ATTACHMENT 4

SUMMARY OF CERTAIN PROVISIONS OF THE LEASES AND FORMS THEREOF

The following is a summary of certain provisions of the Ground Leases and material lease distinctions between the Ground Leases. These summaries do not purport to be complete and reference is made to the respective Ground Leases for the detailed provisions thereof. This summary is qualified in its entirely by such reference. Forms of such Leases are included by specific cross-reference in this official statement and have been filed with EMMA.

Eastern Rail Yards – Summary of ERY Severed Parcel Lease Terms and Material Lease Distinctions

	Form of Severed Parcel Lease	Tower D Severed Parcel Lease ("15 Hudson Yards")	Tower A Severed Parcel Lease ("30 Hudson Yards")	Retail and Retail Pavilion Severed Parcel Leases	Tower E Lease ("35 Hudson Yards")
Severed Parcel Lease Date	N/A	November 23, 2015	December 11, 2015	December 11, 2015	July 27, 2016
Landlord	Metropolitan Transportation Authority ("MTA")	Same as Form	Same as Form	Same as Form	Same as Form
Tenant	N/A	ERY South Residential Tower LLC, a Delaware LLC	Hudson Yards North Tower Tenant LLC, a Delaware LLC	ERY Retail Podium LLC, a Delaware LLC	ERY North Tower RHC Tenant LLC, a Delaware LLC
Rental Commencement Date	December 3, 2012 (Base Rent Abatements calculated from this date)	Same as Form	Same as Form	Same as Form	Same as Form
Severed Parcel Lease Term; Expiration Date (Article 1)	99 years from December 3, 2012 (Rental Commencement Date) Expiration Date: December 2, 2111 All Severed Parcel Leases commence and expire on the above dates, irrespective of actual date of severance and execution.	Same as Form	Same as Form	Same as Form	Same as Form
Severed Parcel Allocable Share & Primary Planned Use (Definitions)	N/A	12.15% (residential)	34.09% (commercial office)	16.21% (Retail) 0.18% (Pavilion) (retail shops & restaurants)	13.95% (hotel, residential, retail, office)
Land Value (Article 3)	Initial Land Value ("ILV") for entire ERY: $376,000,000 "Adjusted Initial Land Value" for Entire ERY (ILV – Upfront Payments): $338,400,000	Same as Form	Same as Form	Same as Form	Same as Form
Upfront Payments (Article 3)	Upfront payments of Base Rent made as follows (based on 10% of ILV): $18,800,000 (based on 5% of ILV) at closing $9,400,000 (based on 2.5% of ILV) at 1st anniversary $9,400,000 (based on 2.5% of ILV) at 2nd anniversary	Same as form, but MTA acknowledges receipt of all required upfront payments.	Same as form, but MTA acknowledges receipt of all required upfront payments.	Same as form, but MTA acknowledges receipt of all required upfront payments.	Same as form, but MTA acknowledges receipt of all required upfront payments.
Annual Base Rent ("Base Rent") (Article 3)	Rent Factor (6.5%) x Adjusted Initial Land Value x Severed Parcel Allocable Share	Same as Form	Same as Form	Same as Form	Same as Form
Base Rent – Fixed Escalations (Article 3)	Base Rent is subject to a 10% increase every 5 years.	Same as Form	Same as Form	Same as Form	Same as Form
Base Rent – FMV Resets (Article 3)	Fair market value ("FMV") resets of Base Rent occur in Lease years 30, 55 and 80. FMV resets based on the product of (i) Rent Factor (6.5%) and (ii) 90% of the FMV Land Value determined as of the relevant FMV reset period, as if the applicable leased premises for which the Base Rent FMV reset is being calculated is (x) encumbered by the applicable Severed Parcel Lease, (y) unimproved by the ERY Roof Component and any Facility Airspace Improvements and (z) to be used for the actual uses in place or under development on the leased premises at the time that such FMV Land Value determination is being made (or, if construction has not commenced on any portion of the premises at the time that such FMV Land Value determination is being made, the highest and best use permitted for such portion of the	Same as Form	Same as Form	Same as Form	Same as Form

	Severed Parcel Lease premises in accordance with the Zoning Resolution, the applicable Severed Parcel Lease and the other applicable Project Documents. An FMV reset of Base Rent shall not result in Base Rent that is (x) any less than 100% of the Base Rent due in the year prior to the applicable reset year (a "floor" on FMV reset Base Rent) and (y) no more than 120% the Base Rent due in the year prior to the applicable reset year (a "cap" on FMV reset Base Rent).				
Base Rent Abatement (Article 3)	(A) Scheduled Base Rent Abatement is as follows: (A) for Lease Years 1-3 (counted from December 3, 2012 Rental Commencement Date), 100% of Base Rent is abated; (B) for Lease Years 4-6, 50% of Base Rent is abated; and (C) from and after the 6th Lease Year, Base Rent is payable without abatement. Upon commencement of construction on a Severed Parcel, Base Rent automatically increases to the greater of (x) 50% of Base Rent or (y) Base Rent amount payable subject to Scheduled Base Rent Abatement. Upon Substantial Completion of construction on a Severed Parcel, 100% of Base Rent is payable, irrespective of Scheduled Base Rent Abatement. In the event that a "Compensable MTA Party Delay" causes an Unavoidable Delay in construction, a Direct Cost Rent Credit, equal to up to 50% of Base Rent, is permitted on a day-for-day basis beyond the date of Substantial Completion with respect to a Building which contains commercial and/or anchor retail space, if, as of the date of the occurrence of a Compensable MTA Party Delay, either commencement of construction of the Building had begun, or one or more bona fide space leases with third-party commercial and/or anchor retail tenants had been signed and copies delivered to MTA. Actions of MTA which could cause a "Compensable MTA Party Delay" include design changes to the LIRR Roof that are inconsistent with previously approved plans, failure by MTA to review plans timely or to provide scheduled "track outages" in accordance with an approved construction schedule.	Same as Form; but Direct Cost Rent Credit N/A because Building contains no third-party commercial and/or anchor retail tenants	Same as Form	Same as Form	Same as Form; but Direct Cost Rent Credit N/A because Building contains no third-party commercial and/or anchor retail tenants
PILOST (Article 4)	Tenant required to pay to MTA (pursuant to separate PILOST Agreement) payments in lieu of sales and compensating use taxes ("PILOST") on the purchase of construction materials and other tangible personal property to be incorporated into the Facility Airspace Improvements constructed on the Premises.	Same as Form	Same as Form	Same as Form	Same as Form
Default Rate (Article 6)	Following required notice and grace period, unpaid amounts due under the Severed Parcel Lease bear interest at Prime Rate plus 2%.	Same as Form	Same as Form	Same as Form	Same as Form

Eastern Rail Yards – Summary of ERY Severed Parcel Lease Terms and Material Lease Distinctions

FASP Owner's Association (Article 7)	An ERY Owners Association comprising all ERY Severed Parcel owners and/or Severed Parcel Lease tenants to coordinate performance of common maintenance obligations under the ERY Declaration of Easements has been formed, with MTA approval.	Same as Form	Same as Form	Same as Form	Same as Form
Development Rights; Development and Construction of ERY Improvements (Article 8)	Entire zoning floor area appurtenant to ERY to be incorporated into commercial, residential and community facility buildings in accordance with the zoning plan, for construction of a common roof/platform over the Yards Parcel, construction of common open space, contribution to construction of High Line, and set-aside of floor area for Cultural Facility. Each Severed Parcel Lease requires construction of the allocable portion of overall ERY zoning floor area in to specific Severed Parcel Improvements. Any improvements must be developed and maintained in compliance with the Zoning Resolution and the ERY Restrictive Declaration. If a Hotel is part of the development it must also be developed and maintained in compliance with the provisions of Public Authorities Law § 2879-b. Commencement of construction on each Severed Parcel conditioned upon: (1) receipt of a building completion guaranty provided by approved guarantors, (2) evidence of sufficient financing to complete planned construction, (3) MTA/LIRR approval of plans and specs and contractor, (4) compliance with insurance requirements; and (5) collateral assignment of all construction contracts. All improvements are the property of MTA until fee conversion.	Allocates 740,227 zoning square feet to be incorporated into residential improvements. Other Provisions same as Form.	Allocates 3,056,000 zoning square feet to be incorporated into commercial/ retail/ community facility improvements. Other Provisions same as Form.	Allocates 3,088,319 zoning square feet to be incorporated into commercial/ retail/ community facility improvements on Retail Parcel, and 10,800 zoning square feet for Pavilion Parcel. Other Provisions same as Form.	Allocates 808,878 zoning square feet to be incorporated into commercial and residential improvements. Other Provisions same as Form.
Condominium Conversion (Article 9)	N/A	MTA has approved subdivision of MTA's fee interest in Severed Parcel into separate condominium units. MTA agrees, subject to its approval of documents, to execute Condo Declaration, By-Laws, Floor Plans, and Common Interest allocations (collectively, the "Condominium Documents"). MTA will cooperate with Tenant, at Tenant's expense, to seek a no-action letter from the NYS Law Department and/or to cooperate with filing of an offering plan for sale of units. Tenant and Guarantor indemnifies MTA (and its affiliates, subsidiaries, agents, etc.) for liabilities arising from condominium formation, operation and offering of units. Following condominium conversion, the Severed Parcel Lease is automatically	Same as Tower D Lease	Same as Tower D Lease	Same as Tower D Lease

		deemed amended so that the Premises includes all condominium units and common elements. Tenant assumes all rights and obligations of unit owner(s) including voting rights, right to appoint members to condominium board, sublease, all in accordance with the Condominium Documents and the Severed Parcel Lease. Such rights, however, shall be restricted and/or revoked if there is a Severed Parcel Lease Default. Upon a Default, Tenant may not vote condominium interest without MTA's written consent. In Event of Default, MTA may also replace a Tenant designee on Condominium Board with an MTA designee. If there is a conflict between the terms of the Condominium Documents and the Severed Parcel Lease with respect to the use and occupancy of a unit, the more restrictive terms govern.			
Sub-Severance (Article 9)	Severed Parcel Lease permits the further subdivision and sub-severance (a "Subparcel Severance") of existing Severed Parcels, each of which parcel(s), following Subparcel Severance, will have its own separate lease (a "Severed Subparcel Lease"), not cross-defaulted with other Severed Subparcel Leases, and with separate Base Rent and Purchase Options. Each Severed Subparcel Lease must be in the same form as the Severed Parcel Lease from which the Severed Subparcel was severed. Subparcel Severance must be for a bona fide commercial purpose in connection with the financing, development and operation of a Building or a portion of a Building under a Severed Parcel Lease. At any one time, there can be no more than nine Subparcel Severances. Subparcel Severance is conditioned upon: (1) no existing event of default under the Severed Parcel Lease; (2) substantial completion of the Associated Portion of the LIRR Roof and Facilities (if any) on the Severed Parcel; (3) a core and shell certificate of occupancy for the entire building on the Severed Parcel; (4) Severed Subparcel consisting of a single use (i.e. office, retail, hotel, residential rental or residential condominium) must constitute the entirety of such use within the applicable building; and (5) MTA reasonable approval of all declarations, easements, agreements, instruments or other documents to which each Severed Subparcel will be subject.	Same as Form	Same as Form	Same as Form	Same as Form

	Following Subparcel Severance, Tenant must provide a revised severed parcel plan reflecting the zoning square footage allocated to the Severed Subparcel and an amendment to the applicable Severed Parcel Lease including, among other things: (A) the maximum floor area and zoning uses that may be used on the Severed Subparcel; (B) a legal description of the Severed Subparcel, and (C) a revised pro forma rent schedule for the applicable Severed Subparcel reflecting the reallocation of rent to the Severed Subparcel. Following Subparcel Severance, Tenant under the applicable Severed Parcel Lease is released from rights and obligations with respect to the Severed Subparcel.				
Fee Purchase Option and Option Price (Article 10)	Tenant has option to purchase fee title to a Severed Parcel at any time following substantial completion of the improvements on that Severed Parcel. The fee purchase price shall equal, at the time of closing of the fee purchase, the present value, at a discount rate of 6.5%, of the sum of (i) all remaining Base Rent due under the Severed Parcel Lease for the balance of the 99-year Severed Parcel Lease Term, plus (ii) the value of MTA's reversionary interest in the Severed Parcel at the end of the Severed Parcel Lease Term (reversion calculated at an aggregate of $3,582,579,130 for all ERY Severed Parcels.) Conditions Precedent to Fee Purchase Option: (1) Payment of all PILOST with respect to improvements, including PILOST on all office fit-out for the anchor tenant in an office building, (2) Rent must be current, (3) Letter of Credit posted to cover any remaining punch list items for Roof completion, and (4) no existing Severed Parcel Lease Default. MTA must cause fee converted property to be free and clear of lien and encumbrances created by MTA, except to the extent requested or consented to by Tenant. Tenant responsible for all costs associated with fee conversion (transfer taxes, title and survey costs, etc.)	Same as Form, but adds additional provisions for fee conversion for residential condominium Units, as follows: • Each Unit sale must be pursuant to a sales contract and offering plan, that includes release and indemnity of MTA for liability associated with condominium conversion; • MTA will execute all documents necessary to convey fee title to individual residential Units, including deed, transfer tax forms, fee mortgage releases, to be held in escrow and delivered at each Unit closing; • Each Unit will have a fee purchase price payable to MTA at Unit closing, equal to Unit's percentage share of the overall Severed Parcel Option Price, set forth in schedule attached to the Severed Parcel Lease; • At each Unit closing, upon payment of the Unit Purchase Price to MTA, the Severed Parcel Lease will be amended to exclude the purchased Unit from the leased premises and adjust the Base Rent to exclude Base Rent attributable to the purchased Unit.	Same as Form, but adds that fee conversion is conditioned upon recording of the Condominium Documents and completion of any Subparcel Severance.	Same as Tower A	Same as Tower D (residential condominium unit provisions)
Buildings Completion Guaranty (Article 11)	Prior to the commencement of construction of each Building under a Severed Parcel Lease, Tenant must deliver a joint and several Completion Guaranty from The Related Companies L.P.	Same as Form	Same as Form	Same as Form	Same as Form

	and OP USA Debt Holdings Limited Partnership (an Oxford affiliate) (collectively, the "Guarantor") covering timely completion of the applicable Building and Related Improvements. Buildings Completion Guaranty obligations are capped at 115% of hard construction costs and actual soft costs (architects, engineers, etc.) less any amounts funded (or to be funded) by institutional loans. Buildings Completion Guaranty requires that Guarantor maintain Minimum Liquid Assets and Minimum Net Worth sufficient, in MTA's reasonable judgment, to cover Guarantor's aggregate exposure on all Guaranties given on the ERY and WRY. MTA has required on all ERY Guaranties a Minimum Net Worth of $1.2 billion and Minimum Liquid Assets of $100 million for the Related Guarantor, and a Minimum Net Worth and Minimum Liquid Assets of $400 million, respectively, for the OP USA Guarantor.				
Bondable Net Lease (Article 13)	Tenant shall reasonably cooperate with MTA in order to enable MTA to issue bond financing secured by Base Rent.	Same as Form	Same as Form	Same as Form	Same as Form
Repairs, Maintenance and other Additional Costs (Articles 4, 14, 18)	Tenant is responsible for all taxes, insurance, repairs and maintenance, with respect to the Premises. Base Rent is triple-net to MTA. Tenant is required to take good care of the Facility Airspace Improvements and to prevent waste or injury to the Premises.	Same as Form	Same as Form	Same as Form	Same as Form
Casualty and Use of Insurance Proceeds (Article 15)	In the event of a casualty to the Facility Airspace Improvements in whole or in part, Tenant is obligated promptly and diligently to restore the Facility Airspace Improvements in accordance with plans approved by the MTA and at Tenant's cost, regardless of whether or not insurance proceeds are sufficient to cover the costs of restoration or rebuild. No Leasehold Mortgagee may apply insurance proceeds to pay down a Leasehold Mortgage loan in lieu of restoration. If Tenant fails promptly and diligently to complete restoration or rebuild, MTA has a self-help option to complete the restoration or rebuild at Tenant's expense. If restoration or rebuild is estimated to cost $5,000,000 or more, all casualty insurance proceeds must be deposited in a Restoration Fund Depository prior to commencement of the restoration. Alternatively, Tenant must provide MTA with a guaranty of the insurance proceeds from a creditworthy guarantor reasonably approved by MTA. Funds in the Restoration Fund Depository will be paid to Tenant in installments as the restoration progresses, subject to customary construction advance provisions and certified Tenant and contractor requisitions, including evidence of no liens. Upon completion of the restoration, the balance of funds held by the Restoration Fund Depository (net any rent due and payable) shall be paid to Tenant	Same as Form	Same as Form	Same as Form	Same as Form

