



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

SUBMITTAL INSTRUCTIONS:

1. Compile the application package in the following manner:
 - a. one file in non-fillable PDF of the application form plus supplemental information, excluding any previous environmental reports and work plans, if applicable
 - b. if the application requires submittal of previous environmental reports to support the addition of new property, an affordable housing agreement to support the determination for tangible property credits in New York City, or other large files, please include each as a separate PDF.
2. Compress all files (PDFs) into one zipped/compressed folder
3. Submit the application to the Site Control Section either via email or ground mail, as described below.

Please select only ONE submittal method – do NOT submit both email and ground mail.

a. VIA EMAIL:

- Upload the compressed folder to the NYSDEC File Transfer Service (<http://fts.dec.state.ny.us/fts>) or another file-sharing service.
- Copy the download link into the body of an email with any other pertinent information or cover letter attached to the email.
- Subject line of the email: “*Amendment Application NEW - *Site Name* - *Site Code**”
- Email your submission to DESiteControl@dec.ny.gov – do NOT copy Site Control staff.

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, 11th Floor
Albany, NY 12233-7020

SITE NAME:	94-15 Sutphin Boulevard - Site B
SITE CODE:	C241278



Department of
Environmental
Conservation

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

Please refer to the attached instructions for guidance on completing this application.

Submission of a full BCP application will be required should this application be determined to be a major amendment. If the amendment seeks to add or subtract more than an insignificant acreage of property to the BCA, applicants are encouraged to consult with the DEC project team prior to submitting this application.

PART I. BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION

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

<input checked="" type="checkbox"/>	Amendment to modify the existing BCA (check one or more boxes below):
<input checked="" type="checkbox"/>	Add applicant(s)
<input type="checkbox"/>	Substitute applicant(s)
<input type="checkbox"/>	Remove applicant(s)
<input type="checkbox"/>	Change in name of applicant(s)
<input type="checkbox"/>	Amendment to reflect a transfer of title to all or part of the brownfield site:
	<p>a. A copy of the recorded deed must be provided. Is this attached? Yes <input type="radio"/> No <input type="radio"/></p> <p>b. <input type="checkbox"/> Change in ownership <input type="checkbox"/> Additional owner (such as a beneficial owner)</p> <p>c. Pursuant to 6 NYCRR Part 375-1.11(d), a Change of Use form should have been submitted prior to a transfer of ownership. If this has not yet been submitted, include the form with this application. Is this form attached? Yes <input type="radio"/> No <input type="radio"/> Submitted on: _____</p>
<input type="checkbox"/>	Amendment to modify description of the property(ies) listed in the existing BCA
<input type="checkbox"/>	Amendment to expand or reduce property boundaries of the property(ies) listed in the existing BCA
<input type="checkbox"/>	Sites in Bronx, Kings, New York, Queens or Richmond Counties ONLY: amendment to request determination that the site is eligible for tangible property credit component of the brownfield redevelopment tax credit.
<input checked="" type="checkbox"/>	Other (explain in detail below)

2. REQUIRED: Please provide a brief narrative describing the specific requests included in this amendment: The purpose of this BCA Amendment No. 2 application is to add "Sutphin QOZB LLC" to the BCA as:

- (i) a new Remedial Party/Volunteer in addition to the existing Remedial Party/Volunteer, "95th Avenue Equities LLC", which will remain a Remedial Party. See Exhibit A for all supporting documents to add new Volunteer.
- (ii) a long-term lessee pursuant to a Ground Lease with the fee Owner, "95th Avenue Equities LLC". See Exhibit B for the long-term lessee's contact information and all supporting documents.

SECTION I: CURRENT AGREEMENT INFORMATION*This section must be completed in full. Attach additional pages as necessary.*

BCP SITE NAME: 94-15 Sutphin Boulevard - Site B	BCP SITE CODE: C241278
NAME OF CURRENT APPLICANT(S): 95th Avenue Equities LLC	
INDEX NUMBER OF AGREEMENT: C241278-01-24	DATE OF ORIGINAL AGREEMENT: 02/12/2024

SECTION II: NEW REQUESTOR INFORMATION*Complete this section only if adding new requestor(s) or the name of an existing requestor has changed.*

NAME: Sutphin QOZB LLC			
ADDRESS: 670 Myrtle Avenue, Suite 6373			
CITY/TOWN: Brooklyn, NY			ZIP CODE: 11205
PHONE: 718-619-0014	EMAIL: jj@heartfeltbuilders.com		
REQUESTOR CONTACT: J.J. Weiss			
ADDRESS: 670 Myrtle Avenue, Suite 6373			
CITY/TOWN: Brooklyn, NY			ZIP CODE: 11205
PHONE: 718-619-0014	EMAIL: jj@heartfeltbuilders.com		
REQUESTOR'S CONSULTANT: Tenen Environmental, LLC		CONTACT: Mohamed Ahmed, Ph.D., PG, CPG	
ADDRESS: 121 West 27th Street, Suite 702			
CITY/TOWN: New York, NY			ZIP CODE: 10001
PHONE: 646-606-2332	EMAIL: mahmed@tenen-env.com		
REQUESTOR'S ATTORNEY: Sive, Paget & Riesel, P.C.		CONTACT: Michael Bogin	
ADDRESS: 560 Lexington Avenue, 15th Floor			
CITY/TOWN: New York, NY			ZIP CODE: 10022
PHONE: 646-378-7210	EMAIL: mbogin@sprlaw.com		
			Y
			N
1. Is the requestor authorized to conduct business in New York State?			<input checked="" type="radio"/>
2. If the requestor is a corporation, LLC, LLP, or other entity requiring authorization from the NYS Department of State (NYSDOS) to conduct business in NYS, the requestor's name must appear exactly as given above in the NYSDOS Corporation & Business Entity Database. A print-out of entity information from the NYSDOS database must be submitted with this application. Is this print-out attached?			<input checked="" type="radio"/>
3. Requestor must submit proof that the party signing this application and amendment has the authority to bind the requestor. This would be documentation showing the authority to bind the requestor in the form of corporate organizational papers, a Corporate Resolution or an Operating Agreement or Resolution for an LLC. Is this proof attached?			<input checked="" type="radio"/>
4. If the requestor is an LLC, the names of the members/owners must be provided. Is this information attached?			<input checked="" type="radio"/>
5. Describe the new requestor's relationship to all existing applicants: The new Requestor, "Sutphin QOZB LLC", is an affiliated ground tenant of and within the same organizational family as the existing Volunteer, "95th Avenue Equities LLC".			<input checked="" type="radio"/>

SECTION III: CURRENT PROPERTY OWNER/OPERATOR INFORMATION*Complete this section only if a transfer of ownership has taken place. Attach additional pages if necessary.*

Owner listed below is:		<input type="checkbox"/> Existing Applicant	<input type="checkbox"/> New Applicant	<input type="checkbox"/> Non-Applicant
OWNER'S NAME:			CONTACT:	
ADDRESS:				
CITY/TOWN:			ZIP CODE:	
PHONE:		EMAIL:		
OPERATOR:			CONTACT:	
ADDRESS:				
CITY/TOWN:			ZIP CODE:	
PHONE:		EMAIL:		

SECTION IV: NEW REQUESTOR ELIGIBILITY INFORMATION*Complete this section only if adding new requestor(s). Attach additional pages if necessary.*

If answering "yes" to any of the following questions, please provide additional information as an attachment. Please refer to ECL § 27-1407 for details.

	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 presently subject to an existing order for the investigation, removal or remediation relating to 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 the 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 subject law; (ii) any order or determination; (iii) any regulation implementing ECL Article 27 Title 14; or (iv) any similar statute or regulation of the state or federal government? If so, provide additional information as an attachment.	<input type="radio"/>	<input checked="" type="radio"/>
5. Has the requestor previously been denied entry to the BCP? If so, include information relative to the application, such as site name, address, DEC site number, reason for denial, and any other relevant information.	<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 or contaminants?	<input type="radio"/>	<input checked="" type="radio"/>
7. Has the requestor been convicted of a criminal offense (i) involving the handling, storing, treating, disposing or transporting of contaminants; or (ii) that involves a violent felony, fraud, bribery, perjury, theft, or offense against public administration (as that term is used in Article 195 of the Penal Law) under federal law or the laws of any state?	<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 the Department, or submitted a false statement or made use of or made a false statement in connection with any document or application submitted to the Department?	<input type="radio"/>	<input checked="" type="radio"/>

SECTION IV: NEW REQUESTOR ELIGIBILITY INFORMATION (continued)		Y	N
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"/>
12. THE NEW REQUESTOR MUST CERTIFY THAT IT IS EITHER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE WITH ECL § 27-1405(1) BY CHECKING ONE OF THE BOXES BELOW:			
<input type="checkbox"/> PARTICIPANT A requestor who either (1) was the owner of the site at the time of the disposal of contamination or (2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of contamination.		<input checked="" type="checkbox"/> 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 a hazardous waste or discharge of petroleum. NOTE: By checking this box, a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site certifies that they have exercised appropriate care with respect to the hazardous waste found at the facility by taking reasonable steps to: (i) stop any continuing discharge; (ii) prevent any threatened future release; (iii) prevent or limit human, environmental or natural resource exposure to any previously released hazardous waste. If a requestor's liability arises solely as a result of ownership, operation of or involvement with the site, they must submit a statement describing why they 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?		N/A <input type="radio"/>	Y <input checked="" type="radio"/> N <input type="radio"/>
14. Requestor's relationship to the property (check all that apply): <input type="checkbox"/> Prior Owner <input type="checkbox"/> Current Owner <input type="checkbox"/> Potential/Future Purchaser <input checked="" type="checkbox"/> Other: <u>Ground Lessee</u>			
15. If the requestor is not the current site owner, proof of site access sufficient to complete the remediation must be submitted. Proof must show that the requestor will have access to the property before being added to the BCA and throughout the BCP project, including the ability to place an easement on the site. Is this proof attached?		N/A <input type="radio"/>	Y <input checked="" type="radio"/> N <input type="radio"/>

SECTION V: PROPERTY DESCRIPTION AND REQUESTED CHANGES

Complete this section only if property is being added to or removed from the site, a lot merger or other change to site SBL(s) has occurred, or if modifying the site address for any reason.

1. Property information on current agreement (as modified by any previous amendments, if applicable):

ADDRESS:

CITY/TOWN

ZIP CODE:

CURRENT PROPERTY INFORMATION

TOTAL ACREAGE OF CURRENT SITE:

PARCEL ADDRESS

SECTION

BLOCK

LOT

ACREAGE

2. Requested change (check appropriate boxes below):

☐

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

PARCELS ADDED:

PARCEL ADDRESS

SECTION

BLOCK

LOT

ACREAGE

TOTAL ACREAGE TO BE ADDED: _____

☐

b. Reduction of property

PARCELS REMOVED:

PARCEL ADDRESS

SECTION

BLOCK

LOT

ACREAGE

TOTAL ACREAGE TO BE REMOVED: _____

☐

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

NEW PROPERTY INFORMATION:

PARCEL ADDRESS

SECTION

BLOCK

LOT

ACREAGE

3. TOTAL REVISED SITE ACREAGE: _____

4. For all changes requested in this section, documentation must be provided. Required attachments are listed in the application instructions. Is the required documentation attached?

Y

☐

N

☐

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

Complete this section only if the site is located within the five counties comprising New York City and the requestor is seeking a determination of eligibility for tangible property credits. Provide supporting documentation as required. Refer to the application instructions for additional information.

	Y	N
1. Is the site located in Bronx, Kings, New York, Queens or Richmond County?	<input type="radio"/>	<input type="radio"/>
2. Is the requestor seeking a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit?	<input type="radio"/>	<input type="radio"/>
3. Is at least 50% of the site area located within an environmental zone pursuant to Tax Law 21(6)? Please see DEC's website for more information.	<input type="radio"/>	<input type="radio"/>
4. Is the property upside down as defined below?	<input type="radio"/>	<input type="radio"/>
<p>From ECL 27-1405(31):</p> <p>"Upside down" shall mean a property where the projected and incurred cost of the investigation and remediation which is protective for the anticipated use of the property equals or exceeds seventy-five percent of its independent appraised value, as of the date of submission of the application for participation in the brownfield cleanup program, developed under the hypothetical condition that the property is not contaminated.</p>		
5. Is the project and affordable housing project as defined below?	<input type="radio"/>	<input type="radio"/>
<p>From 6 NYCRR 375-3.2(a) as of August 12, 2016:</p> <p>(a) "Affordable housing project" means, for purposes of this part, title fourteen of article twenty-seven of the environmental conservation law and section twenty-one of the tax law only, a project that is developed for residential use or mixed residential use that must include affordable residential rental units and/or affordable home ownership units.</p> <p>(1) Affordable residential rental projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which defines (i) a percentage of the residential rental units in the affordable housing project to be dedicated to (ii) tenants at a defined maximum percentage of the area median income based on the occupants' household's annual gross income.</p> <p>(2) Affordable home ownership projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which sets affordable units aside for homeowners at a defined maximum percentage of the area median income.</p> <p>(3) "Area median income" means, for purposes of this subdivision, the area median income for the primary metropolitan statistical area, or for the county if located outside a metropolitan statistical area, as determined by the United States Department of Housing and Urban Development, or its successor, for a family of four, as adjusted for family size.</p>		

APPLICATION SUPPLEMENT FOR NYC SITES (continued)	Y	N
<p>6. Is the project a planned renewable energy facility site as defined below?</p> <p>From ECL 27-1405(33) as of April 9, 2022:</p> <p>"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.</p> <p>From Public Service Law Article 4 Section 66-p as of April 23, 2021:</p> <p>(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.</p>	<input type="radio"/>	<input type="radio"/>
<p>7. Is the site located within a disadvantaged community, within a designated Brownfield Opportunity Area, and meets the conformance determinations pursuant to subdivision ten of section nine-hundred-seventy-r of the general municipal law?</p> <p>From ECL 75-0111 as of April 9, 2022:</p> <p>(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.</p>	<input type="radio"/>	<input type="radio"/>

PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT**EXISTING AGREEMENT INFORMATION**

BCP SITE NAME: 94-15 Sutphin Boulevard - Site B

BCP SITE CODE: C241278

NAME OF CURRENT APPLICANT(S): 95th Avenue Equities LLC

INDEX NUMBER OF AGREEMENT: C241278-01-24

DATE OF ORIGINAL AGREEMENT 02/12/2024

Declaration of Amendment:

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

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

STATEMENT OF CERTIFICATION AND SIGNATURES: NEW REQUESTOR

Complete the appropriate section (individual or entity) below only if this Amendment adds a new requestor. Attach additional pages as needed.

