of any work if any substantial part thereof is affected by any Unavoidable Delay until said delaying factor is no longer operative. Notwithstanding anything herein contained to the contrary, Tenant's time to commence doing such work and performing as a result of such Unavoidable Delay shall in no event be longer than three (3) months (except that such period shall be extended to six (6) months in the case of Stop Work Orders issued by the Department of Buildings) after the date such default notice is given to Tenant, provided Tenant commences as promptly as reasonably possible diligently continues to prosecute such cure to completion, using

its best efforts to take all steps necessary to cure such default.

Section 29.02. For purposes hereof, “**Unavoidable Delays**” shall be deemed to include the phrase “*force majeure*” and for the purposes of this Lease shall include without limitation delays caused by or due to war, acts of terrorism, fire, boiler explosions, water damage, the elements, casualties, accidents, strikes, lockouts, or other labor activity, including sympathetic strikes, slowdowns or picketing, government restrictions, Landlord Delays unavailability of materials, supplies, machinery, tools or equipment, conditions dangerous to personnel encountered or created by demolition, excavation or construction or any other cause, event or circumstances, whether or not listed, beyond the control of Tenant. It is further agreed, without limiting the generality of the foregoing, that interruptions or delays consequent upon the existence of any governmental laws, orders or regulations limiting or restricting construction, or limiting the use to which materials normally required in construction work may be put, or granting priority for use of such materials to work, or for a purpose other than the work contemplated to be performed by Tenant, as the case may be, or limiting or restricting the employment of labor for such work, shall also be deemed Unavoidable Delays within the meaning hereof.

Section 29.03. Anything herein in this Lease contained to the contrary notwithstanding, should any legislation be enacted or regulation(s) issued by governmental authorities staying the removal of the tenants occupying the said Demised Premises, then, for the period for which Landlord is stayed from removing such tenants, the time to commence demolition and complete the New Building as set forth in Article 5 of this Lease shall be extended by the period of time corresponding to the term of the stay granted under the new legislation.

## **ARTICLE 30**

**[INTENTIONALLY OMITTED]**

## **ARTICLE 31**

### **EXCAVATION AND SHORING**

Section 31.01. If any excavation shall be made or contemplated to be made for building or other purposes upon or below property or streets, alleys or passageways adjacent to the Demised Premises, Tenant shall either, to the extent required by law or applicable regulations, (i) afford to the person or persons causing or authorized to cause such excavation the right to enter upon the Demised Premises for the purpose of doing such work as Tenant and such person or persons shall consider to be necessary for the safety and preservation of the walls or structures of any building on the Demised Premises from injury or damage and to support the same by proper foundations, or (ii) do or cause to be done all such work as may be necessary for the safety and preservation of the walls or structures of any building on the Demised Premises from injury or damage and to support the same by proper foundations, at Tenant’s sole cost and expense.

Section 31.02. Tenant shall not, by reason of any such excavation or work, have any claim against Landlord for damages or indemnity or for suspension, diminution, abatement or reduction of rent under this Lease. However, Tenant’s consent described in this Article shall not prevent Tenant from asserting and enforcing a claim for damages to the Demised Land or Demised

Premises.

## **ARTICLE 32**

### **LANDLORD'S RIGHT TO ASSIGN RENTS**

Section 32.01. Landlord shall have the right, without selling its interest in the Demised Premises or assigning its interest in this Lease, to assign from time to time the whole or any portion of the rent at any time payable to Landlord hereunder to persons, firms, corporations, trusts or other entities designated by Landlord in written notices to Tenant and Leasehold Lenders, and, in any such case, Tenant shall pay the rent, or the portion thereof so assigned, subject to the terms of this Lease, to Landlord's said designee or designees at the address or addresses mentioned in any such notices, except to the extent Tenant shall have been directed by any holder of a Fee Mortgage to make payments directly thereto.

## **ARTICLE 33**

**[INTENTIONALLY OMITTED]**

## **ARTICLE 34**

### **LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS**

Section 34.01. If (a) Tenant shall fail to pay any Imposition in accordance with the provisions of Article 4 hereof, or to procure, pay for, maintain or deliver any of the insurance policies or certificates provided for in Article 6 hereof, or shall fail to make any other payment after twenty (20) days written notice of non-payment to Tenant and the Leasehold Lenders or if Tenant shall default in the performance of any other covenant, agreement, term, provision or condition on its part to be made or performed, and (b) any of the same shall have become an Event of Default, then, upon five (5) days prior written notice (or without notice in case of an emergency), and without waiving or releasing Tenant from any obligation of Tenant contained in this Lease, Landlord may (but shall be under no obligation to)

(i) pay any Imposition payable by Tenant pursuant to the provisions of Article 4 hereof, or

(ii) procure, pay for and maintain any of the insurance policies provided for in Article 6 hereof, or

(iii) make any other payment or perform any other act on Tenant's part to be performed as in this Lease provided, and may enter upon the Demised Premises, but not any of the Units and/or residential apartments, for any such purpose, and take all such action thereon, as may be necessary therefor.

Section 34.02. All sums so paid by Landlord and all costs and expenses incurred by Landlord in connection with the performance of any such act, together with interest thereon at the

rate five percent (5%) per annum above the rate of interest publicly announced from time to time by Citibank, N.A., or its successor, as its "prime rate" (or such other term as may be used by Citibank, N.A. or its successor, from time to time, for the rate presently referred to as its "prime rate"), but in no event greater than the maximum rate permitted by applicable law from the respective date of Landlord's making of each such payment, including reasonable counsel fees involved in collection or endeavoring to collect the Base Rent or Additional Rent or any part thereof, or enforcing or endeavoring to enforce any right against Tenant under or in connection with this lease or pursuant to law, including any such cost, expense or disbursements involved in instituting summary proceeding, shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord within thirty (30) days after written demand. The certificate of the tax authorities or department showing that any such Imposition has been paid by Landlord or cancelled checks therefor, shall be prima facie evidence that any such Imposition has been paid by Landlord.

Section 34.03. Landlord may restrain by injunction, restraining order or otherwise any breach or threatened breach of any covenant, agreement, term, provision or condition herein contained, but the mention herein of any particular remedy shall not preclude Landlord from any other remedy it might have, either in law or in equity. Tenant acknowledges and agrees that Landlord shall not be obligated to post any security in connection with any application to obtain an injunction or restraining with respect to Tenant's breach or threatened breach of any covenant, agreement, term, provision or condition herein contained.

## **ARTICLE 35**

### **AMENDMENTS TO LEASE**

Section 35.01. If any prospective Leasehold Lender requires, as a condition to the making of a leasehold mortgage loan satisfactory to Tenant, the amendment of one or more provisions of this Lease and/or the addition of one or more clauses hereto and said amendment or amendments and/or addition or additions required by such Leasehold Lender do not materially impair Landlord's economic interests hereunder, Landlord agrees to reasonably cooperate with such Leasehold Lender and Tenant in connection therewith and shall execute and deliver such amendments and/or additions as and when required.

## **ARTICLE 36**

### **LANDLORD DELAYS**

Section 36.01. For purposes of this lease, "**Landlord Delays**" shall mean any delays in the completion or satisfaction of any term of this Lease which are due to any act or omission of Landlord, its agents or contractors. Landlord Delays shall include; (i) failure to deliver the Demised Premises or any portion thereof in a timely manner; (ii) delays in the giving of authorization or approvals by Landlord; (iii) delays due to the acts or failures to act of Landlord, its agents or contractors, where such acts or failure to act delays the completion of Tenant's construction of the New Building; (iv) interference of Landlord, its agents or contractors with the completion of the New Building or the failure or refusal to permit Tenant, its agents and contractors, access to and use of the Demised Premises or any facilities or services within the

Demised Premises which access and use are required for the orderly and continual performance of the work necessary to complete the New Building; and (v) failure of Landlord to comply with the Lease. The time for the performance of any obligation of Tenant hereunder shall be extended by one day for each day that Tenant is prevented from taking or commencing an action or otherwise meeting its obligations under this Lease by reason of a Landlord Delay.

## ARTICLE 37

### ESTOPPEL CERTIFICATES

Section 37.01. (a) Landlord, within ten (10) Business Days after written notice by Tenant, upon request of a prospective Leasehold Lender or upon request of a prospective assignee of this Lease or Sublease of the entire Demised Premises, will furnish a written statement duly acknowledged as to (i) whether or not the plans and specifications for the New Building have been furnished to Landlord together with Tenant's certification; (ii) whether or not the supervising architect or engineer has certified in writing that such New Building has been substantially completed in accordance with such plans, specifications and amendments thereto, if any; (iii) whether or not this Lease is in full force and effect and is unmodified, or if modified, setting forth the modification; (iv) the date to which rent has been paid; (v) whether or not any notice has been given of failure to perform pursuant to Article 21 hereof, which failure has not been cured; and (vi) any such other matters as may be reasonably requested, it being intended that any prospective assignee or prospective mortgagee of this lease may rely upon any statement given by Landlord pursuant to this Article.

(b) Tenant, within ten (10) Business Days after written notice by Landlord, upon request of a prospective holder of a mortgage upon the fee or any prospective grantee of the fee, will furnish a written statement duly acknowledged as to (i) whether or not this Lease is in full force and effect and is unmodified or if the same has been modified, setting forth a copy of such modification; (ii) whether or not Tenant has any claims against Landlord which might be an set-off to the collection of Base Rent, Additional Rent and Impositions as set forth in this Lease; and (iii) any such other matters as may be reasonably requested, it being intended that any prospective holder of a mortgage upon the fee or any prospective grantee of the fee may rely upon any statement given by Tenant pursuant to this Article.

## ARTICLE 38

### BROKER

Section 38.01. Each of Landlord and Tenant acknowledges that Tenant engaged agent Liron Jamil from Keller Williams Empire Realty 9120 4th Ave Brooklyn, NY (the "**Broker**") pursuant to a certain Commission Agreement dated March 28, 2016 by and between Tenant and Broker (the "**Commission Agreement**"); a total of \$534,750 (Five Hundred Thirty-Four Thousand Seven Hundred Fifty Dollars) commission amount; provided, that Tenant acknowledges and agrees that the obligation to pay any and all commissions and/or fees to Broker arising out of the Commission Agreement shall be the sole and exclusive responsibility of Tenant; provided, further, that Tenant covenants and agrees to indemnify and hold harmless Landlord from any and

all liabilities and expenses, including attorneys' fees and expenses incurred by Landlord in connection with any claim made by Broker for any brokerage commission, finder's fee or other fee in connection with the negotiation and/or execution of this Lease. Each of Landlord and Tenants represents that it neither has dealt with, nor negotiated with any other broker or person acting as such with respect to this Lease. Each of Landlord and Tenant covenants and agrees that should any claim be made by any other real estate broker or finder or person acting as such for a brokerage commission or fee in connection with the negotiation for or the execution of this Lease arising from the acts or conduct of Tenant or Landlord in dealing with such real estate broker, finder or person, Tenant or Landlord will indemnify and hold the other harmless from any and all liabilities and expenses, including counsel fees in connection therewith.

## ARTICLE 39

### ENVIRONMENTAL

Section 39.01. Tenant agrees not to generate, store, manufacture, refine, transport, treat, dispose of or otherwise permit to be present on or about the Demised Premises any hazardous or toxic wastes, contaminants or materials which may now or hereafter be designated as such under any federal, state or local statute, rule or regulation (collectively "**Hazardous Materials**") except for small quantities of same that may be typically used and stored for the cleaning, maintenance or operation of the Demised Premises if stored in accordance with applicable law and regulations. Tenant shall comply with any and all laws, rules, regulations and orders with respect to the discharge and removal of any Hazardous Materials and keep the Demised Premises free of any lien imposed pursuant to such laws, regulations, rules or orders. Landlord shall have the right, at any time, at Tenant's expense to conduct an environmental audit of the Demised Premises by such persons or first appointed by Landlord if Landlord reasonably believes that the provisions of this Article have been violated by Tenant or by any subtenant or occupant in possession of the Demised Premises. Tenant shall indemnify and hold Landlord harmless from and against any and all loss, cost, damage and expense (including, without limitation, reasonable attorney's fees and disbursements) which Landlord may sustain by reason of the assertion against Landlord by any governmental authority or any other party of any claim relating to the presence of Hazardous Materials on or the removal thereof from the Demised Premises caused by Tenant or any subtenant or occupant of the Demised Premises. The foregoing indemnification shall survive the expiration or sooner termination of this Lease.

Section 39.02. Tenant shall not install, nor permit to be installed in the New Building or any substituted buildings on the Demised Premises, any asbestos or asbestos containing material. Tenant agrees that it shall remove all asbestos from the existing buildings, if any, in connection with the demolition thereof at its sole cost and expense and in compliance with all federal, state or local laws, rules, regulations and orders, relating to the removal of the asbestos and shall indemnify and hold Landlord harmless from and against any loss, cost, damage and expense (including reasonable attorney's fees) which Landlord may sustain by reason of the removal of the asbestos and Tenant's failure to comply with all applicable laws, rules, regulations or orders. The foregoing

indemnification shall survive the expiration or sooner termination of this Lease.

## ARTICLE 40

### MISCELLANEOUS

Section 40.01.Landlord and Tenant acknowledge that each of them is experienced in real estate matters, has been represented by competent counsel familiar with leasing transactions in the negotiation, preparation and review of this Lease and that each of them has reviewed this Lease in its entirety before executing it. Each agree that neither this Lease as a whole nor any particular term, provisions, covenant, condition or clause thereof is "unconscionable" within the intent or meaning of Section 235(c) of the Real Property Law (as the same may be amended or replaced by statute of similar import) and, to the extent permitted by law, each hereby waives its right to assert any claim or defense under said law or otherwise to rely upon the provisions thereof.

Section 40.02.Landlord and Tenant agree that at the request of either of them, each will execute a short form memorandum of this Lease in form and content satisfactory to Landlord and Tenant for recording in the office of the City Register pursuant to Section 291(f) of the Real Property Law.

Section 40.03.Landlord shall not be responsible or liable for any damage or injury to any property, fixtures, merchandise or decorations or to any person or persons at any time on the Demised Premises from steam, gas, electricity, water, rain or snow, whether the same may leak into, issue or flow from any part of the Building or from pipes or plumbing work of the same, or from any other place or quarter; nor shall Landlord be in any way responsible or liable in case of any accident or injury including death to any of Tenant's employees, agents, or to any person or persons in or about the Demised Premises or the streets, sidewalks or vaults adjacent thereto; and Tenant agrees that it will not hold Landlord in any way responsible or liable therefor except in the case of Landlord's intentional or negligent acts. Landlord shall not be liable for interference with light or incorporeal hereditaments caused by anybody or the operation of or for any governmental authority in the construction of any public or quasi-public work and Landlord shall not be liable for any latent or any other defects in the New Building or any existing improvements on the demised land.

Section 40.04.The failure of any party hereto to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Lease, shall not prevent a subsequent act, which originally would have constituted a violation, from having all the force and effect of an original violation. The mention herein of any particular remedy shall not preclude any party here to from any other remedy it might have, either in law or in equity. The failure of any party here to insist upon the strict performance of anyone of the covenants, agreements, terms, provisions or conditions of this Lease or to exercise any right, remedy or election herein contained or permitted by law shall not constitute or be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision, condition, right, remedy or election, but the same shall continue and remain in full force and effect. Any right or remedy of any party to this Lease specified or any other right or remedy that it may have at law, in equity or otherwise upon breach



of any covenant, agreement, term, provision or condition in this Lease contained upon the part of the other party to be performed shall be distinct, separate and cumulative rights or remedies and no one of them whether exercised or not, shall be deemed to be in exclusion of any other. No covenant, agreement, term, provision or condition of this Lease shall be deemed to have been waived by any party hereto unless such waiver be in writing, signed by such party or its agent duly authorized in writing. Consent of any party hereto to any act or matter must be in writing and shall apply only with respect to the particular act or matter in which such consent is given and shall not relieve the other party hereto from the obligations wherever required under this Lease to obtain any required consent to any other act or matter.

Section 40.05. Receipt or acceptance of rent by Landlord shall not be deemed to be a waiver of any default under the covenants, agreements, terms, provisions and conditions of this Lease, or of any right which Landlord may be entitled to exercise under this Lease. If Tenant is in arrears in the payment of Base Rent or Additional Rent, Tenant waives Tenant's right, if any, to designate the items against which any payments made by Tenant are to be credited and Tenant agrees that Landlord may apply any payments made by Tenant to any items Landlord sees fit irrespective of and notwithstanding any designation or request by Tenant as to the items against which any such payments shall be credited nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice Landlord's right to recover the balance of rent or charge or pursue any other remedy in this Lease provided.

Section 40.06. There shall be no merger of Landlord's estate in the Demised Premises with Tenant's estate therein by reason of the fact that the same individual, partnership, firm or corporation or other entity may acquire or own such estates directly or indirectly. No such merger shall occur until all individuals, partnerships, firms, corporations and other entities having any interest in such estates, including any Leasehold Lender or the holder of a Fee Mortgage, join in a written instrument effecting such merger.

Section 40.07. This Lease with its schedules and annexes contains the entire agreement between Landlord and Tenant and any executory agreement hereafter made between Landlord and Tenant shall be ineffective to change, modify, waive, release, discharge, terminate or effect an abandonment of this Lease, in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, waiver, release, discharge, termination or abandonment is sought.

Section 40.08. The captions of Articles in this Lease and its Table of Contents are inserted only as a convenience and for reference and they in no way define, limit or describe the scope of this Lease or the intent of any provision thereof. References to Articles and section numbers are to those in this Lease unless otherwise noted.

Section 40.09. If two or more persons, firms, corporations or other entities constitute either Landlord or Tenant, the word "Landlord" or the word "Tenant" shall be construed as if it reads Landlords or Tenants, any such Landlords and Tenants shall be jointly and severally liable for the performance of their respective obligations under this Lease and the pronouns "it", "he" and "him" appearing herein shall be construed to be the singular or plural, masculine, feminine or neuter

gender as the context in which it is used shall require.

## **ARTICLE 41**

### **COVENANTS BINDING**

Section 41.01. The covenants, agreements, terms, provisions and conditions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

**[SIGNATURES APPEAR ON NEXT PAGE]**

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

LANDLORD:

THOMAS MEMORIAL WESLEYAN  
METHODIST CHURCH, INC.