	(subject to the rights of any Leasehold Mortgagee or Mezzanine Lenders to such balance of funds). If any Monetary Default exists, subject to MTA's notice to Tenant, the Restoration Fund Depository shall pay to MTA, prior to any payment to Tenant, the amount required to cure such Monetary Default.				
Condemnation (Article 16)	In the event of the taking of substantially all of the Premises for any public or quasi-public purpose, the Severed Parcel Lease shall terminate and the condemnation award shall first be used to pay to MTA the present value of all remaining rent for the term of the Severed Parcel Lease plus the present value of the MTA's reversionary interest. Any remaining condemnation award is payable to Tenant. In the event of a partial condemnation, the Lease is not terminated, and Base Rent shall be abated in proportion to the portion of the Premises taken. The condemnation award shall first be used to restore the Premises to a usable whole, and thereafter pay MTA for the value of MTA's interest in the Premises taken, and thereafter be distributed to Tenant. Condemnation awards used for restoration will be deposited into a Condemnation Award Depository with similar construction advance provisions as a Restoration Fund Depository. In the event of a temporary taking, the Severed Parcel Lease continues in full force and effect and rent is unabated, and the condemnation award is applied to rent.	Same as Form	Same as Form	Same as Form	Same as Form
Assignment and Subletting (Article 17)	No assignment or change of control in the Tenant is permitted without the consent of the MTA, in its sole discretion, except for certain "Permitted Transfers", including: (1) upon Commencement of Construction under the Severed Parcel Lease, transfer to a "User" which will acquire the Premises for its own use and occupancy, and/or (2) upon Substantial Completion of the Associated Portion of the LIRR Roof located on the Severed Parcel, transfer to any "Qualified Transferee", including a party that has (or retains as construction manager a party with) no less than 10 years of experience in large scale development projects in an urban environment. Exercise by a Mezzanine Lender of rights to obtain title to equity interests of Tenant does not require consent of MTA. Following a permitted transfer and assumption by a transferee of Tenant's obligations under the Severed Parcel Lease, Tenant is released from post-transfer obligations. Tenant may sublease all or a portion of the Premises for actual occupancy by subtenants without MTA consent. MTA will grant	Same as Form	Same as Form	Same as Form	Same as Form

	non-disturbance protection to subtenants recognized by a Leasehold Mortgagee, as well as office tenants of one or more full floors, or retail tenants, on arms-length, market lease terms.				
Leasehold Mortgages and Mezzanine Loans (Article 17)	Leasehold Mortgages (including Mezzanine Loans) held by Institutional Lenders are permitted without MTA consent. All Leasehold Mortgages are subordinate to MTA's rights under the Lease. Leasehold Mortgagees are entitled to typical leasehold lender protections, including: (1) copies of default notices given by MTA to Tenant; (2) in the case of a default in the payment of Base Rent or other Rental, an additional cure period of 10 days following the cure period afforded to Tenant; (3) in the case of a Non-Monetary Default, an additional cure period of (x) 30 days following the applicable cure period afforded to Tenant, or (y) such additional time as shall be necessary to cure such default, if possession is required in order to cure, so long as Leasehold Mortgagee notifies MTA within 30 days of its intention to institute foreclosure proceedings, and thereafter prosecutes such proceedings and, upon obtaining possession, prosecutes to cure such Non-Monetary Default; and (4) in the event Severed Parcel Lease is terminated, the right to enter into a new Severed Parcel Lease with MTA upon all of the terms and conditions of the Severed Parcel Lease. Additional Leasehold Mortgagee protections include: (1) MTA will not agree to any modification or amendment of the Severed Parcel Lease which would have an adverse effect on Leasehold Mortgagee, nor accept a surrender or cancellation of the Lease without the consent of Leasehold Mortgagee; (2) MTA will consider modifications to the Lease requested by a Leasehold Mortgagee as a condition or term of granting financing to Tenant, provided that the same does not materially increase Landlord's obligations or diminish Landlord's rights and immunities under the Severed Parcel Lease; (3) Leasehold Mortgagee may participate in any arbitration proceedings; and (4) Leasehold Mortgagee will have the right to participate in the adjustments of any insurance claims and condemnation awards as well as serve as Depository for casualty and condemnation proceeds. The exercise of any rights or remedies of a Leasehold Mortgagee under a Leasehold Mortgage or a Mezzanine Lender under a Mezzanine Loan, including the consummation of any foreclosure or Transfer in lieu of foreclosure, will not require the consent of MTA, but any transfer of the Severed Parcel Lease resulting from any such foreclosure or transfer in lieu of foreclosure to an entity other than a Leasehold Mortgagee, Mezzanine Lender or their Affiliates must meet the requirements for a Permitted Transfer (*see* "Assignment and Subletting" above).	Same as Form	Same as Form	Same as Form	Same as Form

Eastern Rail Yards – Summary of ERY Severed Parcel Lease Terms and Material Lease Distinctions

Indemnification (Article 26)	Tenant indemnifies MTA, LIRR, the State of New York, any predecessor or successor Landlord, and their respective agents, directors, officers and employees for any act of Tenant, or subtenant arising in connection with the Severed Parcel Lease, except if caused by the negligence or intentional misconduct of the indemnitees.	Same as Form	Same as Form	Same as Form	Same as Form
MTA Right of Inspection (Article 27)	MTA has right to inspect the Premises (with reasonable notice) to confirm that Tenant is in compliance with terms of the Severed Parcel Lease.	Same as Form	Same as Form	Same as Form	Same as Form
Events of Default (Article 31)	Tenant Events of Default include the following: - Failure to pay Base Rent and Additional Rent when due, which remains uncured for 5 business days after written notice from MTA; - Failure to observe or perform one or more of the other terms, conditions, covenants or agreements contained in the Severed Parcel Lease, which remains uncured for 30 days after written notice from MTA; - Voluntary bankruptcy, or admitting it is unable to pay debts as such debts become due; general assignment for the benefit of creditors; involuntary bankruptcy which is not dismissed within 90 days; appointment, without the consent or acquiescence of Tenant, of any trustee, receiver, or other similar official for Tenant or of all or any substantial part of its properties which is not vacated within 30 days; - Abandonment of the Premises, which remains uncured for 30 days following notice from MTA; - Assignment, sublease, transfer, mortgage or encumbrance in violation of the Severed Parcel Lease, which remains uncured for 30 days following notice from MTA; - Tenant Default under the ERY Restrictive Declaration which remains uncured for 30 days after written notice from MTA; - Tenant Default under the ERY Declaration of Easements, any PILOT Agreement or the PILOST Agreement, or a default by the guarantor under the Building Completion Guaranty, or the LIRR Facilities Guaranty which remains uncured after the expiration of any applicable notice and cure period; and				

	-Tenant default under the ERY Construction Agreement which remains uncured after the expiration of any applicable notice and cure period.				
Primary MTA Remedies (Article 31)	If an Event of Default on the part of Tenant occurs: - MTA may cure and perform Tenant covenants and seek reimbursement for all reasonable sums, costs and expenses paid by the MTA; - MTA shall have the right to terminate the Severed Parcel Lease and repossess the Premises upon 20 days' notice following an Event of Default; and - Tenant shall be liable to MTA for damages, expenses and deficiencies for the remaining original term of the Severed Parcel Lease, equal to: o the excess of the Rent that would have been payable by Tenant under the Severed Parcel Lease over any rent collected from re-letting the premises ("Deficiency"); or o in lieu of Deficiency, as liquidated damages, the net present value of the amount by which the remaining Rent stream for the balance of the Severed Parcel Lease Term exceeds the fair market rental value of the Premises, discounted at 6.5%.	Same as Form	Same as Form	Same as Form	Same as Form
Estoppels (Article 35)	Tenant and MTA are each obligated to provide an estoppel within 21 days following request: (a) affirming that the Lease is in full effect, (b) stating whether Rent and PILOT are current, (c) stating whether Tenant owes any amounts due under any other Project Documents, (d) stating whether, to the best of MTA's knowledge, Tenant is in default in performance of any Lease (or other Project Document) covenant, agreement or condition, (e) stating whether Substantial Completion of any Building or portion thereof has occurred, whether Substantial Completion and/or Final Completion of the ERY Roof Component (or an applicable Associated Portion of the LIRR Roof and Facilities) has occurred, and whether Substantial Completion of any other Facility Airspace Improvements has occurred, and (f) certifying as to any other matter with respect to this Lease as Tenant/MTA or such other addressee may reasonably request.	Same as Form	Same as Form	Same as Form	Same as Form

Surrender at End of Term (Article 37)	At expiration of Lease, Tenant shall return the Premises in good order, condition and repair, wear and tear excepted, free and clear of any lettings, occupancies or liens, except for certain limited exceptions. Personal property remaining after 30 days becomes the property of the MTA. Tenant shall assign and deliver to MTA all books, records, licenses and permits, warranties and guarantees, maintenance agreements and other documentation related to the Premises and the Improvements.	Same as Form	Same as Form	Same as Form	Same as Form

Western Rail Yards – Summary of WRY Balance Lease and Severed Parcel Lease Terms

Document	**Agreement of Lease (Western Rail Yard Section of the John D. Caemmerer West Side Yard) ("WRY Balance Lease")** **Form of Agreement of Severed Parcel Lease (Western Rail Yard Section of the John D. Caemmerer West Side Yard) ("Severed Parcel Lease")** **(attached to WRY Balance Lease as Exhibit J)**
Lease Date	WRY Balance Lease: April 10, 2014 (one year after ERY Balance Lease)
Landlord	Metropolitan Transportation Authority ("MTA")
Tenant	WRY Tenant LLC, a Delaware LLC Severed Parcel Leases will have separate SPE tenants for each Lease.
Rental Commencement Date	December 3, 2013 (Base Rent Abatements calculated from this date)
Lease Term; Expiration Date (Article 1)	99 years from December 3, 2013 (Rental Commencement Date) Expiration Date: December 2, 2112
Demised Premises	Entire Western Railyard Facility Airspace Parcel demised under Balance Lease. Severed Parcel Leases will have separate individual building parcels demised under each Lease.
Land Value (Article 3)	Initial Land Value ("ILV") for entire WRY: $494,000,000 "Adjusted Initial Land Value" for Entire WRY (ILV– Upfront Payments + Abatement Extension Adjustment): $462,139,716.
Upfront Payments (Article 3)	Upfront Payments of Base Rent Made as follows (based on 10% of ILV, with interest escalation): $25,222,816.67 (based on 5% of ILV) at closing $12,611,408.33 (based on 2.5% of ILV) at 1st anniversary $12,611,408.33 (based on 2.5% of ILV) at 2nd anniversary
Annual Base Rent ("Base Rent") (Article 3)	Rent Factor (6.5%) x Adjusted Initial Land Value = Starting 100% Base Rent Starting 100% Base Rent for entire WRY= $30,039,081 Upon severance of WRY Balance Lease into separate Severed Parcel Leases, Base Rent for each Severed Parcel Lease will equal Severed Parcel Allocable Share multiplied by entire WRY Base Rent.

Western Rail Yards – Summary of WRY Balance Lease and Severed Parcel Lease Terms

Base Rent – Fixed Escalations (Article 3)	Base Rent is subject to a 10% increase every five (5) years.
Base Rent – FMV Resets (Article 3)	Fair market value ("FMV") resets of Base Rent occur in lease years 30, 55 and 80. FMV resets based on the product of (i) Rent Factor (6.5%) and (ii) 90% of the FMV Land Value determined as of the relevant FMV reset period, as if the applicable leased premises for which the Base Rent FMV reset is being calculated is (x) encumbered by the applicable ground lease, (y) unimproved by the WRY Roof Component and any Facility Airspace Improvements and (z) to be used for the actual uses in place or under development on the leased premises at the time that such FMV Land Value determination is being made (or, if construction has not commenced on any portion of the premises at the time that such FMV Land Value determination is being made, the highest and best use permitted for such portion of the leased premises in accordance with the Zoning Resolution, the applicable ground lease and the other applicable Project Documents. An FMV reset of Base Rent shall not result in rent that is (x) any less than 100% of the Base Rent due in the year prior to the applicable reset year (a "floor" on FMV reset Base Rent) and (y) no more than 120% of the Base Rent due in the year prior to the applicable reset year (a "cap" on FMV reset Base Rent).
Base Rent Abatement (Article 3) (calculated from Abatement Commencement Date of Dec. 3, 2013)	100% Base Rent Abatement in Lease Years 1 – 4 (12/2013 to 11/2017); abatement period reflects extension of 100% abatement period pursuant to Tenant abatement extension option exercised in 2015. Tenant's abatement extension option permitted the WRY Balance Lease Tenant to extend the abatement for a maximum of 24 months. 50% Base Rent Abatement in Lease Years 5 – 7 (12/2017 to 11/2020). Upon severance of WRY Balance Lease into a separate Severed Parcel Lease for construction on a site, Base Rent allocable to Severed Parcel under Severed Parcel Lease automatically increases to (i) upon commencement of construction, the greater of 50% of Base Rent or abated Base Rent amount otherwise payable, and (ii) upon substantial completion of construction, 100% of Base Rent.
PILOST (Article 4)	Tenant required to pay to MTA payments in lieu of sales and compensating use taxes ("PILOST") on the purchase of construction materials and other tangible personal property to be incorporated into the Facility Airspace Improvements constructed on the Premises.
Default Rate (Article 6)	Following any required notice and grace period, unpaid amounts due under the lease bear interest at Prime Rate plus two percent (2%).
FASP Owners Association (Article 7)	Once the entire WRY is severed into one or more WRY Severed Parcels, an Owners Association comprising Tenant and all WRY Severed Parcel owners and/or tenants will be formed to coordinate performance of common maintenance obligations under the WRY Declaration of Easements (similar to ERY Owners Association, which is currently in existence).

Western Rail Yards – Summary of WRY Balance Lease and Severed Parcel Lease Terms

Development Rights; Development and Construction of WRY Improvements (Article 8)	Provides for the zoning floor area appurtenant to the WRY to be incorporated into commercial, residential and community facility buildings in accordance with the zoning plan, and for construction of a share of the roof/platform over the Yards Parcel, and open space to be constructed with each building. Any improvements must be developed and maintained in compliance with the Zoning Resolution and the ERY Restrictive Declaration. If a Hotel is part of the development it must also be developed and maintained in compliance with the provisions of Public Authorities Law § 2879-b. Improvements, all materials and fixtures are property of MTA unless fee purchase option exercised (*see* "Fee Purchase Option and Option Price" below).
Severed Parcel Leases; Commencement of Construction of Building and Associated Roof Segment (Article 9)	The Balance Lease will be severed into one or more separate Severed Parcel Leases prior to the commencement of construction of improvements on a Severed Parcel, upon satisfaction of certain commencement conditions. Severance must be in accord with MTA-approved Severed Parcel Plan. Commencement of construction on a Severed Parcel is conditioned upon, among other things, (1) a completion guaranty for the building improvements and associated Roof Segment being provided to MTA by approved guarantors, (2) evidence of closing of financing sufficient to complete construction of the building improvements and associated Roof Segment to be constructed on such Severed Parcel, (3) MTA/LIRR approval of plans and specs for the building improvements and associated Roof Segment, and (4) a collateral assignment to MTA of all permits, licenses and contracts relating to construction of the building improvements and associated Roof Segment.
Fee Purchase Option and Option Price (Article 10)	Each Severed Parcel Lease will provide that Tenant has option to purchase fee title to a Severed Parcel at any time following substantial completion of the improvements on that Severed Parcel. The fee purchase price shall equal, at the time of closing of the fee purchase, the present value, at a discount rate of 6.5%, of the sum of (i) all remaining Base Rent due under the Severed Parcel Lease for the balance of the 99-year Lease Term, plus (ii) the value of MTA's reversionary interest in the Severed Parcel at the end of the Lease Term (reversion calculated at an aggregate of $4,706,899,176 for all WRY Severed Parcels). MTA must cause fee converted property to be free and clear of lien and encumbrances created by MTA, except to the extent requested or consented to by Tenant. Tenant is responsible for all costs associated with fee conversion (transfer taxes, title and survey costs, etc.)
Bondable Net Lease (Article 13)	Tenant shall reasonably cooperate with MTA in order to enable MTA to issue bond financing secured by Base Rent.

Repairs, Maintenance and other Additional Costs (Articles 4, 14, 18)	Tenant is responsible for all taxes, insurance, repairs and maintenance, with respect to the Premises. Base Rent is triple-net to MTA. Tenant is required to take good care of the Facility Airspace Improvements and to prevent waste or injury to the Premises.
Casualty and Use of Insurance Proceeds (Article 15)	In the event of a casualty to the Facility Airspace Improvements in whole or in part, Tenant is obligated promptly and diligently to restore the Facility Airspace Improvements in accordance with plans approved by the MTA and at Tenant's cost, regardless of whether or not insurance proceeds are sufficient to cover the costs of restoration or rebuild. No Leasehold Mortgagee may apply insurance proceeds to pay down a Leasehold Mortgage loan in lieu of restoration. If Tenant fails promptly and diligently to complete restoration or rebuild, MTA has a self-help option to complete the restoration or rebuild at Tenant's expense. If restoration or rebuild is estimated to cost $5,000,000 or more, all casualty insurance proceeds must be deposited in a Restoration Fund Depository prior to commencement of the restoration. Alternatively, Tenant must provide MTA with a guaranty of the insurance proceeds from a creditworthy guarantor reasonably approved by MTA. Funds in the Restoration Fund Depository will be paid to Tenant in installments as the restoration progresses, subject to customary construction advance provisions and certified Tenant and contractor requisitions, including evidence of no liens. Upon completion of the restoration, the balance of funds held by the Restoration Fund Depository (net any rent due and payable) shall be paid to Tenant (subject to the rights of any Leasehold Mortgagee or Mezzanine Lenders to such balance of funds). If any Monetary Default exists, subject to MTA's notice to Tenant, the Restoration Fund Depository shall pay to MTA, prior to any payment to Tenant, the amount required to cure such Monetary Default.
Condemnation (Article 16)	In the event of the taking of substantially all of the Premises for any public or quasi-public purpose, the Lease shall terminate and the condemnation award shall first be used to pay to MTA the present value of all remaining rent for the term of the Lease plus the present value of the MTA's reversionary interest. Any remaining condemnation award is payable to Tenant. In the event of a partial condemnation, the Lease is not terminated, and Base Rent shall be abated in proportion to the portion of the Premises taken. The condemnation award shall first be used to restore the Premises to a usable whole, and thereafter pay MTA for the value of MTA's interest in the Premises taken, and thereafter be distributed to Tenant. Condemnation awards used for restoration will be deposited into a Condemnation Award Depository with similar construction advance provisions as a Restoration Fund Depository. In the event of a temporary taking, the Lease continues in full force and effect and rent is unabated, and the condemnation award is applied to rent.