(Individual)

I hereby affirm that the information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: _____ Signature: _____

Print Name: _____

(Entity)

I hereby affirm that I am the Authorized Signatory (title) of Sutphin QOZB LLC (entity); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.

Raizel Feder's signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 7/22/24 Signature: Raizel FederPrint Name: Raizel Feder / Sutphin QOZB LLC

STATEMENT OF CERTIFICATION AND SIGNATURES: EXISTING APPLICANT(S)

An authorized representative of each applicant must complete and sign the appropriate section (individual or entity) below. Attach additional pages as needed.

(Individual)

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

Date: _____ Signature: _____

Print Name: _____

(Entity)

I hereby affirm that I am the Authorized Signatory (title) of 95th Avenue Equities LLC (entity) which is a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. Raizel Feder's signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 7/22/24 Signature: Raizel FederPrint Name: Raizel Feder / 95th Avenue Equities LLC**PLEASE SEE THE FOLLOWING PAGE FOR SUBMITTAL INSTRUCTIONS****REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT**

Status of Agreement:

<input type="checkbox"/> PARTICIPANT A requestor who either (1) was the owner of the site at the time of the disposal of contamination or (2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of contamination.	<input type="checkbox"/> VOLUNTEER A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the contamination.
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Effective Date of the Original Agreement: 02/12/2024

Signature by the Department:

DATED: _____

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:

Andrew O. Guglielmi, Director
Division of Environmental Remediation

INSTRUCTIONS FOR COMPLETING AN APPLICATION TO AMEND BROWNFIELD CLEANUP AGREEMENT AND AMENDMENT

This form must be used to add or remove a party, reflect a change in property ownership to all or part of the site, modify a property description, or reduce/expand property boundaries for an existing BCP Agreement.

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

COVER PAGE

Please select all options that apply. Provide a brief narrative of the nature of the amendment requested.

SECTION I: CURRENT AGREEMENT INFORMATION

This section must be completed in its entirety. The information entered here will auto-populate throughout the application and amendment.

Provide the site name, site code and name(s) of current requestor(s) exactly as this information appears on the existing agreement. This should reflect any changes made by previous amendments to the site name or parties on the BCA. Provide the agreement index number and the date of the initial BCA.

SECTION II: NEW REQUESTOR INFORMATION

This section is to be completed only if a new requestor is being added to the BCA, or if the name of the existing requestor has changed with the NYSDOS.

Requestor Name

Provide the name of the person(s)/entity requesting participation in the BCP. (If more than one, attach additional sheets with requested information.) The requestor is the person or entity seeking DEC review and approval of the remedial program.

If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's Corporation & Business Entity Database.

Requestor, Consultant and Attorney Contact Information

Provide the contact name, mailing address, telephone number and e-mail address for each of the following contacts:

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

Requestor's Consultant: Include the name of the consulting firm and the contact person.

Requestor's Attorney: Include the name of the law firm and the contact person.

Required Attachments for Section II:

- 1. NYSDOS Information: A print-out of entity information from the NYSDOS database to document that the applicant is authorized to do business in NYS. The requestor's name must appear throughout the application exactly as it does in the database.*
- 2. LLC Organization: If the requestor is an LLC, provide a list of the names of the members/owners of the LLC.*
- 3. Authority to Bind: Proof must be included that shows that the party signing this application and amendment is authorized to do so on behalf of the requestor. This documentation may be in the form of corporate organizational papers, a Corporate Resolution or Operating Agreement or Resolution.*

SECTION III: CURRENT PROPERTY OWNER/OPERATOR INFORMATION

Complete this section only if a transfer of ownership has taken place for all or part of the site property. Attach additional pages for each new owner if applicable.

Provide the relationship of the owner to the site by selecting one of the check-box options.

Owner Name, Address, etc.

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

Operator Name, Address, etc.

Provide information for the new operator, if applicable.

NOTE: Pursuant to 6 NYCRR Part 375-1.11(d), a Change of Use form should have been submitted prior to a transfer of ownership. If this form was not previously submitted, it must be included with this application. See <http://www.dec.ny.gov/chemical/76250.html> for additional information.

Required Attachments for Section III:

- 1. Copy of deed as proof of ownership.*
- 2. Ownership/Nominee Agreement, if applicable.*
- 3. Change of Use form, if not previously submitted to the Department.*

SECTION IV: NEW REQUESTOR ELIGIBILITY INFORMATION

For additional information regarding requestor eligibility, please refer to ECL §27-1407.

Provide a response to each question listed. If any question is answered in the affirmative, provide an attachment with detailed relevant information. It is permissible to reference specific sections of existing property reports; however, such information must be summarized in an attachment. For properties with multiple addresses or tax parcels, please include this information for each address or tax parcel.

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

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

Required Attachments for Section IV:

- 1. Detailed information regarding any questions answered in the affirmation, if applicable.*
- 2. Statement describing why the requestor should be considered a volunteer, if applicable.*
- 3. Site access agreement, as described above, if applicable.*

SECTION V: PROPERTY DESCRIPTION AND REQUESTED CHANGES

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

Property Information on Existing Agreement

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

Addition of Property

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

Reduction of Property

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

Change to address, SBL or metes and bounds description

Provide the new address and tax parcel information.

Total Revised Site Acreage

Provide the new total site acreage after addition or removal of property. If no change to site boundary, this should match the acreage provided above, under Property Information on Existing Agreement.

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

Required Attachments for Section V:

1. *For all additions and removal of property:*
 - a. *Site map clearly identifying the existing site boundary and proposed new site boundary*
 - b. *County tax map with the new site boundary clearly identified*
 - c. *USGS 7.5-minute quadrangle map with the site location clearly identified*
2. *For address changes, lot mergers, subdivisions and any other change to the property description:*
 - a. *County tax map with the site boundary and all SBL information clearly identified*
 - b. *USGS 7.5-minute quadrangle map with the site location clearly identified*
 - c. *Approved application for lot merger or apportionment, or the equivalent thereof, as proof from the municipality of the SBL change(s)*

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

Complete this section only if the site is located within the five counties comprising New York City and the requestor is seeking a determination of eligibility for tangible property credits.

Provide responses to each question. If any question is answered in the affirmative, provide required documentation as applicable.

Required Attachments for NYC Site Supplement:

- 1. For sites located all or partially in an En-zone: provide a map with the site boundary clearly identified and the En-zone overlay showing that all or a portion of the site is located within an En-zone. This map must also indicate the census tract number in which the site is located. See [DEC's website](#) for additional information.*
- 2. For affordable housing projects: provide the affordable housing regulatory agreement and any additional relevant information.*
- 3. For renewable energy site projects: for (a) planned renewable energy facilities generating/storing less than twenty-five (25) megawatts, provide a local land use approval; or, for (b) planned renewable energy facilities generating/storing twenty-five (25) megawatts or greater, provide the permit issued by the NYS Office of Renewable Energy Siting.*
- 4. For sites located within a disadvantaged community and a conforming Brownfield Opportunity Area: provide a map with the site boundary clearly identified and the disadvantaged community overlay showing that the site is located within a disadvantaged community.*

PART II: BROWNFIELD CLEANUP PROGRAM AMENDMENT

The information in the “EXISTING AGREEMENT INFORMATION” section should auto-populate with the information provided on page 2.

If a new requestor is applying to enter the program, provide the required information and signature at the bottom of page 8 and the required information and signature on page 9.

If no new requestor is applying to the program but any other change has been made, provide the required information and signature on page 9.

Exhibit A to BCA Amendment No. 2:

Supporting Documents to add
"Sutphin QOZB LLC" as
Additional Volunteer

Department of State

Division of Corporations

Entity Information

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

Entity Details



ENTITY NAME: SUTPHIN QOZB LLC

DOS ID: 7308346

FOREIGN LEGAL NAME:

FICTITIOUS NAME:

ENTITY TYPE: DOMESTIC LIMITED LIABILITY COMPANY

DURATION DATE/LATEST DATE OF DISSOLUTION:

SECTION OF LAW: LIMITED LIABILITY COMPANY LAW - 203 LIMITED LIABILITY COMPANY LAW - LIMITED LIABILITY COMPANY LAW

ENTITY STATUS: ACTIVE

DATE OF INITIAL DOS FILING: 04/18/2024

REASON FOR STATUS:

EFFECTIVE DATE INITIAL FILING: 04/18/2024

INACTIVE DATE:

FOREIGN FORMATION DATE:

STATEMENT STATUS: CURRENT

COUNTY: KINGS

NEXT STATEMENT DUE DATE: 04/30/2026

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: SUTPHIN QOZB LLC

Address: 670 MYRTLE AVE STE 6373, 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

LIMITED LIABILITY COMPANY AGREEMENT
OF
Sutphin QOZB LLC

This limited liability company agreement (this "Agreement") is made as of the 29 day of May, 2024, by and between Sutphin Family Holdings QOF LLC, a New York limited liability company, and BerkZup Sutphin QOF LLC, a New York limited liability company, each of whom is herein referred to as a "Member," and who collectively are referred to as the "Members," of Sutphin QOZB LLC (the "Company"), a limited liability company formed and existing under the Limited Liability Company Law of the State of New York (the "Act"), as and for the limited liability company agreement of the Company.

1. **Name; Place of Business.** The name of the Company is Sutphin QOZB LLC. The principal office of the Company shall be located at 670 Myrtle Avenue, Suite 6373, Brooklyn NY or at such other location as the Manager may select.

2. **Purpose.** The purpose of the Company is (a) to carry on any lawful business or other activity that may be carried on by a limited liability company under the Act; and (b) for the interests in the Company to qualify as "qualified opportunity zone partnership interests" as such term is defined in section 1400Z-2(d)(2)(C) of the Internal Revenue Code of 1986, as amended (the "Code"), including, without limitation, the Company's qualifying as a "qualified opportunity zone business" as defined in section 1400Z-2(d)(3)(A) of the Code.

3. **Contributions, Distributions, and Allocations.** All distributions and allocations of income, gain, loss, deduction, and credit shall be in accordance with the Members' respective Percentage Interests (as set forth on **Exhibit A**). The Members have made capital contributions to the Company in the amounts equal to the Initial Capital Contributions (as set forth on **Exhibit A**) pro rata to their respective Percentage Interests in the Company. No

Member shall at any time be required to restore any deficit balance in its capital account.

Distributions shall be made at such times and in such amounts as determined by the Manager.

4. Management.

(a) The Manager has exclusive, full, and complete authority, power, and discretion to manage and control the business, affairs, and properties of the Company, to make all decisions regarding those matters (including with respect to capital transactions), and to perform any and all other acts or activities customary or incidental to the management of the Company's business. The Manager shall have the power to enact such decisions, to sign on behalf of the Company, and to bind the Company by such signature. No Member shall have the power to vote or otherwise to participate in any Company decision, to take part in the conduct or control of the Company's business, or to sign for, obligate, act on behalf of, or bind the Company.

(b) The initial Manager shall be Moshe Braver.

4A. Qualified Opportunity Fund Matters

(a) Each Member acknowledges that, as of the date hereof, it is qualified or intends to qualify as a qualified opportunity fund (a "Qualified Opportunity Fund"), as such term is defined in Section 1400Z-2(d)(1) of the Code, and their interests in the Company are intended to constitute Qualified Opportunity Zone Partnership Interests. Accordingly, and notwithstanding anything contained in this Agreement to the contrary, unless the Members otherwise consent, in order to preserve their respective qualifications as a Qualified Opportunity Fund under the Code and to avoid penalties that would be imposed in connection with a Member's failure to meet the 90 percent asset requirement in section 1400Z-2(d)(1) of the Code (the "90% Asset Test"), the Company shall (and the Members and Managers shall cause the Company to) do the following

(i) Comply with the requirements of Section 1400Z-2(d)(3)(A)(ii) and the regulations thereunder;

(ii) Not operate or lease any portion of the Property (or of subsequently acquired or leased property) to any of the following businesses: any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises;

(iii) Ensure that substantially all (within the meaning of Section 1400Z-2(d)(3)(A)(i) of the Code) of the tangible property owned by the Company is acquired by purchase (within the meaning of Section 179(d)(2) of the Code) from a person who is not a related person (within the meaning of Section 1400Z-2(e)(2) of the Code) and meets the requirements of Section 1400Z-2(d)(2)(D)(i)(II) of the Code;

(iv) Ensure that substantially all (within the meaning of Section 1400Z-2(d)(3)(A)(i) of the Code) of the tangible property leased by the Company is leased under terms that are market rate (within the meaning of Treas. Reg. Sec. 1.1400Z2(d)-2(c)(2)) at the time that the lease was entered into and, if the lessor is related (within the meaning of Treas. Reg. Sec. 1.1400Z2(d)-2(c)(3)) to the Company, under terms that comply with the requirements of Treas. Reg. Sec. 1.1400Z2(d)-2(c)(3)(i) and (ii); and

(v) Use commercially reasonable efforts to comply with any subsequent guidance applicable to Qualified Opportunity Funds or Qualified Opportunity Zone Partnership Interests as published by the U.S. Treasury or Internal Revenue Service,

including without limitation Treasury Regulations, Revenue Rulings, Revenue Procedures, or other administrative guidance.