By: Hugford Jones  
Name: HR S/FORD JONES  
Title: CHAIRMAN

TENANT:

S & F 126 ST. LLC

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

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

**LANDLORD:**

**THOMAS MEMORIAL WESLEYAN  
METHODIST CHURCH, INC.**

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

Name:

Title:

**TENANT:**

**S & F 126 ST. LLC**

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

Name: *CHARLIE STANLOVICH*

Title: *MANAGER*

**SCHEDULE 1.01**

**EXCLUDED PERSONAL PROPERTY**

1. Stained Glass Windows
2. Pews, Podium, Altar Benches, Choir Box
3. Tables, Chairs, Desks
4. Kitchen Equipment and Utensils
5. Filing Cabinets
6. Organ
7. Chandeliers in Sanctuary
8. Organ
9. Air Conditioning Units

**SCHEDULE 3.02(b)**

**BASE RENT**

**A. Base Rent**

<i>Year</i>	<i>Base Rent</i>
1	350,000
2	355,250
3	360,579
4	365,987
5	371,477
6	377,049
7	382,705
8	388,446
9	394,272
10	400,187
11	406,189
12	412,282
13	418,467
14	424,744
15	431,115
16	437,581
17	444,145
18	450,807
19	457,569
20	664,433
21	674,399
22	684,515
23	694,783
24	705,205
25	715,783
26	726,520
27	737,418
28	748,479
29	759,706

## **B. Base Rent Reset**

1. In addition, Landlord, at Landlord's option, may, by Notice to Tenant, elect to have the Land Value determined pursuant to the process described in Section B.2. below (the "**Land Value Process**") at the thirtieth (30th) anniversary of the Rent Commencement Date, and thereafter on each of the fiftieth (50th), seventieth (70th) and ninetieth (90th) anniversaries of the Rent Commencement Date (each of the foregoing an "Adjustment Date" and collectively, the "**Adjustment Dates**"). If the amount equal to six percent (6%) of the Land Value (the "**Land Value Base Rent Amount**"), as determined with respect to the applicable Adjustment Date pursuant to the Land Value Process, is greater than the increased Base Rent determined for such applicable Adjustment Date as provided hereinabove, then the Base Rent for the applicable Adjustment Date period shall be increased to the Land Value Base Rent Amount. In no event shall (a) the application of the Land Value Process ever decrease the Base Rent below that provided hereinabove or (b) exceed the Base Rent for the immediately prior Lease Year by twenty percent (20%) of the Base Rent for such Lease Year. Following the end of the 29<sup>th</sup> Lease Year, and in all Lease Years where there are no Adjustment Dates, the Base Rent will increase by an amount equal to 1.5% of the Base Rent paid in the immediately prior Lease Year.

2. (a) If Landlord exercises the Land Value Process, then the parties shall promptly endeavor to agree upon the Land Value for the applicable Adjustment Date period.

(b) In the event Landlord and Tenant are unable to agree within thirty (30) days from the date Landlord exercises the Land Value Process, then after said thirty (30) day period, Landlord may request that such Land Value shall be determined by an appraisal process by giving written notice to that effect to Tenant and Lessee, and Landlord shall specify in such written notice the name and address of the person designated to act as an appraiser on Landlord's behalf. Within thirty (30) days after the designation of such appraiser, Tenant and/or Lessee shall give notice to the Landlord specifying the name and address of the person designated to act as an appraiser on Tenant's behalf. If Tenant or Lessee fails to notify Landlord of the appointment of its appraiser within the time above specified, then the appointment of Tenant's appraiser (i.e., the second appraiser) shall be made in the same manner as hereinafter provided for the appointment of a third appraiser in a case where the two appraisers appointed hereunder and the parties are unable to agree upon such appointment. The two appraisers so chosen shall meet within ten (10) Business Days after the second appraiser is appointed and if, within twenty (20) Business Days after the second appraiser is appointed, the two appraisers shall not agree, they shall together appoint a third appraiser. In the event of their being unable to agree upon such appointment within forty-five (45) days after the appointment of the second appraiser, the third appraiser shall be selected by the parties themselves if they can agree thereon within a further period of thirty (30) days, time being of the essence. If the parties do not so agree, then Landlord, on behalf of both and on notice to Tenant, may request such appointment by the American Arbitration Association (or organization successor thereto) in accordance with its rules then prevailing or if the American Arbitration Association (or such successor organization) shall fail to appoint said third appraiser within fifteen (15) Business Days after such request is made, then Landlord may apply on notice to the other, to the Supreme Court, New York County, State of New York (or any other court having jurisdiction and exercising functions similar to those now exercised by said Court) for the appointment of such third appraiser. Any appraiser selected, chosen or appointed shall be a licensed real estate



appraiser (who is a member in good standing of the Appraisal Institute) having at least twenty (20) years of experience in acting as an appraiser of comparable land in the New York City metropolitan area. The Land Value determined by Landlord's appraiser shall herein be called "**Landlord's Submitted Value**"; the Land Value specified by Tenant's appraiser shall herein be called "**Tenant's Submitted Value**". Within fifteen (15) Business Days after the appointment of such third appraiser, Landlord shall submit Landlord's Submitted Value to such third appraiser and Tenant shall submit Tenant's Submitted Value to such third appraiser. If Landlord does not submit Tenant's Submitted Value within such time period, then the Land Value shall be deemed to be Tenant's Submitted Value and no determination by the third appraiser shall be required. If Tenant does not submit Tenant's Submitted Value within such time period, then the Land Value shall be deemed to be Landlord's Submitted Value and no determination by the third appraiser shall be required. Otherwise, such third appraiser shall, within fifteen (15) Business Days after the end of such fifteen (15) day period, select either Landlord's Submitted Value or Tenant's Submitted Value (hereinafter referred to as the "**Appraiser's Determination**") and send copies of his determination promptly to both Landlord and Tenant. The decision of such appraiser shall be in writing and shall be final and binding upon Landlord and Tenant whether or not a judgment shall be entered in any court. Except for the definition of Land Value set forth hereinbelow, the appraisers shall not consider (or review) this Lease or any Sublease in making his determination, and neither party shall deliver any part of the Lease or any Sublease to any appraiser, other than this Schedule 3.02(b). Duplicate original counterparts of such decision shall be sent by the appraiser to both Landlord and Tenant. Each party shall be responsible for the cost of retaining its appraiser, and the parties shall bear equally the costs of the third appraiser, and any related arbitration and court costs. The time periods set forth in this Section shall be time of the essence.

3. As used herein, "**Land Value**" means, the fair market value of the Demised Premises effective as of the applicable Adjustment Date. The fair market value of the Demised Premises means the amount that a willing buyer would pay a willing seller for the Demised Premises, neither being under a particular compulsion to buy or to sell, each fully aware of all applicable facts about the Demised Premises, and assuming a reasonable marketing period, considered as if the Demised Premises were vacant and clear of any structures or excavations and free and clear of all leases (including this Lease), taking into account then-current general economic conditions; recent sales of nearby comparable parcels in the New York City metropolitan area; the real estate marketplace; the land conditions/zoning; and all other conditions as in effect on the Adjustment Date that may reasonably be considered in determining the fair market value of the Demised Premises. Land Value shall otherwise be determined in accordance with prevailing standards of appraisal practice at the time of determination. For purposes of determining the fair market value of the Demised Premises on each Revaluation Date, the Demised Premises shall be deemed to include all Development Rights that benefit the Demised Premises.

**EXHIBIT A**

**LEGAL DESCRIPTION OF DEMISED PREMISES**

## Schedule A Description

Page 1

Block 1931 old Lots 58 and 59:

All that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County of New York and State of New York, being more particularly described as follows:

BEGINNING at a point on the southerly line or side of 126th Street distant 125 feet easterly from the southeasterly corner formed by the intersection of the southerly side of 126th Street and the easterly side of 8th Avenue;

THENCE running southerly parallel with 8th Avenue, 99 feet 11 inches to the center of the block;

THENCE easterly and along said center line of the block, 40 feet;

THENCE northerly parallel with 8th Avenue, 99 feet 11 inches to the southerly line or side of 126th Street;

THENCE westerly along said 126th Street, 40 feet to the point or place of BEGINNING.

Block 1931 old Lot 157:

All that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County of New York and State of New York, more particularly designated on the Tax Map of the City of New York for the Borough of Manhattan as Lot 157 in Block 1952 of Section 7 thereof as said map on November 26, 1951.

Block 1931 old Lot 56:

All that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County of New York and State of New York, being more particularly described as follows:

BEGINNING at a point in the southerly side of 126th Street, distant 205 feet easterly from the intersection of the southerly side of 126th Street and the easterly side of 8th Avenue;

RUNNING THENCE southerly parallel with 8th Avenue, 99 feet 11 inches to the center line of the block;

THENCE easterly along said line, 20 feet;

Continued On Next Page

**Schedule A Description - continued**

Page 2

THENCE northerly parallel with 8th Avenue, 99 feet 11 inches to the southerly side of 126th Street;

THENCE westerly along the southerly side of 126th Street, 20 feet to the point of BEGINNING.

Block 1931 old Lot 57:

All that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County of New York and State of New York, being more particularly described as follows:

BEGINNING at a point in the southerly side of 126th Street, distant 185 feet easterly from the intersection of the southerly side of 126th Street and the easterly side of 8th Avenue;

RUNNING THENCE southerly parallel with 8th Avenue, 99 feet 11 inches to the center line of the block;

THENCE easterly along said centre line, 20 feet;

THENCE northerly parallel with 8th Avenue, 99 feet 11 inches to the southerly side of 126th Street;

THENCE westerly along the southerly side of 126th Street, 20 feet to the point of BEGINNING.

Block 1931 old Lot 60:

All that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County of New York and State of New York, being more particularly described as follows:

BEGINNING at a point from the southerly side of 126th Street distant 100 feet easterly from the corner formed by the intersection of the southerly side of 126th Street with the easterly side of 8th Avenue;

RUNNING THENCE southerly parallel with 8th Avenue, 99 feet 11 inches to the center line of the block;

THENCE easterly along said center line of the block, 25 feet;

THENCE northerly parallel with 8th Avenue, 99 feet 11 inches to the southerly

Continued On Next Page

## Schedule A Description - continued

Page 3

side of 126th Street;

THENCE westerly along the said southerly side of 126th Street, 25 feet to the point or place of BEGINNING.

### BLANKET DESCRIPTION:

All that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County of New York and State of New York, being more particularly described as follows:

BEGINNING at a point from the southerly side of 126th Street distant 100 feet easterly from the corner formed by the intersection of the southerly side of 126th Street with the easterly side of 8th Avenue;

RUNNING THENCE southerly parallel with 8th Avenue, 99 feet 11 inches to the center line of the block;

THENCE easterly along said center line of the block, 125 feet;

THENCE northerly parallel with 8th Avenue, 99 feet 11 inches to the southerly side of 126th Street;

THENCE westerly along the said southerly side of 126th Street, 125 feet to the point or place of BEGINNING.

**EXHIBIT B**

**PERMITTED ENCUMBRANCES**

1. Beam Rights Agreement made between James McLaughlin and William Malley dated October 3, 1872 and recorded November 4, 1872 in Liber 1235 Cp 65.
2. Any state of facts an accurate Survey might show.
3. All exceptions to title disclosed in the Certificate of Title issued to Tenant, bearing Title No. RANY-25107, a copy of which is annexed hereto and incorporated into Exhibit B.

**RIVERSIDE ABSTRACT, LLC**  
as Agent for  
Old Republic National Title Insurance Company

**SCHEDULE B  
EXCEPTIONS**

Title Number: **RANY-25107**

The following requirements must be met prior to the issuance of a policy.

- (a) Pay the agreed amounts for the interest in the land and/or according to the mortgage to be insured.
- (b) Pay the Company the premium, fees and charges for and associated with the policy.
- (c) Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.

You must tell us in writing the name of any person or entity not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements or raise additional exceptions.

Hereinafter set forth are additional matters which will appear in our policy as exceptions from coverage. The Company will not pay costs, attorneys' fees or expenses which arise by reason of the following exceptions unless disposed of to the Company's satisfaction prior to the closing or delivery of the policy: Company reserves the right to raise additional exceptions.

**DISPOSITION**

- 1. Taxes, tax liens, tax sales, water rates, sewer rents, and assessments set forth herein.
- 2. Rights of tenants or persons in possession, if any.
- 3. Mortgage(s) returned herein and set forth herein: **(NONE) SEE ATTACHED MORTGAGE SCHEDULE**
- 4. Covenants, restrictions, easements, leases and agreements of record, etc., more fully set forth herein:  
**A) Beam Agreement recorded in Liber 1235 Page 65.**  
**B) Covenants and Restrictions in Deed Liber 4845 Page 134.**
- 5. Any encroachment, encumbrance, violation, variation or adverse circumstances affecting the title that would be disclosed by an accurate and complete land survey of the land or Survey exceptions as set forth herein.
- 6. **FOR INFORMATION ONLY:** Bankruptcy Searches run against the certified owner(s) and purchaser(s), if any.
- 7. **FOR INFORMATION ONLY:** Patriot Searches run against the certified owner(s) and purchaser(s), if any.



**RIVERSIDE ABSTRACT, LLC**  
as Agent for  
**Old Republic National Title Insurance Company**

**SCHEDULE B  
EXCEPTIONS**

Title Number: **RANY-25107**

8. Proof is required that **Chaskiel Strulovitch** has/have not been known by any other name within the last ten years.
9. Searches were run for judgments, federal tax liens, minor liens, etc. against the same/similar name as **Chaskiel Strulovitch and Thomas Memorial Wesleyan Methodist Church**. The following returns were found of record and must be satisfactorily disposed of:  
**A) 1 Judgement and 1 PVB were found vs. Chaskiel Strulovitch. See attached.**
10. If any of the mortgages shown in the mortgage schedule herein is to be paid off at closing, then a written statement from the mortgagee indicating the balance and that the account is closed must be presented. Failure to provide this statement may cause the closing to be adjourned.
11. If any of the mortgages shown in the mortgage schedule herein have been paid off prior to closing, the certified owner must produce the original Satisfaction(s) of said mortgage(s), or in the alternative, the name of the title company who handled the payoff and their title number in connection therewith.
12. **FOR NYC ONLY:** Policy excepts Emergency Repair Liens and charges which may exist but are not filed. There may be work in progress or completed work and such items cannot effectively be determined due to the delay in entering such items.
13. Satisfactory proof by affidavit must be furnished showing whether any work has been done upon the premises by The City of New York, or any demand has been made by The City of New York for any such work that may result in:  
**A) Charges by the New York City Department of Rent and Housing Maintenance Emergency Services.**  
**B) Charges by the New York City Department of Health.**  
**C) Charges by the New York City Department of Environmental Protection.**
14. Section 26-128 of the Administrative Code of The City of New York, creates tax liens for unpaid Inspection Fees and Permit Fees billed by the Building Department and Fire Department regardless of the fact that such fees may not be reflected in the City Collector's records. Policy excepts any loss, claim or damage for any unpaid fee or charge claimed by the Building Department or Fire Department and entered in the records of the City Collector after the date of closing.

**RIVERSIDE ABSTRACT, LLC**  
as Agent for  
Old Republic National Title Insurance Company

**SCHEDULE B  
EXCEPTIONS**

Title Number: **RANY-25107**

15. FOR INFORMATION ONLY: The City of New York requires the owners of certain income producing properties to file a Real Property Income and Expense ("RPIE") form with the City's Department of Finance annually. If the property owner does not file the RPIE form or files the form late, then the Department of Finance may assess a penalty of 3 to 5 percent of the property's final assessed valuation. The penalty will appear on the owner's real property tax bill. Because there may be significant time lag between the due date for the RPIE form and the date on which the penalty and interest appear on the tax bill, the policy will except and not cover any and all RPIE charges, fees and penalties which may be assessed by the Department of Finance against the property or its owner after the date of the title policy.
16. All taxes, water, sewer rent charges and other miscellaneous assessments not entered prior to date of closing, which might include charges for use prior to the date of the policy.
17. If the subject premises are currently benefited by a tax exemption, discount, credit or abatement, no liability is assumed for the retroactive restoration of any taxes due to a loss or reversal, partial or total, of said exemption, discount, credit or abatement. Any tax which may be assessed or entered subsequently by the City is not insured.
18. If the subject premises consists of 6 units or more and is rent stabilized, this policy excepts any rent stabilization fees not transferred to the NYC Department of Finance as of the date of closing. Any fee which may be assessed or entered subsequently by the City is not insured.
19. If subject property is used for both residential and commercial use, and the total purchase price is in excess of \$1,000,000.00. New York State Department of Taxation and Finance may impose Mansion Tax on the residential portion of said property. This policy does not insure any such tax, nor any penalties related thereto, which may be assessed or entered subsequently by the State.
20. The proposed seller/lessor is a corporation formed under the Religious Corporation Law of the State of New York. The following is required:
  - A) The Sale/Lease to the proposed insured must be approved by an appropriate Order of the Supreme Court; and
  - B) Closing Deed/Lease must be made in conformity with and must refer to the Order of Court or AG Approval authorizing the sale/lease. The deed, if any, must recite the full consideration received.
  - C) Execution of the Deed/Lease must be authorized by a vote of two-thirds of the entire Board of Trustees or Directors of the religious corporation, or, if there are twenty-one (21) or more Trustees or Directors, by a vote of a majority of the entire Board. However, if the Certificate of Incorporation or By-Laws requires a greater number of the Board to consent, then compliance therewith is required.