Assignment and Subletting (Article 17)	Under the Balance Lease, no assignment or change of control in the Tenant is permitted without the consent of the MTA, in its sole discretion, except to a Related Affiliate or Oxford Hudson Yards LLC (or any other Affiliate of OMERS Administration Corporation). Tenant may also (without MTA consent) replace the WRY Developer and any other Affiliate of The Related Companies, L.P. under the other Project Documents insofar as they relate to the Premises (excluding the Guaranties), at any time following (x) the election of Oxford Hudson Yards LLC to remove Related Hudson Yards, LLC as the Administrative Member of Hudson Yards Gen-Par, LLC (the "GP") and exercise its right to direct the day-to-day business and affairs of the GP and Tenant or (y) consummation of the purchase by Oxford Hudson Yards LLC of 100% of Related Hudson Yards, LLC's membership interests in the GP pursuant to the GP LLC Agreement, provided that if such a change in Controlling Ownership occurs prior to the Substantial Completion of the LIRR Work, Tenant is or retains as construction manager a Qualified Replacement Developer to perform the obligations of Developer under the WRY Construction Agreement. Under a Severed Parcel Lease, no assignment or change of control in the Tenant is permitted without the consent of the MTA, in its sole discretion, except for certain "Permitted Transfers", including: (1) upon Commencement of Construction under the Severed Parcel Lease, transfer to a "User" which will acquire the Premises for its own use and occupancy, and/or (2) upon Substantial Completion of the Associated Portion of the LIRR Roof located on the Severed Parcel, transfer to any "Qualified Transferee", including a party that has (or retains as construction manager a party with) no less than 10 years of experience in large scale development projects in an urban environment. Exercise by a Mezzanine Lender of rights to obtain title to equity interests of Tenant does not require consent of MTA. Following a permitted transfer and assumption by a transferee of Tenant's obligations under the Severed Parcel Lease, Tenant is released from post-transfer obligations. Tenant may sublease all or a portion of the Premises for actual occupancy by subtenants without MTA consent. MTA will grant non-disturbance protection to subtenants recognized by a Leasehold Mortgagee, as well as office tenants of one or more full floors, or retail tenants, on arms-length, market lease terms.

Leasehold Mortgages and Mezzanine Loans (Article 17)	Leasehold Mortgages (including Mezzanine Loans) held by Institutional Lenders are permitted without MTA consent. All Leasehold Mortgages are subordinate to MTA's rights under the Lease. Leasehold Mortgagees are entitled to typical leasehold lender protections, including: (1) copies of default notices given by MTA to Tenant; (2) in the case of a default in the payment of Base Rent or other Rental, an additional cure period of ten (10) days following the cure period afforded to Tenant; (3) in the case of a Non-Monetary Default, an additional cure period of (x) 30 days following the applicable cure period afforded to Tenant, or (y) such additional time as shall be necessary to cure such default, if possession is required in order to cure, so long as Leasehold Mortgagee notifies MTA within 30 days of its intention to institute foreclosure proceedings, and thereafter prosecutes such proceedings and, upon obtaining possession, prosecutes to cure such Non-Monetary Default; (4) in the event Lease is terminated, the right to enter into a new Lease with MTA upon all of the terms and conditions of the Lease. Additional Leasehold Mortgagee protections include: (1) MTA will not agree to any modification or amendment of the Lease which would have an adverse effect on Leasehold Mortgagee, nor accept a surrender or cancellation of the Lease without the consent of Leasehold Mortgagee; (2) MTA will consider in modifications to the Lease requested by a Leasehold Mortgagee as a condition or term of granting financing to Tenant, provided that the same does not materially increase Landlord's obligations or diminish Landlord's rights and immunities under the Lease; (3) Leasehold Mortgagee may participate in any arbitration proceedings; (4) Leasehold Mortgagee will have the right to participate in the adjustments of any insurance claims and condemnation awards as well as serve as Depository for casualty and condemnation proceeds. The exercise of any rights or remedies of a Leasehold Mortgagee under a Leasehold Mortgage or a Mezzanine Lender under a Mezzanine Loan, including the consummation of any foreclosure or Transfer in lieu of foreclosure, will not require the consent of MTA, but any transfer of the Lease resulting from any such foreclosure or transfer in lieu of foreclosure to an entity other than a Leasehold Mortgagee, Mezzanine Lender or their Affiliates must meet the requirements for a Permitted Transfer (*see* "Assignment and Subletting" above).
Indemnification (Article 26)	Tenant indemnifies MTA, LIRR, the State of New York, any predecessor or successor Landlord, and their respective agents, directors, officers and employees for any act of Tenant, or subtenant arising in connection with the Lease, except if caused by the negligence or intentional misconduct of the indemnitees.
MTA Right of Inspection (Article 27)	MTA has right to inspect the Premises (with reasonable notice) to confirm that Tenant is in compliance with terms of the Lease.

Events of Default (Article 31)	Tenant Events of Default include the following: - Failure to pay Base Rent and Additional Rent when due, which remains uncured for 5 business days after written notice from MTA; - Failure to observe or perform one or more of the other terms, conditions, covenants or agreements contained in the Lease, which remains uncured for 30 days after written notice from MTA; - Voluntary bankruptcy, or admitting it is unable to pay debts as such debts become due; general assignment for the benefit of creditors; involuntary bankruptcy which is not dismissed within 90 days; appointment, without the consent or acquiescence of Tenant, of any trustee, receiver, or other similar official for Tenant or of all or any substantial part of its properties which is not vacated within 30 days; - Abandonment of the Premises, which remains uncured for 30 days following notice from MTA; - Assignment, sublease, transfer, mortgage or encumbrance in violation of the Lease, which remains uncured for 30 days following notice from MTA; - Tenant Default under the WRY Restrictive Declaration which remains uncured for 30 days after written notice from MTA; and - Tenant Default under the WRY Declaration of Easements, any PILOT Agreement or the PILOST Agreement, or a default by the guarantor under any of the Roof Segment Completion Guaranties, the LIRR Facilities Guaranty (if any), the Default Payments Guaranty, or the Rent/Financial Payment Guaranty, which remains uncured after the expiration of any applicable notice and cure period; and - Tenant default under the WRY Construction Agreement which remains uncured after the expiration of any applicable notice and cure period.

Western Rail Yards – Summary of WRY Balance Lease and Severed Parcel Lease Terms

Primary MTA Remedies (Article 31)	If an Event of Default on the part of Tenant occurs:
	- MTA may cure and perform Tenant covenants and seek reimbursement for all reasonable sums, costs and expenses paid by the MTA.
	- MTA shall have the right to terminate Lease and repossess the Premises upon 20 days' notice following an Event of Default.
	- Tenant shall be liable to MTA for damages, expenses and deficiencies for the remaining original term of the Lease, equal to:
	  - the excess of the Rent that would have been payable by Tenant under the Lease over any rent collected from re-letting the premises ("Deficiency"); or
	  - in lieu of Deficiency, as liquidated damages, the net present value of the amount by which the remaining Rent stream for the balance of the Lease Term exceeds the fair market rental value of the Premises, discounted at 6.5%.

Estoppels (Article 35)	Tenant and MTA are each obligated to provide an estoppel within 21 days following request: (a) affirming that the Lease is in full effect and stating any modifications, (b) stating whether Rent and PILOT are current, (c) stating whether Tenant owes any amounts due under any other Project Documents, (d) stating whether, to the best of MTA's knowledge, Tenant is in default in performance of any lease (or other Project Document) covenant, agreement or condition, (e) stating whether Substantial Completion of any Building or portion thereof has occurred, whether Substantial Completion and/or Final Completion of the WRY Roof Component (or an applicable Associated Portion of the LIRR Roof and Facilities) has occurred, and whether Substantial Completion of any other Facility Airspace Improvements has occurred, and (f) certifying as to any other matter with respect to this Lease as Tenant/MTA or such other addressee may reasonably request.
Surrender at End of Term (Article 37)	At expiration of Lease, Tenant shall return the Premises in good order, condition and repair, wear and tear excepted, free and clear of any lettings, occupancies or liens, except for certain limited exceptions. Personal property remaining after 30 days becomes the property of the MTA. Tenant shall assign and deliver to MTA all books, records, licenses and permits, warranties and guarantees, maintenance agreements and other documentation related to the Premises and the Improvements.
Provision re Tax Benefits (Section 43.17)	During the Lease term, notwithstanding that the MTA shall own title to the Premises and the Improvements under the Lease, Tenant shall have the right to depreciation, tax credits and similar tax benefits attributable to the ownership of the Improvements.

Western Rail Yards – Summary of WRY Balance Lease and Severed Parcel Lease Terms

Guarantors (joint and several)	The Related Companies L.P. and OP USA Debt Holdings Limited Partnership (an Oxford affiliate).
Rent Guaranty Prior to WRY Roof Construction Commencement **(Lease Article 11; WRY Default Payments Guaranty)**	WRY Default Payments Guaranty (delivered to MTA by Guarantor at the time of execution of the WRY Balance Lease) remains in effect until commencement of construction on the initial WRY Roof Segment(s) (at which time the WRY Default Payments Guaranty terminates, and Guarantor delivers to MTA the Roof/Financial Payments Guaranty and a Roof Segment Completion Guaranty with respect to the WRY Roof Segment under construction, both described below). If, prior to commencement of construction of the initial WRY Roof Segment(s), a WRY Severed Parcel Lease is entered into for a "Terra Firma" parcel (a parcel that does not include a WRY Roof Segment), the WRY Default Payments Guaranty remains in effect, and the Guarantor must deliver an additional Default Payments Guaranty covering Base Rent payments due on the WRY Severed Parcel Lease in addition to the WRY Balance Lease. If an Event of Default occurs on the WRY Balance Lease prior to commencement of construction on any WRY Roof Segments, the WRY Default Payments Guaranty covers: 1. any unpaid post-closing payments and all installments of Base Rent due under the WRY Balance Lease calculated from the Abatement Commencement Date (December 3, 2013) through to the date on which Related surrenders possession to MTA of the Premises, as such Base Rent is abated during the Initial Abatement Period and Second Abatement Period; plus 2. the additional amount, if any, set forth on the Default Payments Schedule under the column "Guaranteed Additional Amounts Due" corresponding to the Lease Year in which the Event of Default resulting in the termination of the WRY Lease occurred, which additional amounts effectively result in the repayment to MTA of the entire rent abatement given for the Initial Abatement Period (Years 1 and 2) and Second Abatement Period (Years 3 – 5). Although Tenant exercised its right to an Initial Abatement Extension under the WRY Balance Lease (two additional years of 100% abatement at Years 3 –4, with the Second Abatement Period at 50% now running from Years 5 –7), Guaranteed Default Payments continue to be due as if the Initial Abatement Extension had not been in effect, as if MTA were entitled to receive Base Rent — the corresponding additional payments making up the abatement on the original, non-extended schedule.

Western Rail Yards – Summary of WRY Balance Lease and Severed Parcel Lease Terms

Rent Guaranty Following WRY Roof Construction Commencement **(Lease Article 11; Rent/Financial Payments Guaranty)**	Default Payments Guaranty terminates once construction of the first WRY Roof Segment begins in connection with a WRY Severed Parcel Lease not on Terra Firma, and a Roof Segment Completion Guaranty with respect to the parcel in question is given to MTA. At that time, Guarantor must deliver to MTA the Roof/Financial Payments Guaranty, which guaranties to MTA the payment of all "Financial Obligations" due to MTA (i.e., all Rental, specifically excluding PILOT and PILOST payments) on the yet-to-be-developed portions of the WRY which continue to be leased under the WRY Balance Lease (i.e., not under a WRY Severed Parcel Lease). The Financial Obligations covered by the Roof/Financial Payments Guaranty are capped at a maximum of $250MM, and the cap declines as segments of the WRY Roof are substantially completed: 1. until 50% of the entire WRY Roof is substantially completed, an aggregate cap of $250MM; 2. from and after the date that 50% of the entire WRY Roof is substantially completed, until 75% of the entire Roof is substantially completed, an aggregate cap of $187.5MM; 3. from and after the date that 75% of the entire WRY Roof is substantially completed, an aggregate cap of $125MM; and 4. -0-, once Roof Segment Completion Guaranties for the entire WRY Roof have been delivered to MTA. The Roof/Financial Payments Guaranty cap amounts are not cumulative; once Financial Obligations payments equal to the maximum aggregate cap have been received by MTA under the WRY Balance Lease, the Roof/Financial Payments Guaranty terminates. All payments covered under the WRY Default Payments Guaranty (i.e., all payments under the WRY Balance Lease prior to commencement of construction of the first WRY Roof Segment) are specifically excluded from the definition of "Financial Obligations" covered under the Roof/Financial Payments Guaranty, such that no credit against the Roof/Financial Payments Guaranty cap is given for payments made under the WRY Balance Lease prior to execution and delivery of the Roof Roof/Financial Payments Guaranty.
Construction Completion Guaranties **(Lease Article 11; Roof Segment Completion Guaranty and Buildings Completion Guaranty)**	At the time of each WRY Severed Parcel Lease, Guarantor is required to deliver Guaranties of Completion for each Building and the related Roof Segment (if any) to be built under a Severed Parcel Lease. Prior to commencement of construction on a Roof Segment, Guarantor must deliver a Roof Segment Completion Guaranty covering timely completion of the applicable Roof Segment or payment of the cost associated with restoring the WRY to its pre-existing condition (whichever is less costly). Roof Segment Completion Guaranty obligations are capped at 115% of hard construction costs and actual soft costs (architects, engineers, etc.) less any amounts funded (or to be funded) by institutional loans. Prior to the commencement of construction of each Building, Guarantor must deliver a Completion Guaranty covering timely completion of the applicable Building and Related Improvements. Buildings Completion Guaranty obligations are capped at 115% of hard construction costs and actual soft costs (architects, engineers, etc.) less any amounts funded (or to be funded) by institutional loans.

Guarantor Financial Covenants	Each ERY and WRY Guaranty requires that Guarantor maintain Minimum Liquid Assets and Minimum Net Worth sufficient, in MTA's reasonable judgment, to cover Guarantor's aggregate exposure on all Guaranties given on the ERY and WRY. MTA has required on all ERY Guaranties and the WRY Default Payments Guaranty a Minimum Net Worth of $1.2 billion and Minimum Liquid Assets of $100 million for the Related Guarantor, and a Minimum Net Worth and Minimum Liquid Assets of $400 million, respectively, for the OP USA Guarantor. MTA reserves the right to require additional limits as additional Guaranties are delivered on the WRY.

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AGREEMENT OF SEVERED PARCEL LEASE
(EASTERN RAIL YARD SECTION OF THE
JOHN D. CAEMMERER WEST SIDE YARD)

by and between

METROPOLITAN TRANSPORTATION AUTHORITY,

as Landlord,

and

[●],

as Tenant,

dated as of [●], 20[●]

Premises:

Portion of Facility Airspace Parcel Above a Limiting Plane
Eastern Rail Yard Section of the John D. Caemmerer West Side Yard
New York, New York
(Manhattan Block [●], Lot [●])

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List of Exhibits

[Exhibit U – Illustrated Individual Residential Unit Purchase Price Calculation]

THIS AGREEMENT OF SEVERED PARCEL LEASE (EASTERN RAIL YARD SECTION OF THE JOHN D. CAEMMERER WEST SIDE YARD) is made as of the [●] day of [●], 20[●], by and between **METROPOLITAN TRANSPORTATION AUTHORITY**, a body corporate and politic constituting a public benefit corporation of the State of New York, having an office at 2 Broadway, New York, New York 10004, as landlord, and [●], having an address at c/o The Related Companies, L.P., 60 Columbus Circle, New York, New York 10023, as tenant.

W I T N E S S E T H:

It is hereby mutually covenanted and agreed by and between the parties hereto that this Lease is made upon the terms, covenants and conditions hereinafter set forth.

ARTICLE 1

DEFINITIONS

The terms defined in this Article 1 shall, for all purposes of this Lease, have the following meanings.

"Act or Omission" shall have the meaning provided in the ERY Declaration of Easements.

"Additional Rent" shall have the meaning provided in Section 3.09.

"Adjusted Initial Land Value" shall have the meaning provided in Section 3.03(a).

"Affiliate" shall mean, with respect to any specified Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the specified Person. For purposes of this definition and the definition of "Affiliated Person", the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting stock, by contract or otherwise. For the avoidance of doubt, if Tenant is a Related Affiliate, then any Person that is a party to any agreement with MTA or LIRR relating to the ERY Project, which Person is controlled by a Related Control Person, shall constitute an Affiliate of Tenant.

"Affiliated Person" shall mean, with respect to any specified Person, (a) any Affiliate of such specified Person and (b) any other Person if such other Person and/or its Affiliates collectively own, directly or indirectly, not less than twenty percent (20%) of the economic interests in an entity which controls such specified Person.

"Annual Base Rent" shall have the meaning provided in Section 3.03.

"Approved Facility Airspace Improvement Plans and Specifications" shall have the meaning provided in Section 8.02(d).

"Approved LIRR Work Project Plans and Specifications" shall have the meaning provided in the ERY Construction Agreement.

"Approved MFAI Contractor Submittal" shall have the meaning set forth in Section 2.3(c)(vi) of Exhibit D of the ERY Declaration of Easements.

"Approved Restoration Plans and Specifications" shall have the meaning provided in Section 15.02(b).

"Approved Severed Parcel Plan" shall mean that certain [Severed Parcel Plan annexed as Exhibit B to that certain Fourth Amendment to Lease, dated as of December 11, 2015, between Landlord and ERY Tenant].

"Arbitrator" shall have the meaning provided in Section 40.01(b).

"Assignment" shall have the meaning provided in Section 17.01(a).

"Associated FASP Improvements" shall have the meaning provided in the ERY Declaration of Easements.

"Associated Portion of the LIRR Roof and Facilities" shall mean that portion of the LIRR Roof and Facilities described in Exhibit Q annexed hereto.

"Association Documents" shall have the meaning provided in the ERY Declaration of Easements.

"Association Matter" shall have the meaning provided in the ERY Declaration of Easements.

"Bond Lease Financing" shall have the meaning provided in Article 13.

"Building" shall mean the building to be erected within the Premises as described in Exhibit Q, excluding the footings, foundations, columns, FAI Preparation Work and the LIRR Roof and Facilities.

"Building Code" shall mean the Building Code of the City of New York, as applicable to the Facility Airspace Improvements.

"Building Completion Guaranty" shall have the meaning provided in Section 11.02.