(b) In connection with the foregoing , the Managers shall promptly notify the Members of any event or circumstance of which the Manager is aware that results, or could reasonably be expected to result, in:

(i) the Company failing to qualify as a Qualified Opportunity Zone Business under the Code, and

(ii) the Members' interests in the Company failing to qualify as Qualified Opportunity Zone Partnership Interests under the Code, and

(iii) a Member's failing to qualify as a Qualified Opportunity Fund under the Code , and /or and

(iv) a Member's failure to meet the 90% Asset Test.

5. **Transfers.** No assignee of a membership interest shall become a Member without the consent of the Manager.

6. **Continuation.** Upon the ceasing to be a Member of the last remaining Member of the Company, the Member's legal representatives or successor-in-interest may continue the Company and become a successor Member thereof by executing a writing to that effect within 180 days of the Member's ceasing to be a Member. If such a writing is not executed within 180 days, the Company shall dissolve and its affairs shall be wound up.

7. **Inurement.** This Agreement shall inure to the benefit of and bind the parties hereto and their successors in interest.

8. **Amendment.** This Agreement may be amended or modified by written instrument executed by the Members.

[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK.

SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have executed and adopted this operating agreement as of the date first written above.

Sutphin Family Holdings QOF LLC

By: Raizel Feder
Name: Raizel Feder as Trustee for the 45-57
Davis Holdings Trust
Title: Manager

BerkZup Sutphin QOF LLC

By: Joel Zupnick
Name: Joel/Zupnick
Title: Manager

MANAGER:

Moshe Braver
Moshe Braver

EXHIBIT A

<u>Member</u>	<u>Percentage Interest</u>	<u>Initial Capital Contribution</u>
Sutphin Family Holdings QOF LLC	50%	\$250,000.00
BerkZup Sutphin QOF LLC	50%	<u>\$250,000.00</u>
	<u>100%</u>	<u>\$500,000.00</u>

**WRITTEN CONSENT OF MANAGER OF
SUTPHIN QOZB LLC**

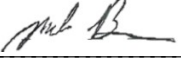
The undersigned, being the manager (the “Manager”) of SUTPHIN QOZB LLC, a New York domestic limited liability company (the “Company”), hereby resolves that:

1. JOEL ZUPNICK and RAIZEL FEDER are representatives of the Company and have the full power and authority on behalf of the Company, each as an authorized signatory (collectively, the “Authorized Signatories”), to:
 - a. Execute documents in connection with the application of the Company for participation in the New York State Brownfield Cleanup Program (“BCP”);
 - b. Enter into agreements with the New York State Department of Environmental Conservation (“DEC”) in connection with the Company’s participation in the BCP;
 - c. Execute any and all documents in connection with the Company’s participation in the BCP, including but not limited to applications, agreements, easements, certificates, and tax returns;
 - d. Take any action necessary to the furtherance of the Company’s participation in the BCP, including but not limited to conducting negotiations on behalf of the Company.
2. The authority hereby conferred shall be deemed retroactive, and any and all acts authorized herein which were performed prior to the passage of this consent are hereby approved and ratified. The authority hereby conferred shall continue in full force and effect until the DEC shall have received notice, in writing, of the revocation hereof by a resolution duly adopted by the Manager of the Company. Any such revocation shall be effective only as to actions taken by the Company subsequent to DEC's receipt of such notice.
3. The undersigned hereby represent and warrant that (i) the undersigned is the Manager of the Company; and (ii) the consent of the undersigned is sufficient to authorize the Company to take the aforementioned actions.

[SIGNATURE PAGE FOLLOWS]

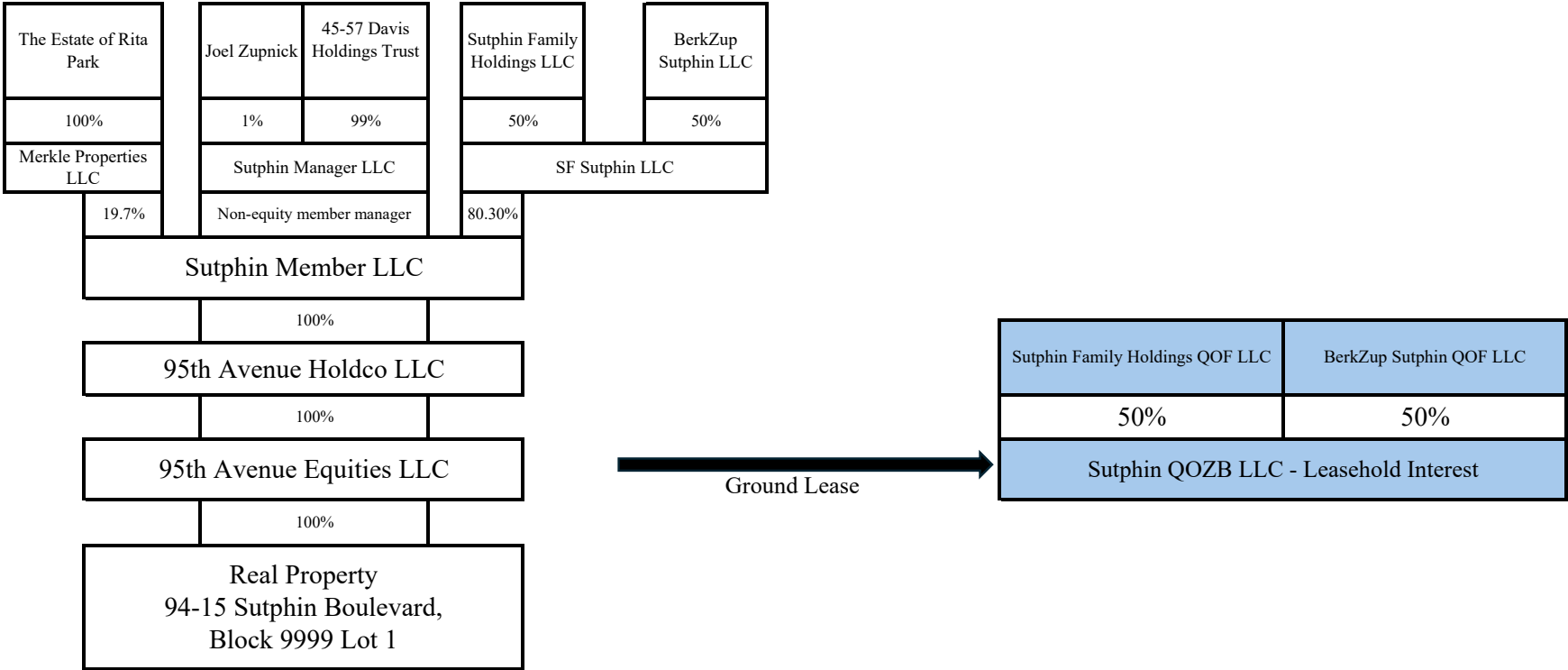
IN WITNESS WHEREOF, the undersigned has executed this Written Consent as of 30th day of May, 2024.

SUTPHIN QOZB LLC,
a New York limited liability company

By:  _____
Name: Moshe Braver
Title: Manager

Proposed Org Chart for 94-15 Sutphin Boulevard (Second Lot)
With Opportunity Zone Structure

Newly Formed Entities



**VOLUNTEER STATEMENT OF
SUTPHIN QOZB LLC**

The Requestor, Sutphin QOZB LLC, is properly designated as a “Volunteer” because its liability will arise solely from its involvement with the BCP Site since the execution of its ground lease dated as of May 30, 2024, following the discharge or disposal of contaminants at the BCP Site. The Requestor will exercise appropriate care with respect to current site conditions to prevent any threatened future release and to prevent or limit human, environmental, or natural resource exposures to any previously released contamination. The Requestor has not contributed to or exacerbated any site environmental conditions and is prepared to undertake all necessary remediation required to address identified site contamination. As such, the Requestor, Sutphin QOZB LLC, qualifies as a “Volunteer” per ECL 27-1405(1).

**Sutphin QOZB LLC
670 Myrtle Avenue, Suite 6373
Brooklyn, NY 11205**

May 31, 2024

95th Avenue Equities LLC
ATTN: Joel Zupnick
670 Myrtle Avenue, Suite 6373
Brooklyn, NY 11205

Re: Supplemental Site Access Letter Agreement for Brownfield Cleanup Program Work
94-15 Sutphin Boulevard – Site B (C241278)
Jamaica, New York 11435
Block 9999, Lot 1


Joel Zupnick:

As you are aware, Sutphin QOZB LLC (the “Applicant”) is applying for admission into the New York State Department of Environmental Conservation (“NYSDEC”) Brownfield Cleanup Program (“BCP”) as an additional Remedial Party/Volunteer for the property located at 94-15 Sutphin Boulevard (Block 9999, Lot 1) in Jamaica, New York, NYSDEC Site No. C241278 (the “Site”). The Site is currently owned by 95th Avenue Equities LLC (the “Owner”).

Reference is made to that certain Ground Lease by and between Applicant and Owner, dated as of 5/31/24 . Notwithstanding anything to the contrary in said Ground Lease, by execution of this Supplemental Site Access Letter Agreement, you hereby acknowledge that:

1. Applicant, and its contractors, is granted access to the Site to conduct BCP-related investigation and/or remediation activities (the “BCP Work”); and
2. Applicant has Owner’s permission to record an environmental easement on title to the Site, should such an environmental easement be deemed necessary for the site remedy under the BCP.

Sincerely,

By: 

Moshe Braver, Manager
Sutphin QOZB LLC

As Owner of the Site, I hereby agree to allow Sutphin QOZB LLC, and its contractors, to enter 94-15 Sutphin Boulevard, Jamaica, New York 11435 (Block 9999, Lot 1), which is currently owned by 95th Avenue Equities LLC, to perform the BCP Work and to record an environmental easement on title to the Site should one be deemed necessary for the BCP site remedy.

By: 
Joel Zupnick, Authorized Signatory
95th Avenue Equities LLC

Exhibit B to BCA Amendment No. 2:

Supporting Documents to add
"Sutphin QOZB LLC" as
Long-Term Lessee

Contact Information of Long-Term Lessee:

- Name: Sutphin QOZB LLC
- Contact: J.J. Weiss
- Address: 670 Myrtle Avenue, Suite 6373
- City/Town: Brooklyn, NY
- Zip Code: 11205
- Phone: (718) 619-0014
- Email: jj@heartfeltbuilders.com
- BCP Status: New Applicant

GROUND LEASE

95TH AVENUE EQUITIES LLC

Landlord

AND

Sutphin QOZB LLC

Tenant

94-15 SUTPHIN BOULEVARD
QUEENS, NEW YORK
BLOCK 9999 LOT 1

GROUND LEASE

This Ground Lease (“Lease”) is made as of this 31 day of May, 2024, by and between **95TH AVENUE EQUITIES LLC**, a New York limited liability company (“Landlord”), and **Sutphin QOZB LLC**, a New York limited liability company (“Tenant”) .

W I T N E S S E T H:

In consideration of the mutual covenants and conditions contained herein, and intending to be legally bound hereby, Landlord and Tenant hereby agree with each other as follows:

ARTICLE 1 **DEFINITIONS**

Capitalized terms used in this Lease shall have the meanings set forth below or in the Article or Section of this Lease referred to below; such terms, as so defined, shall include the singular in the plural, and the plural in the singular, and the use of any gender shall include all genders.

“Brownfield Cleanup Program” shall mean the investigation and/or remediation of the Land and other actions taken at, on, under, or about the Property pursuant to the New York State Brownfield Cleanup Program, Article 27, Title 14 of the New York State Environmental Conservation Law and the regulations promulgated by the NYSDEC thereunder at 6 NYCRR Part 375.

“Brownfield Cleanup Agreement” shall mean the Brownfield Cleanup Agreement, Index No. C241278-01-24, between Landlord and the NYSDEC, dated February 12, 2024, with respect to the Property (NYSDEC Site No. C241278), as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Environmental Laws” shall mean any and all federal, state, local and foreign laws, orders, regulations, rules or ordinances or other governmental restrictions relating to the environment or to emissions, discharges or releases of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes into the environment including, without limitation, ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes or the cleanup or other remediation thereof.

“Fee Mortgage” shall mean any mortgage, deed of trust, assignment of leases and rents, financing statement or other agreement or instrument, and all modifications, extensions, supplements, consolidations and replacements thereof, that secures repayment of any indebtedness by the grant of a lien, security interest or other encumbrance on the fee estate of Landlord in the Premises and/or Landlord’s interest in this Lease.

“Fee Mortgagee” shall mean the holder of any Fee Mortgage.

“Gross Floor Area” shall mean the aggregate floor area of Tenant’s Buildings, computed by measurements made to and from the outside of the exterior walls of each of Tenant's Buildings.

“Hazardous Materials” shall mean and include any oils, petroleum products, asbestos and any other toxic or hazardous wastes, materials and substances which are defined, determined or identified as such in any Environmental Laws, or in any judicial or administrative interpretation of Environmental Laws.

“Improvements” shall mean any buildings, structures and improvements now or hereafter existing on the Land and any alterations, changes, replacements, improvements or additions thereto and any and all other buildings and improvements now or hereafter located on the Land.

“Land” shall mean the real property commonly known as 94-15 Sutphin Blvd, Queens New York 11206 (Block 9999, Lot 1), as more particularly described in Exhibit A attached hereto.

“Leasehold Mortgage” shall have the meaning ascribed to such term in Section 9.1 hereof.

“Leasehold Mortgagee” shall mean the holder of a Leasehold Mortgage.

“Liabilities” means, collectively, all claims, demands, actions, causes of actions, suits, judgments, damages, losses, liabilities, fines, penalties, costs and expenses (including, without limitation, reasonable attorneys’ fees and disbursements).

“NYSDEC” shall mean the New York State Department of Environmental Conservation, or any successor agency thereto.

“Premises” or “Property” shall mean the Land, the Improvements, and all easements, , licenses, privileges, rights and interests appurtenant, benefiting or belonging thereto, including without limitation any “air rights” or other development rights.