## EXHIBIT C

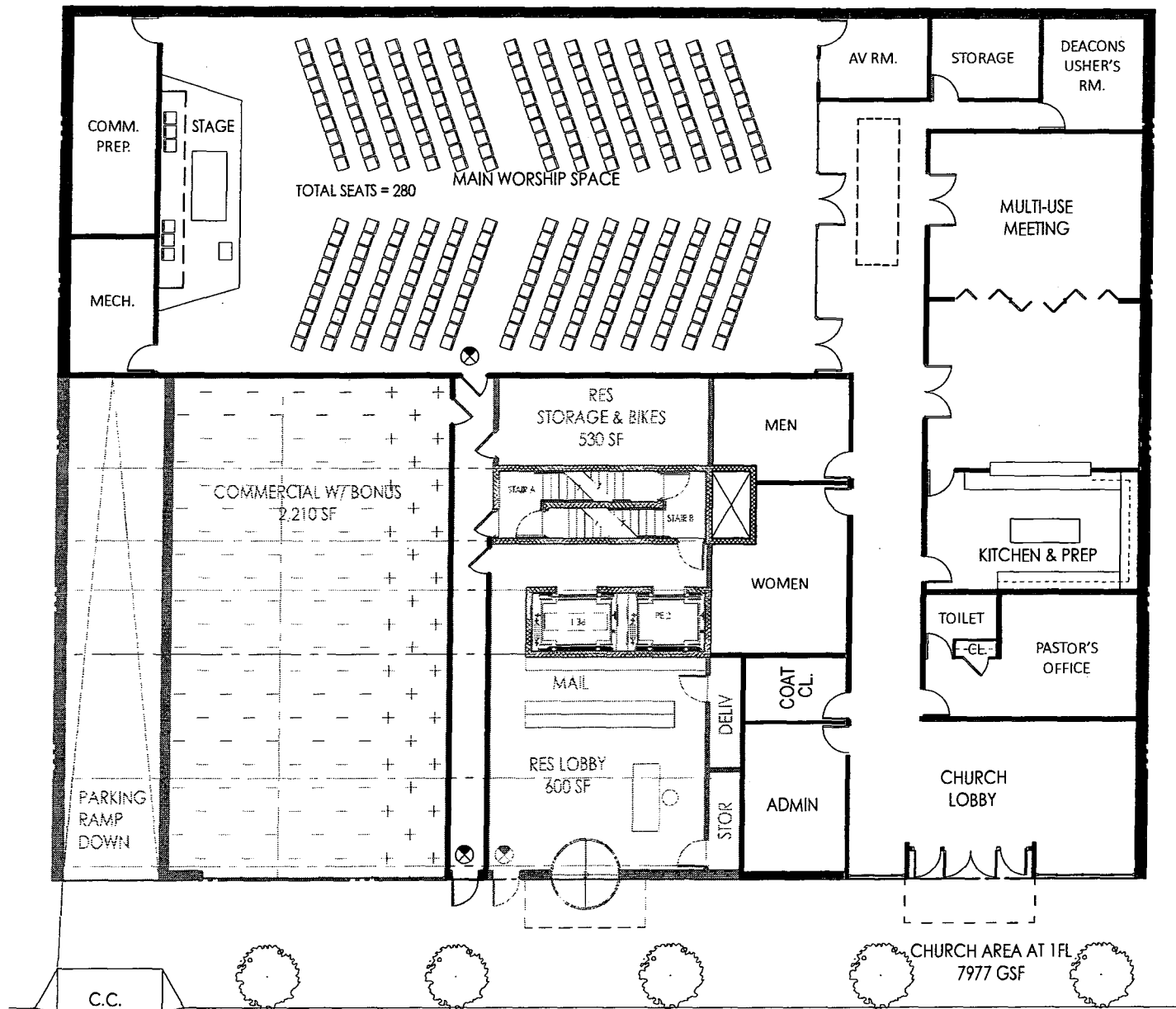
### DESCRIPTION OF CONDOMINIUM

The Tenant shall submit the leasehold to the condominium form of ownership so as to create three (3) Units as shown on the concept plan attached to this Exhibit "C" as follows:

1. The Church Unit (the "**Church Unit**") shall be comprised of not less than 8,500 gross square feet, including (a) facilities for worship, meeting and administration facilities and (b) a two (2) bedroom apartment for use as a manse, and (c) one (1) dedicated parking space for use by the Church's reverend;
2. The Commercial Unit (the "**Commercial Unit**") shall be comprised of space on the ground and second floors that are not designated as the Church Unit to be designated for commercial/community facility use; subject to the terms of Section 13.01 of this Lease.
3. The Residential Apartment Unit (the "**Residential Apartment Unit**") shall be comprised of the majority of the area of the New Building, with a presently estimated unit count of not less than seventy-four (74) residential apartment units offered for rental to the general public.

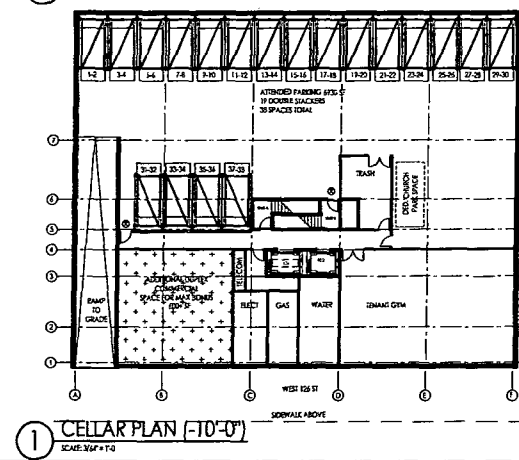
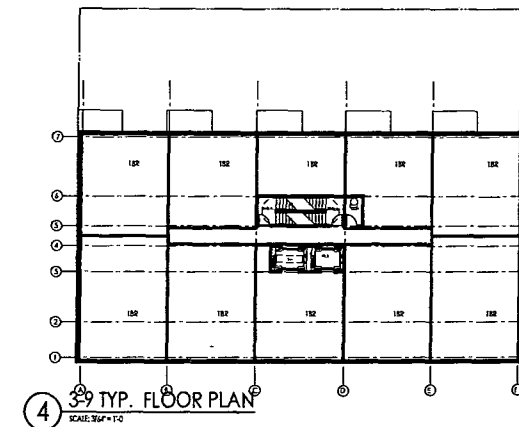
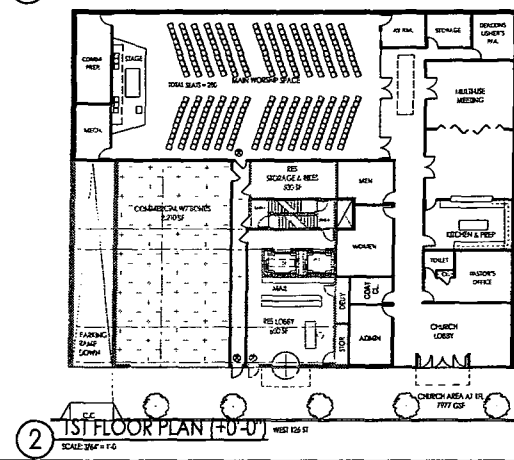
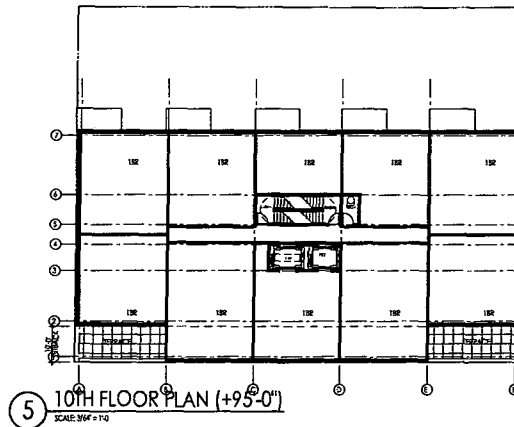
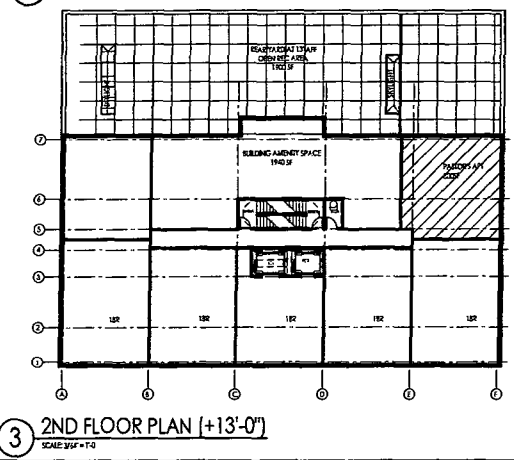
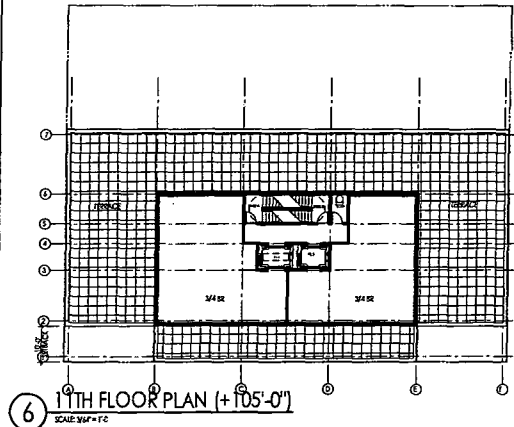
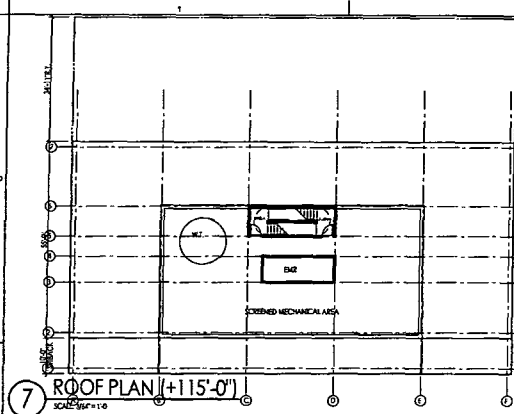
EXHIBIT D

PRELIMINARY DRAWINGS



1ST FLOOR PLAN (+0'-0'')

WEST 126 ST



CHURCH PROGRAM REQ.	PROVIDED
RESTROOMS ON 1FL & C	1FL ONLY
KITCHEN IN C	300 SF
FELLOWSHIP HALL IN C	1124 SF
CIRCULATION SEPARATE FROM BUILDING	SEPARATE ACCESS & EGRESS
LONG SPAN WITH NO COLUMNS FOR CHURCH	30' CLEAR SPANS
MEETING & ADMIN FACILITIES	YES
DAYLIGHT FOR CHURCH & ADMIN	GARDEN PROVIDED
MECHANICAL SPACES	YES
2-BEDROOM APARTMENT	780 SF
8500 SF TOTAL CHURCH AREA	6750 SF PROVIDED
1 DEDICATED PARKING SPACE	YES

LEGEND	BUILDING USE TYPES	AREAS (SF)
[Symbol]	RESIDENTIAL (AS OF RIGHT)	67,446 SF
[Symbol]	CHURCH (COMMUNITY FACILITY)	8,500 SF
[Symbol]	QUALIFYING COMMERCIAL	2,780 SF
[Symbol]	BONUS FLOOR AREA	11,200 SF
[Symbol]	TOTAL	89,946 SF

**STEVEN KRATCHMAN ARCHITECT, PC**

PROJECT: GROUND UP MIXED USE  
270 WEST 126 ST  
NEW YORK, NY 10027

CLIENT: CS REAL ESTATE  
116 NOSTRAND AVE.  
BROOKLYN, NY  
TEL 516 941 8075

STRUCTURAL

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4	REVISED BULK AT ROOF PER PROGRAM AREAS	09.26.16
3	ISSUED PER COMMENTS	09.19.16
2	ISSUED TO CLIENT	09.14.16
1	ISSUED TO CLIENT	07.22.16
#	REVISION/SUBMISSION	DATE

DRAWING USE:

FLOOR AREA DIAGRAM

NEW YORK STATE (E.C. NO. 02005)	DRAWN: CHROD	PROJECT NUMBER: CSC 5.0
	REVIEWED: SK	SHEET NUMBER: A-100.00
	DATE: 09.19.2016	
	SCALE:	

**EXHIBIT E**

**CONFIRMATION OF RENT COMMENCEMENT DATE CERTIFICATE**

**THIS CONFIRMATION OF RENT COMMENCEMENT DATE CERTIFICATE** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between THOMAS MEMORIAL WESLEYAN METHODIST CHURCH, INC., a religious corporation having an address at 260-270 West 126th Street, New York, New York 10027 (hereinafter called the "Landlord") and \_\_\_\_\_, a New York limited liability company having an address at 116 Nostrand Avenue, Brooklyn, New York 11205 (hereinafter called the "Tenant"), who have entered into that certain Lease dated October 5, 2016 (hereafter called the "Lease"), covering that certain plot, piece or parcel of land, with the buildings erected, and/or to be erected thereon or thereunder, situate, lying and being in the City of New York, County of New York, State of New York, bounded and described on the annexed Exhibit A ("Premises") and shown on the New York City Tax Map as Section 7, Block 1931, Lot 56 and more particularly described in the Lease. In connection with the Lease, Landlord and Tenant agree as follows:

1. For purposes of confirming the "Rent Commencement Date" as provided in Section 2.01 of the Lease, Landlord and Tenant hereby agree that the date of \_\_\_\_\_, 20\_\_\_\_, is hereby established as the "Rent Commencement Date" of the Lease.
2. The Lease is hereby ratified and confirmed and shall remain in full force and effect, subject to all of the terms, covenants, and conditions therein set forth.
3. The provisions of this Certificate shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

**[SIGNATURES APPEAR ON NEXT PAGE]**



**IN WITNESS WHEREOF**, the parties hereto have executed this Confirmation of Commencement Date Certificate as of the day and year first above written.

**LANDLORD:**

**THOMAS MEMORIAL WESLEYAN  
METHODIST CHURCH, INC.**

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

Name:

Title

**TENANT:**

**S & F 126 ST. LLC**

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

Name:

Title:

## EXHIBIT F

### PROJECT FINANCING TERMS

The loan commitment for the New Building (the "Loan Commitment") shall be issued by an institutional lender (the "Project Lender") and shall incorporate the following terms and conditions:

1. Subject to the terms of Section 18.02 the Ground Lease, Tenant shall be permitted to mortgage its leasehold without the prior consent of Landlord. Subject to the terms of Article 19, Landlord shall join in any mortgage or other financing document required by the Project Lender to achieve the subordination of the Landlord's fee interest in the Leased Premises to the Leasehold Mortgage. Landlord shall not further encumber its fee interest during the term of the Lease.
2. The ratio of projected net operating income (including any reserves for tenant improvements and "lease-up" expenses and other credit enhancements that may be used in lieu of net operating income shortfalls prior to stabilization) for the term of such financing to Project Debt Service during such term shall be not less than 1.15:1.
3. Any Project Indebtedness secured by the Leasehold Mortgage, as of the date of Project approval, shall have a loan-to-stabilized value ratio not in excess of eighty (80%).
4. Tenant shall have furnished to the Project Lender a completion guaranty in form and substance reasonably satisfactory to the Project Lender from an entity or entities satisfactory to the Project Lender, or, if the Project Lender shall not require a completion guaranty, Tenant shall provide a completion guaranty from an entity or entities reasonably satisfactory to Landlord, provided, however, that any such obligation to deliver a completion guaranty (to a Project Lender or Landlord) shall terminate as to any work performed on, in or relating to the New Building upon substantial completion of the New Building.
5. The principals of Tenant may, but shall not be required to assume any personal liability for the payment or performance of any obligations to be paid or performed under the Leasehold Mortgage.

For purposes of the foregoing, "Project Debt Service" shall mean (x) all principal repayments or interest and other payments payable or accrued from time-to-time under the documents evidencing the Project Indebtedness secured by the Leasehold Mortgage(s), and (y) in the event of a default under any Leasehold Mortgage and the transfer of the leasehold interest (or portion thereof) of Tenant to a Leasehold Lender or Leasehold Mortgage or their successor, reasonable and customary management fees for management of the applicable improvements, regardless of the nature of the characterization of the sum of (x) and (y) above.

**EXHIBIT G**

**FORM OF CONSTRUCTION COMPLETION GUARANTY**

**PERFORMANCE AND CONSTRUCTION COMPLETION GUARANTY**

THIS GUARANTY OF COMPLETION (this "**Guaranty**") is made this 5<sup>th</sup> day of October, 2016, by and between THOMAS MEMORIAL WESLEYAN METHODIST CHURCH, INC., a religious corporation having an address at 260-270 West 126<sup>th</sup> Street, New York, New York 10027 (the "**Landlord**") and CHASKIEL STRULOVITCH, having an address at 116 Nostrand Avenue, Brooklyn, New York 11205 (the "**Guarantor**").

**WITNESSETH:**

WHEREAS, simultaneously with the execution hereof, Landlord entered into a certain ground lease (the "**Lease**") with S & F 126 ST. LLC, a New York limited liability company, having an address at 116 Nostrand Avenue, Brooklyn, New York 11205 (the "**Tenant**") affecting the following real property and associated property and development rights (collectively, the "**Demised Premises**"): (a) all that certain plot, piece or parcel of land, with the buildings erected, and/or to be erected thereon or thereunder, situate, lying and being in the City of New York, County of New York, State of New York, bounded and described on Exhibit A to the Lease (the "**Premises**") and shown on the New York City Tax Map as Section 7, Block 1931, Lot 56; (b) together with all bulk, floor area and floor area ratio (as such three terms are defined in Section 12-10 of the New York City Zoning Resolution) and all other zoning and development rights appurtenant to the Premises (collectively, the "**Development Rights**"); (c) together with all easements, appurtenances, hereditaments, air rights or other rights or privileges now or hereafter belonging or now or hereafter appurtenant to the Premises; and (d) together with all right, title and interest of Landlord in and to the land lying in the streets and roads in front of and adjoining the Premises to the center lines thereof; subject, however, to the Permitted Encumbrances, as set forth in Exhibit "B" attached to the Lease; and

WHEREAS, simultaneously with the execution hereof, Landlord and Tenant have entered into a certain development agreement affecting the Demised Premises (the "**Development Agreement**"), pursuant to which Development Agreement Tenant shall, subject to compliance with all governmental laws, rules and regulations and the terms and conditions of the Lease, demolish the buildings and improvements now situated on the Demised Premises and shall replace the same with a new building which shall be approximately 12 stories, contain approximately 90,000 gross square feet (more or less) and be used primarily for residential apartments (the "**New Building**"); provided that the New Building shall be an independent, free standing structure located entirely within the boundaries of the Premises; provided, further, that the demolition of the buildings and improvements now situated on the Demised Premises and the construction of the New Building and completion of the Project (as defined herein) shall be effected at Tenant's sole cost and expense in accordance with the terms and conditions thereof; and

WHEREAS, pursuant to the terms and conditions of the Lease and the Development Agreement, (a) Tenant will construct the New Building which will be divided into not more than three (3) separate Units, namely the Church Unit, a Residential Apartment Unit, and a Commercial Unit all as more particularly described in Exhibit "C" and Exhibit "D" annexed to

the Lease and incorporated herein by reference (the "**Project**"); and (b) Tenant has covenanted and agreed that the overall costs with respect to the Project shall be not less than Twenty-Five Million (\$25,000,000.000) Dollars; and

WHEREAS, the Guarantor represents and warrants to Landlord that Guarantor has a financial interest in Tenant and will derive a direct financial benefit from the construction of the Project; and

WHEREAS, as a material inducement to Landlord's execution and delivery of the Lease and the Development Agreement, Guarantor has agreed to execute and deliver this Guaranty for the benefit of Landlord.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants, agreements and promises set forth hereinafter, and with the intent to be legally bound, Guarantor hereby covenants and agrees as follows:

1. Guarantor absolutely and unconditionally guarantees to the Landlord that the Tenant shall construct, equip and complete the Project free and clear of liens in accordance with all governmental laws, rules and regulations, permits, approvals, and authorizations then required by the New York City Department of Buildings and all other governmental authorities having jurisdiction over the construction of the New Building and/or the Project.