"Building Component" shall mean any portion of a Building which, subject to the provisions of Section 9.02(d), is permitted to constitute a Severed Subparcel.

"Business Day" shall mean any day which is not a Saturday, Sunday or a day observed as a holiday by either the State of New York or the federal government.

"Capital Improvement" shall have the meaning provided in Section 19.01.

"Casualty" shall have the meaning provided in Section 15.01(a).

"Certificate of Occupancy" shall mean (a) with respect to the LIRR Relocations, the New LIRR Facilities, the Roof Mechanical Equipment, the Roof Utility Facilities or any portion of any of the foregoing, as applicable, a code compliance certificate issued by LIRR acting in its capacity as a Governmental Authority pursuant to Part 1204 of Chapter XXXII of Title 19 of the New York Code, Rules and Regulations and (b) with respect to the Facility Airspace Improvements, a certificate of occupancy issued by the NYCDOB pursuant to Section 645 of the New York City Charter or any successor provision thereto (to the extent applicable).

"City" shall mean The City of New York, a municipal corporation of the State of New York.

"City Register" shall mean the Office of the City Register, New York County.

"Claim" shall have the meaning provided in Section 9.01(f)(iii).

"Closing Payment" shall have the meaning provided in Section 3.01.

"Commencement Date" shall mean the date of this Lease.

"Commencement of Construction" or "Commenced Construction" shall mean with respect to each Building, the commencement of initial construction of such Building and the Associated FASP Improvements pursuant to a Severed Parcel Lease but excluding (i) test borings, test pilings, soil testing, environmental remediation and other similar pre-construction activities, (ii) performance of FAI Preparation Work, (iii) construction of the Associated FASP Improvements only, if construction of the Building within the same Severed Parcel has not yet commenced and (iv) any work performed by or on behalf of LIRR.

"Compensable MTA Party Delay" shall have the meaning provided in the ERY Construction Agreement.

"Condemnation Proceeds" shall have the meaning provided in Section 16.01(b).

"Condemnation Proceeds Depository" shall mean an Institutional Lender which is regularly engaged in the business of administering construction loans, and reasonably acceptable to both Landlord and Tenant to hold the Condemnation Proceeds in accordance with the provisions of Article 16. A Leasehold Mortgagee which is an Institutional Lender shall, upon request, be entitled to serve as Condemnation Proceeds Depository hereunder; provided that such Leasehold Mortgagee shall have agreed in writing, for the benefit of Landlord and pursuant to an instrument reasonably satisfactory to Landlord, to hold such funds in a segregated special account to be used and distributed solely as set forth in Article 16. All funds held by a Condemnation Proceeds Depository pursuant to this Lease shall be drawable in New York City.

"Condominium" shall mean [●] Hudson Yards Condominium.

"Condominium Board" shall mean the board of managers of the condominium created pursuant to the Condominium Documents.

"Condominium By-Laws" shall have the meaning provided in Section 9.01(a).

"Condominium Conversion Date" shall mean the date on which the Condominium Documents are recorded in the City Register.

"Condominium Declaration" shall have the meaning provided in Section 9.01(a).

"Condominium Documents" shall have the meaning provided in Section 9.01(a).

"Construction Contracts" shall mean agreements executed by or on behalf of Tenant for the construction of Facility Airspace Improvements, Restoration, Capital Improvement, rehabilitation, alteration, repair, demolition or other construction performed on the Premises pursuant to this Lease.

"Contested Imposition Deposit" shall have the meaning provided in Section 4.05(b).

"Controlling Ownership" shall mean the ownership of the right to direct the day-to-day business and affairs of a Person; provided that the ownership of the right to approve or consent to certain business or affairs of a Person only through major decision rights or similar protective provisions shall not constitute "Controlling Ownership".

"CPI" shall mean the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor or its successors, New York Northern New Jersey Long Island NY-NJ-CT-PA area, All Items (1982-84 = 100), or any successor index thereto, appropriately adjusted. If the Consumer Price Index ceases to be published and there is no successor thereto, such other index as Landlord and Tenant shall agree upon (or, if they are unable to agree, as determined in accordance with Section 40.01(a)), as appropriately adjusted, shall be substituted for the Consumer Price Index.

"CPI Adjustment" shall mean an adjustment of each specified dollar amount that is subject to CPI Adjustment under this Lease which shall occur as of each anniversary of the Rental Commencement Date by multiplying the original dollar amount being adjusted by the sum of (a) one hundred percent (100%), plus (b) the CPI Increase. As so adjusted, such amount will be utilized until the next CPI Adjustment is calculated as of the next applicable anniversary of the Rental Commencement Date. All CPI Adjustments shall be calculated annually.

"CPI Increase" shall mean the percentage increase, if any (but not decrease, if any) between the CPI for the calendar month which is three (3) months prior to the date hereof and the CPI for the calendar month which is three (3) months prior to the relevant anniversary of the date hereof.

"Declarant Indemnities" shall have the meaning provided in Section 9.01(g)(ii).

"Declarant Net Lessee" shall have the meaning set forth in the Condominium Documents.

"Default" shall mean any condition or event which constitutes or, after notice or lapse of time, or both, would constitute an Event of Default.

"Default Rate" shall have the meaning provided in Article 6.

"Deficiency" shall have the meaning provided in Section 31.03(c).

"Delayed Party" shall have the meaning provided in the definition of "Force Majeure".

"Depository" shall mean any of the Restoration Fund Depository, the Condemnation Proceeds Depository or the Impositions Depository.

"Design and Construction Requirements" shall have the meaning provided in the ERY Construction Agreement.

"Developer" shall have the meaning provided in the ERY Construction Agreement.

"Due Date" shall mean, with respect to an Imposition or Insurance Premium, the last date on which such Imposition or Insurance Premium can be paid without any fine, penalty, interest or cost being added thereto or imposed by law for the non-payment thereof (but excluding any early payment discount) or, in the case of an Insurance Premium, cancellation, expiration or termination of the applicable insurance policy.

"Election Notice" shall have the meaning provided in Section 10.02.

"Election Notice Date" shall have the meaning provided in Section 10.02.

"Environmental Activity" shall mean any storage, installation, existence, release, threatened release, discharge, generation, abatement, removal, disposal, handling or transportation from, under, into or on the Premises of any Hazardous Substance.

"Equipment" shall mean all fixtures incorporated in the Premises, including, without limitation, all machinery, dynamos, boilers, heating and lighting equipment, pumps, tanks, motors, air conditioning compressors, pipes, conduits, fittings, ventilating and communications apparatus, elevators, escalators, antennas, computers and sensors.

"ERY" shall mean that certain parcel of land in the Borough of Manhattan, which is as of the Commencement Date owned by Landlord, and known as the Eastern Rail Yard Section of LIRR's John D. Caemmerer West Side Yard, located between 30th and 33rd Streets and between 10th and 11th Avenues in Manhattan (Manhattan Block 702, Lots 10, 150, 175, 1001, 1002, 1003, 1004, 1301, 1302, 1303, 1304, 8001, 8002 and 8003), as more particularly described in Exhibit A-1 attached hereto.

"ERY Closing Date" shall mean April 10, 2013.

"ERY Construction Agreement" shall mean that certain ERY Construction Agreement, dated as of May 26, 2010, by and among Landlord, LIRR and Developer, as amended by that certain First Amendment to Agreement to Enter into Lease and ERY Construction Agreement among MTA, LIRR, Tenant Named Herein and ERY Developer LLC, dated as of December 3, 2012, as the same may have been or may hereafter be amended, modified or supplemented from time to time in accordance with the terms thereof.

"ERY Declaration of Easements" shall mean that certain ERY Declaration of Easements (Eastern Rail Yard Section of the John D. Caemmerer West Side Yard), dated as of May 26, 2010, and recorded at CRFN No. 2010000194078 in the City Register, as amended by that certain First Amendment to the Declaration of Easements (Eastern Rail Yard Section of the John D. Caemmerer West Side Yard), dated as of April 10, 2013, and recorded at CRFN No. 2013000276090 in the City Register, made by MTA, as declarant, as supplemented by that certain Supplement to Declaration of Easements (Eastern Rail Yard Section of the John D. Caemmerer West Side Yard), dated as of November 16, 2015, made by MTA, as declarant, and recorded at CRFN No. 2015000410387 in the City Register, as the same has been and may be amended, modified or supplemented from time to time in accordance with the terms thereof.

"ERY Open Space Parcel" shall have the meaning provided in Section 10.01(a).

"ERY Project" shall have the meaning provided in the ERY Declaration of Easements.

"ERY Restrictive Declaration" shall mean that certain Restrictive Declaration for the Eastern Railyard, dated as of the ERY Closing Date, made by Tenant Named Herein and Legacy Yards Tenant LLC, as declarants, and recorded on July 12, 2013 at CRFN No. 2013000276101 in the City Register, as the same may hereafter be amended, modified or supplemented in accordance with the terms thereof.

"ERY Restrictive Declaration (93-70)" shall mean that certain Restrictive Declaration (Zoning Resolution Section 93-70 Certification), dated as of the ERY Closing Date, made by Tenant Named Herein and Legacy Yards Tenant LLC, as declarants, and recorded on July 12, 2013, at CRFN No. 2013000276102 in the City Register, as amended by that certain First Amendment to Restrictive Declaration (Zoning Resolution 93-70 Certification), dated as of March 17, 2015, made by Tenant Named Herein, Legacy Yards Tenant LLC and ERY CS Parcel LLC, as declarants, and recorded March 25, 2015, at CRFN No. 2015000100759 in the City Register, as further amended by that certain Second Amendment to Restrictive Declaration (Zoning Resolution 93-70 Certification), dated as of March 27, 2015, made by Tenant Named Herein, Legacy Yards Tenant LLC and ERY CS Parcel LLC, as declarants, and recorded April 2, 2015, at CRFN No. 2015000110565 in the City Register, and as the same may hereafter be amended, modified or supplemented in accordance with the terms thereof.

"ERY Roof Component" shall have the meaning provided in the ERY Declaration of Easements.

"ERY Severed Parcel Open Space Component" shall have the meaning provided in Section 8.13.

"ERY Severed Parcel Project" shall have the meaning provided in Section 8.01.

"ERY Severed Parcel Project Components" shall mean the Associated Portion of the LIRR Roof and Facilities and the Facility Airspace Improvements described in the ERY Severed Parcel Project Requirements.

"ERY Severed Parcel Project Requirements" shall mean (a) the list of the Approved LIRR Work Project Plans and Specifications comprising the Associated Portion of the LIRR Roof and Facilities, (b) a description of the Facility Airspace Improvements permitted to be constructed on the Premises, and (c) the maximum Floor Area and zoning uses that may be utilized on the Premises as "Included Floor Area", each of which are attached hereto as Exhibit Q.

"ERY ZLDA" shall mean that certain Zoning Lot Development Agreement (Eastern Rail Yard Section of the John D. Caemmerer West Side Yard), dated as of the ERY Closing Date, made by Landlord, as declarant, and recorded on July 12, 2013, at CRFN 2013000276092 in the City Register, as amended by that certain Supplemental ZLDA No. 1 (Tower A/Retail) made by Landlord and consented to by Tenant Named Herein, dated as of March 17, 2014, and recorded in the City Register on April 8, 2014, at CRFN 2014000117749, as amended by that certain Supplemental ZLDA No. 2 (Tower D), made by Landlord, dated as of November 23, 2015 and recorded in the City Register at CRFN 2015000428829, as amended by that certain Supplemental ZLDA No. 3 (Tower A, Retail, Pavilion Parcel), made by Landlord, dated as of December 11, 2015 and recorded in the City Register on January 8, 2016 at CRFN 2016000007891, as amended by that certain YP Floor Area Transfer Instrument, and as amended by that certain Supplemental ZLDA No. 5 (Tower E), made by Landlord, dated as of July 27, 2016, and to be recorded in the City Register, as the same may have been or may hereafter be amended, modified or supplemented from time to time in accordance with the terms thereof.

"Event of Default" shall have the meaning provided in Section 31.01.

"Expiration Date" shall mean the date upon which the term of this Lease shall expire or terminate, whether such date be (a) the Fixed Expiration Date or (b) such earlier date upon which the Term shall cease or be terminated pursuant to the terms hereof.

"Facility Airspace Improvements" shall mean the improvements constructed as part of the ERY Severed Parcel Project on the Premises and including, without limitation, the residential, commercial, community facility and accessory uses and the Open Space Component (as applicable), but excluding the LIRR Roof and Facilities and any work that is the property of the Yards Parcel Owner or the Yards Parcel Operator pursuant to their respective rights under the ERY Declaration of Easements and any Facility Airspace Improvements constructed or to be constructed outside of the Premises.

"Facility Airspace Improvements Release to Proceed" shall have the meaning provided in Section 8.03(a).

"Facility Airspace Improvements Restoration" shall have the meaning provided in Section 15.01(b).

"Facility Airspace Parcel" shall have the meaning provided in the ERY Declaration of Easements.

"Facility Airspace Parcel Owner" shall have the meaning provided in the ERY Declaration of Easements.

"FAI Construction Commencement Notice" shall have the meaning provided in Section 8.03(a).

"FAI Preparation Work" shall have the meaning provided in the ERY Construction Agreement.

"FASP Owners Association" shall have the meaning provided in the ERY Declaration of Easements.

"Fee Conversion" shall have the meaning provided in Section 10.03(a).

"Fee Conversion Closing" shall have the meaning provided in Section 10.03(a).

"Fee Conversion Closing Date" shall have the meaning provided in Section 10.03(a).

"Fee Conversion Option" shall have the meaning provided in Section 10.01.

"Fee Mortgage" shall mean any mortgage, deed of trust, pledge or similar instrument, including, without limitation, any modification, amendment, spreader, consolidation or renewal thereof, which constitutes a lien on Landlord's interest in this Lease and/or the fee interest in the Premises.

"Fee Mortgagee" shall mean the mortgagee under a Fee Mortgage.

"Final Completion" shall have the meaning provided in the ERY Construction Agreement.

"Financial Matter" shall mean the determination in accordance with this Lease of (a) FMV Land Value, (b) the Adjusted Gross Land Value (only to the extent of the determination of the Estimated ERY Roof Costs (excluding Budgeted Roof Costs)), (c) Annual Base Rent and the Option Price (in each case only to the extent based on FMV Land Value), and (d) the respective portions of the Condemnation Proceeds attributable to the Facility Airspace Parcel and Improvements thereon, and the Severed Parcel Allocable Shares thereof, but shall expressly exclude (i) any matters related to Tenant's obligations under this Lease to pay any of the foregoing, and (ii) the calculation of the amount of the Closing Payment, the First Post-Closing Payment, the Second Post-Closing Payment, the Option Price, and, to the extent not adjusted or otherwise determined based on FMV Land Value, Annual Base Rent.

"Financial Obligations" shall mean the financial obligations of Tenant under this Lease.

"First Post-Closing Payment" shall have the meaning provided in Section 3.02(a).

"Fixed Expiration Date" shall mean the day immediately preceding the ninety-ninth (99th) anniversary of the Rental Commencement Date.

"Floor Area" shall have the meaning provided in Section 12-10 of the Zoning Resolution and shall be measured in accordance with the standards set forth in the Zoning Resolution (notwithstanding that the Premises may be exempt from the application of the Zoning Resolution under Public Authorities Law Section 1266(8)).

"Floor Plans" shall have the meaning provided in Section 9.01(a).

"FMV Base Rent Reset" shall have the meaning provided in Section 3.03(c).

"FMV Land Value" shall have the meaning provided in Section 3.03(a)(iv).

"FMV Rental Value" shall have the meaning provided in Section 3.03(a)(v).

"FMV Reset Period" shall have the meaning provided in Section 3.03(c).

"Force Majeure" shall have the meaning provided in the ERY Declaration of Easements.

"Governmental Authority" shall have the meaning provided in the ERY Declaration of Easements.

"Hazardous Substance" shall have the meaning provided in the ERY Declaration of Easements.

"High Line" shall mean that certain rail viaduct structure, together with the easements and appurtenances associated therewith, located along the west side of Manhattan, portions of which viaduct structure are located on, and portions of which easements encumber, the ERY.

"High Line Component" shall mean the portion of the High Line, if any, which is located on the Premises.

"Impositions" shall have the meaning provided in Section 4.01.

"Impositions Depository" shall mean an Institutional Lender which is reasonably acceptable to both Landlord and Tenant to hold the Contested Imposition Deposit and the Monthly Impositions and Insurance Deposits in accordance with the provisions of Section 4.05 and Article 5. A Leasehold Mortgagee which is an Institutional Lender shall, upon request, be entitled to serve as Impositions Depository hereunder; provided that such Leasehold Mortgagee shall have agreed in writing, for the benefit of Landlord and pursuant to an instrument reasonably satisfactory to Landlord, to hold such funds in a segregated special account to be used and distributed solely as set forth in Section 4.05 or Article 5, as applicable. All funds held by the Impositions Depository pursuant to this Lease shall be drawable in New York City.

"Improvement Approvals" shall mean all permits, consents, certificates and approvals required from any Governmental Authority having jurisdiction for, as the context may require, (a) the construction of the applicable Facility Airspace Improvements in accordance with the Approved Facility Airspace Improvement Plans and Specifications or (b) any Capital Improvement.

"Improvements" shall mean, collectively, the Associated Portion of the LIRR Roof and Facilities, the Capital Improvements and Facility Airspace Improvements, and any and all alterations and replacements thereof, additions thereto and substitutions therefor, only to the extent each of the same are located within the Premises.

"Included Floor Area" shall mean the maximum Floor Area and zoning uses that may be utilized on the Premises as set forth in Exhibit Q.

"Indemnitees" shall have the meaning provided in Section 26.01.

"Initial Construction of the Improvements" shall have the meaning provided in the ERY Declaration of Easements.

"Initial Fee Conversion Closing Date" shall have the meaning provided in Section 10.02.

"Initial Land Value" shall have the meaning provided in Section 3.03(a)(i).