“Senior Mortgage” shall mean, individually and/or collectively, as the context may require, the Leasehold Mortgage and/or the Fee Mortgage the lien of which, by virtue of prior recordation, is senior in priority to any other Leasehold Mortgage or Fee Mortgage.

“Senior Mortgagee” shall mean the holder of the Senior Mortgage.

“Tenant's Buildings” shall mean any Improvements constructed by Tenant on the Land, and any addition to or replacement thereof.

ARTICLE 2

PREMISES

2.1 **Premises.** Landlord does hereby lease to Tenant, and Tenant hereby does let from Landlord, the Premises, for the Term and upon and subject to the terms, conditions and provisions of this Lease.

2.2 **Warranty of Title.** Landlord represents and warrants that it is the owner of the Premises (other than any Improvements which may hereinafter be constructed thereon) in fee simple, free and clear of all deeds of trust, mortgages, liens, leases, tenancies, occupancies, easements, covenants, violations, restrictions and other encumbrances (“Encumbrances”), except for those other Encumbrances of record as of the date hereof, including without limitation the Senior Mortgage (collectively, the “Permitted Exceptions”).

2.3 **Delivery of Possession; Commencement Date.** Landlord hereby delivers possession of the Premises to Tenant as of the date hereof, free and clear of all tenancies and occupancies (the “Commencement Date”).

ARTICLE 3

TERM

3.1 **Term.** The term of this Lease (the “Term”) shall commence on the Commencement Date and shall continue to and shall include the date (the “Expiration Date”) which is the last day of the ninety-ninth (99th) Lease Year. If the Commencement Date is the first day of a calendar month, then the first “Lease Year” shall be the period commencing on the Commencement Date and ending on the date immediately preceding the first (1st) anniversary thereof; if the Commencement Date is not the first day of a calendar month, then the first “Lease Year” shall be the period commencing on the Commencement Date and ending in the following year on the last day of the same calendar month in which the Commencement Date occurred. Each “Lease Year” thereafter shall be a successive period of twelve (12) calendar months. The Term shall be subject to earlier termination and to extensions as set forth in this Lease.

ARTICLE 4

RENT

4.1 **Minimum Annual Rent.** “Minimum Annual Rent” shall be the rent payable by Tenant in accordance with the terms of this Section 4.1, as follows: Minimum Annual Rent for the first Lease Year of the Term shall be the sum of Three Million Dollars (\$3,000,000.00) per annum. Minimum Annual Rent shall increase by one percent (1%) per annum on each anniversary date of the Lease, throughout the Term, see Rent Schedule attached hereto.

4.2 **Arms Length Terms.** Landlord and Tenant intend that the terms of the Lease, including the Minimum Annual Rent, be at arms length consistent with such meaning under Treas. Reg. Sec. 1.1400Z2(d)-2(c)(3)(i). To the extent that an independent appraiser mutually agreeable

to the parties determines that the lease terms are not arms-length, the parties shall work together to modify the terms so that they be arms length.

4.3 **Payment of Rent.** The Minimum Annual Rent for each Lease Year shall be paid in full in advance on December 1 of the preceding Lease Year. The prorated Minimum Annual Rent for the period covering the Commencement Date through November 30, 2024 shall be paid upon the execution and delivery of this Lease. Additional Rent shall be paid when required under the terms of this Lease. Minimum Annual Rent and Additional Rent may be paid by means of federal wire or check and shall be made payable to Landlord and shall be deemed timely and properly made if paid in person or by mail when deposited in any United States Post Office, post office box or other official depository for such purpose addressed to Landlord at its address specified in Section 16.9 of this Lease or such other address as Landlord may designate by notice to Tenant given at least thirty (30) days prior to the date on which the next payment of rent is due.

4.4 **Additional Rent.** Except as otherwise expressly set forth to the contrary in this Lease, Tenant shall pay, during or in respect of the Term, as additional rent ("Additional Rent"), the following:

4.4.1 **Real Estate Taxes.** (a) Tenant shall pay, directly to the authority charged with collection thereof, all personal property taxes, all real estate taxes, general and special assessments, and all water and sewer use fees, and similar charges, extraordinary as well as ordinary, whether foreseen or unforeseen, whether by virtue of any present or future laws, orders, regulations, rules, ordinances and requirements of the federal, state, county governments covering the Land and Tenant's Buildings, levied, assessed or imposed at any time upon or against the Land or Tenant's Buildings or the leasehold estate created by this Lease, or any equipment, fixtures or improvements therein or thereon (all such taxes, assessments, fees and charges being hereinafter collectively called "Real Estate Taxes"). Landlord shall use reasonable efforts to have all bills for Real Estate Taxes for the Premises forwarded by the applicable taxing authorities directly to Tenant. If the taxing authority does not send the real estate bill directly to Tenant, then upon receipt thereof, Landlord shall promptly forward all real estate tax bills for the Premises to Tenant or, if requested, to one or more subtenants as designated by Tenant. In the case of assessments, such assessments may be paid in installments over the longest period permitted by Laws, and Tenant, to the extent permitted by Laws, shall have the right to apply for conversion of any assessment in order to cause such assessment to be payable in annual installments.

(b) Tenant shall pay all Real Estate Taxes, or any required installments thereof, on the later to occur of thirty (30) days after receipt of a copy of the respective tax bill from Landlord or the last day such Real Estate Taxes shall be due and payable before any penalty or interest may be added thereto for nonpayment. Tenant or its designees shall have the right to contest or review all Real Estate Taxes by legal proceedings, or in such other manner as it may deem suitable (which, if instituted, Tenant or its designees shall conduct promptly at its own cost and expense, and free of any expense to Landlord, and, if necessary, in the name of and with the cooperation of Landlord, and Landlord shall execute all documents necessary to accomplish the foregoing). Notwithstanding the foregoing, Tenant shall promptly pay all such Real Estate Taxes if at any time the Premises or any part thereof shall then be immediately

subject to forfeiture, or if Landlord shall be subject to any criminal liability, arising out of the nonpayment thereof. The legal proceedings referred to in this section shall include appropriate proceedings and appeals from orders therein and appeals from any judgments, decrees or orders. In the event of any reduction, cancellation or discharge, Tenant shall pay the amount finally levied or assessed against the Premises or adjudicated to be due and payable on any such contested Real Estate Taxes. If there shall be any refunds or rebates on account of the Real Estate Taxes paid by Tenant under the provisions of this Lease, such refund or rebate shall belong to Tenant. Any refunds received by Landlord shall be deemed trust funds and as such are to be received by Landlord in trust and paid to Tenant forthwith. Landlord shall, upon the request of Tenant, sign any receipts which may be necessary to secure the payment of any such refund or rebate, and will pay over to Tenant such refund or rebate as received by Landlord.

(c) Nothing contained in this Lease shall require Tenant to pay any franchise, corporate, estate, inheritance, succession, capital levy or transfer tax of Landlord, or any income, profits or revenue tax or charge upon Minimum Annual Rent or Additional Rent payable by Tenant under this Lease.

(d) Real Estate Taxes which is payable for a period, a part of which is included within the Term of this Lease and a part of which is included in a period of time before the commencement or after the expiration or termination of the Term of this Lease, shall be apportioned between Landlord and Tenant. Upon the execution and delivery of this Lease, Tenant shall reimburse Landlord for all Real Estate Taxes already paid by Landlord which are payable with respect the period occurring from and after the Commencement Date.

4.4.3 **Payment for Utilities and Services.** Tenant, at its sole cost and expense, shall make all arrangements with governmental authorities and public utilities for the provision of all utilities to the Premises (including, without limitation, water, gas, sewer, electricity, light, heat, power and telephone) and Landlord shall cooperate with Tenant in switching all existing accounts for such utilities and services to the name of Tenant or other name as Tenant shall designate.

ARTICLE 5

USE AND COMPLIANCE WITH LAW

5.1 **Use of The Premises.** Tenant shall have the right to use and permit the use of the Premises for any lawful purpose, including, without limitation, the demolition, construction, development of a multifamily housing project, leasing, subleasing, licensing, and operation of the Improvements (existing and/or new); provided, however, Tenant shall have no obligation to develop the Premises in any manner or for any purpose or at all. Tenant may seek such zoning and other relief as Tenant deems appropriate in its sole discretion in order to facilitate use of the Premises for the foregoing purposes. Upon the request of Tenant, Landlord agrees to cooperate with Tenant (at no cost to Landlord unless reimbursed by Tenant) in the obtaining of the Approvals (as hereinafter defined) and in carrying out such other activities, and in executing such consents, applications and other documents, as shall be reasonably required in connection therewith.

5.2 **Compliance with Applicable Laws.** Except for Landlord's obligations under Section 7.5 and Article 18 or as otherwise set forth in this Lease as being Landlord's obligation, Tenant shall, at its sole cost and expense, comply with and observe all laws, orders, regulations, rules, ordinances and requirements of the federal, state, county and local governments, and of all insurance companies writing policies, whether now in force, or which may, at any time in the future, be enacted or directed and which are applicable to the Premises (collectively, "Laws"). Tenant or its designees shall have the right to contest and review all Laws by legal proceedings, or in such other manner as it may deem suitable (which, if instituted, Tenant or its designees shall conduct promptly at its own cost and expense, and free of any expense to Landlord, and, if necessary, in the name of and with the cooperation of Landlord, and Landlord shall execute all documents necessary to accomplish the foregoing). Notwithstanding the foregoing, Tenant shall immediately comply with all Laws if at any time the Premises or any part thereof shall then be immediately subject to forfeiture, or if Landlord shall be subject to any criminal liability, arising out of the nonpayment thereof.

5.3 **Brownfield Cleanup Program.** Tenant acknowledges that the Property has been admitted and is subject to the Brownfield Cleanup Program pursuant to the Brownfield Cleanup Agreement. Landlord and Tenant mutually desire for Tenant to apply for admission to the Brownfield Cleanup Program as an additional Volunteer (as such term is defined at Section 27-1405(1) of the Environmental Conservation Law) under Landlord's Brownfield Cleanup Agreement. Landlord shall execute all documents necessary for and in connection with Tenant's application for admission to the Brownfield Cleanup Program as an additional Volunteer, including but not limited to, a site access letter agreement authorizing Tenant to conduct Brownfield Cleanup Program activities at the Property and to place an environmental easement pursuant to Article 71, Title 36 of the Environmental Conservation Law on title to the Property if necessary for the site remedy.

ARTICLE 6 **THE IMPROVEMENTS**

6.1 **The Improvements.** Tenant shall at all times during the Term have the unrestricted right to construct any buildings, structures, parking areas, driveways, walkways, gardens, signage and other similar or dissimilar improvements as Tenant may elect to construct in its sole discretion, subject to applicable Laws.

6.2 **Zoning and Governmental Approvals.** Landlord hereby irrevocably constitutes and appoints Tenant as Landlord's true and lawful attorney-in-fact, coupled with an interest, for the duration of the Term, in Landlord's name if necessary to apply for and secure from any governmental authority having jurisdiction over the Premises or any other parties in interest any permits, licenses, zoning changes, approvals, consents and the like (hereinafter the "Approvals") as Tenant desires, provided, however, that Tenant shall have no authority, to obligate Landlord, directly or indirectly, to construct any Improvements or otherwise incur any monetary liability in connection with such Approvals. Without limiting the foregoing, Landlord agrees, throughout the Term, to cooperate fully with Tenant at Tenant's expense in any and all applications and proceedings and appeals made or prosecuted by Tenant in connection with obtaining any

Approvals desired by Tenant under zoning, land use, environmental, building and/or other Laws. Landlord shall, if requested by Tenant and at Tenant's expense, execute and join in the execution of any and all applications, documents, instruments, consents and authorizations requested by Tenant which shall be necessary or desirable with respect thereto, including any appeals therefrom. Landlord shall convey, upon request of Tenant and without compensation therefor, insubstantial perimeter portions of the Premises to the City of New York or other applicable governmental authority or body for highway or road purposes, or for drainage or slope easements. Without limiting Tenant's rights hereunder, it is expressly agreed that Tenant shall have the right from time to time and at any time throughout the Term, to merge the existing tax lot of the Property (and any future tax lot of the Property) with one or more tax lots so as to create a larger zoning lot.

ARTICLE 7

ALTERATIONS, REPAIR AND MAINTENANCE AND ENVIRONMENTAL COVENANTS

7.1 **Alterations.** Tenant shall have the right at any time and from time to time during the Term, to make alterations, changes, replacements, demolitions, improvements, deletions, expansion of or additions to the Improvements, including, without limitation, the demolition and removal of any Improvements which may be at any time during the Term be situated or erected on the Premises (including without limitation, the Improvements existing on the Premises as of the date hereof), provided, however, that all of such work is performed in a good and workmanlike manner in accordance with applicable Laws.

7.2. **Ownership and Depreciation.** All Improvements placed in or upon the Premises until the expiration or termination of the Term, and all fixtures, furnishings and equipment contained therein or thereon shall remain the sole and exclusive property of Tenant, and Tenant alone shall be entitled to all depreciation deductions and investment tax credits thereon for income tax purposes and all other purposes. Upon request, Landlord shall assign or otherwise transfer to Tenant any investment tax credit that may be applicable or available with respect to any equipment, fixtures or apparatus installed in the Premises by Tenant or its subtenants. Landlord shall have no lien on, or right of distraint against, any fixtures or equipment installed by Tenant and Landlord expressly waives any such right provided by law.

7.3 **Repair and Maintenance.** Except otherwise expressly provided to the contrary in this Lease, Tenant, at its sole cost and expense, shall be responsible for and shall make all necessary repairs to the Improvements during the Term, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen. Except as otherwise expressly set forth in this Lease, Landlord shall not be required to make any repairs or replacements or any alterations or additions whatsoever to the Premises or any Improvements thereon during the Term.