2. If the Tenant fails to perform the matters specified in Paragraph 1 on or before the time periods set forth in the Lease and the Development Agreement, after expiration of all applicable notice and cure periods set forth in the Lease, immediately upon such failure to perform, Guarantor shall:

(a) cause to be constructed, equipped, and completed the New Building and/or the Project free and clear of liens in accordance with all governmental laws, rules and regulations, permits, approvals, and authorizations then required by the New York City Department of Buildings and all other governmental authorities having jurisdiction over the construction of the New Building and/or the Project, and in accordance with the terms and conditions of the construction and development documents relating to the construction of the New Building and the development of the Project, including, without limitation, the Construction Contracts (as defined in the Lease) (the "**Development Documents**"), as such Development Documents have been approved by (i) the Landlord in accordance with the terms of the Lease and Development Agreement and (ii) the Leasehold Lender in accordance with the Leasehold Mortgage (as such terms are defined in the Lease);

(b) cause to be removed any lien arising from constructing, equipping, or completing the New Building and/or the Project, and make payment in full to all laborers, subcontractors and materialmen on or before the date of completion for the costs of the New Building and/or the Project and related costs;

(c) pay all costs and expenses incurred in doing (a) or (b) of this paragraph 2, and pay to or reimburse the Landlord for all reasonable expenses incurred by the Landlord with respect to enforcing its rights with respect to the Development Documents.

3. The Guarantor expressly agrees that the Landlord may, in its sole and absolute discretion, without notice to or further assent of the Guarantor and without in any way releasing, affecting or impairing the obligations and liabilities of the Guarantor hereunder: (i) waive compliance with, or any defaults under, or grant any other indulgences with respect to, the Development Documents; (ii) modify, amend, or change any provisions of the Development Documents; (iii) grant extensions or renewals of or with respect to the Development Documents or effect any release, compromise or settlement in connection with the Development Documents; (iv) assign or otherwise transfer this Guaranty or any interest therein or herein; and (v) deal in all respects with the Tenant as if this Guaranty were not in effect. The obligations of the Guarantor under this Guaranty shall be unconditional, absolute and irrevocable and shall continue in full force and effect until the full and final completion of the New Building and/or the Project, as required by the terms and conditions of (x) the Development Documents and (y) all governmental laws, rules and regulations, permits, approvals, and authorizations then required by the New York City Department of Buildings and all other governmental authorities having jurisdiction over the construction of the New Building and/or the completion of the Project.

4. The liability of the Guarantor under this Guaranty shall be primary, direct and immediate and not conditional or contingent upon pursuit by the Landlord of any remedies it may have against the Tenant, its successors and assigns, with respect to the Development Documents whether pursuant to the terms thereof or by law. Without limiting the generality of the foregoing, the Landlord shall not be required to make any demand on the Tenant, or to otherwise pursue or exhaust its remedies against the Tenant pursuant to the terms of the Lease and/or the Development Agreement with respect to the construction of the New Building and/or the completion of the Project, before, simultaneously with or after enforcing its rights and remedies hereunder against the Guarantor. Any one or more successive or concurrent actions may be brought hereon against the Guarantor either in the same action, if any, brought against the Tenant or in separate actions, as often as the Landlord, may deem advisable in its sole and absolute discretion.

5. The Guarantor hereby expressly waives (i) presentment and demand for payment and protest for non-payment; (ii) notice of acceptance of this Guaranty and of presentment, demand and protest; (iii) notice of any default hereunder or under the Development Documents and of all indulgences; (iv) demand for observance or performance of, or enforcement of, any terms or provisions of this Guaranty or the Development Documents; (v) all other notices and demands otherwise required by law which the Guarantor may lawfully waive; and (vi) any defense to any action brought against Guarantor, including, without limitation, any defense based on any statute of limitations and on any legal disability of Tenant and any discharge and limitation of liability of the Tenant to the Landlord, whether consensual or arising by operation of law or any bankruptcy, insolvency or debtor-relief proceeding, or from any other cause. The Guarantor also waives trial by jury in any action brought on or with respect to this Guaranty and agrees that in the event this Guaranty shall be enforced by suit or otherwise, the Guarantor will

reimburse the Landlord, upon demand, for all expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs.

6. If the Guarantor shall advance any sums to the Tenant or its successors or assigns or if the Tenant or its successors or assigns shall hereafter become indebted to the Guarantor, such sums and indebtedness shall be subordinate in all respects to the amounts then or thereafter due and owing to the Landlord under the Development Documents. Nothing herein contained shall be construed to give the Guarantor any right of subrogation in and to the Development Documents or all or any part of the Landlord's interest therein, until all amounts owing to the Landlord have been paid in full.

7. All rights and remedies afforded to the Landlord, by reason of this Guaranty, the Development Documents, or by law, are separate and cumulative and the exercise of one shall not in any way limit or prejudice the exercise of any other such rights or remedies. No delay or omission by the Landlord in exercising any such right or remedy shall operate as a waiver thereof. No waiver of any rights and remedies hereunder, and no modification or amendment hereof, shall be deemed made by the Landlord unless in writing and duly signed by the Landlord. Any such written waiver shall apply only to the particular instance specified therein and shall not impair the further exercise of such right or remedy or of any other right or remedy of the Landlord and no single or partial exercise of any right or remedy hereunder shall preclude other or further exercise thereof or any other right or remedy.

8. The Guarantor represents and warrants that: (a) Guarantor has a financial interest in the Tenant; (b) Guarantor has examined or has had an opportunity to examine each of the documents referred to herein; (c) Guarantor has full power, authority and legal right to execute and deliver this Guaranty, (d) this Guaranty is a binding legal obligation of the Guarantor; (e) the financial statements of Guarantor heretofore provided to the Landlord are, as of the date specified therein, complete and correct in all material respects, fairly present the financial condition of the Guarantor, and are prepared by financial professionals in a consistent manner; (f) there is no litigation pending or to the best of the Guarantor's knowledge, threatened against the Guarantor and/or Tenant; (g) Guarantor is a principal of Tenant; and (h) no other fact or circumstance exists, which would diminish or negate the liability of the Guarantor to the Landlord hereunder, or materially impair Guarantor's ability to perform his obligations, and neither execution or delivery of this Guaranty nor compliance with the terms hereof will conflict with, or constitute a breach of or default under any agreement or instrument to which the Guarantor may be a party.

9. Until such time as this Guaranty shall have been terminated in accordance with the terms and conditions hereof, the Guarantor shall provide to the Landlord on each anniversary date hereof Guarantor's financial statements in the form and detail annexed hereto as Exhibit A. The Guarantor further covenants and agrees to provide to the Landlord copies of any financial statements and/or financial information simultaneously with the submission thereof to the Leasehold Lender in accordance with the terms of the Leasehold Mortgage.

10. If any of the amounts required to be paid hereunder by the Guarantor, including, without limitation, the amount necessary to complete the construction of the New Building



and/or the Project and discharge all liens, is not paid within ten (10) business days after the date written notice of such required payment is sent to the Guarantor by the Landlord, the Guarantor hereby authorizes any attorney at law to appear for it before any court having jurisdiction and to confess judgment against it for the amounts then due together with interest, court costs, and attorneys' fees in an amount equal to fifteen (15%) percent of the amount due hereunder.

11. If any provision, or part of any provision, contained in this Guaranty shall for any reason be determined to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining part(s) of the provisions of this Guaranty.

12. This Guaranty shall inure to the benefit of, and be enforceable by, the Landlord, its successors and assigns, and shall be binding upon, and enforceable against, the Guarantor and its heirs, personal representatives and assigns.

13. This Guaranty shall not create any rights in favor of any third party, it being understood and agreed that this Guaranty is intended for the sole benefit of the Landlord, or such other party as the Landlord may designate in its sole and absolute discretion.

14. This Guaranty shall be construed under the laws of the State of New York.

15. The parties hereby consent to the exclusive jurisdiction of the courts of the State of New York sitting in New York County to decide any case or controversy arising out of this Guaranty. The parties also irrevocably waive, to the fullest extent permitted by law, any objection which it or they may have to venue in any such court and any claim that any action or proceeding brought in any such court has been brought in an inconvenient forum.

16. All terms not otherwise defined herein shall have the same meaning as set forth in the Lease or Development Agreement.

17. Any notices or other communications required or permitted hereunder shall be sufficiently given if delivered personally, or sent by overnight delivery such as Federal Express, or by certified mail, postage prepaid, addressed as follows or to such other address of which a party may have given notice to all other parties by the means provided for in this Section:

(a) If to the Guarantor:

Chaskiel Strulovitch  
116 Nostrand Avenue  
Brooklyn, New York 11205  
Facsimile No.: (718) 384-0864

(b) If to Landlord to:

Thomas Memorial Wesleyan Methodist Church, Inc.  
260-270 West 126<sup>th</sup> Street  
New York, New York 10027  
Attention: Reverend

With a copy simultaneously to:

Biancone & Wilinsky, LLP  
230 Park Avenue  
New York, New York 10169  
Attention: Thomas B. Wilinsky Esquire  
Facsimile No.: (212) 661-4774

Unless otherwise specified herein, such notices or other communications shall be deemed given (i) on the date delivered, if given personally, (ii) on the date delivered by the Postal Service, if given by certified mail, or (iii) on the date delivered by the overnight delivery service, if given by overnight delivery.

18. This Guaranty shall terminate upon the Landlord's receipt of a certificate of occupancy issued by the New York City Department of Buildings covering all of the Units in the New Building.

IN WITNESS WHEREOF, the Guarantor has executed and sealed this Guaranty on the date first above written.

GUARANTOR:

\_\_\_\_\_  
CHASKIEL STRULOVITCH

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

On the 5<sup>th</sup> day of October, 2016, before me, the undersigned, personally appeared CHASKIEL STRULOVITCH, who proved to me on the basis of satisfactory evidence to be the person(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 authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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**Notary Public**

**EXHIBT A – FORM OF GUARANTOR’S FINANCIAL STATEMENT**

**EXHIBIT H**

**VALUE OF FEE ESTATE**

Ten Million Six-Hundred Sixty-Four Thousand Five Hundred Ninety-Seven and 82/100  
(\$10,664,597.82) Dollars

EXHIBIT I

FORM OF SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT  
AGREEMENT

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Subordination, Non-Disturbance and Attornment Agreement (the "**Agreement**") is made as of \_\_\_\_\_, 201\_\_, by and among \_\_\_\_\_, (hereinafter referred to as "**Subtenant**"); **S & F 126 ST. LLC** (hereinafter referred to as "**Tenant**"); and **THOMAS MEMORIAL WESLEYAN METHODIST CHURCH, INC.** (hereinafter referred to as ("**Landlord**").

WHEREAS, Landlord entered into a certain ground lease (the "**Lease**") with Tenant affecting the following real property and associated property and development rights (collectively, the "**Demised Premises**"): (a) all that certain plot, piece or parcel of land, with the buildings erected, and/or to be erected thereon or thereunder, situate, lying and being in the City of New York, County of New York, State of New York, bounded and described on Exhibit A to the Lease (the "**Premises**") and shown on the New York City Tax Map as Section 7, Block 1931, Lot 56; (b) together with all bulk, floor area and floor area ratio (as such three terms are defined in Section 12-10 of the New York City Zoning Resolution) and all other zoning and development rights appurtenant to the Premises (collectively, the "**Development Rights**"); (c) together with all easements, appurtenances, hereditaments, air rights or other rights or privileges now or hereafter belonging or now or hereafter appurtenant to the Premises; and

WHEREAS, Landlord and CS Construction Group LLC, an affiliate of Tenant, entered into a certain development agreement affecting the Demised Premises (the "**Development Agreement**"), pursuant to which Development Agreement Tenant shall, subject to compliance with all governmental laws, rules and regulations and the terms and conditions of the Lease, demolish the buildings and improvements now situated on the Demised Premises and shall replace the same with a new building which shall be approximately 12 stories, containing approximately 90,000 gross square feet (more or less) and used primarily for residential apartments (the "**New Building**"); and

WHEREAS, pursuant to the terms and conditions of Section 20.08 of the Lease, Landlord agreed, at the request of Tenant, to enter into subordination, non-disturbance and attornment agreements with one or more subtenants of Tenant in the form hereof; provided each of the following conditions are satisfied: (i) Subtenant is leasing at least 3,000 rentable square feet of the Improvements; (ii) Subtenant is not an Affiliate of Tenant at any time during the term of its lease with Tenant; and (iii) there is no outstanding default in payment of Base Rent (as defined in the Lease) or Additional Rent (as defined in the Lease) or other charges due in connection with the Lease and there is no outstanding Event of Default (as defined in the Lease): and

WHEREAS, pursuant to the terms and conditions of the Lease and the Development Agreement, (a) Tenant will construct the New Building which will be divided into not more than three (3) separate Units, namely the Church Unit, a Residential Apartment Unit, and a Commercial Unit all as more particularly described and defined in **Exhibit C** and **Exhibit D** annexed to the Lease (the "**Project**"); provided that, pursuant to the terms of the Lease the overall costs with respect to the Project shall be not less than Twenty-Five Million (\$25,000,000.000) Dollars; and

WHEREAS, Tenant, as sublessor, and Subtenant have executed or are about to execute a

sublease (the "Sublease") simultaneously herewith affecting all or a substantial portion of the Commercial Unit in the New Building (the "Sublet Space").

NOW, THEREFORE, in consideration of the premises and of the mutual covenants, agreements and promises set forth hereinafter, the receipt and sufficiency of which are hereby acknowledged, and with the intent to be legally bound, the parties hereby covenant and agree as follows:

1. Sublease Subordinate to Lease.

(a) The Sublease shall be subject and subordinate at all times to the Lease, and to all of the provisions, covenants, agreements, terms and conditions (collectively, the "Provisions") of the Lease, and Subtenant shall not do or permit anything to be done in connection with Subtenant's use and occupancy of the Sublet Space which would violate any of said Provisions. Any breach or violation of any Provision of the Lease by Subtenant (whether by act or omission) shall be deemed to be and shall constitute a default by Tenant in fulfilling such Provision and, in such event, Landlord shall have all of the rights, powers and remedies provided in the Lease or at law or in equity or by statute or otherwise with respect to defaults. Landlord may at any time enforce the provisions of the Lease against either Tenant or Subtenant or both of them. Subtenant shall have no recourse against Landlord on account of any failure by Landlord to perform any of its obligations under the Lease. Subtenant's only recourse shall be against Tenant.

(b) Nothing herein contained in this Agreement shall be construed to (i) modify, waive, impair or affect any of the Provisions contained in the Lease (except as may be expressly provided herein), (ii) waive any present or future breach of, or default under, the Lease or any rights of Landlord against any person, firm, association or corporation liable or responsible for the performance thereof, (iii) enlarge or increase Landlord's obligations or Tenant's rights under the Lease or otherwise; and all Provisions of the Lease are hereby declared by Tenant to be in full force and effect, and Tenant further declares that Landlord is not in default under any of its obligations under the Lease.

(c) Nothing herein contained shall be construed as a consent to or approval or ratification by Landlord of any of the particular provisions of the Sublease (except as may be herein expressly provided) or as a representation or warranty by Landlord. Landlord shall not be a party to the Sublease and Landlord has not, and will not, review or pass upon any of the provisions of the Sublease and shall not be bound or estopped in any way by the provisions of the Sublease.

(d) Neither the Sublease nor this Agreement shall release or discharge Tenant from any liability or obligation under the Lease, and Tenant shall be and remain liable and responsible for the due keeping and the full performance and observance of all of the Provisions of the Lease on the part of Tenant to be kept, performed and observed, including, without limitation, the payment of all Base Rent or Additional Rent or other charges due in connection with the Lease.

(e) Both Tenant and Subtenant shall be and continue to be jointly and severally liable for all bills rendered by Landlord for charges incurred or imposed for services rendered and material supplied to the Sublet Space by Landlord whether requested by Tenant and/or Subtenant.



(f) This provision is acknowledged by Tenant and Subtenant to be self-operative and no further instrument shall be required to effect this subordination of the Sublease.

2. Non-Disturbance of Sublease.

The parties hereto specifically acknowledge that although the Sublease is subordinate to the Lease, Subtenant's rights and obligations pursuant to the Sublease, are hereby preserved and shall not be disturbed, unless and until the occurrence of an Event of Default or an event which, with notice or lapse of time or both, would constitute an Event of Default under the Lease and/or the Sublease. Upon the cancellation, termination or expiration of the term of the Lease, prior to the expiration of the term of the Sublease, whether the Lease shall so terminate or expire, or be cancelled, upon the expiration of its term as stated therein or on any other date, and whether upon the election of either Landlord or Tenant thereunder, or in any other manner, Landlord shall recognize Subtenant as tenant of the Sublet Space for the balance of the term of the Sublease, provided Subtenant is not then in default under such Sublease (beyond all applicable notice and cure periods in the Sublease).

3. Attornment.

(a) In the event that Tenant shall be in default under the Lease (beyond all applicable notice and cure periods in the Lease) and Landlord gives notice of any such default to Subtenant, then, from the date upon which Landlord gives such notice to Subtenant until such time as Landlord rescinds said notice, Subtenant shall make all payments of fixed rent and additional rent/charges due under the Sublease directly to Landlord by unendorsed check made payable solely to Landlord at the address designated by Landlord in said notice. Any such payments shall be credited, upon collection only, by (i) Landlord against any sums due Landlord by Tenant under the Lease in such manner and in such order as Landlord may elect, in its sole discretion; provided, however, in the event that Landlord rescinds said notice, Landlord shall credit such payments by Subtenant in such manner and in such order as Tenant may elect or refund such payments to Tenant to the extent such payments duplicate payments made directly by Tenant; and (ii) Tenant against any sums due Tenant by Subtenant under the Sublease. Tenant hereby authorizes payment by Subtenant to Landlord pursuant to this Paragraph. Landlord may exercise its rights under this Paragraph on one or more occasions, and from time to time, as often as Landlord desires, and the rights granted to it hereunder shall apply in each event of default by Tenant under the Lease. This Paragraph shall in no event limit or impair other rights and remedies which may be available to Landlord as a result of any such default by Tenant. The acceptance of any such payments from Subtenant shall not be deemed an acceptance of Subtenant as tenant under the Lease nor shall it release Tenant from any of its obligations under the Lease.