"Initial Rental Period" shall mean the period commencing on the Commencement Date of this Lease and ending on the date that is the earlier to occur of (i) the thirtieth (30^{th}) anniversary of the Commencement Date of this Lease and (ii) the fortieth (40^{th}) anniversary of the Rental Commencement Date.

"Initial Reset Date" shall have the meaning provided in Section 3.03(c).

"Institutional Lender" shall mean (a) a savings bank, a savings and loan association, a commercial bank or trust company (whether acting individually or in a fiduciary capacity), an investment bank, a real estate investment trust, an insurance company organized and existing under the laws of the United States or any state thereof, a not-for-profit religious, educational or eleemosynary institution, an employee welfare, benefit, pension or retirement fund, a Governmental Authority (or subsidiary thereof), a credit union, an endowment fund, or any combination of the foregoing, provided, that any Person referred to in this clause (a), other than a Governmental Authority acting as a conduit issuer of securities, satisfies the Eligibility Requirements (as hereinafter defined); (b) an investment company, a money management firm, a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional "accredited investor" within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any Person referred to in this clause (b) satisfies the Eligibility Requirements; (c) an institution substantially similar to any of the entities described in clause (a) or (b) that satisfies the Eligibility Requirements; (d) any entity controlled by any of the entities described in clause (a), (b) or (c) above; (e) a Qualified Trustee (as hereinafter defined) in connection with a securitization of, or the creation of collateralized debt obligations or commercial mortgage backed securities ("CDO") secured by, or financing

through an "owner trust" of, a loan to finance the ERY Project or an Improvement (collectively, "Securitization Vehicles"), so long as (i) the special servicer or manager of such Securitization Vehicle has the Required Special Servicer Rating (as hereinafter defined), (ii) in the case of a Securitization Vehicle other than a CDO Securitization Vehicle, the entire "controlling class" of such Securitization Vehicle is held by one or more entities that are otherwise Institutional Lenders under clause (a), (b), (c) or (d) of this definition and (iii) in the case of a CDO Securitization Vehicle, the operative documents of such Securitization Vehicle require that the "equity interest" in such Securitization Vehicle is owned by one or more entities that are Institutional Lenders under clause (a), (b), (c) or (d) of this definition (provided, that if any trustee, special servicer or manager fails to meet the requirements of this clause (e), such Person must be replaced by a Person meeting the requirements of this clause (e) within (30) days); or (f) an investment fund, limited liability company, limited partnership or general partnership (i) of which one or more Institutional Lenders under clauses (a), (b), (c) or (d) of this definition acts as the general partner, managing member or fund manager and owns, directly or indirectly, at least fifty percent (50%) or more of the equity interest or (ii) which, or the general partner, managing member or fund manager of which, has been in the business of investment banking, private investing or private equity for at least five (5) years and satisfies the Eligibility Requirements (including, for purposes of the asset test, assets of an Affiliate or unconditional capital commitments). For the purpose of this definition, (w) the "Required Threshold" means, in the case of (A) an Institutional Lender providing a construction loan, Twenty Billion and 00/100 Dollars ($20,000,000,000.00), (B) an Institutional Lender providing a permanent loan or mezzanine financing, Fifteen Billion and 00/100 Dollars ($15,000,000,000.00) and (C) an Institutional Lender acting as a depository, Five Hundred Million Dollars ($500,000,000.00), provided that if an Institutional Lender is composed of more than one Person, the Required Threshold shall be the combined assets of all such Persons; (x) the "Eligibility Requirements" means, with respect to any Person, that such Person (A) is subject to the jurisdiction of the courts of the State of New York and (B) has assets of not less than the Required Threshold, subject to CPI Adjustment; (y) "Qualified Trustee" means (A) a corporation, national bank, national banking association or trust company, organized and doing business under the laws of the United States of America or any state thereof, authorized under such laws to exercise corporate trust powers and to accept the trust conferred, subject to supervision or examination by federal or state regulatory authority, and having a combined capital and surplus of at least the Required Threshold, subject to CPI Adjustment, (B) an institution insured by the Federal Deposit Insurance Corporation and having a combined capital and surplus of at least the Required Threshold, subject to CPI Adjustment, or (C) an institution whose long-term senior unsecured debt is rated in either of the top two (2) rating categories then in effect of Standard & Poor's ("S&P"), Moody's Investors Services, Inc. ("Moody's"), Fitch, Inc. ("Fitch"), or any other nationally recognized statistical rating agency; and (z) "Required Special Servicer Rating" means (A) in the case of Fitch, a rating of "CSSI", (B) in the case of S&P, being on the list of approved special servicers and (C) in the case of Moody's, acting as special servicer in a commercial mortgage loan securitization that was rated within the twelve (12) month period prior to the date of determination, provided that Moody's has not downgraded or withdrawn the then-current rating on any class of commercial mortgage securities or placed any class of commercial mortgage securities on watch citing the continuation of such special servicer as special servicer of such commercial mortgage securities. In all of the above cases, any Person shall qualify as an Institutional Lender only if it shall (I) be subject (X) by law or by consent to service of process

within the State of New York and (Y) to the supervision of (1) the Comptroller of the Currency or the Department of Labor of the United States or the Federal Home Loan Bank Board or the Insurance Department or the Banking Department or the Comptroller of the State of New York, or the Board of Regents of the University of the State of New York, or the Comptroller of New York City or any successor to any of the foregoing agencies or officials, (2) any agency or official exercising comparable functions on behalf of any other state within the United States, (3) in the case of a commercial credit corporation, the laws and regulations of the state of its incorporation, or (4) any federal, state or municipal agency or public benefit corporation or public authority advancing or insuring mortgage loans or making payments that, in any manner, assist in the financing, development, operation and maintenance of improvements, and (II) have individual or combined assets, as the case may be, of not less than the Required Threshold, subject to CPI Adjustment. Notwithstanding anything to the contrary in this definition, in the event that an Institutional Lender consists of more than one Person, such Institutional Lender shall designate by written notice to Landlord a single Person with full authority to act on behalf of such Institutional Lender for the purposes of this Lease, and any notice delivered to, or consent or approval obtained from, such Person shall be deemed to have been delivered to, or obtained from, such Institutional Lender for the purposes of this Lease. An amendment of such written notice may be delivered from time to time to Landlord designating a new Person with full authority to act on behalf of such Institutional Lender.

"Insurance Premiums" shall mean the aggregate annual insurance premiums to be paid in respect of any insurance required to be carried by Tenant pursuant to this Lease.

"Involuntary Rate" shall mean the Prime Rate plus two percent (2%) per annum, but in no event in excess of the maximum permissible interest rate then in effect in the State of New York.

"Landlord" shall mean MTA, or any successor to MTA's rights and interests in the Premises or any portion thereof.

"Landlord's Reversionary Interest Value" shall mean the value of Landlord's reversionary interest in any Severed Parcel, which shall be an amount equal to the Severed Parcel Allocable Share of: (i) THREE BILLION FIVE HUNDRED EIGHTY-TWO MILLION FIVE HUNDRED SEVENTY-NINE THOUSAND ONE HUNDRED THIRTY AND 00/100 DOLLARS ($3,582,579,130.00) in the year commencing on the ninety-ninth (99th) anniversary of the Rental Commencement Date and (ii) THREE BILLION FIVE HUNDRED EIGHTY-TWO MILLION FIVE HUNDRED SEVENTY-NINE THOUSAND ONE HUNDRED THIRTY AND 00/100 DOLLARS ($3,582,579,130.00) discounted to the Fee Conversion Closing Date (or, for purposes of Article 16, the "date of taking" as defined therein) using a discount rate of six and one-half percent (6.5%) per annum for each year prior to the year commencing on the ninety-ninth (99th) anniversary of the Rental Commencement Date.

"Landlord's Termination Rights" shall have the meaning provided in Section 17.03(f).

"Lease" shall mean this Agreement of Severed Parcel Lease (Eastern Rail Yard Section of the John D. Caemmerer West Side Yard) and all future amendments, modifications, extensions and renewals hereof and exhibits attached hereto.

"Leasehold Mortgage" shall mean any mortgage, deed of trust, pledge or similar instrument, including, without limitation, any modification, amendment, spreader, consolidation or renewal thereof, which constitutes a lien on Tenant's interest in this Lease and the leasehold estate created hereby, provided that such mortgage is held by an Institutional Lender that is not an Affiliate of Tenant, except if such Institutional Lender is providing bona-fide and substantial secured debt financing in connection with the Premises.

"Leasehold Mortgagee" shall mean the mortgagee under a Leasehold Mortgage.

"Leasehold Mortgagee/Mezzanine Lender Notice of Cure" shall have the meaning provided in Section 17.03(d).

"Legal Compliance" shall have the meaning provided in the ERY Declaration of Easements.

"Legal Requirements" shall mean any and all applicable present and future laws, rules, orders, ordinances, regulations, statutes, requirements, directives, permits, consents, certificates, approvals, environmental statutes, codes and executive orders of all Governmental Authorities now existing or hereafter created, of all their departments and bureaus, including the zoning regulations to the extent applicable, and of any applicable fire rating bureau or other body exercising similar functions affecting the Premises, any real property upon or over which the ERY Severed Parcel Project is being constructed (excluding the Yards Parcel), or any portion thereof, or any street, avenue or sidewalk comprising a part or in front thereof or any vault in or under the same.

"Lender-Approved Budget" shall have the meaning provided in the Building Completion Guaranty (unless otherwise indicated).

"LIRR" shall mean The Long Island Rail Road Company, a body corporate and politic constituting a public benefit corporation of the State of New York, having an office at Jamaica Station, Jamaica, New York 11435 and any successor entities thereto.

"LIRR Relocations" shall have the meaning provided in the ERY Declaration of Easements.

"LIRR Roof and Facilities" shall have the meaning provided in the ERY Declaration of Easements.

"LIRR Work" shall have the meaning provided in the ERY Construction Agreement.

"M/WBEs" shall have the meaning provided in Article 45.

"Major Subtenant" shall have the meaning provided in Section 17.01(a).

"Material Facility Airspace Improvements" shall have the meaning provided in the ERY Declaration of Easements.

"Memorandum of Lease" shall mean a memorandum of this Lease in the form attached hereto as Exhibit M to be executed by Landlord and Tenant on the Commencement Date and recorded in the City Register.

"Mezzanine Lender" shall mean the lender under a Mezzanine Loan.

"Mezzanine Loan" shall mean financing secured by the equity interests in Tenant (and not by a lien on Tenant's interest in this Lease), provided that such Mezzanine Loan is held by an Institutional Lender that is not an Affiliate of Tenant, except if such Institutional Lender is providing bona-fide and substantial secured debt financing in connection with the Premises.

"MFAI Schedule" shall have the meaning provided in the ERY Declaration of Easements.

"Minimum Standards" shall have the meaning provided in Section 8.04(a).

"Monetary Default" shall mean a Default by Tenant in the payment of Annual Base Rent, Insurance Premiums, Impositions or any other item of Rental or other amount payable under this Lease, whether such amount is payable to Landlord or to a third party.

"Monthly Impositions and Insurance Deposits" shall have the meaning provided in Section 5.01(a).

"MTA" shall mean the Metropolitan Transportation Authority, a body corporate and politic constituting a public benefit corporation of the State of New York, having its principal place of business at 2 Broadway, New York, New York 10004 and any successor entities thereto.

"MTA Parties" shall mean LIRR and MTA, collectively.

"New Lease" shall have the meaning provided in Section 17.04(a).

"New LIRR Facilities" shall have the meaning provided in the ERY Declaration of Easements.

"New Tenant" shall have the meaning provided in Section 17.04(a)(i).

"Non-Disturbance and Attornment Agreement" shall have the meaning provided in Section 17.06(c).

"Non-Monetary Default" shall mean a Default by Tenant under this Lease, other than a Monetary Default.

"Notice" shall have the meaning provided in Section 32.01.

"Notice of Dispute" shall have the meaning provided in Section 3.07.

"NYCDOB" shall mean the New York City Department of Buildings (or its successor in function).

"NYS Law Department" shall have the meaning provided in Section 9.01(c).

"Open Space Component" shall have the meaning provided in the ERY Declaration of Easements.

"Option Price" shall have the meaning provided in Section 10.04.

"Option Property" shall have the meaning provided in Section 10.01(a).

"Other Projects" shall have the meaning provided in Section 8.09.

"Patriot Act" shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, and all rules and regulations promulgated thereunder from time to time, in each case as amended from time to time.

"Penn Station" shall mean New York Pennsylvania Station.

"Permitted Exceptions" shall mean all matters listed on Exhibit B annexed hereto and shall also include any and all matters created by or on behalf of, or with the consent of, Tenant, including without limitation all matters created in accordance with the Project Documents (as defined in the Original Lease).

"Permitted Transfer" shall have the meaning provided in Section 17.01(b).

"Permitted Uses" shall have the meaning provided in Section 30.01.

"Person" shall mean an individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, limited liability company, or government or any agency or subdivision thereof.

"PILOST" shall mean payments in lieu of sales and use taxes that would otherwise have been levied under the New York State Tax Law on the tangible materials and equipment incorporated into the Premises but for the exemption therefrom arising on account of the ownership of the Premises by Landlord.

"PILOST Agreement" shall mean that certain agreement between Landlord, on the one hand, and Tenant, on the other hand, executed simultaneously herewith and attached hereto as Exhibit H, as the same may be modified from time to time.

"PILOT" shall mean payments in lieu of Taxes that would otherwise have been levied on the Premises (after taking into consideration any as-of-right or discretionary abatements or exemptions).

"Pre-Casualty Condition" shall have the meaning provided in Section 15.01(b).

"Premises" shall mean that portion of the Facility Airspace Parcel, as more particularly described in Exhibit A-2 attached hereto.

"Prime Rate" shall mean the prime or base rate announced as such from time to time by Citibank, N.A., or its successors, at its principal office. Any interest payable under this Lease with reference to the Prime Rate shall be adjusted on a daily basis, based upon the Prime Rate in effect at the time in question, and shall be calculated on the basis of a three hundred sixty (360) day year with twelve (12) months of thirty (30) days each.

"Prohibited Person" shall mean any Person if:

(a) such Person or any of its Affiliated Persons is in monetary default or in breach of any non-monetary obligation under any written agreement with the State of New York (including without limitation Landlord or LIRR) or the City of New York after notice and beyond any applicable cure periods, unless, in each instance, such monetary default or breach either (i) has been waived in writing by the State or City of New York, (ii) is being disputed in a court of law, administrative proceeding, arbitration or other similar forum, (iii) is cured within thirty (30) days after a determination and notice to Tenant from Landlord that such Person is a Prohibited Person as a result of such default or breach or (iv) is in connection with a payment default under a mortgage loan that is either recourse or non-recourse to a single purpose entity borrower and issued by an agency or authority of the State or City of New York other than the MTA or its subsidiaries;

(b) such Person or any of its Affiliated Persons has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude, is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure, or has had a contract terminated by any governmental agency for breach of contract or for any cause directly or indirectly related to an indictment or conviction. The determination as to whether any Person is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure for purposes of this paragraph (b) shall be within the sole discretion of Landlord, which discretion shall be exercised in good faith; provided, however, that such Person shall not be deemed a Prohibited Person if the State of New York, having actual knowledge that such Person meets the criteria set forth in this paragraph (b), entered into a contract and is then doing business with such Person;

(c) such Person or any of its Affiliated Persons is a terrorist or terrorist organization or is reputed to have substantial business or other affiliations with a terrorist or terrorist organization, including those Persons included on any relevant lists maintained by the United Nations, the North Atlantic Treaty Organization, the Organization for Economic Cooperation and Development, the Financial Action Task Force, or the Office of Foreign Assets Control, Securities and Exchange Commission, Federal Bureau of Investigation, Central Intelligence Agency or Internal Revenue Service of the United States, all as may be amended from time to time. The determination as to whether any Person is a terrorist or terrorist organization or is reputed to have substantial business or other affiliations with a terrorist or terrorist organization for purposes of this paragraph (c) shall be within the sole discretion of Landlord, which discretion shall be exercised in good faith; provided, however, that such Person shall not be deemed a Prohibited Person if the State of New York, having actual knowledge that

such Person meets the criteria set forth in this paragraph (c), entered into a contract and is then doing business with such Person;

(d) such Person is a government, or is directly or indirectly controlled (rather than only regulated) by a government, which is (i) finally determined, beyond right to appeal, by the Federal Government of the United States or any agency, branch or department thereof to be in violation of (including, but not limited to, any participant in an international boycott in violation of) the Export Administration Act of 1979, as amended, or any successor statute, or the regulations issued pursuant thereto, or (ii) subject to the regulations or controls thereof. Such control shall not be deemed to exist in the absence of a determination to that effect by a Federal court or by the Federal Government of the United States or any agency, branch or department thereof;

(e) such Person is a government, or is directly or indirectly controlled (rather than only regulated) by a government, the effects of the activities of which are regulated or controlled pursuant to regulations of the United States Treasury Department or executive orders of the President of the United States of America issued pursuant to the Trading with the Enemy Act of 1917, as amended; or

(f) such Person has received written notice of default in the payment to the City of New York of any real property taxes, sewer rents or water charges, in an amount greater than Ten Thousand Dollars ($10,000), unless such default is then being contested in good faith in accordance with applicable legal requirements with due diligence in proceedings in a court or other appropriate forum or unless such default is cured within thirty (30) days after a determination and notice to Tenant from Landlord that such Person is a Prohibited Person as a result of such default.

"Project Documents" shall mean, collectively, this Lease and the PILOST Agreement (each as executed by Tenant), the ERY Declaration of Easements (only to the extent it relates to an obligation of Tenant in its capacity as a Severed Parcel Owner of the Premises as further set forth in Section 7.01 of this Lease), and the Building Completion Guaranty delivered by [●] Guarantor.

"Proposed Facility Airspace Improvement Plans and Specifications" shall have the meaning provided in Section 8.02(c).

"Proposed Facility Airspace Improvement Plans and Specifications Notice" shall have the meaning provided in Section 8.02(d).