7.4 **Mechanic's Liens.** Tenant shall not suffer or permit any mechanic's, laborer's or materialmen's liens or other liens for work, labor, services or materials to be filed or recorded

against the Premises. In the event that any laborer's, materialmen's or mechanic's liens or other liens shall be filed or recorded against the Premises by reason of or arising out of any labor or material furnished or alleged to have been furnished or to be furnished to or for Tenant or its subtenants at the Premises, or for or by reason of any alteration, change, replacement, improvement or addition to the Improvements, including, without limitation, the Improvements, or the cost of expense thereof or any contract relating thereto, Tenant shall cause the same to be canceled and discharged of record, by bond or otherwise as allowed by law, at the sole cost and expense of Tenant, within one hundred and twenty (120) days after Landlord gives Tenant notice of the filing or recording thereof.

7.5 Hazardous Materials.

7.5.1. Landlord's Representations, Warranties and Covenants. Landlord hereby represents and warrants to Tenant that to Landlord's knowledge, there are no Hazardous Materials existing at the Premises. As used in this Section 7.5, the term "at" shall mean at, on, in or under the Premises. Landlord shall hold harmless, indemnify and defend Tenant from and against any and all Liabilities arising from or relating to (a) a breach of Landlord's representations and warranties set forth in this section, or (b) any Hazardous Materials introduced at the Premises as a result of the affirmative acts of Landlord, its agents, contractors or employees or any other person or entity acting through or under Landlord (any such Hazardous Materials, "Landlord Responsible Contamination"). In connection with such indemnification: (i) Landlord upon notice from Tenant to defend any claim or demand brought, or any action, petition, or order filed, against Tenant, its subsidiaries or affiliates, its subtenants, or against any or all of the agents, servants, employees, officers, directors or trustees or any of them, or in which any of the same may be impleaded, at its expense, whether any such claim or action is rightfully or wrongfully brought or filed, with counsel reasonably satisfactory to such indemnified party; and (ii) Landlord shall pay, satisfy and discharge any Liabilities which may be recovered or filed against Tenant, its subsidiaries or affiliates relating to the foregoing.

7.5.2. Tenant's Covenants. (a) Tenant shall not transport, use, handle, store or dispose of any Hazardous Materials in or about the Premises during the Term, except in accordance with all applicable Laws. Tenant shall hold harmless, indemnify and defend Landlord from and against any all Liabilities which may be imposed on, asserted against or incurred by Landlord (i) arising from the release or discharge of Hazardous Materials at the Premises as a direct result of the acts of Tenant, its subtenants, agents, employees or contractors ("Tenant Responsible Contamination").

(b) In connection with the foregoing indemnification, Tenant, upon notice from Landlord, shall defend such action or proceeding, whether any such claim or action is rightfully or wrongfully brought or filed, by counsel reasonably satisfactory to such indemnified party and Tenant shall pay all reasonable expenses incurred in connection with defending against such action or proceeding and shall pay, satisfy and discharge any Liabilities which may be recovered or filed against such indemnified party arising out of any such claim

(c) Tenant shall promptly comply with all Environmental Laws relating to Tenant Responsible Contamination. Such compliance shall include, without

limitation, the performance of such investigation, testing, assessment, containment and remediation as may be required by Environmental Laws with respect to Tenant Responsible Contamination (individually and collectively "Compliance Activities"). Notwithstanding the foregoing provisions of this Section, there are specifically excluded from Tenant's obligations under this subsection any Compliance Activities to the extent required due to Landlord Responsible Contamination; provided, however, that Tenant shall have the right (but not the obligation) to perform such Compliance Activities, the costs of which, plus any other Liabilities incurred by Tenant in connection with such Landlord Responsible Contamination, shall be promptly reimbursed by Landlord to Tenant. If Landlord shall not so pay Tenant, Tenant shall have the right to deduct and offset such amounts from the Minimum Annual Rent coming due under this Lease.

7.5.3. **Notices and Survival.** Landlord and Tenant agree to deliver promptly to the other party and Senior Mortgagee any notices, orders or similar documents received by Landlord or Tenant from any governmental agency or official concerning any violation of any Environmental Laws or with respect to any Hazardous Materials affecting the Premises. All obligations of Landlord and Tenant contained in this Section 7.5 shall survive the expiration or earlier termination of this Lease.

7.6 **Yield Up.** At the expiration or earlier termination of the Term, Tenant shall surrender the Premises (including, without limitation, the Improvements) to Landlord in their then existing condition and repair, and any buildings and other Improvements which have not been removed by Tenant.

ARTICLE 8

ASSIGNMENT, SUBLETTING AND ATTORNMENT

8.1 **Assignment and Subletting.** Tenant may not, without Landlord's consent sell and/or assign or otherwise transfer Tenant's interest in this Lease (including the delegation of its obligations under this Lease), and/or sublease the Premises or any portion thereof and/or any Improvements or portion thereof, and permit any of the foregoing.

8.2 **Recognition and Attornment.** For the purpose of providing that the termination of this Lease shall not affect any sublease, and that, notwithstanding the early termination of this Lease, all subleases shall continue in full force and effect, Landlord agrees, from time to time, to execute and deliver, at Tenant's request, a recognition and attornment agreement between Landlord, any sublessee and its lenders and/or other party to any such sublease in such form as shall be reasonably required by the respective subtenant or its lender (such agreement, a "Recognition Agreement").

ARTICLE 9

LEASEHOLD MORTGAGES

9.1. **Right to Mortgage.** Tenant and its subtenants shall have the unrestricted right at any time and from time to time to mortgage the Improvements and all or any portion of its or their leasehold or subleasehold interest under this Lease for the purposes of financing

Improvements or additions and alterations built or to be built pursuant hereto and/or their leasehold or subleasehold interests generally (any and all of which is referred to as a "Leasehold Mortgage"). The Leasehold Mortgagee or its successors and assigns may enforce such Leasehold Mortgage and acquire title to the leasehold estate created under this Lease in any lawful way, and pending foreclosure of such Leasehold Mortgage may, without the consent of Landlord, sell and assign the leasehold estate created hereby.

9.2. **Notice to Landlord.** In connection with each Leasehold Mortgage, Landlord shall be given a written notice of the name and address of the Leasehold Mortgagee together with a true and correct copy of the Leasehold Mortgage.

9.3. **Conditions.** So long as such Leasehold Mortgage shall remain in effect, the following provisions shall apply:

9.3.1. Landlord shall serve a copy of any notice of default served or required to be served on Tenant under this Lease upon such Leasehold Mortgage at the address for such Leasehold Mortgagee as previously given to Landlord, and no notice by Landlord to Tenant hereunder shall be deemed to have been duly given unless and until a copy of thereof has been served on the Leasehold Mortgagee.

9.3.2. If a default by Tenant shall occur under this Lease, any Leasehold Mortgagee shall, within the period allowed Tenant to cure the respective default and otherwise as herein provided, have the right to cure such default, or cause the same to be cured, and Landlord shall accept such performance by or on behalf of such Leasehold Mortgagee as if the same had been made by Tenant.

9.3.3. For the purposes of this subsection, no Event of Default shall be deemed to exist hereunder if steps shall in good faith, have been commenced within the time permitted therefor to cure the same and shall be prosecuted to completion with diligence and continuity.

9.3.4. Notwithstanding anything to the contrary set forth in this Lease, Landlord shall take no action to terminate this Lease due to an Event of Default or default of Tenant without first giving to the Leasehold Mortgagee written notice thereof and a reasonable time (and in no event less than ninety (90) days) thereafter within which either (i) to obtain possession of the Premises and Improvements (including possession by a receiver) or (ii) to institute, prosecute and complete foreclosure proceedings or otherwise acquire Tenant's interest under this Lease. Such Leasehold Mortgagee, upon obtaining possession or acquiring Tenant's interest under this Lease, shall be required to promptly to cure all Events of Default reasonably susceptible of being cured by such Leasehold Mortgagee; provided, however, that: (x) such Leasehold Mortgagee shall not be obligated to continue such possession or to continue such foreclosure proceedings after such Events of Default shall have been cured; and (y) such Leasehold Mortgagee shall agree with Landlord in writing to comply during the period of such forbearance with such of the terms, conditions and covenants of this Lease as are reasonably susceptible of being complied with by such Leasehold Mortgagee. Any default by Tenant not reasonably susceptible of being cured by such Leasehold Mortgagee or the occurrence of any of the events specified in Section 15.1.3 or 15.1.4 shall be deemed to have been waived by Landlord upon completion of such

foreclosure proceedings or upon such acquisition of Tenant's interest under this Lease, except that any of such events of default which are reasonably susceptible of being cured after such completion and acquisition shall then be cured with reasonable diligence. Such Leasehold Mortgagee or other purchaser in foreclosure proceedings may become the legal owner and holder of Tenant's interest under this Lease by foreclosure or assignment in lieu of foreclosure.

9.4. **New Lease.** In the event of termination of this Lease prior to the scheduled expiration of the Term, Landlord shall serve upon the Leasehold Mortgagee written notice that the Lease has been terminated together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Landlord. Such Leasehold Mortgagee shall thereupon have the option to obtain a new lease upon the written request of the Leasehold Mortgagee within thirty (30) days after service of such notice that the Lease has been terminated. In such event, Landlord shall enter into a new lease of the Premises and Improvements with such Leasehold Mortgagee, or its designee, on the following terms and conditions:

9.4.1. Such new lease shall be effective on the date of termination of this Lease and shall be for the remainder of the Term (including the right of the Leasehold Mortgagee or its assigns to exercise all remaining extension options) of this Lease, at the Minimum Annual Rent and upon all the agreements, terms, covenants and conditions hereof.

9.4.2. Such new lease shall require the Tenant to perform all unfulfilled obligations of Tenant under this Lease which are susceptible of being performed by such Tenant. Upon the execution of such new lease, the Tenant named therein shall pay all sums which would at the time of the execution thereof be due under this Lease but for such termination and shall pay the reasonable expenses incurred by Landlord in connection with such defaults and termination, the recovery of possession of said Premises and Improvements and the preparation, execution and delivery of such new lease.

9.4.3. Upon execution and delivery of such new lease, Landlord shall allow to the Tenant named therein and such Tenant shall be entitled to an adjustment in an amount equal to the net income, if any, derived by Landlord from the Premises and Improvements during the period from the date of termination of this Lease to the date of execution of the new lease.

9.4.4. In the event of the election by said Leasehold Mortgagee to enter into a new lease with Landlord as aforesaid, Tenant shall and it does hereby waive all rights it may have to redeem its leasehold interest hereunder or to reinstate this Lease.

9.5. **New Lease Upon Failure To Extend.** If by reason of its failure either to exercise any renewal or extension option provided for in this Lease, or for any other reason whatsoever, Tenant shall not be entitled to extend this Lease for any option period otherwise provided, Landlord shall serve upon the Leasehold Mortgagee written notice thereof, and such Leasehold Mortgagee shall have the option to obtain from Landlord a new lease of the Premises and Improvements provided that a written request for such new lease shall be served upon Landlord not later than sixty days after the service of Landlord's notice on such Leasehold Mortgagee, and within thirty days after the service of such written request, Landlord and the Leasehold

Mortgagee, shall enter into a new lease of the Premises and Improvements on the following terms and conditions:

9.5.1. Such new lease shall be effective on the date of expiration of the then current Term and shall be for the extension period next succeeding the then current Term (and allow further extension for all extension periods) and at the rent and upon all the agreements, terms, covenants and conditions contained in this Lease, including all applicable rights of renewal.

9.5.2. Such new lease shall require Tenant to perform any unfulfilled obligations of Tenant under this Lease which are reasonably susceptible of being performed by such Tenant.

9.5.3. Upon the execution of such new lease, the Tenant therein named shall pay all sums remaining unpaid under this Lease then unpaid, plus the reasonable expenses incurred by Landlord in connection with the preparation, execution and delivery of such new lease.

9.6. Actions Restricted Pending New Lease; Assignment of Leases and Subleases; Priority of New Leases.

(a) If a Leasehold Mortgagee has timely requested a new lease pursuant to this Article, Landlord shall not, between the date of termination of this Lease and the date of execution of such 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 Land or 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). Effective upon the commencement of the term of any new lease executed pursuant to this Article, all leases (other than such new lease) and subleases shall be assigned and transferred without recourse by Landlord to the Tenant under such new lease, and all monies (if any) on deposit with Landlord which Tenant would have been entitled to use but for the termination or expiration of this Lease may be used by the Tenant under such new lease for the purposes of and in accordance with the provisions of such new lease.

(b) All new leases pursuant to this Article and the respective leasehold estates thereby created shall, subject to the terms and conditions of this Lease, have the same priority as this Lease with respect to any mortgage, including any Fee Mortgage, of the 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 cause any Fee Mortgagee 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 Mortgagee 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 Mortgagee) 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.

(c) Landlord's obligation to enter into new lease with a Leasehold Mortgagee pursuant to this Article 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 Mortgagee.

9.7. **Modifications Not Binding.** Any material modification or amendment of this Lease (not expressly provided for in this Lease) made without the express written consent of the Leasehold Mortgagee shall not be binding on such Leasehold Mortgagee.

9.8. **No Merger.** If Landlord or Tenant shall acquire the interest of the other hereunder, this Lease shall remain outstanding and no merger of the leasehold into the fee interest shall be deemed to have occurred.

9.9. **Assignment By Leasehold Mortgagee.** If any Leasehold Mortgagee shall acquire title to Tenant's interest under this Lease by foreclosure, assignment in lieu of foreclosure or otherwise, or under a new lease pursuant to this Article, such Leasehold Mortgagee may assign such interest under this Lease or in such lease and shall thereupon be released from all liability for the performance or observance of the covenants, and conditions in this Lease or in such lease contained on Tenant's or Tenant's part to be performed and observed from and after the date of such assignment, provided, however, that the assignee from such Leasehold Mortgagee shall have expressly assumed this Lease or such lease and written evidence thereof shall have been submitted to Landlord. No Leasehold Mortgagee who shall acquire Tenant's interest under this Lease shall at any time have or incur any liability beyond its then existing equity interest, if any, in the Premises, and Landlord shall look exclusively to such equity interest, if any, for the payment or discharge of any obligation or liability of such Leasehold Mortgagee who shall acquire Tenant's interest under this Lease.