(b) Subtenant hereby covenants and agrees that, if the term of the Lease shall be cancelled or terminated prior to the expiration of the Sublease, or by any other means:

(i) Subtenant shall make full and complete attornment to Landlord so as to establish direct privity between Landlord and Subtenant with respect to the Sublease; and

(ii) all rights and obligations of Subtenant under the Sublease shall continue in full force and effect and be enforceable against Subtenant by Landlord with the same force and effect as if said Sublease had been originally made and entered into directly by and between Landlord, as sublessor thereunder, and Subtenant.

(c) Landlord shall not be (1) liable for any previous act or omission of Tenant under the Sublease, (2) subject to any offset which theretofore accrued to Subtenant against Tenant, (3) bound by any previous modification of the Sublease to which Landlord has not consented or by any previous pre-payment of more than one month's fixed rent or additional rent, (4) obligated to make any payment to or on behalf of Subtenant or to perform any repairs or other work to or in the Sublet Space, or (5) required to account for any security deposit other than any actually delivered to Landlord.

4. No Amendment

Notwithstanding anything to the contrary contained in the Lease and/or the Sublease, Tenant and Subtenant shall not, without the prior written consent of Landlord in each instance, execute any amendment to or modification or extension of the Sublease, and any amendment or modification or extension entered into without such consent shall be void and of no force or effect.

5. Representations of Tenant and Subtenant

Tenant and Subtenant jointly and severally represent to Landlord that: (i) Exhibit A is a true and correct copy of the Sublease and that the Sublease has not been amended, changed or modified; and (ii) the term of the Sublease, including any extension or renewal thereof, will expire on or prior to (but in any event not later than) the date set for the expiration of the term of the Lease.

6. Indemnification and Insurance

(a) Whenever in the Lease Tenant has agreed to indemnify, defend, save or hold Landlord harmless from and against any action, claim, proceeding, cost, or expense or any other matter brought against Landlord by third parties, Subtenant hereby agrees jointly and severally with Tenant to so indemnify, defend, save and hold Landlord harmless with respect to any such matter which arises out of or in connection with Subtenant's (i) use or occupancy of the Sublet Space or (ii) acts or omissions, negligent or otherwise, or those of its agents, employees or contractors.

(b) Subtenant shall: (i) maintain in effect such liability insurance as Tenant is required by the Lease to maintain, (ii) cause to be named as additional insureds thereon such persons as Tenant is required by the Lease to name as additional insureds on its liability insurance (provided that Subtenant shall have been notified thereof), and (iii) furnish to Landlord such evidence of such insurance as Tenant is required by the Lease to furnish. The insurance required by this Paragraph 6 shall be in addition to all insurance required by the Lease to be maintained by Tenant or required by the Sublease to be maintained by Subtenant.

7. Miscellaneous

(a) This Agreement may not be altered, amended, modified or changed orally, but only by an agreement in writing signed by the party against whom enforcement of any such alteration, amendment, modification or change is being sought.

(b) Captions are inserted for convenience only and will not affect the construction hereof.

(c) (i) Any notice, communication, request, reply or advice (collectively, "**Notice**") provided for or permitted by this Agreement to be made or accepted by any party must be in writing. Notice may, unless otherwise provided herein, be given or served by depositing the same in the United States mail, postage paid, U.S. Express Mail, and addressed to the party to be notified, with return receipt requested, or by delivering the same to such party in person or by Federal Express, or other reputable overnight courier providing proof of delivery, or by hand delivery. Notice given by Federal Express, Express Mail or other reputable overnight courier providing proof of delivery shall be effective one (1) business day following deposit therewith. Notice given by hand shall be effective as of the date of delivery or refusal of delivery if given on a business day or as of the business day immediately following the date of delivery. For the purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to Landlord:

Thomas Memorial Wesleyan Methodist Church, Inc.  
260-270 West 126<sup>th</sup> Street  
New York, New York 10027  
Attention: Reverend  
Telephone: (212) 493-7088

With a copy to:

Biancone & Wilinsky, LLP  
230 Park Avenue  
New York, New York 10169  
Attention: Thomas B. Wilinsky Esquire  
Telephone: (212) 661-1888  
Telecopy: (212) 661-4774

If to Tenant:

S & F 126 St. LLC  
116 Nostrand Avenue  
Brooklyn, New York 12305  
Attention: Mr. Chaskiel Strulovitch  
Telecopy: (718) 384-0864

With a copy to:

Peter Schmidt, Esq.  
P.O. Box 751  
Washington Bridge Station  
New York, NY 10033

Facsimile: (212) 795-2943  
E-mail: punchjur@nyc.rr.com

If to Subtenant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone:  
Telecopy: ( ) -

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone:  
Telecopy: ( ) -

(ii) Subtenant agrees to promptly deliver to Landlord a copy of all notices of default and all other notices sent to Tenant under the Sublease and Tenant agrees to promptly deliver to Landlord a copy of all such notices sent to Subtenant under the Sublease.

(d) This Agreement constitutes the entire agreement of the parties hereto with respect to the matters stated herein.

(e) This Agreement will for all purposes be construed in accordance with and governed by the laws of the State of New York applicable to agreements made and to be performed wholly therein.

(f) This Agreement shall not be effective until executed by all the parties hereto and may be executed in several counterparts, each of which will constitute an original instrument and all of which will together constitute one and the same instrument.

(g) Each right and remedy of Landlord provided for in this Agreement or in the Lease shall be cumulative and shall be in addition to every other right and remedy provided for herein or therein 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 so provided for or existing shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies so provided for or so existing.

(h) The terms and provisions of this Agreement bind and inure to the benefit of the parties hereto and their respective successors and assigns, as may be permitted in accordance with the Provisions of the Lease.

(i) If any one or more of the terms and conditions contained in this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the

remaining provisions contained herein shall not in any way be affected or impaired thereby.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed as of the effective date hereinabove stated.

LANDLORD:

**THOMAS MEMORIAL WESLEYAN  
METHODIST CHURCH, INC.**

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

TENANT:

**S & F 126 ST. LLC**

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

SUBTENANT:

\_\_\_\_\_

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

**EXHIBIT A**

**SUBLEASE AGREEMENT**

**EXHIBIT J**

**FORM OF ESCROW AGREEMENT**

**ESCROW AGREEMENT**

ESCROW AGREEMENT entered into the 5<sup>th</sup> day of October, 2016, by and among THOMAS MEMORIAL WESLEYAN METHODIST CHURCH, INC., a religious corporation having an address at 260-270 West 126<sup>th</sup> Street, New York, New York 10027 (the "**Landlord**"); S & F 126 ST. LLC, a New York limited liability company, having an address at 116 Nostrand Avenue, Brooklyn, New York 11205 (the "**Tenant**"); and BIANCONE & WILINSKY, LLP, with offices located at 230 Park Avenue, New York, New York 10169 ("**Escrow Agent**").

**WITNESSETH:**

WHEREAS, on or about October 5, 2016, Landlord and Tenant entered into a certain ground lease (the "**Lease**") affecting the following real property and associated property and development rights (collectively, the "**Demised Premises**"): (a) all that certain plot, piece or parcel of land, with the buildings erected, and/or to be erected thereon or thereunder, situate, lying and being in the City of New York, County of New York, State of New York, bounded and described on Exhibit A to the Lease (the "**Premises**") and shown on the New York City Tax Map as Section 7, Block 1931, Lot 56; (b) together with all bulk, floor area and floor area ratio (as such three terms are defined in Section 12-10 of the New York City Zoning Resolution) and all other zoning and development rights appurtenant to the Premises (collectively, the "**Development Rights**"); (c) together with all easements, appurtenances, hereditaments, air rights or other rights or privileges now or hereafter belonging or now or hereafter appurtenant to the Premises; and (d) together with all right, title and interest of Landlord in and to the land lying in the streets and roads in front of and adjoining the Premises to the center lines thereof; subject, however, to the Permitted Encumbrances, as set forth in Exhibit "B" attached to the Lease; and

WHEREAS, on or about October 5, 2016, Landlord and CS Construction Group LLC, an affiliate of Tenant, entered into a certain development agreement affecting the Demised Premises (the "**Development Agreement**"), pursuant to which Development Agreement Tenant shall, subject to compliance with all governmental laws, rules and regulations and the terms and conditions of the Lease, demolish the buildings and improvements now situated on the Demised Premises and shall replace the same with a new building which shall be approximately 12 stories, containing approximately 90,000 gross square feet (more or less) and used primarily for residential apartments (the "**New Building**"); provided that the New Building shall be an independent, free standing structure located entirely within the boundaries of the Premises; provided, further, that the demolition of the buildings and improvements now situated on the Demised Premises and the construction of the New Building and completion of the Project (as defined in the Lease) shall be effected at Tenant's sole cost and expense in accordance with the terms and conditions thereof; and

WHEREAS, pursuant to the terms and conditions of Section 3.01(a) of the Lease, Tenant shall deliver to Escrow Agent the following sums, upon the occurrence of each of the events stated below: (a) upon the execution and delivery of this Lease the sum of Three Hundred Fifty Thousand (\$350,000.00) Dollars (the "**Initial Escrow Funds**"); (b) within sixty (60) days of



Landlord's commencement of the special proceeding in the Court to obtain the Court Approval an additional sum of Two Hundred Fifty Thousand Dollars (\$250,000) (the "**First Installment of Additional Escrow Funds**"); and (c) on the earlier to occur of (x) one hundred twenty (120) days after Landlord's commencement of the special proceeding in the Court to obtain the Court Approval or (y) the Approval Date (as defined herein), an additional sum of Two Hundred Fifty Thousand Dollars (\$250,000) (the "**Second Installment of Additional Escrow Funds**") (the First Installment of Additional Escrow Funds and the Second Installment of Additional Escrow Funds, collectively the "**Additional Escrow Funds**") (the Initial Escrow Funds and the Additional Escrow Funds, collectively the "**Escrow Funds**"); and

WHEREAS, the Escrow Agent agrees to hold the Escrow Funds in accordance with the terms and conditions of this Escrow Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and premises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be bound hereby, agree as follows:

I. **Establishment of Escrow.**

1.1 Upon the execution of the Lease, Tenant covenants and agrees to effect a wire transfer of the Initial Escrow Funds to the Escrow Agent's Attorney Escrow Account No. 95104581 at Citibank, N.A., located at 734 Third Avenue, New York, New York 10017 (the "**Escrow Account**").

1.2 Within sixty (60) days of the Landlord's commencement of the special proceeding in the Court to obtain the Court Approval, Tenant covenants and agrees to effect a wire transfer the First Installment of Additional Escrow Funds to the Escrow Account.

1.3 On the earlier to occur of (a) one hundred twenty (120) days after Landlord's commencement of the special proceeding in the Court to obtain the Court Approval or (b) the Approval Date, Tenant covenants and agrees to effect a wire transfer the First Installment of Additional Escrow Funds to the Escrow Account.

1.4 Landlord and Tenant each hereby authorizes the Escrow Agent to (a) hold the Escrow Funds in a non-interest bearing Escrow Account; and (b) administer and disburse the Escrow Funds in accordance with the terms of this Escrow Agreement.

II. **Disbursement of Escrow Funds.**

2.1 Landlord and Tenant each hereby authorizes the Escrow Agent to disburse the Initial Escrow Funds to (a) the Landlord upon the Approval Date, which for purposes hereof shall be the date that Landlord delivers to Tenant the Legal Approvals; or (b) Tenant in the event that (i) the Landlord is unable to deliver to Tenant the Legal Approvals by the Outside Legal

Approval Deadline and (ii) Tenant elects to terminate the Lease, in accordance with the terms thereof.

2.2 (A) Landlord and Tenant each hereby authorizes the Escrow Agent to disburse the First Installment of Additional Escrow Funds to (a) the Landlord upon the earlier to occur of (i) the Surrender Date (as defined in Section 2.03 of the Lease) or (ii) the Release Date (as defined in Section 3.01(a) of the Lease); or (b) the Tenant in the event that the Tenant is authorized to terminate the Lease in accordance with Section 2.04 of the Lease.

(B) Landlord and Tenant each hereby authorizes the Escrow Agent to disburse the Second Installment of Additional Escrow Funds to (a) the Landlord upon the Surrender Date (as defined in Section 2.03 of the Lease); or (b) the Tenant in the event that the Tenant is authorized to terminate the Lease in accordance with Section 2.04 of the Lease.

2.3 If Escrow Agent shall receive a written or electronic mail notice of objection from either Landlord or Tenant prior to the disbursement of the Escrow Funds in accordance with the terms of Section 2.1 and/or Section 2.2 hereof, Escrow Agent shall hold the Escrow Funds pursuant to the terms of Section 2.4 or Section 2.5 hereof.

2.4 If Escrow Agent shall have received a notice of objection pursuant to Section 2.3 hereof, Escrow Agent shall continue to hold the Escrow Funds until Escrow Agent receives either: (i) a written notice signed by Landlord and Tenant consenting to the disbursement of the Escrow Funds; or (ii) a final order of a court of competent jurisdiction directing delivery of the Escrow Funds in a specific manner, in either of which events, Escrow Agent shall then disburse the Escrow Funds in accordance with such written notice or order. Escrow Agent shall not be or become liable in any way or to any person for its refusal to comply with any such requests or demands until and unless it has received a direction of the nature described in subdivision (i) or (ii) above.

2.5 Notwithstanding the foregoing provisions, if Escrow Agent shall have received a written notice of objection as provided for in Section 2.3 hereof, or at any time before the disbursement of the Escrow Funds, Escrow Agent shall have the right, upon written notice to Landlord and Tenant, to deposit the Escrow Funds or the Additional Escrow Funds, if the Initial Escrow Funds were previously disbursed in accordance to the terms of Section 2.1 hereof, with a court of competent jurisdiction and commence an action for interpleader, and thereupon Escrow Agent shall be released of and from all liability hereunder, except for any previous gross negligence or willful misconduct. Notwithstanding anything herein contained to the contrary, in the event that the Escrow Agent has not received the Escrow Funds from Tenant within thirty (30) days of the date hereof, Escrow Agent shall have the right, upon written notice to Landlord and Tenant, to terminate this Agreement.

III. **Rights and Obligations of Escrow Agent.**

3.1 Upon disbursement of the Escrow Funds in the manner provided in this Escrow Agreement, or, as the parties may agree in writing, the Escrow Agent shall be released and discharged of its obligations under this Escrow Agreement.

3.2 The Escrow Agent shall act hereunder as a depository only and may act in reliance upon any instrument believed to be genuine and may assume that any person purporting to give any written or electronic mail notice or instruction in connection with the provisions hereof has been duly authorized to do so.

3.3 The Escrow Agent shall serve without compensation for its services as Escrow Agent and shall be liable under this Escrow Agreement only for acts of gross negligence or willful misconduct.

3.4 No agreement hereafter made shall be effective to change, modify or affect the rights, obligations and/or duties of the Escrow Agent hereunder, in whole or in part, unless such agreement is in writing and signed by the parties hereto.

3.5 Except with respect to claims based upon the willful misconduct or gross negligence of Escrow Agent, Landlord and Tenant, jointly and severally, agree to indemnify and hold harmless the Escrow Agent from and against any and all claims, liability, loss, damage or expense arising out of or in connection with this Escrow Agreement, including, but not limited to, reasonable attorneys' fees and expenses.

3.6 Escrow Agent shall be under no obligation to deliver any instrument or documents to a court or take any other legal action in connection with this Escrow Agreement or towards its enforcement, or to file, commence, appear in, prosecute or defend any action or legal proceeding which, in Escrow Agent's opinion, would or might involve it in any cost, expense, loss or liability unless, as often as Escrow Agent may require, Escrow Agent shall be furnished with security and indemnity satisfactory to it against all such costs, expenses, losses or liabilities.

IV. **Miscellaneous.**

4.1 This Escrow Agreement may be amended, modified and supplemented at any time with respect to any of the terms contained herein but only by an instrument signed by the party to be charged therewith.

4.2 Any failure to comply with any obligation, covenant, agreement or condition contained herein may be expressly waived, but only to the extent expressly provided in writing, but any failure to insist upon strict compliance with any obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, such obligation, covenant, agreement or condition or any subsequent or other failure to comply with such or any other obligation, covenant, agreement or condition.

4.3 Any notices or other communications required or permitted hereunder shall be sufficiently given if delivered personally, or sent by overnight delivery such as Federal Express, or by certified mail, postage prepaid, addressed as follows or to such other address of which a party may have given notice to all other parties by the means provided for in this Section:

(a) If to Tenant to:

S & F 126 ST. LLC  
116 Nostrand Avenue  
Brooklyn, New York 11205  
Attn.: Chaskiel Strulovitch

(b) If to Landlord to:

Thomas Memorial Wesleyan Methodist Church, Inc.  
260-270 West 126<sup>th</sup> Street  
New York, New York 10027  
Attention: Reverend

With a copy simultaneously to:

Biancone & Wilinsky, LLP  
230 Park Avenue  
New York, New York 10169  
Attention: Thomas B. Wilinsky Esquire

(c) If to Escrow Agent to:

Biancone & Wilinsky, LLP  
230 Park Avenue  
New York, New York 10169  
Attention: Thomas B. Wilinsky Esquire

Unless otherwise specified herein, such notices or other communications shall be deemed given (i) on the date delivered, if given personally, (ii) on the date delivered by the Postal Service, if given by certified mail, or (iii) on the date delivered by the overnight delivery service, if given by overnight delivery.

4.4 This Escrow Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

4.5 Each party hereto shall from time to time, at the request of any other party hereto, execute and deliver such other instruments, and take such other actions, as such other party may

reasonably request in order to more effectively consummate, or evidence the consummation of, the transactions contemplated by this Escrow Agreement.

4.6 This Escrow Agreement shall be construed under the laws of the State of New York.

4.7 The parties hereby consent to the exclusive jurisdiction of the courts of the State of New York sitting in New York County to decide any case or controversy arising out of this Escrow Agreement. The parties also irrevocably waive, to the fullest extent permitted by law, any objection which it or they may have to venue in any such court and any claim that any action or proceeding brought in any such court has been brought in an inconvenient forum.

4.8 All terms not otherwise defined herein shall have the same meaning as set forth in the Lease or Development Agreement.