"Proposed Restoration Plans and Specifications" shall have the meaning provided in Section 15.02.

"Public Safety" shall have the meaning provided in the ERY Declaration of Easements.

"Qualified Replacement Developer" shall mean any Person that (a) has, in the MTA Parties' reasonable judgment, substantial and satisfactory experience in constructing/developing public infrastructure of a scale and complexity (and with operational

sensitivities) similar to the LIRR Work, (b) is not, at the applicable time, disqualified or disbarred from performing work on projects for the MTA Parties or their Affiliates or any other City of New York or New York State agency and (c) is not a Prohibited Person. Landlord, on behalf of the MTA Parties, hereby approves [The Related Companies, L.P., Oxford Hudson Yards LLC, Oxford Properties Corporation, Tishman Speyer Properties, Hines Interests Limited Partnership, The Durst Organization, Boston Properties, Inc., Silverstein Properties, Inc., Forest City Ratner Companies, Vornado Realty Trust, Rudin Management Company, Inc., SL Green, Brookfield], and any Affiliate of any of the foregoing as Qualified Replacement Developers so long as (x) such Person is not a Prohibited Person and (y) in the MTA Parties' reasonable judgment, such Person continues, at the time of the proposed replacement, to meet the requirements for Qualified Replacement Developer set forth herein.

"Qualified Transferee" shall mean (a) a managing member or general partner of Tenant, (b) a Person that is or retains (as construction manager for the construction of the Building(s) on the Premises) a Person with no less than ten (10) years of experience in large scale development projects in an urban environment or (c) a Person that is reasonably acceptable to Landlord; provided, in each case, that the applicable Person is not a Prohibited Person. Landlord, on behalf of the MTA Parties, hereby approves [The Related Companies, L.P., Oxford Hudson Yards LLC, Oxford Properties Corporation, Tishman Speyer Properties, Hines Interests Limited Partnership, The Durst Organization, Boston Properties, Inc., Silverstein Properties, Inc., Forest City Ratner Companies, Vornado Realty Trust, Rudin Management Company, Inc., SL Green, Brookfield], and any Affiliate of any of the foregoing as Qualified Transferees, so long as (x) such Person is not a Prohibited Person and (y) in the MTA Parties' reasonable judgment, such Person continues, at the time of the proposed replacement, to meet the requirements for Qualified Transferee set forth herein.

"Qualifying Sublease" shall have the meaning provided in Section 17.06(c).

"Qualifying Subtenant" shall have the meaning provided in Section 17.06(c).

"Related Affiliate" shall mean any Person (a) over which any Related Control Person exercises day-to-day operational and managerial control as a managing member or otherwise, and (b) of which one or more Related Beneficial Owners or one or more Persons controlled by any Related Control Persons collectively own, directly or indirectly, at least two percent (2%) of the economic interests; provided, that the aggregate equity investment of such Related Control Persons with respect to both the ERY and WRY shall not be required to exceed ONE HUNDRED MILLION AND 00/100 DOLLARS ($100,000,000.00).

"Related Beneficial Owner" shall mean any of Stephen M. Ross and/or Jeff T. Blau and/or Bruce A. Beal, Jr. and their respective spouses, descendants, heirs, legatees and devisees, and any trust created for the benefit of any of such persons.

"Related Control Person" shall mean any of Stephen M. Ross and/or Jeff T. Blau and/or Bruce A. Beal, Jr.

"Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, migration, leaching, dumping or disposing of a Hazardous

Substance into the environment, including the abandonment, discarding, burying or disposing of barrels, containers or other receptacles containing a Hazardous Substance.

"Rent Escalation Date" shall have the meaning provided in Section 3.03(d).

"Rent Factor" shall have the meaning provided in Section 3.03(a)(iii).

"Rental" shall have the meaning provided in Section 3.05.

"Rental Commencement Date" shall mean December 3, 2012.

"Rental Notice" shall have the meaning provided in Section 3.08.

"Replacement Cost" shall have the meaning provided in Section 14.01(b).

"Reset Date" shall mean the respective dates on which each of the FMV Base Rent Resets take effect hereunder.

"Residential Unit" and "Residential Units" shall have the meaning provided in the Condominium Declaration.

"Restoration" shall have the meaning provided in Section 15.01(b).

"Restoration Fund Depository" shall mean an Institutional Lender which is regularly engaged in the business of administering construction loans, and reasonably acceptable to both Landlord and Tenant to hold the Restoration Funds in accordance with the provisions of this Lease. A Leasehold Mortgagee which is an Institutional Lender shall, upon request, be entitled to serve as Restoration Fund Depository hereunder; provided that such Leasehold Mortgagee shall have agreed in writing, for the benefit of Landlord and pursuant to an instrument reasonably satisfactory to Landlord, to hold such funds in a segregated special account to be used and distributed solely as set forth in Article 15. All funds held by a Restoration Fund Depository pursuant to this Lease shall be drawable in New York City.

"Restoration Funds" shall have the meaning provided in Section 15.05(b).

"Restoration Notice" shall have the meaning provided in Section 15.02(b).

"Restore" shall have the meaning provided in Section 15.01(b)..

"RFP" shall mean that certain Request for Proposals for Development at the Eastern Rail Yard Section of the LIRR West Side Yard, issued by Landlord on July 13, 2007, by which Landlord heretofore solicited proposals for the development of the ERY.

"Roof Mechanical Equipment" shall have the meaning provided in the ERY Declaration of Easements.

"Roof Slab" shall have the meaning provided in the ERY Declaration of Easements.

"Roof Utility Facilities" shall have the meaning provided in the ERY Declaration of Easements.

"Second Post-Closing Payment" shall have the meaning provided in Section 3.02(b).

"Service Reliability" shall have the meaning provided in the ERY Declaration of Easements.

"Severance" shall have the meaning provided in the ERY Declaration of Easements.

"Severed Parcel" shall have the meaning provided in the ERY Declaration of Easements.

"Severed Parcel Allocable Share" with respect to the Premises, shall mean thirteen and ninety five thousandths percent ([●]%), representing Tenant's share of certain financial obligations under this Lease, which Severed Parcel Allocable Share is also set forth in the Approved Severed Parcel Plan. The Severed Parcel Allocable Share shall be expressed as a percentage and based on the pro rata allocation of Floor Area for the Premises based on the Original Lease and shall not include the amount of any Floor Area transferred pursuant to the YP Floor Area Transfer Instrument, if such additional Floor Area would cause the aggregate Severed Parcel Allocable Shares under all Severed Parcel Leases on the ERY to exceed one hundred percent (100%).

"Severed Parcel Lease" shall mean this Lease and any other "Severed Parcel Lease" as such term is defined in the ERY Declaration of Easements.

"Severed Parcel Owner" shall have the meaning provided in the ERY Declaration of Easements.

"Severed Parcel Pro Forma Rent Schedule" shall mean the pro forma rent schedule for this Lease (assuming that the Annual Base Rent immediately following each FMV Base Reset shall be equal to one hundred twenty percent (120%) of the Annual Base Rent for the period immediately prior to the applicable Initial Reset Date or Reset Date) which is attached hereto as Exhibit P.

"Severed Parcel Tenant" shall mean the tenant under any Severed Parcel Lease.

"Severed Subparcel" shall have the meaning provided in Section 9.02(d).

"Severed Subparcel Lease" shall have the meaning provided in Section 9.02(d).

"Severed Subparcel Tenant" shall have the meaning provided in Section 9.02(d).

"Shortfall Amount" shall have the meaning provided in Section 15.05(b).

"Sponsor Guaranty" shall mean that certain [●] Sponsor Guaranty (Eastern Rail Yard Section of the John D. Caemmerer West Side Yard) to be executed by [●] Guarantor and delivered to Landlord contemporaneously with the filing of the offering plan (or, if earlier, any no-action application) for the Condominium with the NYS Law Department pursuant to Section 9.01(c) hereof, and in all events prior to the Condominium Conversion Date.

"Subletting" shall have the meaning provided in Section 17.01(a).

"Substantial Completion" or "Substantially Completed" shall mean (a) with respect to the LIRR Roof and Facilities or the Associated Portion of the LIRR Roof and Facilities, the respective meanings set forth in the ERY Construction Agreement; (b) with respect to a commercial Building, the condition of construction for which a temporary or permanent Certificate of Occupancy has been issued for such Building (or the core and shell of such Building); (c) with respect to a residential Building, the condition of construction for which a temporary or permanent Certificate of Occupancy has been issued for such Building; (d) with respect to a Building Component, the condition of construction for which a temporary or permanent Certificate of Occupancy has been issued for such Building Component (or the core and shell of such Building Component); and (e) with respect to any other Facility Airspace Improvements, the condition of construction for which (i) a temporary or permanent Certificate of Occupancy has been issued for such Facility Airspace Improvement, if applicable, or (ii) if not applicable, the architect for such Facility Airspace Improvement has delivered a certification that, in such architect's opinion, the construction of such Facility Airspace Improvement has been substantially completed in accordance with all applicable Legal Requirements.

"Successor Landlord" shall have the meaning provided in Section 33.03.

"Support Facilities" shall have the meaning provided in the ERY Declaration of Easements.

"Tax Year" shall mean each tax fiscal year of the City.

"Taxes" shall mean the real property taxes or any taxes or other payments substituted in lieu thereof of any kind or nature that are, or would be but for any applicable exemption or abatement, assessed, levied or imposed by any Governmental Authority against the Premises or any part thereof, which may become payable during the Term.

"Tenant" shall mean the Tenant Named Herein, unless and until the Tenant Named Herein shall assign or transfer its interest hereunder in accordance with the terms of this Lease (other than with respect to a Severed Parcel), in which case the term "Tenant" shall mean only such permitted assignee or permitted transferee.

"Tenant Named Herein" shall mean [●].

"Term" shall mean the term of this Lease, which shall commence on the Commencement Date and expire on the Expiration Date.

"Then-Current Abatement Level" shall mean: (A) commencing on the Rental Commencement Date (i.e., December 3, 2012) and ending on the day immediately prior to the

date which is the third (3rd) anniversary of the Rental Commencement Date, an abatement of one hundred percent (100%) of the Annual Base Rent payable pursuant to the provisions of Section 3.03; (B) commencing on the third (3rd) anniversary of the Rental Commencement Date (i.e., December 3, 2015) and ending on the day immediately prior to the date which is the sixth (6th) anniversary of the Rental Commencement Date (i.e., December 3, 2018), an abatement of fifty percent (50%) of the Annual Base Rent payable pursuant to the provisions of Section 3.03; and (C) from and after the sixth (6th) anniversary of the Rental Commencement Date, Annual Base Rent shall not be abated except as provided in Section 3.04(c).

"[●] Guarantor" shall mean The Related Companies, L.P., a Delaware limited partnership, and OP USA Debt Holdings Limited Partnership, an Ontario limited partnership, jointly and severally.

"Transfer" shall have the meaning provided in Section 17.01(a).

"Trustee" shall have the meaning provided in Section 31.02(a).

"Unavoidable Delay" shall have the meaning provided in the ERY Declaration of Easements.

"Unit" shall mean a unit within the condominium created pursuant to the Condominium Documents.

"User" shall have the meaning provided in Section 17.01(b)(i).

"WRY" shall mean that certain parcel of land in the Borough of Manhattan, which is as of the Commencement Date owned by Landlord, and known as the Western Rail Yard Section of the John D. Caemmerer West Side Yard, which is owned by Landlord and is bounded by West 30th Street on the south, West 33rd Street on the north, 12th Avenue on the west and 11th Avenue on the east.

"WRY Lease" shall mean that certain Agreement of Lease, dated as of April 10, 2014, by and between MTA, as landlord, and WRY Tenant LLC, as tenant, as amended by that certain First Amendment to Lease, dated as of July 9, 2014, as the same may have been or hereafter be amended, modified, or supplemented from time to time in accordance with the terms thereof.

"WSY" shall mean that certain parcel of land known as the John D. Caemmerer West Side Yard comprised of the ERY and WRY.

"Yards Parcel" shall have the meaning provided in the ERY Declaration of Easements, as more particularly described in Exhibit A-3 attached hereto.

"Yards Parcel Operator" shall have the meaning provided in the ERY Declaration of Easements.

"Yards Parcel Owner" shall have the meaning provided in the ERY Declaration of Easements.

"Zoning Resolution" shall mean the Zoning Resolution of the City of New York, as the same may be amended from time to time.

ARTICLE 2

PREMISES AND TERM OF LEASE

Landlord does hereby demise and lease to Tenant, and Tenant does hereby hire and take from Landlord, the Premises, together with all easements, appurtenances and other rights and privileges now or hereafter belonging or appertaining to the Premises, subject to the Permitted Exceptions. For the avoidance of doubt, the demise and lease of the Premises to Tenant shall include the exclusive right to utilize the Included Floor Area.

TO HAVE AND TO HOLD unto Tenant, its successors and assigns, for a term of years commencing on the Commencement Date and expiring on the Expiration Date.

ARTICLE 3

RENT

Section 3.01 Closing Payment. On or prior to the Rental Commencement Date, Tenant Named Herein paid to Landlord the product of (x) EIGHTEEN MILLION EIGHT HUNDRED THOUSAND AND 00/100 DOLLARS ($18,800,000.00) and (y) the Severed Parcel Allocable Share (the "Closing Payment") (as further adjusted or credited in accordance with Section 3.01 of the Original Lease), the amount of which Closing Payment shall be deemed to have been deducted from the Initial Land Value. Landlord hereby acknowledges receipt of the Closing Payment.

Section 3.02 Post-Closing Payments.

(a) On the first (1st) anniversary of the Rental Commencement Date, Tenant Named Herein paid to Landlord the product of (x) NINE MILLION FOUR HUNDRED THOUSAND AND 00/100 DOLLARS ($9,400,000.00) and (y) the Severed Parcel Allocable Share (the "First Post-Closing Payment"), the amount of which First Post-Closing Payment shall be deemed to have been deducted from the Initial Land Value. Landlord hereby acknowledges receipt of the First Post-Closing Payment.

(b) On the second (2nd) anniversary of the Rental Commencement Date, Tenant Named Herein paid to Landlord the product of (x) NINE MILLION FOUR HUNDRED THOUSAND AND 00/100 DOLLARS ($9,400,000.00) and (y) the Severed Parcel Allocable Share (the "Second Post-Closing Payment"), the amount of which Second Post-Closing Payment shall be deemed to have been deducted from the Initial Land Value. Landlord hereby acknowledges receipt of the Second Post-Closing Payment.

Section 3.03 Annual Base Rent. Tenant shall pay to Landlord, for each year commencing on the Commencement Date and continuing thereafter for the balance of the Term (prorated for any partial year), the annual sums set forth in this Section 3.03 ("Annual Base Rent"), in equal monthly installments (subject to the last sentence of Section 3.03(b)) in advance,

on the first (1st) day of each calendar month of the Term (unless any such date is not a Business Day, in which case payment shall be due on the immediately preceding Business Day), for the period commencing on the Commencement Date and continuing thereafter throughout the balance of the Term.

(a) Definitions. For purposes of this Section 3.03, the following terms shall have the following definitions:

(i) "Initial Land Value" shall mean an amount equal to the product of (x) THREE HUNDRED SEVENTY-SIX MILLION AND 00/100 DOLLARS ($376,000,000.00) and (y) the Severed Parcel Allocable Share.

(ii) "Adjusted Initial Land Value" shall mean the excess of (x) the Initial Land Value, over (y) the sum of (A) the Closing Payment, (B) the First Post-Closing Payment and (C) the Second Post-Closing Payment.

(iii) "Rent Factor" shall mean six and one-half percent (6.5%).

(iv) "FMV Land Value" shall mean the fair market value of the Premises as of the commencement of the FMV Reset Period in question, determined pursuant to Section 3.08 and calculated as if the Premises were (x) encumbered by this Lease, (y) unimproved by the ERY Roof Component and any Facility Airspace Improvements; and (z) to be used for the actual uses in place or under development on the Premises at the time that such FMV Land Value determination is being made (or, if at the time that such FMV Land Value determination is being made, construction has not commenced on any portion of the Premises, the highest and best use permitted for the Premises in accordance with the Zoning Resolution, this Lease (including the Floor Area and use allocations as set forth in the ERY Severed Parcel Project Requirements) and the other applicable Project Documents).

(v) "FMV Rental Value" shall mean the product of (a) ninety percent (90%) of the FMV Land Value and (b) the Rent Factor.

(b) Initial Rental Period. As more particularly described on the Severed Parcel Pro Forma Rent Schedule, Annual Base Rent payable under this Lease during the Initial Rental Period shall equal the product of (x) the Rent Factor and (y) the Adjusted Initial Land Value, subject to the escalations described in Section 3.03(d). The initial Annual Base Rent payable commencing on the Commencement Date and ending on the first Rent Escalation Date is set forth on the Severed Parcel Pro Forma Rent Schedule.

(c) Annual Base Rent Resets. On the date immediately following the last day of the Initial Rental Period (such date, the "Initial Reset Date"), and on each subsequent twenty-fifth (25th) anniversary of the Initial Reset Date during the Term, Annual Base Rent shall be reset to equal the FMV Rental Value as of such Reset Date, provided that such FMV Rental Value shall be no less than one hundred percent (100%) and not greater than one hundred twenty percent (120%) of Annual Base Rent payable immediately prior to such Reset Date (the period between each Reset Date (if more than one) and the period between the final Reset Date and the Expiration Date, each an "FMV Reset Period"; and each adjustment to Annual Base Rent as set forth in Section 3.03(c), an "FMV Base Rent Reset").

(d) Escalations of Annual Base Rent. Notwithstanding Section 3.03(b) and (c) and as reflected in the Severed Parcel Pro Forma Rent Schedule, Annual Base Rent shall increase by ten percent (10%) on every fifth (5th) anniversary of the Rental Commencement Date (each, a "Rent Escalation Date"). In the event that any Rent Escalation Date coincides within a year of a Reset Date, Annual Base Rent shall solely be reset as provided in Section 3.03(c) and not escalated as provided in this Section 3.03(d).