9.10. **Additional Modification and Instruments.** In connection with the grant by Tenant of a Leasehold Mortgage or Tenant's financing or refinancing of the Premises from time to time, Landlord agrees to cooperate with Tenant in order to facilitate the closing of the related financing or re-financing and to execute and deliver such modifications to this Lease or further instruments and documents as shall reasonably be required by the Leasehold Mortgage as a condition of the funding of the loan which shall be secured by such Leasehold Mortgage, provided that none of such modifications, instruments or documents shall materially adversely affect Landlord's rights under the Lease or Landlord's fee interests in the Premises.

9.11 **Estoppel Certificate.** Landlord shall, within ten (10) days after it receives the request of any Leasehold Mortgagee or prospective Leasehold Mortgagee, provide an estoppel certificate as to such matters pertaining to this Lease as are reasonably requested by such Leasehold Mortgagee or prospective Leasehold Mortgagee.

9.12 **Benefit of Provisions.** The provisions of this Article are for also for the benefit of Leasehold Mortgagee and may be relied upon and shall be enforceable by Leasehold Mortgagee as if Leasehold Mortgagee were a party to this Lease.

ARTICLE 10

FEE MORTGAGES; SUBORDINATION

10.1. **Fee Mortgage.** Landlord shall not grant or permit to exist any Fee Mortgage except the Senior Mortgage and in accordance with the provisions of this Article 10 and other provisions of this Lease. The Senior Mortgage shall at all times be superior to the rights of Landlord under this Lease, and the rights of Landlord in and to the Premises and its rights under this Lease (including without limitation its rights under Article 15 hereof) shall be inferior and subject to such Senior Mortgage and to the liens, rights, remedies and equities created thereby. Landlord shall and it does hereby agree to cooperate in all respects with Senior Mortgagee to execute and deliver one or more subordination agreements and such other and further instruments in connection therewith or collateral or supplemental thereto, all such instruments to be in form reasonable acceptable to Senior Mortgagee.

10.2. **Subordination.**

10.2.1. (a) Tenant's rights under this Lease are and shall remain subject and subordinate to the operation and effect of the Senior Mortgage. Tenant's acknowledgment and agreement of subordination as provided for in this Section is self-operative and no further instrument of subordination shall be required; however, Tenant shall execute within fifteen (15) days after request therefor, such further assurances thereof as may be requested from time to time by Landlord or Senior Mortgagee.

(b) Upon the occurrence of an Event of Default under the Senior Mortgage, Landlord hereby directs Tenant, upon the receipt by Tenant of a direction by Senior Mortgagee to pay all Minimum Annual Rent and Additional Rent thereafter to Senior Mortgagee, to make such payments to Senior Mortgagee, and Landlord agrees that if Tenant makes such payments to Senior Mortgagee, as aforesaid, Tenant shall not be liable to Landlord for the same.

(c) Tenant agrees that no Senior Mortgagee or successor to such Senior Mortgagee shall be (i) bound by any payment of Minimum Annual Rent for more than one (1) month in advance, (ii) bound by any amendment, modification, surrender or termination of this Lease made without the consent of Senior Mortgagee or such successor in interest, (iii) liable for damages for any breach, act or omission of any prior landlord (including, without limitation, the then current landlord), (iv) subject to any claim or counterclaim of offset or defenses that Tenant may have against any prior landlord (including, without limitation, the then current landlord) or (v) liable for return of any security deposit, if any (unless actually received by such person).

10.2.2. Except for the Senior Mortgage and the interests of the Senior and Leasehold Mortgagee thereunder, all Fee Mortgages and the interests of the Fee Mortgagees thereunder shall be expressly subject and subordinate to this Lease, any Leasehold Mortgage and any new lease under Article 9, and all amendments, modifications, and extensions of the foregoing

(each of the foregoing, a “Superior Interest”), in each case, regardless whether or not such Fee Mortgage preceded in time or recording any of the foregoing. The subordination under this Section shall be automatic without the need for any further documentation or instrumentation; provided, however that Landlord shall cause each Fee Mortgagee (other than Senior Mortgagee) to execute and deliver, and each Fee Mortgage (other than Senior Mortgage) shall contain an obligation of the Fee Mortgagee thereof (other than Senior Mortgagee) to so execute and deliver, upon the request of the holder of a Superior Interest (a “Superior Interest Holder”), a subordination agreement in recordable form binding on such Fee Mortgagee (other than Senior Mortgagee) and on all future holders of the Fee Mortgage (other than Senior Mortgage) containing such terms as are reasonably acceptable to such Superior Interest Holder, but in all events, shall provide that (i) all condemnation awards and proceeds of insurance shall be applied in the manner provided for in this Lease, and (ii) that such Fee Mortgagee (other than Senior Mortgagee) shall provide each Superior Interest Holder with a copy of any notice of default provided to Landlord thereunder and that no default shall exist under such Fee Mortgage (other than Senior Mortgage) unless and until such notice has been so delivered and such Superior Interest Holders have had an opportunity to cure such default.

10.3. **Tenant's Right to Cure Landlord's Defaults.** Landlord shall make all payments required to be made under the provisions of any Fee Mortgage and shall otherwise perform all of the obligations of the Landlord thereunder. In the event that Landlord defaults in the performance of any such obligations, Tenant shall have the right, but not the obligation, to cure any such default and to offset the cost thereof against the Minimum Annual Rent thereafter coming due under this Lease or to require the payment of such cost from Landlord upon demand.

10.4 **Mortgage Protection.** Tenant and Landlord each agrees to deliver to each Senior Mortgagee, Fee Mortgagee, and Leasehold Mortgagee, by registered mail, a copy of any notice of default served upon Tenant or Landlord, as applicable. Tenant and Landlord each further agrees that if Tenant or Landlord, as applicable, shall have failed to cure such default within the time provided for in this Lease, then each of Senior Mortgagee, Fee Mortgagee, and Leasehold Mortgagee shall have an additional thirty (30) days within which to cure such default or if such default cannot be cured within that time, then such additional time as may be necessary if within such thirty (30) days any Senior Mortgagee, Fee Mortgagee, or Leasehold Mortgagee has commenced and is diligently pursuing the remedies necessary to cure such default (including but not limited to commencement of foreclosure proceedings, if necessary to effect such cure), in which event Tenant or Landlord, as applicable, shall not have the right to pursue any claim against the other Tenant or Landlord, as applicable, such Senior Mortgagee, Fee Mortgagee, and/or Leasehold Mortgagee, including but not limited to any claim of actual or constructive eviction, so long as such remedies are being so diligently pursued. Such the Senior Mortgagee, Fee Mortgagee, and Leasehold Mortgagee shall have no obligation to cure (and shall have no liability or obligation for not curing) any breach or default by either Tenant or Landlord, except to the extent that such the Senior Mortgagee, Fee Mortgagee, or Leasehold Mortgagee agrees or undertakes otherwise in writing. Before exercising any remedies for a default by Tenant or Landlord, as applicable, hereunder, such Tenant or Landlord, as applicable, shall give an additional notice to any such the Senior Mortgagee, Fee Mortgagee, and/or Leasehold Mortgagee. This Lease shall remain in full force and effect during and throughout the period of grace specified in this Section, and the rights and remedies provided Landlord in Article 15 shall not be exercisable by Landlord after Tenant

shall breach or be deemed to have breached this Lease unless said Senior Mortgagee shall have failed to rectify the same during or within the additional period of time allowed said Senior Mortgagee for rectification thereof as hereinabove set out.

10.5 **Acceptance of Cure by Senior Mortgagee.** All payments made and all actions taken by said Senior Mortgagee within the grace period allowed such Senior Mortgagee for rectification of Tenant's breach, as set forth in this Section, shall be as effective to prevent a forfeiture of the rights of Tenant under this Lease as the same would have been if done and performed by Tenant instead of by said Senior Mortgagee. Senior Mortgagee shall not be considered, or become liable to Landlord as, an assignee of this Lease or otherwise until such time as said Senior Mortgagee shall by foreclosure or other appropriate proceedings in the nature thereof, or as a result of any other action or remedy provided for by such Senior Mortgagee, acquire the rights, interest and estate of Tenant under this Lease. The right of Senior Mortgagee who succeeds to title to the leasehold estate created hereunder to assign this Lease shall be unlimited, and such Senior Mortgagee shall be entitled to secure the financing of such assignment by a Leasehold Mortgage on the leasehold estate hereunder in the same manner as the Senior Mortgage created by Tenant. Upon an assignment of the leasehold estate hereunder by any Leasehold Mortgagee who succeeds to Tenant's interest, such Leasehold Mortgagee shall automatically be relieved of all liability under this Lease, notwithstanding anything to the contrary set forth herein.

ARTICLE 11 **INSURANCE**

11.1 **Tenant's Insurance Obligations.** Tenant shall obtain and maintain or cause to be obtained and maintained throughout the Term, at its sole cost and expense, the following insurance:

11.1.1. **Casualty Insurance.** Fire and extended coverage insurance (which, during the continuance of any construction on the Premises, shall be in so-called "builders risk form" to the extent available), in an amount at least equal to the replacement cost of the Improvements, as such replacement cost may from time to time be determined by Tenant's insurer. Such insurance shall not contain any coinsurance. The replacement costs of the Improvements to be insured shall be accepted by the company issuing such policy and evidenced by an "agreed amount endorsement" or waiver or coinsurance.

11.1.2. **Liability Insurance.** Commercial general liability insurance having a combined single limit for personal injury and property damage of at least equal to Two Million Dollars (\$2,000,000).

11.1.3. **Worker's Compensation Insurance.** Worker's compensation insurance in statutory amounts to the extent required by applicable law.

11.1.4 Such other insurance as is required by Senior Mortgagee pursuant to the Senior Mortgage.

Tenant shall deliver to Landlord certificates of insurance evidencing all such insurance policies and renewals thereof, as and when such policies are issued and renewed.

11.2 **Mutual Waiver of Subrogation.** Tenant and Landlord hereby each waive all rights of recovery against the other and against the general or limited partners, trustees, beneficiaries, officers, directors, members, stockholders, agents, contractors, servants, employees, subtenants, licensees and invitees of the other, on account of loss or damage occasioned to such waiving party or its property or the property of others under its control to the extent that such loss or damage is insured against under any insurance policies which either may have in force at the time of such loss or damage. Each party shall, upon obtaining policies of insurance relating to the Premises, give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Lease and each party shall endeavor to cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against either Landlord or Tenant in connection with any loss or damage covered by any such policy, at the sole cost of the party against which such waiver is sought.

11.3 **Insurance Adjustments and Settlements.** Every insured loss shall be adjusted and settled by Tenant (including, without limitation, any Leasehold Mortgagee if named as an insured on any policy as permitted by this Lease) and the insurer. All casualty insurance proceeds and all amounts payable as a result of any settlement with respect to a casualty loss or damage shall belong to and be paid to Tenant.

11.4 **Insureds.** Insurance policies required to be carried under this Article shall insure Tenant (or the respective subtenant) and shall also name Landlord as additional insureds in the case of liability insurance hereunder. All proceeds of casualty insurance shall be payable to Tenant (or the respective subtenant whose building is insured), and Landlord shall not be entitled to and shall have no interest in such proceeds or any portion thereof. All certificates of Tenant's insurance shall contain an agreement by the insurer that no such policy may be terminated or materially amended or modified without at least thirty (30) days prior notice to Landlord and Tenant.

11.5 **Tenant's Right to Self-Insure.** Anything contained in this Article 11 to the contrary notwithstanding, any and all casualty insurance which Tenant is obligated to carry pursuant to this Article may be carried pursuant to a prudent self-insurance program.

ARTICLE 12 **CASUALTY OR TAKING**

12.1 Casualty.

12.1.1 **Restoration or Demolition.** If at any time during the Term any of the Improvements shall be damaged or destroyed in whole or in part by fire or other casualty ("Casualty"), this Lease shall continue in effect (except as otherwise set forth in Section 12.1.2 herein) and Tenant shall, within a reasonable period of time, at its own cost and expense (but subject to the extent of the net insurance proceeds actually received by Tenant on account thereof), either repair and restore or cause to be repaired and restored the damaged

Improvements to complete architectural units, or demolish and remove the damaged Improvements and remove all rubble. The foregoing obligation of Tenant shall not apply to any damage or destruction caused by the acts or omissions of Landlord or any of its principals, members, contractors, agents, employees, licensees or invitees.

12.1.2 **Termination Right.** In the event at least ten (10%) percent of the Gross Floor Area of Tenant's Buildings has been damaged by such Casualty, Tenant may thereafter terminate this Lease by giving written notice to Landlord within one hundred eighty (180) days of the date of the Casualty, specifying a date of termination within sixty (60) days after the date of the notice. In the event of such termination and prior to the effective date of termination, Tenant shall demolish and remove the damaged portion of the Improvements and remove all rubble and satisfy and discharge any Leasehold Mortgage and the Minimum Annual Rent and Additional Rent shall be apportioned as of the date of the Casualty. The foregoing obligation of Tenant shall not apply to any damage or destruction caused by the acts or omissions of Landlord or any of its principals, members, contractors, agents, employees, licensees or invitees.