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

LANDLORD:

**THOMAS MEMORIAL WESLEYAN  
METHODIST CHURCH, INC.**

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

TENANT:

**S & F 126 ST. LLC**

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

ESCROW AGENT:  
**BIANCONE & WILINSKY, LLP**

By: \_\_\_\_\_  
Name: Thomas B. Wilinsky  
Title: Limited Liability Partner

**FIRST AMENDMENT TO  
LEASE DOCUMENTS**

THIS FIRST AMENDMENT TO GROUND LEASE, DEVELOPMENT AGREEMENT AND ESCROW AGREEMENT (this "**First Amendment**"), dated and effective for all purposes as of January 18, 2017, is made by and among between **THOMAS MEMORIAL WESLEYAN METHODIST CHURCH, INC.**, a religious corporation having an address at 260-270 West 126<sup>th</sup> Street, New York, New York 10027 ("**Landlord**"); **S & F 126 ST. LLC**, a New York limited liability company, having an address at 116 Nostrand Avenue, Brooklyn, New York 11205 ("**Tenant**"); and **CS CONSTRUCTION GROUP LLC**, a New York limited liability company with an address at 116 Nostrand Avenue, Brooklyn, NY 11205 ("**Developer**") (Tenant and Developer collectively, the "**Tenant Entities**") (Landlord and Tenant Entities collectively, the "**Parties**").

**R E C I T A L S:**

WHEREAS, Landlord and Tenant are parties to that certain Ground Lease dated on or about October 5, 2016 (the "**Ground Lease**") affecting the property located at 260-270 West 126<sup>th</sup> Street, New York, New York 10027 (the "**Property**"); and

WHEREAS, Landlord and Developer are parties to that certain Development Agreement dated on or about October 5, 2016 (the "**Development Agreement**") affecting the Property; and

WHEREAS, Landlord, Tenant and Biancone & Wilinsky, LLP, as Escrow Agent, are parties to that certain Escrow Agreement executed in connection with the funds delivered by Tenant pursuant to the terms of the Ground Lease (the "**Escrow Agreement**"); and

WHEREAS, Landlord and Tenant Entities are parties to such other and further agreements as contemplated by and/or annexed to the Ground Lease (such other documents, together with the Ground Lease, Development Agreement and Escrow Agreement, collectively the "**Lease Documents**"); and

WHEREAS, on or about October 11, 2016, Landlord's counsel was provided notice of the commencement of an action in the Supreme Court of the State of New York, County of New York, entitled BOS Development, LLC v. Thomas Memorial Wesleyan Methodist Church, Inc., et al., Index 158436/2016 (the "**Action**"), in which action BOS Development, LLC ("**BOS**") filed a Verified Complaint and an application for a temporary restraining order and preliminary injunction, enjoining the Parties from executing and/or delivering any documents relating to a ground lease and/or development agreement affecting the Property; and

WHEREAS, on or about October 12, 2016, the Hon. Katherine Freed, J.S.C., entered an Order in the Action denying BOS' application for a temporary restraining order enjoining the Parties from executing and/or delivering any documents relating to a ground lease and/or development agreement affecting the Property; and

WHEREAS, on or about October 26, 2016, BOS' counsel advised Landlord's counsel that BOS was withdrawing its application for a preliminary injunction to enjoin the Parties from

executing and/or delivering any documents relating to a ground lease and/or development agreement affecting the Property; and

WHEREAS, on or about December , 2016, BOS, Beatrice Sibblies ("Sibblies") and the Parties entered into a certain Settlement Agreement (the "Settlement Agreement"), which Settlement Agreement provided, inter alia, (i) BOS cause its counsel to execute and file, a Stipulation of Discontinuance, With Prejudice with respect to the Action, (ii) BOS and Sibblies release all claims asserted and/or capable of being asserted, including known and unknown, against the Parties (the "BOS Release") and (iii) BOS and Sibblies refrain from opposing any application by, on behalf of Landlord in connection with the Legal Approvals; and

WHEREAS, pursuant to the terms of the Settlement Agreement, the Parties agreed, inter alia, (i) to pay BOS the sum of Sixty Thousand (\$60,000.00) Dollars in full settlement of the Action and the BOS Release (the "Settlement Payment") and (ii) the Parties agreed to release all claims capable of being asserted, including known and unknown, against BOS and Sibblies; and

WHEREAS, the Parties hereby agree that (i) Landlord shall, subject to the terms hereinafter set forth, be responsible to pay fifty (50%) percent of the Settlement Payment, i.e., Thirty Thousand (\$30,000.00) Dollars ("Landlord Settlement Payment") and (ii) the Tenant Entities shall be responsible to pay fifty (50%) percent of the Settlement Payment, i.e., Thirty Thousand (\$30,000.00) Dollars ("TE Settlement Payment"); and

WHEREAS, the Parties desire to modify the Lease Documents, as provided herein and, except as expressly modified herein, ratify and confirm the terms and conditions of the Lease Documents.

#### **A G R E E M E N T S:**

NOW, THEREFORE, in consideration of the premises and of the mutual covenants, agreements and promises set forth hereinafter, receipt of which is hereby acknowledged, and with the foregoing being deemed incorporated herein below and with the intent to be legally bound hereby, it is mutually agreed as follows:

1. Defined Terms. All terms defined in the Lease Documents have the same meaning in this First Amendment.

2. Modification of Ground Lease. Pursuant to Section 8.03 of the Ground Lease, Landlord represented and warranted, to the best of Landlord's knowledge, that, as of the date of the Ground Lease, there was no litigation pending or threatened against the Landlord or the Demised Premises. The Parties hereto acknowledge and agree that the Action was commenced after the execution of the Lease Documents. Tenant Entities further acknowledge and agree that, notwithstanding the terms of Section 8.03 of the Ground Lease, (a) BOS' commencement of the Action shall not be deemed to create an Event of Default under the Ground Lease and (b) the Parties agree to proceed with the transactions contemplated by the Lease Documents, as amended by this First Amendment, upon the consummation of the transactions contemplated by the Settlement Agreement.

3. Modification of Escrow Agreement. Notwithstanding the terms and conditions of Section 2.1 of the Escrow Agreement, Landlord and Tenant each hereby authorizes the Escrow Agent to disburse out of the Initial Escrow Funds the following sums: (a)(i) the Landlord Settlement Payment and (ii) Twenty Thousand (\$20,000.00) Dollars to Biancone & Wilinsky, LLP in connection with attorneys' fees incurred by Landlord in connection with the defense the Action, the negotiation and drafting of the Settlement Agreement and the consummation of the transactions contemplated by the Settlement Agreement (collectively, the "**Escrow Fund Disbursements**"); provided that the Escrow Fund Disbursements shall be non-refundable to Tenant in the event that the Ground Lease is terminated in accordance with the terms thereof; and (b) the TE Settlement Payment which once disbursed by the Escrow Agent out of the Initial Escrow Funds (the "**TE Escrow Fund Disbursement Advance**") shall be restored by Tenant in accordance with the terms hereof. Within thirty (30) days of Landlord's commencement of the special proceeding in the Court to obtain the Court Approval, Tenant shall deliver to Escrow Agent an amount equal to the TE Escrow Fund Disbursement Advance to be paid into escrow and held by the Escrow Agent, until the earlier of the Approval Date or the termination of the Ground Lease in accordance with the terms thereof.

4. Acknowledgment; Effect of Amendment. Each of the Parties acknowledges and agrees that, upon the consummation of the transactions contemplated by the Settlement Agreement, there are no defaults by the other Parties under the Lease Documents as of the date hereof. Except as expressly amended and modified herein, the Lease Documents shall remain unchanged and in full force and effect, and the Parties do hereby ratify and affirm the same. In the event of a conflict between this First Amendment and the Lease Documents, the terms of this First Amendment shall control.

5. Counterparts; Facsimile. This First Amendment may be executed in multiple counterparts, each of which, when assembled to include a signature by each party contemplated to sign this First Amendment, shall constitute one complete and fully executed First Amendment. Counterparts to this First Amendment may be executed and delivered by facsimile or e-mail transmission and shall constitute originals for all purposes.

6. Notices. All notices, elections, demands, requests, responses and other communications hereunder (each a "**Notice**") shall be in writing, signed by the party giving the same or by its attorneys, and shall be deemed to have been duly given if: (i) personally delivered with proof of delivery thereof, or (ii) delivered to an overnight delivery service with receipt for delivery, or (iii) deposited in the United States mail, postage prepaid, U.S. Express Mail with return receipt requested, or (iv) transmitted by e-mail with (if available on the sender's email system) "read receipt" requested or by facsimile, provided that such facsimile or e-mail transmission is confirmed within one Business Day thereafter in the manner set forth in either clause (i), (ii) or (iii) of this sentence; provided, however, that the time period in which a response to any such notice, election, demand or request must be given shall commence on the date of receipt thereof. Personal delivery to a party or to any officer, partner, manager, member, agent, managerial employee or receiving office of such party at said address shall constitute receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt. Each notice shall be addressed to the respective parties as follows:



if to Tenant Entities:

S & F 126 ST. LLC  
CS Construction Group LLC  
116 Nostrand Avenue  
Brooklyn, New York 11205  
Attention: Mr. Chaskiel Strulovitch  
Facsimile: (718) 384-0864  
E-mail: [cs@csrealestate.com](mailto:cs@csrealestate.com)

with a copy to:

Peter Schmidt, Esq.  
P.O. Box 751  
Washington Bridge Station  
New York, NY 10033  
Facsimile: (212) 795-2943  
E-mail: [punchjur@nyc.rr.com](mailto:punchjur@nyc.rr.com)

if to Landlord:

Thomas Memorial Wesleyan Church  
260-270 West 126<sup>th</sup> Street  
New York, NY 10027  
Attention: Reverend

with a copy to:

Biancone & Wilinsky, LLP  
230 Park Avenue  
New York, NY 10169  
Attn: Thomas Wilinsky, Esq.  
Facsimile: (212) 661-4774  
Email: [twilinsky@bianconeandwilinsky.com](mailto:twilinsky@bianconeandwilinsky.com)

or to such other address or party as either party may have furnished to the other in writing in accordance herewith, except that notices of change of address or addresses shall only be effective upon receipt.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the date first set forth above.

LANDLORD:

**THOMAS MEMORIAL WESLEYAN  
METHODIST CHURCH, INC.**

By: Horsford Jones  
Name: HORSFORD JONES  
Title: PRESIDENT

TENANT:

**S & F 126 ST. LLC**

By: \_\_\_\_\_  
Name: Chaskiel Strulovitch  
Title: Manager

DEVELOPER:

**CS CONSTRUCTION GROUP LLC**

By: \_\_\_\_\_  
Name: Chaskiel Strulovitch  
Title: Manager

IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the date first set forth above.

LANDLORD:

**THOMAS MEMORIAL WESLEYAN  
METHODIST CHURCH, INC.**

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

TENANT:

**S & F 126 ST. LLC**

By: \_\_\_\_\_  
Name: Chaskiel Strulovitch  
Title: Manager

DEVELOPER:

**CS CONSTRUCTION GROUP LLC**

By: \_\_\_\_\_  
Name: Chaskiel Strulovitch  
Title: Manager

**SECOND AMENDMENT TO  
LEASE DOCUMENTS**

THIS SECOND AMENDMENT TO GROUND LEASE, DEVELOPMENT AGREEMENT AND ESCROW AGREEMENT (this "**Second Amendment**"), dated and effective for all purposes as of September 27, 2017, is made by and among between **THOMAS MEMORIAL WESLEYAN METHODIST CHURCH, INC.**, a religious corporation having an address at 260-270 West 126<sup>th</sup> Street, New York, New York 10027 ("**Landlord**" and/or "**Owner**"); **S & F 126 ST. LLC**, a New York limited liability company, having an address at 116 Nostrand Avenue, Brooklyn, New York 11205 ("**Tenant**"); and **CS CONSTRUCTION GROUP LLC**, a New York limited liability company with an address at 116 Nostrand Avenue, Brooklyn, NY 11205 ("**Developer**") (Tenant and Developer collectively, the "**Tenant Entities**") (Landlord and Tenant Entities collectively, the "**Parties**").

**RECITALS:**

WHEREAS, Landlord and Tenant are parties to that certain Ground Lease dated on or about October 5, 2016 (the "**Ground Lease**") affecting the property located at 260-270 West 126<sup>th</sup> Street, New York, New York 10027 (the "**Property**"); and

WHEREAS, Landlord and Developer are parties to that certain Development Agreement dated on or about October 5, 2016 (the "**Development Agreement**") affecting the Property; and

WHEREAS, Landlord, Tenant and Biancone & Wilinsky, LLP, as Escrow Agent, are parties to that certain Escrow Agreement executed in connection with the funds delivered by Tenant pursuant to the terms of the Ground Lease (the "**Escrow Agreement**"); and

WHEREAS, Landlord and Tenant Entities are parties to such other and further agreements as contemplated by and/or annexed to the Ground Lease (such other documents, together with the Ground Lease, Development Agreement and Escrow Agreement, collectively the "**Lease Documents**"); and

WHEREAS, on or about October 11, 2016, Landlord's counsel was provided notice of the commencement of an action in the Supreme Court of the State of New York, County of New York, entitled **BOS Development, LLC v. Thomas Memorial Wesleyan Methodist Church, Inc., et al.**, Index 158436/2016 (the "**Action**"), in which action BOS Development, LLC ("**BOS**") filed a Verified Complaint and an application for a temporary restraining order and preliminary injunction, enjoining the Parties from executing and/or delivering any documents relating to a ground lease and/or development agreement affecting the Property; and

WHEREAS, on or about January 18, 2017, BOS, Beatrice Sibblies ("**Sibblies**") and the Parties entered into a certain Settlement Agreement (the "**Settlement Agreement**"); and

WHEREAS, the Parties complied fully with their respective obligations pursuant to the terms of the Settlement Agreement; and

WHEREAS, BOS caused a Stipulation of Discontinuance with Prejudice in connection

with the Action to be e-filed in the Supreme Court of the State of New York, County of New York on January 18, 2017 (NYSCEF Doc. No. 32); and

WHEREAS, Landlord and Tenant Entities executed and delivered that certain First Amendment to Lease Documents dated January 18, 2017 (the "First Amendment of Lease Documents") (the Lease Documents, as amended by the First Amendment of Lease Documents (the "Amended Lease Documents"); and

WHEREAS, on or about May 9, 2017, Landlord obtained and delivered to Tenant Entities the Legal Approvals, pursuant to § 2.04 of the Amended Lease Documents and the Parties acknowledge and agree that May 9, 2017 does and shall constitute the Approval Date with respect to the Amended Lease Documents; and

WHEREAS, on or about May 18, 2017, Tenant advised Landlord that Tenant was offered an opportunity to acquire from one or more third parties certain air rights from a property or properties adjacent to the Property (collectively, the "Acquired Air Rights"), which Acquired Air Rights would, subject to the approval of an application to change the present zoning of the Property from C4-4D to C4-7 (the "Zoning Change Application"), permit the Tenant Entities to construct the New Building with greater density; and

WHEREAS, Tenant has engaged Eric Palatnik, P.C. with respect to the contemplated Zoning Change Application, which Zoning Change Application is contemplated to take approximately two (2) to three (3) years from the date that a Pre-Application Statement is filed with the Department of City Planning Uniform Land Use Review Procedure (the "ULURP"); and

WHEREAS, the Parties desire to modify the Amended Lease Documents, as provided herein and, except as expressly modified herein, ratify and confirm the terms and conditions of the Amended Lease Documents; and

WHEREAS, Landlord and Tenant Entities acknowledge and agree that the Amended Lease Documents, as amended by this Second Amendment shall be referred to as (the "Further Amended Lease Documents").

## A G R E E M E N T S:

NOW, THEREFORE, in consideration of the premises and of the mutual covenants, agreements and promises set forth hereinafter, receipt of which is hereby acknowledged, and with the foregoing being deemed incorporated herein below and with the intent to be legally bound hereby, it is mutually agreed as follows:

1. Defined Terms. All terms defined in the Amended Lease Documents have the same meaning in this Second Amendment, except as expressly modified herein.
2. Modification of § 1.01 of the Ground Lease. The Parties hereby acknowledge and agree that the definition of Development Rights shall expressly include the Acquired Air Rights acquired by Tenant and any and all approvals obtained by Tenant with respect to the Zoning

Change Application pursuant to the ULURP; provided, further, that the Parties acknowledge and agree that the Acquired Air Rights acquired by Tenant and any and all approvals obtained by Tenant with respect to the Zoning Change Application shall run with the Property and inure to the benefit of Landlord.