Section 3.04 Rent Abatements. Provided that this Lease is in full force and effect Annual Base Rent set forth in Section 3.03 shall be abated as follows:

(a) Prior to Certificate of Occupancy. From and after the Commencement Date and until the issuance of a temporary or permanent Certificate of Occupancy allowing for physical occupancy with respect to any portion of the Building, the greater of (A) Annual Base Rent at the Then-Current Abatement Level, and (B) fifty percent (50%) of Annual Base Rent, shall be payable.

(b) From and After Certificate of Occupancy. From and after the issuance of a temporary or permanent Certificate of Occupancy allowing for physical occupancy with respect to any portion of the Building, one hundred percent (100%) of Annual Base Rent shall become payable, without abatement.

(c) Abatement for Compensable MTA Party Delay. If, as of the date of the occurrence of a Compensable MTA Party Delay, either (x) Commencement of Construction with respect to a Building containing or which shall contain commercial and/or anchor retail space shall have occurred, or (y) Commencement of Construction with respect to a Building containing commercial and/or anchor retail space shall not have yet occurred, but one or more space leases with commercial and/or anchor retail tenants for occupancy in the Building to be constructed has been executed, in addition to the other abatements set forth in this Section 3.03, Tenant shall be entitled to the Direct Cost Rent Credit in accordance with Section 2.5(f) of the ERY Construction Agreement and/or Section 2.11 of Exhibit D to the ERY Declaration of Easements.

Section 3.05 Rental. All of the amounts payable by Tenant to Landlord pursuant to this Lease (except, in all events, PILOT or PILOST payments), including, without limitation, the Closing Payment, the First Post-Closing Payment, the Second Post-Closing Payment, Annual Base Rent, Additional Rent, and all other sums, costs, expenses or deposits which Tenant in any of the provisions of this Lease assumes or agrees to pay to and/or deposit with Landlord (such amounts, collectively, "Rental") shall constitute rent under this Lease and, in the event of Tenant's failure to pay Rental after the expiration of any applicable notice and cure periods, Landlord (in addition to all other rights and remedies) shall have all of the rights and remedies provided for herein and by law in the case of non-payment of rent. All Rental shall be payable without any abatement, deduction, counterclaim, set-off or offset whatsoever (except as expressly set forth herein), and without notice or demand, in lawful money of the United States, by wire transfer to a bank account designated by Landlord or at such other place as Landlord shall direct from time to time by written notice to Tenant.

Section 3.06 Proration of Rental Payments. Rental of whatever kind that is due for any partial month, year or other applicable period shall be appropriately prorated.

Section 3.07 Net Lease. Except as expressly set forth herein or in any other Project Document, it is the purpose and intention of Landlord and Tenant, and Landlord and Tenant hereby agree that, all Rental shall be absolutely net to Landlord without any abatement, deduction, counterclaim, set-off or offset whatsoever, so that this Lease shall yield, net, to Landlord, the Rental in each year during the term of this Lease, and that all costs, expenses and charges of every kind and nature (including, without limitation, all public and private utilities and services and any easement or agreement maintained for the benefit of the Premises), relating to the Premises shall be paid by Tenant, such that this Lease shall be a so-called "triple net lease".

Section 3.08 FMV Land Value, FMV Rental Value and Interim Annual Base Rent. The FMV Land Value and FMV Rental Value for each FMV Reset Period shall be determined in the following manner: not more than one (1) year and six (6) months prior to the commencement of the relevant FMV Reset Period (or, in the event that the Commencement Date is less than one (1) year and six (6) months prior to the commencement of the relevant FMV Reset Period, promptly following the Commencement Date), Landlord shall submit to Tenant an appraisal, setting forth Landlord's determination of the FMV Land Value and the FMV Rental Value, together with a letter making express reference to this Section 3.08 and stating that Tenant has thirty (30) days to respond to such notice (the "Rental Notice"). If Tenant shall dispute Landlord's determination (the "Notice of Dispute") by notice given by Tenant to Landlord not later than thirty (30) days after delivery to Tenant of the applicable Rental Notice (TIME BEING OF THE ESSENCE as to the giving of the Notice of Dispute), then Tenant shall engage its own appraiser and deliver to Landlord its determination of the FMV Land Value (and calculation of the corresponding FMV Rental Value) no later than forty-five (45) days following the delivery of the Notice of Dispute. Landlord and Tenant shall attempt to resolve any disagreement in the FMV Land Value in good faith, and if such disagreement is not resolved within thirty (30) days, then such dispute shall be resolved in accordance with Sections 40.01(a) and (b); provided that any appraiser selected by the parties pursuant to this Section 3.08 shall be a member of the American Institute of Real Estate Appraisers (or its successor organization) and shall have been engaged in the business of real estate appraisals in the City of New York for no less than ten (10) years. If for any reason the FMV Rental Value for any FMV Reset Period has not been finally determined by the first day of such FMV Reset Period, then until such final determination, Tenant shall pay as Annual Base Rent the lesser of (a) one hundred ten percent (110%) of the Annual Base Rent payable immediately prior to such Reset Date and (b) the Annual Base Rent calculated using Landlord's determination of FMV Rental Value. Upon final determination of the FMV Land Value and corresponding FMV Rental Value for such FMV Reset Period (i) in the event that the application of such FMV Rental Value shall result in a greater Annual Base Rent than that theretofore paid in respect of such FMV Reset Period, Tenant shall pay the entire amount of any underpayment to Landlord within twenty (20) days of such final determination, without interest, or (ii) in the event that the application of such FMV Rental Value shall result in a lesser Annual Base Rent than that theretofore paid in respect of such FMV Reset Period, Landlord shall credit the amount of such overpayment against the next monthly installments of Annual Base Rent thereafter due and owing, without interest.

Section 3.09 Additional Rent. Tenant shall pay to Landlord, as additional rent ("Additional Rent") under this Lease, the following amounts (except, in all events, PILOT or PILOST payments, which shall be payable in accordance with Section 4.11 and shall not be deemed "rent"): all taxes, assessments, charges, costs, expenses and other sums of money as shall become due and payable by Tenant to or on behalf of Landlord under this Lease, or which Tenant shall assume to pay to or on behalf of Landlord under this Lease (whether or not designated as Additional Rent in this Lease). Upon any failure on the part of Tenant to pay any Additional Rent, Landlord shall have the same legal, equitable and contractual rights, powers and remedies provided in this Lease, by statute, at common law or as are otherwise available to Landlord, in the case of nonpayment of Annual Base Rent, including all interest and penalties that may accrue thereon in the event of Tenant's failure to pay such amounts when due, and all damages, costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements which Landlord may incur by reason of any Default of Tenant or failure on Tenant's part to comply with any of the terms of this Lease, or arising out of any indemnity and/or "hold harmless" agreement given or made by Tenant to Landlord in this Lease, or otherwise incurred by Landlord in connection with the enforcement of its rights and Tenant's obligations under this Lease (provided that Landlord is the prevailing party), and Tenant hereby agrees to pay any such amounts within twenty (20) days after demand by Landlord unless otherwise specifically provided in this Lease.

Section 3.10 Section 467. Upon Tenant's written request, Landlord shall cooperate with Tenant to enable Tenant to account for the appropriate treatment of Annual Base Rent under Section 467 of the Internal Revenue Code of 1986, as amended.

ARTICLE 4

IMPOSITIONS

Section 4.01 Impositions. Subject to any exemptions or abatements which may be granted by any Governmental Authority or as otherwise set forth herein, Tenant shall pay, as hereinafter provided, all of the following items imposed by any Governmental Authority with respect to the Premises (collectively, "Impositions"), all of which shall be calculated without taking into account available exemptions arising on account of the ownership of the Premises by Landlord: (a) Taxes and/or PILOT (if any), with PILOT payable in accordance with Section 4.11, (b) personal property taxes, (c) commercial rent or occupancy taxes, (d) water, water meter and sewer rents, rates and charges, (e) levies, (f) license and permit fees, (g) service charges with respect to police protection, fire protection, street and highway construction, maintenance and lighting, sanitation and water supply, if any, (h) all excise, sales, value added, use and similar taxes, (i) governmental charges for utilities, communications and other services rendered or used in or about the Premises, (j) fines, penalties and other similar or like governmental charges applicable to the foregoing and any interest or costs with respect thereto arising from the failure to make timely payment thereof and (k) any and all other governmental levies, fees, rents, assessments and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, and any interest, penalties or costs with respect thereto arising from the failure to make timely payment thereof, which at any time during (or after, but attributable to a period falling within) the Term are (or, if the Premises or any part thereof or the owner thereof were not exempt therefrom, would have been) (1) assessed, levied,

confirmed, imposed upon or would have become due and payable out of or in respect of, or would have been charged with respect to, the Premises or any document to which Tenant is a party creating or transferring an interest or estate in the Premises or the use and occupancy thereof by Tenant and (2) encumbrances or liens on (i) the Premises, (ii) the sidewalks or streets in front of or adjoining the Premises, (iii) any vault, passageway or space in, over or under such sidewalk or street (other than any of the foregoing that are within the sole legal and operational control of a Person other than Tenant), (iv) any appurtenances of the Premises, (v) any personal property (except personal property which is not owned by or leased to Tenant), Equipment or other facility used in the operation thereof or (vi) the Rental (or any portion thereof) payable by Tenant hereunder. Each such Imposition, or installment thereof, during the Term shall be paid not later than the Due Date thereof. However, if, by law, any Imposition may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the same in such installments and shall be responsible for the payment of such installments only, together with applicable interest, if any, relating to periods prior to the Expiration Date. Tenant shall promptly notify Landlord if Tenant shall have elected to pay any such Imposition in installments. Notwithstanding anything to the contrary herein, Tenant shall have no obligation to pay any Imposition levied on or payable with respect to the Yards Parcel or the High Line Component; provided that Tenant shall indemnify and hold Landlord harmless for any such Impositions levied on or payable with respect to the High Line Component. For the avoidance of doubt, Landlord shall have no liability for any Impositions levied on or payable with respect to the Premises.

Section 4.02 Receipts. Tenant, from time to time upon request of Landlord, shall promptly furnish to Landlord official receipts of the appropriate taxing authority, or other evidence reasonably satisfactory to Landlord, evidencing the payment of Impositions.

Section 4.03 Landlord's Taxes. Nothing herein contained shall require Tenant to pay municipal, state or federal income, gross receipts, inheritance, estate, succession, profit or capital gains taxes of Landlord, or any corporate franchise tax imposed upon Landlord or any gains tax imposed on Landlord. Notwithstanding the foregoing, if at any time during the Term, a tax or excise on Rental or the right to receive rents or any other tax, however described, is levied or assessed against Landlord as a substitute, in whole or in part, for any Impositions that would otherwise be payable by Tenant, Tenant shall pay and discharge such tax or excise on Rental or other tax before interest or penalties accrue and the same shall be deemed an Imposition levied against the Premises.

Section 4.04 Impositions Beyond Term. Any Imposition relating to a period a part of which is included within the Term and a part of which is included in a period of time before the Commencement Date or after the Expiration Date (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon or in respect of or become a lien upon the Premises, or shall become payable, during the Term) shall be apportioned between Landlord and Tenant as of the Commencement Date or the Expiration Date, as the case may be, so that Tenant shall pay that portion of such Imposition which that part of such fiscal period included in the period of time after the Commencement Date or before the Expiration Date bears to such fiscal period. Notwithstanding the foregoing, no such apportionment of Impositions as of the Expiration Date shall be made if this Lease is terminated prior to the Fixed Expiration Date as the result of an Event of Default.

Section 4.05 Tenant's Contest. Tenant shall have the right to contest the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith, in which event, payment of such Imposition may be postponed at the election of Tenant if and only as long as:

(a) neither the Premises, nor any part thereof or interest therein or income therefrom or any other assets of or funds appropriated to Landlord would, by reason of such postponement or deferment, be, in the reasonable judgment of Landlord, in imminent danger of being forfeited or lost, and neither Landlord nor Tenant would by reason thereof be subject to any civil or criminal liability;

(b) if the contested amount (together with all interest and penalties in connection therewith) exceeds One Hundred Thousand Dollars ($100,000.00), subject to CPI Adjustment, Tenant shall have either (i) deposited with the Impositions Depository, prior to or simultaneously with such contest, an amount equal to one hundred percent (100%) of the amount so contested and unpaid, together with all interest and penalties in connection therewith and all charges that may or might be assessed against or become a charge on the Premises or any part thereof in (or during the pendency of) such proceedings (collectively, the "Contested Imposition Deposit") or (ii) delivered to Landlord a letter of credit for the benefit of Landlord in such amount issued by an Institutional Lender or other security, in form and substance reasonably satisfactory to Landlord; and

(c) upon the termination of such proceedings, Tenant shall pay the amount of such Imposition or part thereof as finally determined in such proceedings (the payment of which may have been deferred during the prosecution of such proceedings), together with any costs, fees (including attorneys' fees and disbursements), interest, penalties or other liabilities imposed on Tenant or Landlord in connection therewith. Upon such payment, the Impositions Depository shall return, with interest, if any, any amount deposited with it in respect of such Imposition as aforesaid; provided, however, that the Impositions Depository, at Tenant's request (or, upon Tenant's failure to make such payment in a timely manner, at Landlord's request), shall disburse said monies on deposit with it directly to the taxing authority to whom such Imposition is payable and any remaining monies, with interest, if any, shall be returned promptly to Tenant. If at any time during the continuance of such proceedings any accrued and unpaid interest, penalties and/or charges in connection with such Imposition cause the amount of such Imposition (together with all interest and penalties in connection therewith and all charges that may or might be assessed against or become a charge on the Premises or any part thereof in (or during the pendency of) such proceedings) to exceed the amount of the Contested Imposition Deposit, Tenant, within fifteen (15) days after accrual of the same, shall deposit an amount equal to such excess with the Impositions Depository, and upon failure of Tenant to do so, the amount theretofore deposited may be applied, at the request of Landlord, to the payment, removal and/or discharge of such Imposition, together with the interest and penalties incurred in connection therewith and any costs, fees (including attorneys' fees and disbursements) or other liabilities accruing in any such proceedings, and the balance, if any, together with any interest earned thereon, shall be returned to Tenant or the deficiency, if any, shall be paid by Tenant to Landlord within ten (10) days after demand therefor by Landlord. Notwithstanding anything to the contrary contained in this Section 4.05, if by law an Imposition may be challenged only after

payment of such Imposition, Tenant shall pay the same prior to, and as a condition to, the institution of any challenge thereof.

Section 4.06 No Postponement of Tenant's Obligation. Tenant shall have the right, at its sole cost and expense, to seek a reduction in the valuation of the Premises assessed for Taxes by appropriate proceedings diligently conducted in good faith, and to prosecute any action or proceeding in connection therewith; provided, that (a) Tenant shall notify Landlord of any such actions or proceedings, and shall deliver to Landlord copies of any applications or submissions in connection with any such proceeding, at least five (5) Business Days prior to Tenant's submission of the same to the applicable taxing authority and (b) no such action or proceeding shall postpone Tenant's obligation to pay any Imposition except in accordance with the provisions of Section 4.05.

Section 4.07 Landlord Cooperation. Landlord shall not be required to join in any proceedings referred to in Section 4.05 or 4.06 unless the provisions of any law, rule or regulation in effect at the time shall require that Landlord join such proceedings or that such proceedings be brought by or in the name of Landlord, in which event, Landlord shall join and reasonably cooperate in such proceedings, or permit the same to be brought in its name, upon compliance by Tenant with such conditions as Landlord may reasonably require; provided, however, that Landlord shall not be liable for the payment of any costs or expenses in connection with any such proceedings and Tenant shall reimburse Landlord for, and shall indemnify and hold Landlord harmless from and against, any and all costs or expenses which Landlord may reasonably sustain or incur in connection with any such proceedings, including, without limitation, reasonable attorneys' fees and disbursements. In the event that Tenant shall institute a proceeding referred to in Section 4.05 or 4.06 and no law, rule or regulation in effect at the time requires that such proceeding be brought by and/or in the name of Landlord, Landlord, nevertheless, shall, at Tenant's sole cost and expense, and subject to the reimbursement provisions hereinabove set forth, reasonably cooperate with Tenant in any such proceeding.

Section 4.08 Tax Bills. Any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition asserting non-payment of such Imposition shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill at the time or date stated therein.

Section 4.09 Invoices for Impositions. Tenant shall make all necessary arrangements with the applicable taxing authorities to have invoices for Impositions sent directly to Tenant and, if necessary, Landlord shall, at the request of Tenant and at no cost to Landlord, reasonably cooperate in making such arrangements. In the event that Landlord shall receive, after the Commencement Date, any invoices for Impositions, Landlord shall promptly forward the same to Tenant.

Section 4.10 Separation of Tax Lots. Landlord agrees to cooperate reasonably with Tenant in any applications to be made by Tenant for the creation of a separate tax lot or lots for the Facility Airspace Parcel, and or Severed Parcels or Severed Subparcels within the Premises, including the execution of any documents as may be required by a Governmental

Authority in connection therewith. The costs associated with any such applications for a separate tax lot, including surveying costs, shall be paid by Tenant.

Section 4.11 PILOT; PILOST.

(a) Tenant shall pay to the New York City Department of Finance all PILOT payments (if any) prior to the Due Date thereof. In no event shall PILOT be deemed a payment of Rental for purposes of this Lease; provided, however that Tenant may contest any payment of PILOT in accordance with the procedures set forth in Section 4.05.

(b) Intentionally Omitted.

(c) It is the understanding of the parties that Tenant shall be liable for the payment of PILOST in accordance with the PILOST Agreement. In no event shall PILOST be deemed an Imposition or a payment of Rental for purposes of this Lease; provided, however that Tenant may contest any payment of PILOST in accordance with the procedures set forth in Section 4.05.

ARTICLE 5

DEPOSITS FOR IMPOSITIONS

Section 5.01 Monthly Deposits Following Event of Default.