12.2 **Taking.**

12.2.1 **Taking of the Premises.** In the event there shall be a taking, requisition or sale or transfer by deed in lieu of a taking, by or on account of any actual or threatened eminent domain proceeding or any other governmental action (any of the foregoing, a "Taking") of all of the Premises, this Lease shall terminate as of the date of the Taking and the Minimum Rent and Additional Rent shall be apportioned as of the date of the Taking. In the event that there shall be a Taking of less than the whole of the Premises but at least five (5%) percent of the area of the Land or Gross Floor Area of Tenant's Building, or there shall be a taking or diminishment by any other government action (also included in the definition of "Taking") of one or more of the entrances to or exits or other ingress or egress from any development constructed by Tenant on the Premises, or there shall be a Taking of any portion of the Premises which materially impacts the operation of the Premises and/or Improvements or the planned development thereof, then Tenant shall have the right to terminate this Lease as of the date of the Taking by giving notice to Landlord of such election within one hundred eighty (180) days from the date of such Taking. For purposes of the foregoing, a temporary Taking for a period exceeding six (6) months shall be considered a Taking triggering Tenant's right of termination. In the event of a Taking of any portion of the Premises and if this Lease shall not be so terminated, it shall continue as to that portion of the Premises which shall not have been the subject of the Taking, in which event Tenant shall, at its sole cost and expense, promptly and with due diligence restore the buildings on the Premises as nearly as practicable to complete architectural unit, or shall demolish and remove all rubble with respect to any Improvements which are the subject of the Taking, but such obligation shall only be to the extent of the net condemnation award actually received by Tenant. If this Lease shall be so terminated, any Minimum Annual Rent paid in advance shall be refunded to Tenant. Nothing herein contained shall be construed as preventing Tenant from being entitled to any separate award made to Tenant for the taking of any personal property, or from claiming its award directly against the condemnor.

12.2.2 **Condemnation Award - Lease Terminated.** In the event of a Taking resulting in a termination of this Lease in accordance with the provisions of this article, the award paid by the condemning authority (after reimbursement to Tenant for reasonable expenses incurred in connection with collecting the award) shall be allocated as follows:

- (a) First, to the Senior Mortgagee, the unpaid principal balance of the note secured by the Senior Mortgage;
- (b) Second, to the Leasehold Mortgagee, the unpaid principal balance of the note secured by the Leasehold Mortgage;
- (c) Third, to Tenant all amounts attributable to the Improvements located on the Land (including without limitation the costs and expenses of every kind and nature incurred in connection with the construction, repair and replacement (if any) of such Improvements), plus all amounts attributable to Tenant's leasehold interest under this Lease; and
- (d) Fourth, to Landlord the amounts of the award, if any, attributable to Landlord's fee interest in the Property (but not under any circumstances an amount exceeding ten (10) times the Minimum Annual Rent then payable by Tenant under this Lease); and
- (e) Then, any remaining portion of the award to Tenant.

12.2.3 **Condemnation Award - Lease Not Terminated.** In the event of a Taking of any portion of the Premises and the Lease is not terminated, the award paid by the condemning authority (after payment of expenses incurred in connection with collecting such award) shall be allocated as follows:

- (a) First, Tenant shall receive so much of the award as is necessary to restore the Improvements and for the value of the Improvements Taken which cannot be restored (including, without limitation, amounts necessary to make necessary modifications to any parking and other "common areas" for which no substitution can be made); and
- (b) Then, the balance of the award, if any, shall be divided between Landlord and Tenant in accordance with the provisions of Section 12.2.2(c) and (d) hereof, except that all compensation for any temporary Taking shall be paid to Tenant without any distribution to Landlord.

12.2.4. **Lease Not Terminated – Abatement of Rent.** In the event of a partial Taking of any portion of the Premises and if this Lease shall not be terminated, the Minimum Annual Rent payable hereunder shall be abated in proportion to the number of square feet of Land taken in proportion to the number of square feet of Land prior to the Taking or by such other equitable calculation if the foregoing method does not accurately reflect the proportionate loss incurred by Tenant in its operation or ability to develop the Premises as a result of such Taking.

12.2.5 **Mortgagee Rights.** Landlord and Tenant each acknowledges that Landlord's and Tenant's right to any condemnation award, as well as any casualty proceeds, may be subject to the rights of Senior Mortgagee (if any), Fee Mortgagee (if any) and Leasehold Mortgagee (if

any) in and to such award or proceeds under the Senior Mortgage (if any), Fee Mortgage (if any) and/or Leasehold Mortgage (if any) which encumbers the Premises.

ARTICLE 13

LANDLORD RESTRICTIONS

13.1. **Restrictions on Landlord.** Landlord hereby agrees that any property now owned, leased or subsequently acquired by Landlord or by any party controlled by (directly or indirectly) Landlord or any principal or member of Landlord adjacent to the Premises shall not be used and Landlord shall not permit it to be used for any one or more of the following: (a) for any industrial purposes; or (b) for the conduct of a business operation which regularly or with significant frequency sells merchandise of the types or qualities now commonly known as “odd lot”, “distressed”, “bankruptcy”, “fire sale” or “damaged”; or (c) for any purpose or business which is noxious or unreasonably offensive because of the emission of noise, smoke, dust or odors (normal restaurant odors shall not be considered to be offensive so as to violate the foregoing); or (d) for the operation of a motel, or for similar operations catering to tourists; or (e) for any recreational or amusement operation, including any activity consisting wholly or in substantial part of the furnishing of recreation, entertainment or amusement facilities (including, without limitation, bowling alleys, casinos, betting parlors, theaters, electronic or other amusement games or devices, night clubs, live entertainment or massage parlors), or the sale or renting (as a primary business and not as incidental to the a general book or video store) of so-called “adult” materials (such as, without limitation, magazines, books, movies, tapes, and photographs); or (f) for any automobile or truck sales, storage, service, fueling, washing, or repair operations; or (g) for any lumber yards, boat sales yards and the like; or (h) or such other use or purpose which competes with the then-current use of the Premises by Tenant.

13.2. **Tenant's Rights With Respect to Violation of Restrictions.** Landlord and Tenant agree that irreparable harm may be suffered by Tenant in the event any of the terms and conditions set forth in Section 13.1 are violated. Accordingly, Tenant shall be entitled to an injunction, or injunctions, to restrain, enjoin and/or prevent breaches or violations, or threatened breaches or violations, of any of such terms and conditions by Landlord or by any party which controls or is controlled by or under common control with Landlord and to enforce specifically the terms and provisions hereof in any court of the United States (such right being in addition to, and not in lieu of, any other rights, damages and remedies to which Tenant is or may be entitled at law or in equity hereunder). Further, and in addition to the foregoing rights of Tenant set forth in this Section, if Landlord willfully violates (i.e. specifically permits a violation or fails to use its best efforts to end such a violation) any such terms and conditions, Tenant (a) may reduce all payments of Minimum Annual Rent thereafter due under this Lease by fifty percent (50%). Landlord shall not be deemed to have violated any such terms and conditions if such violation was not a willful violation (as described above) and upon the receipt by Landlord from Tenant of a notice of such violation, Landlord shall forthwith, at Landlord's expense, institute such actions, suits or proceedings as may be required to stay and enjoin any such violation, obtaining, if possible, an injunction pendente lite, and shall diligently and continuously prosecute such actions, suits or proceedings to a final conclusion and enforce the final judgment, decree or order which may be rendered, passed, made or entered in such actions, suits or proceedings in favor of Landlord.

ARTICLE 14
QUIET ENJOYMENT; REPRESENTATIONS AND WARRANTIES

14.1 **Quiet Enjoyment.** Landlord covenants that upon Tenant paying the Minimum Annual Rent and Additional Rent and keeping, performing and observing all covenants, agreements, terms, conditions and provisions of this Lease, Tenant shall, at all times during the Term, peaceably and quietly have, hold and enjoy the Premises (including, without limitation, the Improvements) without hindrance or molestation from Landlord or anyone claiming by, through or under Landlord, upon and subject to the terms, conditions and provisions of this Lease.

14.2. **Landlord's Authority.** Landlord hereby represents and warrants to Tenant the following:

Landlord has the legal power and authority to enter into this Lease and to lease the Premises to Tenant. Landlord has not entered into any other agreement, contract or option of any kind which has not been terminated in accordance with its terms, which grants any person or entity any right to occupy or acquire all or any portion of the Premises or any interest therein or any interest in Landlord or any development right appurtenant to the Premises or any air rights. The execution and delivery of this Lease, and the performance of all obligations under this Lease by Landlord, are duly authorized and do not and will not require any consent or approval of any person and do not and will not result in a breach of, or constitute a default under, any indenture, loan or credit agreement, mortgage, deed of trust or other agreement to which Landlord is a party of by reason of which Landlord or the Premises may be bound. There is no legal impediment to the leasing of the Premises to Tenant as contemplated by this Lease.

14.3 **Tenant's Authority.** Tenant represents and warrants that on the date hereof Tenant (a) is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, (b) has the full power and authority to enter into and perform its obligations under this Lease, and (c) the execution and delivery of this Lease and the exercise of Tenant's rights hereunder will not violate or constitute a breach of or a default under any agreement or instrument to which Tenant is a party or by which it is or may be bound and such execution, delivery and consummation does not violate any law, order or regulation of any governmental authority having jurisdiction over Tenant.

ARTICLE 15
DEFAULTS

15.1 **Events of Default.** A breach of this Lease by Tenant shall exist if any of the following events (severally an "Event of Default" and collectively "Events of Default") shall occur:

15.1.1. Tenant shall have failed to pay any Minimum Annual Rent when and as the same shall be due and payable and such failure shall continue for a period of forty-five

(45) days after Tenant's receipt of written notice thereof from Landlord specifying in detail the nature of such failure (a "Monetary Event of Default");

15.1.2. Tenant shall have failed to keep, perform or observe any, covenant, agreement, term, condition or provision of this Lease to be kept, performed or observed by Tenant and Tenant shall have failed to cure the same within sixty (60) days after Tenant's receipt of written notice from Landlord specifying in detail the nature of such failure, except that, where such failure cannot reasonably be cured within such sixty (60) day period, no Event of Default shall exist unless Tenant has failed to promptly commence and thereafter be continuing to make diligent efforts to cure such failure as soon as practicable;

15.1.3. Tenant shall have made a general assignment of its assets for the benefit of its creditors; or

15.1.4. (a) A court shall have made or entered any decree or order adjudging Tenant to be bankrupt or insolvent; (b) a petition seeking reorganization of Tenant or an arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any State thereof shall have been filed against Tenant and not dismissed within ninety (90) days thereafter; (c) a receiver, trustee or assignee of Tenant in bankruptcy or insolvency for its property shall have been appointed and not discharged within ninety (90) days thereafter; (d) a court shall have made or entered any decree directing the winding up or liquidation of Tenant and such decree or other shall have continued for a period of ninety (90) days; or (e) Tenant shall have voluntarily submitted to or filed a petition seeking any such decree or order.

15.1.5 Tenant shall default with respect to any payment obligation of Tenant under the Senior Mortgage.

15.2 **Remedies.** Upon a Monetary Event of Default, and so long as such Monetary Event of Default shall be continuing, Landlord shall have the following rights and remedies:

15.1.1. Landlord may keep this Lease in effect and enforce all of its rights and remedies under this Lease, including, without limitation, the right to recover Minimum Annual Rent and Additional Rent as they become due by appropriate legal action.

15.1.2. Landlord may cure the Monetary Event of Default, in which event all reasonable sums expended by Landlord shall become Additional Rent hereunder.

15.1.3. Subject to the rights of any Leasehold Mortgagee pursuant to the provisions of Article 9 hereof or as otherwise provided herein, Landlord may terminate this Lease by giving Tenant thirty (30) days' prior written notice of termination, and if Tenant shall not cure the Monetary Event of Default on which such termination is based within such thirty (30) day period, then upon expiration of such thirty (30) day period, except as otherwise expressly provided in this Lease, all of Tenant's interest in the Premises shall terminate and Tenant shall surrender the Premises (including, without limitation, the Improvements) in the condition required pursuant to

the provisions of Article 7 hereof, and, pursuant to judicial proceedings, Landlord may reenter and take possession of the Premises and eject Tenant, or any other person or persons claiming any right under or through Tenant or eject some and not others or eject none without being deemed guilty of any manner of trespass. Notwithstanding the preceding sentence, Landlord shall not eject any subtenant or other party which Landlord is required to recognize pursuant to the provisions of Section 8.2 hereof or to which Landlord has otherwise provided a recognition agreement.

15.1.4. Landlord may reenter and take possession of the Premises without accepting surrender of or terminating this Lease, and at any time and from time to time, relet the Premises upon such reasonable terms and conditions as Landlord may reasonably deem advisable for the account and in the name of Tenant or otherwise without relieving Tenant from any liability or obligations hereunder or from any claim for damages, Minimum Annual Rent or Additional Rent previously accrued at the time of reentry and for Minimum Annual Rent Additional Rent and damages (but never consequential damages) accruing thereafter for the remainder of the Term. Tenant shall nevertheless remain liable for and pay to Landlord on the due dates specified in this Lease all Minimum Annual Rent and Additional Rent, plus Landlord's reasonable costs and expenses, less the proceeds of any such reletting. No act by or on behalf of Landlord shall constitute a termination of Tenant's right to possession under this Lease unless Landlord gives Tenant written notice of termination as set forth hereinabove.

In no event shall Tenant ever be liable for consequential damages. Notwithstanding anything in this Lease to the contrary, Landlord shall use commercially reasonable efforts to mitigate its damages which it has or may incur as a result of an Event of Default and Tenant shall be liable under this Lease only for such damages which could not have been so mitigated by Landlord. Except to the extent expressly set forth in this Lease, Landlord shall not have the right to terminate this Lease or reenter or take possession of the Premises (pursuant to judicial proceedings or otherwise) with respect to a default of Tenant hereunder or otherwise.

15.3 **Injunction.** In addition to the other remedies provided in this Lease for a Monetary Event of Default, or in the case of a non-Monetary Event of Default, Landlord shall be entitled to restraint of Tenant, as the case may be, by injunction of the violation or attempted or threatened violation of any of the covenants, agreements, terms, conditions or provisions of this Lease.

15.4 **Voluntary Surrender.** The voluntary or other surrender of this Lease by Tenant or a mutual cancellation thereof, shall not, unless Landlord shall so elect, work a merger and shall, at the option of Landlord, operate as an assignment to Landlord of any or all subleases.