3. Modification of §§ 2.01 and 2.04 of the Ground Lease. The Parties hereby acknowledge and agree that the definition of Commencement Date and § 2.04 of the Ground Lease shall be amended and modified as follows:

Landlord and Tenant each acknowledge and agree that this Second Amendment is contingent upon compliance with NY Religious Corporations Law Section 12, pursuant to which Landlord shall (a) commence a supplemental special proceeding in the Court to obtain the Court's approval of the Second Amendment (the "**Court Approval of Second Amendment**"); and (b) obtain and deliver to Tenant the approval of the Department of Law, Office of the Attorney General, of the State of New York with respect to the Second Amendment (the "**Attorney General Second Amendment Approval**"). For purposes hereof, the Court Approval of Second Amendment and the Attorney General Second Amendment Approval are referred to herein collectively as the "**Second Amendment Legal Approvals**." For purposes hereof, the "**Second Amendment Approval Date**" shall be the date that Landlord either (i) delivers to Tenant the Second Amendment Legal Approvals or (ii) notifies Tenant of the denial of Landlord's supplemental special proceeding to obtain the Second Amendment Legal Approvals. Within thirty (30) days following the execution of this Second Amendment, Landlord shall either (a) submit to the Department of Law, Office of the Attorney General, of the State of New York a proposed supplemental petition in connection with the Court Approval of Second Amendment or (b) commence the supplemental special proceeding to obtain the Second Amendment Legal Approvals and diligently pursue the issuance of the Second Amendment Legal Approvals. In the event that the final, non-appealable Legal Approvals have not been obtained by a date that is on or prior to the date that is one hundred eighty (180) days following the date on which the Landlord has submitted its completed application(s) for the Second Amendment Legal Approvals, with all required documentation (the "**Second Amendment Legal Approval Deadline**"), after the exercise of diligent good faith efforts by Landlord, Landlord may, by written notice to Tenant delivered not less than twenty (20) Business Days following the Second Amendment Legal Approval Deadline ("**Landlord's Second Amendment Approval Election**") elect to either (a) continue to diligently pursue the Second Amendment Legal Approvals at the sole cost and expense of Tenant; subject to Tenant's Maximum Share of Landlord's Fees (as defined herein) or (b) terminate this Second Amendment, subject to the reinstatement the Parties' rights and obligations pursuant to the Amended Lease Documents, except as otherwise expressly set forth in Section 13 of this Second Amendment. In the event that Landlord elects to terminate this Second Amendment as provided hereinabove, Tenant may, by written notice to Landlord delivered not less than twenty (20) Business Days following the receipt of Landlord's Second Amendment Approval Election, void Landlord's election to terminate this Second Amendment in which event Tenant may make or continue the application for the Second Amendment Legal Approvals at the sole cost and expense of Tenant in the name of the Landlord, for which purpose the Landlord hereby grants to Tenant an irrevocable power of attorney, coupled with an interest, for the sole and express limited purpose of obtaining the

Second Amendment Legal Approvals. Notwithstanding the foregoing and the grant of the power of attorney as provided herein, in the event that Tenant elects to make application for the Second Amendment Legal Approvals, Landlord shall cooperate with Tenant and execute any documents reasonably required by Tenant to obtain the Second Amendment Legal Approvals; provided, further, that all efforts to be undertaken by Tenant in the name of the Landlord with respect to the prosecution of any applications and/or appeals in connection with any applications for the Second Amendment Legal Approvals shall be subject to Landlord's review and comments, prior to the submission of or proposed action to be taken by Tenant. In the event Tenant is unable to obtain the Second Amendment Legal Approvals by a date that is ninety (90) days following the Second Amendment Legal Approval Deadline (the **"Second Amendment Outside Legal Approval Deadline"**) subject to extension for Landlord Delays, either Landlord or Tenant may terminate this Second Amendment by written notice to the other delivered not later than thirty (30) days following the Second Amendment Outside Legal Approval Deadline (the **"Second Amendment Termination"**); provided, further, that simultaneously with the Second Amendment Termination, the Parties' respective rights and obligations pursuant to the Amended Lease Documents shall be reinstated, except as otherwise expressly set forth in Section 13 of this Second Amendment. The Term shall commence (the **"Commencement Date"**), upon the earlier to occur of (i) the Second Amendment Approval Date or (ii) Second Amendment Termination in accordance with the terms and conditions hereof.

Landlord and Tenant each further acknowledge and agree that Tenant has deposited with Escrow Agent the sum of Thirty-Five Thousand (\$35,000.00) Dollars (the **"Tenant's Maximum Share of Landlord's Fees"**), which sum shall be held in escrow and disbursed on a monthly basis by Escrow Agent to Biancone & Wilinsky, LLP in connection with all fees and disbursements incurred by Landlord from and after June 1, 2017 in connection with (i) the negotiation and drafting of this Second Amendment and (ii) obtaining the Second Amendment Legal Approvals (collectively, the **"Second Amendment Legal Services"**); provided that all fees and disbursements incurred by Landlord with respect to the Second Amendment Legal Services in excess of Tenant's Maximum Share of Landlord's Fees shall be borne solely by Landlord; provided, further, that, in the event that the Second Amendment Legal Services shall be less than Tenant's Maximum Share of Landlord's Fees, the unbilled portion of Tenant's Maximum Share of Landlord's Fees shall be disbursed to Tenant. The Parties hereto acknowledge, agree and ratify that, prior to the date hereof, the Tenant Entities have authorized, in one or more writings, the Escrow Agent to disburse to Biancone & Wilinsky, LLP a portion of Tenant's Maximum Share of Landlord's Fees in connection with Second Amendment Legal Services from and after June 1, 2017.

4. **Modification of § 2.03 of the Ground Lease.** The Parties hereby acknowledge and agree that the definition of Surrender Date and § 2.03 of the Ground Lease shall be amended and modified as follows:

From the date hereof until the Surrender Date (as hereinafter defined), Landlord shall (a) continue to have the exclusive right to use the Property, including, without limitation, the building and improvements for the Church; subject to a license granted to Developer to use

the bulk of the parking lot located on the Property as hereinafter set forth (the "**Parking Lot License**"), without charge therefor; (b) continue to have the sole responsibility to maintain, at its sole cost and expense, (i) the Demised Premises (including its buildings and all improvements built thereon) in good operating order and condition, free and clear of any and all liens, claims and encumbrances caused by Landlord and (ii) general liability insurance, in an amount not less than set forth in Schedule A hereof; provided, further, that each of the Tenant Entities shall be named as an additional insured thereunder; and (c) retain all rights of ownership with respect to the Demised Premises, free and clear of all claims of Tenant Entities under the Further Amended Lease Documents, subject only to the Parking Lot License granting the Developer access to and the right to use the bulk of the parking lot located on the Property, from and after the Second Amendment Legal Approvals, for any lawful purposes, including conducting tests, taking measurements and/or performing inspections with respect to the Zoning Change Application and applications for Development Approvals (the "**Due Diligence Activities**"). Notwithstanding anything herein contained to the contrary, the Parking Lot License shall be subject to and conditioned upon (a) the Tenant Entities', joint and several, indemnification of Landlord with respect to all claims, demands, judgments and losses arising out of and/or resulting from the Developer or its affiliates and their respective agents, servants, employees, contractors and/or representatives' access to the parking lot located on the Property prior to the Surrender Date; (b) the Tenant Entities' delivery to Landlord of insurance certificates for coverages and in amounts specified in Section 6.01, subdivisions (b), (c) and (d) of the Ground Lease with respect to the Parking Lot License; (c) the Tenant Entities' obligation to pay all Impositions on any and all non-exempt portions of the Premises; and (d) Landlord and/or its designee's right to (i) use one (1) parking space, not less than one hundred eighty (180) square feet, on Monday through and including Saturday of each week prior to the Surrender Date; and (ii) up to six (6) parking spaces, each such space not less than one hundred eighty (180) square feet, on Sunday of each week for the first eighteen (18) months following the date hereof, and thereafter, up to the Surrender Date, on a best efforts basis only depending upon the Developer's needs determined, from time-to-time, in its reasonable judgment; provided, further, that the location of the parking spaces may vary from week to week and such spaces may not be contiguous, based upon the Developer's Due Diligence Activities.

For the purposes hereof, the "**Surrender Date**" shall mean the date on which the Landlord surrenders and gives Tenant full and exclusive possession of the Premises, free and clear of all tenancies, in the condition required by the terms of the Further Amended Lease Documents, including (a) the removal of all movable personal property of the Landlord, including without limitation, the Excluded Personal Property, and (b) all portions of the Premises used for Landlord's Parking Lot License shall be delivered clean of vehicles and debris with all occupancy or signage rights agreements expired or terminated; provided that the Surrender Date shall be no earlier than three (3) years after the Second Amendment Legal Approvals, as hereinabove defined, and no later than four (4) years after the Second Amendment Legal Approvals, as hereinabove defined; provided that, in the event of the Second Amendment Termination, in accordance with the terms and conditions hereof, the Surrender Date shall be ninety (90) days after the Second Amendment Termination; provided, further, that notwithstanding anything herein contained to the contrary, Tenant, may in its sole and absolute discretion, elect to terminate the Zoning Change Application



(the **"Zoning Change Application Termination"**), in which event the Surrender Date shall be deemed to be one (1) year after Landlord's receipt of Tenant's written notice of the Zoning Change Application Termination.

The Parties further agree that the final installment of the Subsequent Additional Upfront Rent Payment in accordance with Section 9 hereof shall be paid into escrow, and held by the Escrow Agent, until the Surrender Date.

5. **Modification of § 3.01 of the Ground Lease.** The Parties hereby acknowledge and agree that the definition of Release Date and § 3.01 of the Ground Lease shall be amended and modified as follows:

Landlord and Tenant each acknowledge and agree that upon the execution and delivery of this Second Amendment (the **"Release Date"**), Escrow Agent is hereby authorized to disburse the First Installment of Additional Escrow Funds and the Second Installment of Additional Escrow Funds to the Landlord, which disbursement of escrow funds shall be non-refundable and retained by Landlord, notwithstanding any termination of this Second Amendment, in accordance with the terms hereof.

The Parties hereby release any and all claims against Escrow Agent with respect to the disbursement of all escrow funds prior to the date of this Second Amendment and/or in accordance with the terms hereof.

6. **Modification of § 3.03(a) of the Ground Lease.** The Parties hereby acknowledge and agree that the definition of Rent Commencement Date and § 3.03(a) of the Ground Lease shall be amended and modified as follows:

Landlord and Tenant each acknowledge and agree that the **"Rent Commencement Date"** shall be the earlier of (i) the date upon which the first temporary certificate of occupancy shall be issued by the New York City Department of Buildings for the New Building erected on the Demised Premises other than any unoccupied retail or commercial space, if any, or (ii) seven (7) years from the execution and delivery of this Second Amendment by Landlord and Tenant.

7. **Modification of § 4.08 of the Ground Lease.** The Parties hereby acknowledge and agree that § 4.08 of the Ground Lease shall be amended and modified as follows:

From the date hereof until the Surrender Date, Tenant shall be responsible to pay, in a timely fashion, all Impositions on any and all non-exempt portions of the Premises. From and after the Surrender Date, Landlord and Tenant shall comply with all of their respective obligations pursuant to Article 4 of the Ground Lease.

8. **Modification of § 4.11 of the Ground Lease.** The Parties hereby acknowledge and agree that § 4.11 of the Ground Lease shall be amended and modified as follows:

Landlord and Tenant acknowledge and agree that, by virtue of the terms and conditions of the Further Amended Lease Documents, the Surrender Date shall be extended in

accordance with the terms of Section 4 of this Second Amendment; provided that Tenant shall timely and fully pay any and all New York State Real Estate Transfer Tax and New York City Real Property Transfer Tax that may be due and payable for the creation, execution or delivery of the Further Amended Lease Documents or the recording of a memorandum hereof; provided, further, that the Tenant Entities hereby, jointly and severally, agree to indemnify and hold harmless Landlord, the members of its Trustee Board and officers (collectively the **"Indemnified Parties"**) with respect to (i) the payment of any and all New York State Real Estate Transfer Tax and New York City Real Property Transfer Tax that may be due and payable in connection with the transactions contemplated by the Further Amended Lease Documents; and (ii) all reasonably related fees, costs and expenses, including, without limitation, reasonable attorneys' fees incurred by the Indemnified Parties in connection therewith. Notwithstanding anything herein contained to the contrary, in the event that Tenant shall fail to pay any of the same as and when due aforesaid within ten (10) Business Days after receipt of a notice from Landlord or any Taxing Authority, then Landlord or any Leasehold Lender may pay the same on behalf of Tenant, in which event such amount paid by Landlord, with interest at the rate of 9% per annum, shall be added the next payments of Basic Rent payable under this Lease.

9. **Modification of § 5.01(b) of the Ground Lease.** The Parties hereby acknowledge and agree that the definition of New Building, New Building Delivery Date and § 5.01(b) of the Ground Lease shall be amended and modified as follows:

Landlord and Tenant acknowledge and agree that, in the event the Zoning Change Application is granted, subject to compliance with all governmental laws, rules and regulations and the terms and conditions of this Further Amended Lease Documents, Tenant may demolish the buildings and improvements now situated on the Premises and shall replace the same with a new building which shall be a minimum of 12 stories, containing not less than 90,000 gross square feet and used primarily for residential apartments (the **"New Building"**); provided that the New Building shall be an independent, free standing structure located entirely within the boundaries of the Premises.

Landlord and Tenant further acknowledge and agree that, in the event that the New Building has not been completed so as to obtain the issuance of a temporary certificate of occupancy from the Department of Buildings of the City of New York within five (5) years from the execution and delivery of this Second Amendment (the **"New Building Delivery Date"**), Tenant shall pay to Landlord the sum of One-Hundred Seventy-Five Thousand (\$175,000.00) Dollars, which amount shall constitute an additional Upfront Rent Payment (the **"Additional Upfront Rent Payment"**); provided, further, that the Additional Upfront Rent Payment shall be payable as follows: (a) Eighty-Seven Thousand Five Hundred (\$87,500.00) Dollars five (5) years from the execution and delivery of this Second Amendment; and (b) Eighty-Seven Thousand Five Hundred (\$87,500.00) Dollars six (6) years from the execution and delivery of this Second Amendment.

10. **Modification of § 6.01 of the Ground Lease.** The Parties hereby acknowledge and agree that § 6.01 of the Ground Lease shall be amended and modified as follows:

From the date hereof until the Surrender Date, Landlord shall maintain general liability

insurance in an amount not less than set forth in Schedule A hereof ; provided, further, that each of the Tenant Entities shall be named as an additional insured thereunder; provided that, to the extent the Tenant Entities exercise their right to (i) access the Premises for the purposes of taking measurements and/or performing inspections with respect to the Zoning Change Application; and/or (ii) use and occupy a portion of the parking lot located on the Premises, each of the Tenant Entities shall maintain and deliver to Landlord insurance certificates for coverages and in amounts specified in Section 6.01, subdivisions (b), (c) and (d) of the Ground Lease with respect to the Tenant Entities' access and/or use and occupancy of the Premises prior to the Surrender Date; provided, further, that, from and after the Surrender Date, Tenant shall comply with all requirements set forth in Article 6 of the Further Amended Lease Documents.

11. Modification of § 16.01 of the Ground Lease and Exhibit H. The Parties hereby acknowledge and agree that § 16.01 of the Ground Lease and Exhibit H thereto shall be amended and modified as follows:

Landlord and Tenant acknowledge and agree that Value of the Fee Estate, as reflected in Exhibit H to the Ground Lease shall be deemed to be Twelve Million Nine Hundred Thousand (\$12,900,000.00) Dollars in accordance with the appraisal obtained by Landlord, at the request of the Attorney General of the State of New York in connection with the Legal Approvals of the Amended Lease Documents.

12. Modification of Exhibit B of the Ground Lease. The Parties hereby acknowledge and agree that Exhibit B of the Ground Lease shall be amended and modified as follows:

Landlord and Tenant acknowledge and agree that Tenant shall order a continuation search with respect to the Property from Tenant's title insurance company (the "**Continuation Search**") and that any and all additional encumbrances reflected in the Continuation Search created by virtue of the execution and delivery of the Amended Lease Documents and/or the Legal Approvals of the Amended Lease Documents, shall be deemed to be Permitted Encumbrances.

13. Modification of § 3.01 of the Development Agreement. The Parties hereby acknowledge and agree that § 3.01 of the Development Agreement shall be amended and modified as follows:

Owner and Developer acknowledge and agree that the deadline for Developer to file, at Developer's sole cost and expense, applications for the Development Approvals shall be extended to two hundred seventy (270) days after the earlier of (i) the approval of the Zoning Change Application, (ii) the Zoning Change Application Termination, or (iii) the Second Amendment Termination.

14. Modification of § 2.2 of the Escrow Agreement. Landlord and Tenant each acknowledge and agree that upon the execution and delivery of this Second Amendment (the "**Release Date**"), Escrow Agent is hereby authorized to disburse the First Installment of Additional Escrow Funds and the Second Installment of Additional Escrow Funds to the Landlord, which

disbursement of escrow funds shall be non-refundable and retained by Landlord, notwithstanding any termination of this Second Amendment, in accordance with the terms hereof. The Parties hereby release any and all claims against Escrow Agent with respect to the disbursement of all escrow funds prior to the date of this Second Amendment and/or in accordance with the terms hereof.

15. Supplemental Terms of the Escrow Agreement. Landlord and Tenant each acknowledge and agree that Tenant has deposited with Escrow Agent Tenant's Maximum Share of Landlord's Fees, which sum shall be held in escrow and disbursed on a monthly basis by Escrow Agent to Biancone & Wilinsky, LLP in connection with all fees and disbursements incurred by Landlord from and after June 1, 2017 in connection with the Second Amendment Legal Services; provided that, in the event that the Second Amendment Legal Services shall be less than Tenant's Maximum Share of Landlord's Fees, the unbilled portion of Tenant's Maximum Share of Landlord's Fees shall be disbursed to Tenant. The Parties hereto acknowledge, agree and ratify that, prior to the date hereof, the Tenant Entities have authorized, in one or more writings, the Escrow Agent to disburse to Biancone & Wilinsky, LLP a portion of Tenant's Maximum Share of Landlord's Fees in connection with Second Amendment Legal Services from and after June 1, 2017.

16. Acknowledgment; Effect of Amendment. Each of the Parties acknowledges and agrees that there are no defaults by the other Parties under the Amended Lease Documents as of the date hereof. Except as expressly amended and modified herein, the Amended Lease Documents shall remain unchanged and in full force and effect, and the Parties do hereby ratify and affirm the same. In the event of a conflict between this Second Amendment and the Amended Lease Documents, the terms of this Second Amendment shall control.

17. Counterparts; Facsimile. This Second Amendment may be executed in multiple counterparts, each of which, when assembled to include a signature by each party contemplated to sign this Second Amendment, shall constitute one complete and fully executed Second Amendment. Counterparts to this Second Amendment may be executed and delivered by facsimile or e-mail transmission and shall constitute originals for all purposes.

18. Notices. All notices, elections, demands, requests, responses and other communications hereunder (each a "**Notice**") shall be in writing, signed by the party giving the same or by its attorneys, and shall be deemed to have been duly given if: (i) personally delivered with proof of delivery thereof, or (ii) delivered to an overnight delivery service with receipt for delivery, or (iii) deposited in the United States mail, postage prepaid, U.S. Express Mail with return receipt requested, or (iv) transmitted by e-mail with (if available on the sender's email system) "read receipt" requested or by facsimile, provided that such facsimile or e-mail transmission is confirmed within one Business Day thereafter in the manner set forth in either clause (i), (ii) or (iii) of this sentence; provided, however, that the time period in which a response to any such notice, election, demand or request must be given shall commence on the date of receipt thereof. Personal delivery to a party or to any officer, partner, manager, member, agent, managerial employee or receiving office of such party at said address shall constitute receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt. Each notice shall be addressed to the respective parties as follows:

if to Tenant Entities:

S & F 126 ST. LLC  
CS Construction Group LLC  
116 Nostrand Avenue  
Brooklyn, New York 11205  
Attention: Mr. Chaskiel Strulovitch  
Facsimile: (718) 384-0864  
E-mail: cs@csrealestate.com

with a copy to:

Peter Schmidt, Esq.  
P.O. Box 751  
Washington Bridge Station  
New York, NY 10033  
Facsimile: (212) 795-2943  
E-mail: punchjur@nyc.rr.com

if to Landlord:

Thomas Memorial Wesleyan Church  
260-270 West 126<sup>th</sup> Street  
New York, NY 10027  
Attention: Reverend

with a copy to:

Biancone & Wilinsky, LLP  
230 Park Avenue  
New York, NY 10169  
Attn: Thomas Wilinsky, Esq.  
Facsimile: (212) 661-4774  
Email: [twilinsky@bianconeandwilinsky.com](mailto:twilinsky@bianconeandwilinsky.com)

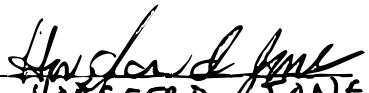
or to such other address or party as either party may have furnished to the other in writing in accordance herewith, except that notices of change of address or addresses shall only be effective upon receipt.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Parties have executed this Second Amendment as of the date first set forth above.