15.5 **Attorneys' Fees.** In the event of any action or proceeding concerning this Lease or the Premises, the party substantially prevailing in such action or proceeding shall be entitled to recover from the other party in such action reasonable attorneys' fees, costs and expenses.

15.6 **Rights of Leasehold Mortgagee.** The rights and remedies of Landlord and Tenant under this Article are expressly subject to the provisions of Article 9 and 10 of this Agreement.

ARTICLE 16

MISCELLANEOUS

16.1 **Approvals.** Whenever this Lease requires any approval, consent or other action on the part of Landlord, and whether or not the applicable provision expressly so requires, Landlord shall not unreasonably withhold or delay such approval or other action; in the case of any approval requested of Landlord hereunder, such approval shall be deemed given in the event of the failure of Landlord to give its written refusal thereof within ten (10) days after request for such approval is first requested by Tenant.

16.2 **Construction of Provisions.** Landlord and Tenant are business entities having substantial experience with the subject matter of this Lease and have each fully participated in the negotiation and drafting of this Lease. Accordingly, this Lease shall be construed without regard to the rule that ambiguities in a document are to be construed against the drafter.

16.3 **Waiver; Remedies Cumulative.** Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by either party at any time, express or implied, of any breach of any covenant, agreement, term, condition or provision of this Lease shall be deemed a waiver of a breach of any other covenant, agreement, term, condition or provision of this Lease or a consent or approval to any subsequent breach of the same or any other covenant, agreement, term, condition or provision. If any action by either party shall require the approval of the other party, the other party's approval of such action on any one occasion shall not be deemed an approval of said action on any subsequent occasion or an approval of any other action on the cause of any subsequent occasion. Any and all rights and remedies which either party may have under this Lease or by operation of law, either at law or in equity, upon any breach, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other; and no one of them whether exercised by said party or not, shall be deemed to be in exclusion of any other; and any two or more of all of such rights and remedies may be exercised at the same time.

16.4 **Headings.** The headings used for the various articles of this Lease are used only as a matter of convenience for reference, and are not to be construed as part of this Lease or to be used in determining the intent of the parties of this Lease.

16.5 **Invalidity.** If any of the covenants, agreements, terms, conditions or provisions of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease and the application of such covenant, agreement, term, condition or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and each of the other covenants, agreements, terms, conditions and provisions of this Lease shall be valid and enforceable to the fullest extent permitted by law. This Lease shall be governed by, and construed in accordance with, the laws of the Commonwealth of Massachusetts.

16.6 **Successors and Assigns.** This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

16.7 Estoppel Certificates. Each party shall from time to time, upon no less than fifteen (15) days' prior written request of the other, execute, acknowledge and deliver to the other a statement in writing ("Estoppel Certificate") certifying that (a) this Lease is not amended, unmodified and is in full force and effect (or, if there have been amendments or modifications), (b) this Lease is in full force and effect as amended or modified and stating amendments or the modifications thereto, (c) the dates to which Minimum Annual Rent and Additional Rent have been paid, (d) the commencement and termination dates of the Term, the Minimum Annual Rent and the Additional Rent, (e) whether there exist any default or Event of Default by the other party and, if so, the nature of such default or Event of Default, and (f) such other information as the requesting party shall reasonably request. Any such statement delivered pursuant to this Section may be relied upon by any prospective purchaser or holder of a Fee Mortgage (including without limitation the holder of the Senior Mortgage) or fee interest hereunder or holder of a Leasehold Mortgage (including without limitation the holder of the Senior Mortgage) or leasehold interest hereunder or any prospective holder of a sublease from Tenant or any prospective assignee of any such holder of a Fee Mortgage, Senior Mortgage, Leasehold Mortgage or sublease. The failure of Tenant or Landlord, as applicable, to execute, acknowledge and deliver to such requesting party any Estoppel Certificate in accordance with the provisions of this Section 16.7 within the 15-day period above provided shall constitute an acknowledgment by such requestee party, which may be relied upon by any Fee Mortgagee, Senior Mortgagee, Leasehold Mortgagee, or prospective Fee Mortgagee, Senior Mortgagee, Leasehold Mortgagee, or any purchaser of the Premises or of any interest therein, that this Lease has not been modified, supplemented or amended except as set forth in such requestor's request, and is in full force and effect (or in full force and effect as so modified, supplemented or amended), and that the facts and conditions as shall have been requested to be certified are true and correct, and shall constitute, as to any person entitled to rely as aforesaid, a waiver of any defaults which may exist prior to the date of such request. Notwithstanding the foregoing, such requestee party's failure to furnish such Estoppel Certificate to the requesting party within the time period provided herein after such requesting party's request therefor, shall constitute an Event of Default hereunder.

16.8 Memorandum of Lease; Transfer Taxes. Landlord, upon request of Tenant, shall execute, deliver and record a notice or memorandum of this Lease in proper form for recording ("Memorandum of Lease"), together with any other instrument or document as shall be required in order for the Tenant to record such notice or memorandum in the public real estate records. Tenant shall have the right to record such Memorandum of Lease. If this Lease is amended, Landlord and Tenant shall, promptly upon the request of either party, execute and deliver an amendment of such memorandum giving notice of such amendment. Tenant shall pay all transfer taxes, including without limitation New York State Real Estate Tax and New York City Real Property Transfer Tax ("Transfer Taxes") imposed in connection with this Lease.

16.9 Notices. All notices, demands and other communications hereunder shall be in writing and shall be sent by prepaid certified or registered mail, return receipt requested, or by personal delivery, or by national overnight courier (such as Federal Express, UPS Overnight Express, Airborne Express or the like) prepaid (or on standing account) and shall be deemed to have been given, on the date of delivery, or, if delivery, is refused, on the date delivery is first attempted. Notices shall be effective if given by the parties or their respective counsel. Notices shall be sent to the following addresses:

If to Landlord, to: **95TH AVENUE EQUITIES LLC**
670 Myrtle Avenue
Suite 6373
Brooklyn NY 11205
Attention:

With a copy to: Jeffrey Zwick, Esq.
Jeffery Zwick & Associates, P.C.
2329 Nostrand Avenue, 4 Floor
Brooklyn, New York 11210

If to Tenant, to: **Sutphin QOZB LLC**
670 Myrtle Avenue
Suite 6373
Brooklyn NY 11205
Attention:

With a copy to: Jeffrey Zwick, Esq.
Jeffery Zwick & Associates, P.C.
2329 Nostrand Avenue, 4 Floor
Brooklyn, New York 11210

Any party or its attorney may change its notice address on giving notice to the other party given in accordance with this Section.

16.10 **Limitations of Landlord's Liability.** The term "Landlord" as used in this Lease shall be limited to mean and include only the owner or owners at the time in question of the Premises and in the event of any sale of the fee title to the Premises, Landlord and, in case of any subsequent sale, the transferor thereunder, shall be relieved from and after the date of such sale of further liability or obligation for the keeping, performing or observing of any covenant, or condition on the part of Landlord contained in this Lease arising from and after the date of the transfer to be kept, performed or observed, it being intended hereby that the covenants, agreements, terms, conditions or provisions contained in this Lease on the part of Landlord shall be binding on Landlord and its successors and assigns, only during and in respect of their respective successive periods of ownership of the Premises.

16.11 **Force Majeure.** In any case where either party hereto is required to do any act, delays caused by or resulting from Acts of God, war, civil commotion, fire, flood or other casualty, labor difficulties, shortages of labor, materials or equipment, changes in or inability to comply with government regulations, unusually severe weather, or other causes beyond such party's reasonable control shall not be counted in determining the time during which work or other undertakings shall be completed, whether such time be designated by a fixed date, a fixed time or a "reasonable time", and such time shall be deemed to be extended by the period of such delay; provided, however, that the party required to perform such act shall, to the extent possible,

complete such obligations as may then be possible to perform and use due diligence to remove or overcome the cause of such delay.

16.12 **Amendments.** This instrument contains all agreements made between the parties hereto with respect to the subject matter hereof and may not be amended and modified in any other manner than by an instrument in writing executed by the party to be charged therewith.

16.13 **Holding Over.** This Lease shall terminate without further notice at the expiration of the Term. Any holding over by Tenant after the expiration of the Term (including any extensions thereof) shall be treated as a daily tenancy at sufferance at a monthly rate (prorated for any partial month) equal to the Minimum Annual Rent plus Additional Rent payable hereunder for the last month of the Term and upon the terms, conditions and provisions set forth in this Lease as far as applicable.

16.14 **Confidentiality.** Landlord shall keep the provisions of this Lease in confidence and shall not publish or disclose any of such provisions at any time during the Term and shall cause its agents, employees and contractors keep the same in confidence. The foregoing shall not apply to disclosures that are required to be made by to any taxing authority or pursuant to a court order or other reporting requirement or in connection with any financing obtained by Landlord.

16.15 **Landlord Encumbrances.** Landlord shall not cause or permit the Premises or any portion thereof to be encumbered or otherwise affected by any Encumbrances (other than the Senior Mortgage). Any Encumbrances so caused or permitted by Landlord prior to or during the Term shall be promptly removed and cured by Landlord at its sole cost and expense and Landlord shall indemnify, defend and hold harmless Tenant from and against all Losses incurred by Tenant as a result of Landlord's failure to comply with Landlord's obligations under this Section. In addition, in the event that Landlord defaults in the performance of any of its obligations under this Section, Tenant shall have the right, but not the obligation, to cure any such default and to offset the cost thereof against the Minimum Annual Rent thereafter coming due under this Lease or to require the payment of such cost from Landlord upon demand.

16.16 **No Merger.** If Landlord and/or Tenant shall acquire the interest of the other hereunder, this Lease shall remain outstanding and no merger of the interests shall be deemed to have occurred.

ARTICLE 17 **BROKERS**

Landlord and Tenant hereby represent and warrant to each other that they have dealt with no broker or agent in this transaction and each agrees to hold and indemnify the other harmless from and against any Liabilities that either party may suffer as a result of claims for a commission or fee brought by any other broker or agent in connection with this Lease, the obligated party hereunder to be the party whose conduct gives rise to such claim. This Section is not intended for the benefit of any other third party.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Landlord and Tenant have executed this instrument as a sealed instrument as of the date first written above.

Landlord:

95TH AVENUE EQUITIES LLC

By: 

Name: Joel Zupnick

Title: Authorized Signatory

Tenant:

Sutphin QOZB LLC

By: 

Name: Moshe Braver

Title: Manager

EXHIBIT A

Description of Land

EXHIBIT B

RENT SCHEDULE

<u>Rent Table</u>		
Year 1	\$	3,000,000
Year 2	\$	3,030,000
Year 3	\$	3,060,300
Year 4	\$	3,090,903
Year 5	\$	3,121,812
Year 6	\$	3,153,030
Year 7	\$	3,184,560
Year 8	\$	3,216,406
Year 9	\$	3,248,570
Year 10	\$	3,281,056
Year 11	\$	3,313,866
Year 12	\$	3,347,005
Year 13	\$	3,380,475
Year 14	\$	3,414,280
Year 15	\$	3,448,423
Year 16	\$	3,482,907
Year 17	\$	3,517,736
Year 18	\$	3,552,913
Year 19	\$	3,588,442
Year 20	\$	3,624,327
Year 21	\$	3,660,570
Year 22	\$	3,697,176
Year 23	\$	3,734,148
Year 24	\$	3,771,489
Year 25	\$	3,809,204
Year 26	\$	3,847,296
Year 27	\$	3,885,769
Year 28	\$	3,924,627
Year 29	\$	3,963,873
Year 30	\$	4,003,512
Year 31	\$	4,043,547
Year 32	\$	4,083,982
Year 33	\$	4,124,822
Year 34	\$	4,166,070
Year 35	\$	4,207,731
Year 36	\$	4,249,808
Year 37	\$	4,292,306

Year 38	\$ 4,335,229
Year 39	\$ 4,378,582
Year 40	\$ 4,422,368
Year 41	\$ 4,466,591
Year 42	\$ 4,511,257
Year 43	\$ 4,556,370
Year 44	\$ 4,601,933
Year 45	\$ 4,647,953
Year 46	\$ 4,694,432
Year 47	\$ 4,741,377
Year 48	\$ 4,788,790
Year 49	\$ 4,836,678
Year 50	\$ 4,885,045
Year 51	\$ 4,933,895
Year 52	\$ 4,983,234
Year 53	\$ 5,033,067
Year 54	\$ 5,083,397
Year 55	\$ 5,134,231
Year 56	\$ 5,185,574
Year 57	\$ 5,237,429
Year 58	\$ 5,289,804
Year 59	\$ 5,342,702
Year 60	\$ 5,396,129
Year 61	\$ 5,450,090
Year 62	\$ 5,504,591
Year 63	\$ 5,559,637
Year 64	\$ 5,615,233
Year 65	\$ 5,671,386
Year 66	\$ 5,728,099
Year 67	\$ 5,785,380
Year 68	\$ 5,843,234
Year 69	\$ 5,901,667
Year 70	\$ 5,960,683
Year 71	\$ 6,020,290
Year 72	\$ 6,080,493
Year 73	\$ 6,141,298
Year 74	\$ 6,202,711
Year 75	\$ 6,264,738
Year 76	\$ 6,327,385
Year 77	\$ 6,390,659
Year 78	\$ 6,454,566
Year 79	\$ 6,519,112
Year 80	\$ 6,584,303

Year 81	\$ 6,650,146
Year 82	\$ 6,716,647
Year 83	\$ 6,783,814
Year 84	\$ 6,851,652
Year 85	\$ 6,920,168
Year 86	\$ 6,989,370
Year 87	\$ 7,059,264
Year 88	\$ 7,129,856
Year 89	\$ 7,201,155
Year 90	\$ 7,273,166
Year 91	\$ 7,345,898
Year 92	\$ 7,419,357
Year 93	\$ 7,493,551
Year 94	\$ 7,568,486
Year 95	\$ 7,644,171
Year 96	\$ 7,720,613
Year 97	\$ 7,797,819
Year 98	\$ 7,875,797
Year 99	\$ 7,954,555