LANDLORD:

**THOMAS MEMORIAL WESLEYAN  
METHODIST CHURCH, INC.**

By:   
Name: HAROLD JONES  
Title: PRESIDENT

TENANT:

**S & F 126 ST. LLC**

By: \_\_\_\_\_  
Name: Chaskiel Strulovitch  
Title: Manager

DEVELOPER:

**CS CONSTRUCTION GROUP LLC**

By: \_\_\_\_\_  
Name: Chaskiel Strulovitch  
Title: Manager

IN WITNESS WHEREOF, the Parties have executed this Second Amendment as of the date first set forth above.

LANDLORD:

**THOMAS MEMORIAL WESLEYAN  
METHODIST CHURCH, INC.**

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

TENANT:

**S & F 126 ST. LLC**

By: \_\_\_\_\_  
Name: Chaskiel Strulovitch  
Title: Manager

DEVELOPER:

**CS CONSTRUCTION GROUP LLC**

By: \_\_\_\_\_  
Name: Chaskiel Strulovitch  
Title: Manager

## SCHEDULE A

**TRAVELERS** 

One Tower Square, Hartford, Connecticut 06183

**BUSINESSOWNERS COVERAGE PART DECLARATIONS**

RELIGIOUS PAC

POLICY NO.: 680-1H507516-17-42

ISSUE DATE: 03/08/2017

INSURING COMPANY:

THE CHARTER OAK FIRE INSURANCE COMPANY

POLICY PERIOD:

From 04-22-17 to 04-22-18 12:01 A.M. Standard Time at your mailing address

FORM OF BUSINESS: CORPORATION

COVERAGES AND LIMITS OF INSURANCE: Insurance applies only to an item for which a "limit" or the word "included" is shown.

**COMMERCIAL GENERAL LIABILITY COVERAGE**

OCCURRENCE FORM	LIMITS OF INSURANCE	
General Aggregate (except Products-Completed Operations Limit)	\$	2,000,000
Products-completed Operations Aggregate Limit	\$	2,000,000
Personal and Advertising Injury Limit	\$	1,000,000
Each Occurrence Limit	\$	1,000,000
Damage to Premises Rented to You	\$	300,000
Medical Payments Limit (any one person)	\$	5,000

**BUSINESSOWNERS PROPERTY COVERAGE**

DEDUCTIBLE AMOUNT: Businessowners Property Coverage: \$ 1,000 per occurrence.  
Building Glass: \$ 250 per occurrence.

BUSINESS INCOME/EXTRA EXPENSE LIMIT: Not Covered

Period of Restoration-Time Period:

ADDITIONAL COVERAGE:

Fine Arts: \$ 25,000

Other additional coverages apply and may be changed by an endorsement. Please read the policy.

**SPECIAL PROVISIONS:**

**COMMERCIAL GENERAL LIABILITY COVERAGE  
IS SUBJECT TO A GENERAL AGGREGATE LIMIT**

MP T0 01 02 05 (Page 1 of 2)



# S & F 126 St. LLC

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5/24/2023

Thomas Memorial Wesleyan Methodist Church, Inc.  
260-270 West 126th Street  
New York, New York 10027  
Attention: Margaret Edwards

- And -

Biancone & Wilinsky, LLP  
230 Park Avenue  
New York, New York 10169  
Attention: Thomas B. Wilinsky Esq.

Re: Agreement of Lease, dated as of October 5, 2016, as amended (the "Lease")  
Between Thomas Memorial Wesleyan Methodist Church, Inc., as Landlord, and  
S & F 126 ST. LLC, as Tenant, and  
Development Agreement, dated as of October 5, 2016 (the "Development Agreement"),  
between CS Construction Group, LLC, as the initial Developer, and Thomas Memorial  
Wesleyan Methodist Church, Inc.,  
Notice of Surrender Date

Gentlemen:

Reference is made to the captioned Lease and Development Agreement and their related documents, agreements and amendments. Please be advised that all capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed to them in the Lease and the Development Agreement.

Notice is hereby given that the Surrender Date under the captioned Lease, as such term is defined in Section 2.03 thereof, is hereby fixed and set as June 24\_\_, 2023. Accordingly, on that date, the Landlord must surrender and give the Tenant full and exclusive possession of the Demised Premises, free and clear of all tenancies, in the condition required by the terms of the Lease, including (a) the removal of all movable personal property of the Landlord, including without limitation, the Excluded Personal Property, and (b) all portions of the Demised Premises used for parking shall be delivered clean of vehicles and debris with all occupancy or signage rights agreements expired or terminated. Any delay in vacating the Demised Premises shall be considered a Landlord Delay for purposes of this Lease and the Development Agreement.

Please note as we reviewed the insurance section of the lease it sounds that the requirements are for the occupied completed operational building.

As the building will be demolished and we are still working on construction/ zoning plans the Workers compensation and the Loss of rent insurance are not applicable, in addition the GL/ Excess limits we now carry are for the lot/building that is not fully operational, once construction will commence the limits will be fulfilled.

PLEASE BE ADVISED ACCORDINGLY

S & F 126 St. LLC

By \_\_\_\_\_

Exhibit G  
Site Contact List and Repository Confirmation

## **Contact List Information**

### **1. The Chief Executive Officer And Planning Board Chairperson Of Each County, City, Town And Village In Which The Property Is Located.**

Mayor Eric Adams  
City Hall  
260 Broadway Avenue  
New York, New York 10007

Daniel Garodnick, Commissioner  
Department of City Planning  
120 Broadway, 31<sup>st</sup> Floor  
New York, NY 10271

Rohit Aggarwala, Commissioner  
New York City Department of Environmental Protection  
59-17 Junction Boulevard  
Flushing, NY 11373

Mark McIntyre, Esq., Acting Director  
Mayor's Office of Environmental Remediation  
100 Gold Street, 2<sup>nd</sup> Floor  
New York, NY 10038

Julie Stein  
Office of Environmental Assessment & Planning  
New York City Department of Environmental Protection  
96-05 Horace Harding Expressway  
Flushing, NY 11373

Mark Levine  
Manhattan Borough President  
The David N. Dinkins Municipal Building  
1 Centre Street, 19<sup>th</sup> Floor  
New York, NY 10007

NYC Department of City Planning  
Equitable Life Building  
120 Broadway, 31<sup>st</sup> Floor  
New York, NY 10271

Yusef Salaam  
Council Member, District 9  
163 Lenox Avenue  
New York, NY 10026

Inez E. Dickens  
Assembly Member, District 70  
Harlem State Office Building  
163 West 125<sup>th</sup> Street, Suite 911  
New York, NY 10027

Cordell Cleare  
State Senator, District 30  
Harlem State Office Building  
163 West 125<sup>th</sup> Street, Suite 912  
New York, NY 10027

Adriano Espaillat  
U.S. House of Representatives  
Harlem State Office Building  
163 West 125<sup>th</sup> Street, Suite 508  
New York, NY 10027

Charles Schumer  
U.S. Senator  
780 Third Avenue, Suite 2301  
New York, NY 10017

Kirsten Gillibrand  
U.S. Senator  
780 Third Avenue, Suite 2601  
New York, NY 10017

Hon. Milton Tingling  
New York County Clerk  
New York County Courthouse  
60 Centre Street, Room 161  
New York, NY 10007

## **2. Residents, Owners And Occupants Of The Property And Properties Adjacent To The Property.**

### Site Owner

Thomas Memorial Wesleyan Methodist Church  
270 West 126<sup>th</sup> Street  
New York, NY 10027

### 253 West 125<sup>th</sup> Street

Commercial building owned by: Apollo Theatre Redevelopment Corporation  
Owner address: 253 West 125<sup>th</sup> Street, New York, NY 10027  
Operated by: Apollo Theater  
Operator address: 253 West 125<sup>th</sup> Street, New York, NY 10027

### 261 West 125<sup>th</sup> Street

Commercial building owned by: Commonwealth Local Development Corp.  
Owner address: 261 West 125<sup>th</sup> Street, New York, NY 10027

Operated by: Blick Art Materials  
Operator address: 261 West 125<sup>th</sup> Street, New York, NY 10027  
Operated by: Banana Republic Factory Store  
Operator address: 261 West 125<sup>th</sup> Street, New York, NY 10027

2330 Frederick Douglass Boulevard

Commercial/residential building owned by: Bishop S.C. Madison, Trustee  
Owner address: 2330 Frederick Douglass Boulevard, New York, NY 10027  
Operated by: Boost Mobile  
Operator address: 271 West 125<sup>th</sup> Street, New York, NY 10027

2338 Frederick Douglass Boulevard

Commercial building owned by: United House of Prayer  
Owner address: 2338 Frederick Douglass Boulevard, New York, NY 10027  
Operated by: MoneyGram  
Operator address: 2338 Frederick Douglass Boulevard, New York, NY 10027  
Operated by: RiteCheck  
Operator address: 2338 Frederick Douglass Boulevard, New York, NY 10027

2340 Frederick Douglass Boulevard

Commercial building owned by: Amnews Corporation  
Owner address: 2340 Frederick Douglass Boulevard, New York, NY 10027  
Operated by: Amsterdam News  
Operator address: 2340 Frederick Douglass Boulevard, New York, NY 10027

2342 Frederick Douglass Boulevard

Commercial building owned by: United House of Prayer  
Owner address: 2342 Frederick Douglass Boulevard, New York, NY 10027  
Operated by: H&R Block  
Operator address: 2342 Frederick Douglass Boulevard, Suite C8, New York, NY 10027  
Operated by: True Value Discount LLC  
Operator address: 2346 Frederick Douglass Boulevard, New York, NY 10027

2350 Frederick Douglass Boulevard

Commercial/residential building owned/operated by: NYC Housing Preservation & Development  
Owner address: 100 Gold Street, New York, NY 10038

267 West 126<sup>th</sup> Street

Residential condo building operated by: HCCI Balton Housing Development Fund Corporation  
Owner address: 267 West 126<sup>th</sup> Street, New York, NY 10027

261 West 126<sup>th</sup> Street

Commercial building owned by: Bow Realty LLC  
Owner address: 261 West 126<sup>th</sup> Street, New York, NY 10027  
Operated by: Home Base Ent.  
Operator address: 261 West 126<sup>th</sup> Street, New York, NY 10027

259 West 126<sup>th</sup> Street

Religious building owned/operated by: Trinity Ame Church  
Owner address: 259 West 126<sup>th</sup> Street, New York, NY 10027

257 West 126<sup>th</sup> Street

Educational building owned by: NYC Department of Education

Owner address: 257 West 126<sup>th</sup> Street, New York, NY 10027

Operated by: PS 154 Harriet Tubman Learning Center

Operator address: 250 West 127<sup>th</sup> Street, New York, NY 10027

Operated by: New Light Baptist Church

Operated address: 250 West 127<sup>th</sup> Street, New York, NY 10027

**3. Local News Media From Which The Community Typically Obtains Information.**

Harlem Community News

P.O. Box 1775

New York, NY 10027

New York Daily News

270C Duffy Avenue

Hicksville, NY 11801

New York Post

1211 Avenue of the Americas

New York, NY 10036

**4. The Public Water Supplier Which Services The Area In Which The Property Is Located**

Public water is provided from upstate New York reservoirs by the City of New York, Department of Environmental Protection (Consumer Service Center: 59-17 Junction Boulevard, 10th Floor, Flushing, NY 11373).

Rohit Aggarwala

Commissioner, NYC Dept. of Environmental Protection

59-17 Junction Boulevard

Flushing, NY 11373

**5. Any Person Who Has Requested To Be Placed On The Contact List.**

We are unaware of any requests for inclusion on the contact list.

**6. The Administrator Of Any School Or Day Care Facility Located On Or Near The Property.**

Three schools and two day care facilities are within 1,000 feet of the site:

PS 154 Harriet Tubman Learning Center

250 West 127<sup>th</sup> Street

New York, NY 10027

(212) 864-2400

Principal: Elizabeth Jarrett

Utopia Children's Center

236 West 129<sup>th</sup> Street

New York, NY 10027  
(212) 663-7375  
Educational Director: Teresa Evans

New York Center for Child Development (Daycare)  
159 West 127<sup>th</sup> Street  
New York, NY 10027  
Executive Director: Evelyn Blanck, LCSW

New York Center for Child Development (School)  
127 West 127<sup>th</sup> Street  
New York, NY 10027  
Executive Director: Evelyn Blanck, LCSW

Harlem Children's Zone – Promise Academy 1 Charter School  
245 West 129<sup>th</sup> Street  
New York, NY 10027  
(212) 360-3232  
Superintendent: Achil Petit

**7. Locations of the Document Repositories**

New York Public Library – George Bruce Library  
518 West 125<sup>th</sup> Street  
New York, NY 10027

Manhattan Community Board #10  
215 West 125<sup>th</sup> Street, 4<sup>th</sup> Floor  
New York, NY 10027

**8. In Cities With A Population of One Million or More, The Local Community Board If The Proposed Site Is Located Within Such Community Board's Boundaries**

Manhattan Community Board #10  
215 West 125<sup>th</sup> Street, 4<sup>th</sup> Floor  
New York, NY 10027



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## 260 W 126th Street - Document Repository Request

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**Madline Emile** <madlineemile@nypl.org>

Wed, Aug 6, 2025 at 3:46 PM

To: Ashley Platt <aplatt@tenen-env.com>

Hi Ashley,

Kindly forward a copy of a Document Repository Letter for review and signature.

Please include the **link which will house the documents** to the library at your earliest convenience.

Be advised that the Library **does not accept** any physical copies including digitized copies on USB, CD, or otherwise.

Once the document is fully executed and the link to the digital file is received, the Library manager will upload the link to the Library site where the documents will be housed.

Please let me know if you have any questions or concerns.

Thank you for your patience.

Warm Regards,

**Maddie Emile**

Paralegal

Legal Department

### **The New York Public Library**

Stephen A. Schwarzman Building

476 Fifth Avenue, New York, NY 10018

212.930.0552 | x20552

[nypl.org](https://nypl.org)

On Mon, Aug 4, 2025 at 10:44 AM Ashley Platt <aplatt@tenen-env.com> wrote:

Good Morning,

I am reaching out to request permission to use the NYPL main branch (Stephen A. Schwarzman Building) as a document repository for a property entering the NYS Brownfield Cleanup Program (BCP). I spoke with a NYPL representative on the phone, who indicated the legal department is where I should be directing this request to.

The property is located at [260 West 126th Street](#) in the Harlem neighborhood of Manhattan. The BCP application requires the designation of a document repository for reports so they can be reviewed by the public.

We will require space for the reports for approximately 12-18 months. The total shelf space would likely be less than twelve inches. The documents will be reports on 8-1/2" high paper. An electronic copy can also be provided on flash drive if you do not have the space to hold physical copies.

Please respond in writing that the NYPL main branch (Stephen A. Schwarzman Building) will act as the document repository, as noted above, or contact me if you need any additional information.

Please note, we are requesting the main branch of NYPL as a document repository for this project, as the branches at Harry Belafonte 115th St and Harlem have both already responded that they are unable to act as repositories for this project.

Thank you!

Sincerely,  
Ashley Platt

---

Ashley Platt  
Tenen Environmental LLC  
121 West 27th Street, **Suite 303**  
New York, NY 10001  
[aplatt@tenen-env.com](mailto:aplatt@tenen-env.com)  
O: 646.606.2332 x110  
C: 908.892.1354

Please note our new suite number above.



121 West 27<sup>th</sup> Street, 303  
New York, NY 10001  
(646) 606-2332

August 7, 2025

New York State Department of Environmental Conservation Division of  
Environmental Remediation  
625 Broadway, 12<sup>th</sup> Floor  
Albany, NY 12233-7016

Attn: Marlen Salazar, Project Manager

Re: Document Repository Request  
260 West 126<sup>th</sup> Street – New York, NY  
Block 1931, Lot 56  
BCP Site No. C231164

Dear Marlen,

This letter serves as acknowledgement that the New York Public Library (NYPL) Branch, George Bruce Library, located at 518 West 125th Street New York, NY 10027 will act as a document repository for the 260 West 126<sup>th</sup> Street Brownfield Cleanup Program (BCP) site (BCP Site No. C231164) located in the Harlem neighborhood of New York, NY. NYPL does not accept physical copies of documents, including digitized versions on flash drive, CD, etc. All project documents must be submitted via an upload link. The library manager will upload the link to the NYPL site where the documents will be housed for public review.

Please contact us if you need any additional information.

Sincerely,

**Tenen Environmental LLC**

A handwritten signature in blue ink, appearing to read "Matt M. Carroll".

Matthew M. Carroll, PE  
121 West 27<sup>th</sup> Street, Suite 303  
New York, NY 10001  
(646) 606-2332 x103

NYPL Representative Signature: \_\_\_\_\_

NYPL Representative Name/Title: Junelle Carter-Bowman, Library Manager



Hon. Marquis A. Harrison  
Chairperson

# CITY OF NEW YORK MANHATTAN COMMUNITY BOARD 10

215 West 125th Street, 4th Floor New York, NY 10027

T: 212-749-3105 F: 212-662-4215

Website: <https://cbmanhattan.cityofnewyork.us/cb10/>

To Whom It May Concern,

Thank you for reaching out with this request and for considering Manhattan Community Board 10 as a potential document repository. We truly value opportunities to support transparency and community engagement, particularly on matters that affect our neighborhood.

While our office does not currently have the staffing capacity to host and manage a physical repository, we are pleased to serve as a public repository electronically. We will be happy to share the information on our Community Board 10 website and provide a link so the public can access the materials directly.

We believe this approach will allow us to help keep our community informed while working within our current resources.

Thank you again for your partnership and for the important work you are doing to support our communities.

Sincerely,

Marquis A. Harrison  
Chairperson, Manhattan Community Board 10