(a) At Landlord's option, which may be exercised solely at any time during the pendency of an uncured Event of Default under this Lease and no other time, Tenant shall make monthly deposits for Impositions and Insurance Premiums, as set forth in this Article 5. Landlord shall provide Tenant with written notice setting forth Landlord's reasonable estimate of the annual Insurance Premiums and aggregate annual Impositions for the forthcoming twelve (12) month period, and Tenant shall deposit with the Impositions Depository on the first day of each month during the Term, an amount equal to one-twelfth (1/12th) of such annual Impositions and one-twelfth (1/12th) of such Insurance Premiums as reasonably estimated by Landlord (such deposits, the "Monthly Impositions and Insurance Deposits"). Notwithstanding the foregoing, in the event that a Leasehold Mortgagee or a Mezzanine Lender shall require Tenant to deposit funds with such Leasehold Mortgagee or Mezzanine Lender, as applicable, to insure payment of Impositions or Insurance Premiums, any amount so deposited by Tenant shall be credited against the amount, if any, which Tenant would otherwise be required to deposit with the Impositions Depository under this Article 5; provided that such Leasehold Mortgagee or Mezzanine Lender, as applicable, shall have agreed in writing, for the benefit of Landlord and pursuant to an instrument reasonably satisfactory to Landlord, to hold such funds in a segregated special account for the payment of Impositions and Insurance Premiums, and for no other use, and that the Leasehold Mortgagee or Mezzanine Lender, as applicable, shall use such funds to pay Impositions and Insurance Premiums as and when the same are required to be paid hereunder and for no other purpose.

(b) If at any time the monies so deposited by Tenant shall be insufficient to pay the next installment of Impositions or Insurance Premiums then due, Tenant shall deposit with the Impositions Depository the amount of any such insufficiency to enable the

Impositions Depository to pay the next installment of Impositions or Insurance Premiums at least thirty (30) days prior to the Due Date thereof. It is acknowledged that all or a portion of the Insurance Premiums may be payable to the FASP Owners Association in accordance with the Association Documents and/or, following the Condominium Conversion Date, the Condominium Board in accordance with the Condominium Documents.

(c) The Impositions Depository shall hold monies deposited by Tenant pursuant to this Article 5 in a segregated special account for the purpose of paying the charges for which such amounts have been deposited as they become due, and the Impositions Depository shall apply the deposited monies for such purpose not later than the Due Date for such charges.

(d) If at any time during the period that Tenant shall be required to make the deposits required by this Section 5.01 the amount of any Imposition or Insurance Premium is increased or Landlord receives information from the Persons imposing such Imposition that an Imposition will be increased and the monthly deposits then being made by Tenant under this Section 5.01 would be insufficient to pay such Imposition or Insurance Premium thirty (30) days prior to the Due Date thereof, then upon notice from Landlord to Tenant of such fact, the monthly deposits shall thereupon be increased and Tenant shall deposit with the Impositions Depository promptly (but in no event later than twenty (20) days from the applicable notice) sufficient monies for the payment of the increased Imposition or Insurance Premium. Thereafter, the monthly payments shall be adjusted such that Tenant shall deposit with the Impositions Depository an amount sufficient to pay each Imposition and Insurance Premium at least thirty (30) days prior to the Due Date thereof.

(e) For the purpose of determining whether the Impositions Depository has on hand sufficient monies to pay any particular Imposition or Insurance Premium at least thirty (30) days prior to the Due Date thereof, deposits for each category and payee of Imposition and for each Insurance Premium shall be treated separately. The Impositions Depository shall not be obligated to use monies deposited for the payment of an Imposition or Insurance Premium not yet due and payable for the payment of an Imposition or Insurance Premium that is due and payable.

(f) Notwithstanding the foregoing, Tenant expressly acknowledges and agrees that (i) monies deposited with the Impositions Depository pursuant to the provisions of this Article 5 may be held by the Impositions Depository in a single bank account and (ii) the Impositions Depository shall, in the event Tenant fails to make any payment or perform any obligation required under this Lease, at Landlord's option and direction, but subject to the rights of any Leasehold Mortgagees or Mezzanine Lenders, use any such monies for the payment of any Rental.

(g) If this Lease shall be terminated by reason of any Event of Default, or if dispossession occurs pursuant to Article 31 of this Lease, all monies deposited pursuant to this Article 5 then held by the Impositions Depository shall be paid to, and applied by, Landlord in payment of any and all sums due under this Lease and Tenant shall promptly pay the resulting deficiency.

(h) Any interest paid on monies deposited pursuant to this Article 5 shall be applied pursuant to the foregoing provisions against amounts thereafter becoming due and payable by Tenant.

(i) Notwithstanding anything to the contrary herein, if at any time after monies have been deposited with the Impositions Depository pursuant to the provisions of this Article 5 there are no pending Events of Default for a period of thirty (30) consecutive days, all monies so deposited with the Impositions Depository shall be paid over to Tenant, subject to the rights of any Leasehold Mortgagees or Mezzanine Lenders.

ARTICLE 6

LATE CHARGES

In the event that (a) any payment of Rental shall not have been paid by Tenant to Landlord within five (5) Business Days following the date due and (b) Landlord delivers written notice thereof to Tenant (provided that no such notice shall be required with respect to late payments of Annual Base Rent or Closing Payments), such unpaid amount shall bear interest at a rate equal to the sum of the Prime Rate plus two percent (2%) (such rate, the "Default Rate"), from the date on which such payment became due and payable through the date of actual payment. The amount of interest accrued pursuant to the immediately preceding sentence shall become due and payable to Landlord as liquidated damages for the administrative costs and expenses incurred by Landlord by reason of Tenant's failure to make prompt payment, and such amounts shall constitute Additional Rent hereunder. No failure by Landlord to insist upon the strict performance by Tenant of its obligations to pay any such interest shall constitute a waiver by Landlord of its right to enforce the provisions of this Article 6 in any instance thereafter occurring. The provisions of this Article 6 shall not be construed in any way to extend the grace periods or notice periods otherwise set forth in this Lease.

ARTICLE 7

LEASE SUBORDINATE TO ERY DECLARATION OF EASEMENTS; ASSUMPTION BY TENANT OF RIGHTS AND OBLIGATIONS; FASP OWNERS ASSOCIATION

Section 7.01 ERY Declaration of Easements. This Lease, and the rights and obligations of Landlord and Tenant hereunder, shall be subject and subordinate in all respects to the ERY Declaration of Easements. During the Term, Tenant shall be entitled to all rights and benefits, and shall comply with all obligations, of the Severed Parcel Owner of the Premises in accordance with and subject to the ERY Declaration of Easements which obligations shall be incorporated into this Lease as obligations of Tenant hereunder, as if fully set forth herein. For the avoidance of doubt, nothing in this Section 7.01 shall be deemed to expand Tenant's obligations as the Severed Parcel Owner of the Premises within the meaning of Article XVI of the ERY Declaration of Easements, including without limitation, the limitation of Tenant's obligations (in its capacity as a Severed Parcel Owner with respect to its Allocable Share (as such term is defined in the ERY Declaration of Easements) of the obligations of the Facility Airspace Parcel Owner (which constitute Association Matters under the ERY Declaration of Easements). In addition, notwithstanding anything to the contrary in this Lease, nothing in this

Lease shall whatsoever be deemed to (a) derogate from the rights and obligations of the Yards Parcel Owner (including Landlord in its capacity as Yards Parcel Owner) and Yards Parcel Operator as set forth in the ERY Declaration of Easements, or (b) derogate from the rights and obligations of Tenant in its capacity as the Severed Parcel Owner of the Premises in accordance with the ERY Declaration of Easements.

Section 7.02 FASP Owners Association. Landlord has heretofore approved the Association Documents. Landlord will accept the performance by the FASP Owners Association or its designee of any obligation of Tenant hereunder, which constitutes an Association Matter. Notwithstanding the foregoing, nothing contained herein shall limit Landlord's recourse to Tenant with respect to any Default under this Lease. Landlord and Tenant hereby agree that this Lease shall in all respects be subject and subordinate to the terms and provisions of the Association Documents and any future amendments, modifications or supplements thereof.

ARTICLE 8

DEVELOPMENT RIGHTS AND DEVELOPMENT AND CONSTRUCTION OF THE PROJECT

Section 8.01 Agreement to Develop the ERY Severed Parcel Project. Subject to and in accordance with the terms and conditions set forth in this Lease, the ERY Declaration of Easements and the other Project Documents which are binding on Tenant, Tenant shall cause, at no cost or expense to Landlord, the design, construction and completion of a project (the "ERY Severed Parcel Project") utilizing up to the Included Floor Area, which ERY Severed Parcel Project shall consist of the Associated Portion of the LIRR Roof and Facilities and other ERY Severed Parcel Project Components; provided, however, that the ERY Severed Parcel Project shall in all events be developed and maintained (i) in compliance with the Zoning Resolution and the ERY Restrictive Declaration, (ii) in accordance with the Minimum Standards, and (iii) if the ERY Severed Parcel Project contains a hotel, compliance with the provisions of Public Authorities Law § 2879-b, to the extent applicable.

Section 8.02 Facility Airspace Improvement Plans and Specifications.

(a) Intentionally Omitted.

(b) The provisions of this Section 8.02 and Exhibit D of the ERY Declaration of Easements are intended to collectively constitute a single set of requirements for the review and approval by the Yards Parcel Owner, the Yards Parcel Operator and Landlord, collectively, of the Proposed Facility Airspace Improvement Plans and Specifications (including, if applicable, portions thereof that may relate to Material Facility Airspace Improvements on the Premises), other design and scheduling matters, and the imposition of any other requirements hereunder and under the ERY Declaration of Easements with respect to the design and construction of any Facility Airspace Improvements (including any Restoration and Capital Improvement thereto) on the Premises. Landlord hereby appoints the Yards Parcel Operator (and Tenant hereby consents thereto) for all responsibilities in coordinating in all respects the implementation of such provisions on behalf of the Yards Parcel Owner, the Yards Parcel

Operator and Landlord. Landlord acknowledges and agrees that Tenant shall be entitled to rely on all consents and approvals (including deemed approvals) by the Yards Parcel Operator as binding on Landlord, Yards Parcel Owner and the Yards Parcel Operator for all such purposes hereunder and under the ERY Declaration of Easements without the requirement of any further inquiry on the part of Tenant.

(c) Prior to the initial Commencement of Construction of any portion of the Facility Airspace Improvements on the Premises (or any portion thereof) pursuant to this Lease, Tenant shall submit to Yards Parcel Operator plans and specifications in a form sufficiently detailed and progressed to enable the Yards Parcel Operator to review the same to the extent provided in this Section 8.02(c) for such portions of the Facility Airspace Improvements to be constructed (the "Proposed Facility Airspace Improvement Plans and Specifications") prepared by a licensed professional engineer or registered architect selected by Tenant, which Proposed Facility Airspace Improvement Plans and Specifications shall be in conformance with all applicable Legal Requirements, the ERY Severed Parcel Project Requirements, and all requirements of the ERY Declaration of Easements. Without limiting any additional requirements under Exhibit D of the ERY Declaration of Easements, the Yards Parcel Operator shall have the right pursuant to this Section 8.02 to review and approve such Proposed Facility Airspace Improvement Plans and Specifications; provided, that such review and approval shall be limited to (i) determining whether such Proposed Facility Airspace Improvement Plans and Specifications conform to the ERY Severed Parcel Project Requirements in all material respects (i.e., with respect to allocation of Floor Area, and zoning use) and (ii) to the extent applicable, that any portion of the ERY Severed Parcel Open Space Component complies with Legal Requirements. If the Yards Parcel Operator reasonably determines that such Proposed Facility Airspace Improvement Plans and Specifications do not conform to the standards set forth (to the extent applicable) in the preceding sentence, and such deviations are not reasonably acceptable to Yards Parcel Operator (on behalf of Landlord and Yards Parcel Owner), then Yards Parcel Operator shall notify Tenant of same within twenty-one (21) days of receipt thereof, specifying in reasonable detail those respects in which such Proposed Facility Airspace Improvement Plans and Specifications do not so conform and are otherwise not reasonable to Yards Parcel Operator. Upon receipt of such notice from Yards Parcel Operator, Tenant shall then either (i) cause such Proposed Facility Airspace Improvement Plans and Specifications to be revised and resubmitted to Landlord for review and approval as aforesaid, or (ii) dispute the disapproval of the Proposed Facility Airspace Improvement Plans and Specifications in accordance with Sections 40.01(a) and (b).

(d) If Yards Parcel Operator shall fail to approve or disapprove any Proposed Facility Airspace Improvement Plans and Specifications within twenty-one (21) days of Tenant's submission thereof to Yards Parcel Operator, Tenant may provide to Yards Parcel Operator a written notice, which notice shall include in capital letters on the first page thereof: "THIS NOTICE IS BEING GIVEN UNDER SECTION 8.02 OF THE AGREEMENT OF SEVERED PARCEL LEASE FOR A PORTION OF THE EASTERN RAIL YARD SECTION OF THE JOHN D. CAEMMERER WEST SIDE YARD. YOUR FAILURE TO RESPOND WITHIN TEN (10) DAYS WILL RESULT IN YOUR DEEMED APPROVAL OF THE PENDING PROPOSED FACILITY AIRSPACE IMPROVEMENT PLANS AND SPECIFICATIONS" (such notice, the "Proposed Facility Airspace Improvement Plans and Specifications Notice"). In the event that Yards Parcel Operator does not approve or disapprove

such Proposed Facility Airspace Improvement Plans and Specifications within ten (10) days after Tenant provides Yards Parcel Operator with such Proposed Facility Airspace Improvement Plans and Specifications Notice, Yards Parcel Operator shall be deemed to have approved such Proposed Facility Airspace Improvement Plans and Specifications. As used herein, the term "Approved Facility Airspace Improvement Plans and Specifications" shall mean, with respect to any Facility Airspace Improvements, the Proposed Facility Airspace Improvement Plans and Specifications that have been approved (or have otherwise been deemed approved) by Yards Parcel Operator.

(e) In the event that Tenant shall desire from time to time to modify the Approved Facility Airspace Improvement Plans and Specifications in a material manner, Tenant shall first submit such proposed modifications to Yards Parcel Operator. The submittal, review and approval of any such proposed modifications shall be upon the same terms and conditions as apply to the submittal, review and approval of the applicable Proposed Facility Airspace Improvement Plans and Specifications pursuant to Sections 8.02(c) and (d).

(f) Each Approved Facility Airspace Improvement Plans and Specifications shall comply with all Legal Requirements, including but not limited to the Building Code, as well as all requirements under the ERY Declaration of Easements, to the extent applicable. The responsibility to assure such compliance shall be that of Tenant and not of Landlord or Yards Parcel Operator. Yards Parcel Operator's determination that such Approved Facility Airspace Improvement Plans and Specifications conform to the applicable provisions of Section 8.02(c) shall not be, nor shall it be construed to be, or relied upon as, a determination that such Approved Facility Airspace Improvement Plans and Specifications comply with any Legal Requirements.

(g) All reasonable costs and expenses incurred by Landlord in reviewing the Proposed Facility Airspace Improvement Plans and Specifications and any modifications thereto shall be paid by Tenant to Landlord within thirty (30) days following delivery of an invoice by Landlord, together with evidence reasonably substantiating such costs.

Section 8.03 Facility Airspace Improvements Release to Proceed.

(a) Tenant shall provide to Yards Parcel Operator notice of the date upon which it desires to initiate the Commencement of Construction of any Facility Airspace Improvements on the Premises (the "FAI Construction Commencement Notice"), which FAI Construction Commencement Notice shall be given not less than thirty (30) days prior to such desired commencement date (and shall be delivered concurrently with an Estimated Sales Tax Statement (as such term is defined in the PILOST Agreement)). Within twenty (20) days after receipt of such notice, Yards Parcel Operator shall provide Tenant with a written release to proceed with the commencement of construction in accordance with the applicable Approved Facility Airspace Improvement Plans and Specifications (the "Facility Airspace Improvements Release to Proceed"), upon satisfaction (or waiver in writing by Yards Parcel Operator) of each of the following conditions:

(i) The Yards Parcel Operator (on behalf of Landlord) shall have approved or shall have been deemed to have approved the Approved Facility Airspace Improvement Plans and Specifications;

(ii) If required pursuant to Exhibit D of the ERY Declaration of Easements:

(1) The Yards Parcel Operator shall have approved or shall be deemed to have approved any Approved MFAI Contractor Submittals for the initial stage of the construction work and Tenant's MFAI Schedule; and

(2) Tenant shall have provided to the Yards Parcel Operator work and safety plans, including job hazard analyses where required;

(iii) Tenant shall have procured and paid for all Improvement Approvals with respect to all of the particular elements of such Facility Airspace Improvements;

(iv) If such construction involves the construction of a Building, Tenant shall have (x) delivered to Landlord reasonably satisfactory evidence of closing by Tenant of financing sources (which sources may consist of any combination of debt and/or equity facilities) sufficient to complete the initial construction of such Building, other than work anticipated to be completed by the occupants thereof at their expense (or, if the debt and/or equity facilities intended to be used for such construction, if any, have not closed, the delivery to Landlord of binding commitments therefor), (y) delivered to Landlord the Building Completion Guaranty for such Building, duly executed by [●] Guarantor and (z) provided to Landlord evidence, satisfactory in the reasonable determination of Landlord, that the agreements between Tenant and the lender under any construction loan facility for such Building fulfill the requirements of Section 17.03(a)(iii);

(v) Tenant shall have complied with the insurance requirements of this Lease and the ERY Declaration of Easements applicable to such Facility Airspace Improvements and the construction thereof (it being acknowledged that the FASP Owners Association has the right to procure and maintain any such insurance on behalf of Tenant in accordance with the ERY Declaration of Easements);

(vi) Tenant's obligations set forth in Section 4.4 of the ERY Declaration of Easements with respect to Section 5 of the New York Lien Law shall have been satisfied;

(vii) Tenant shall have (x) executed and delivered to Landlord a collateral assignment in a form reasonably acceptable to Tenant, Landlord and Leasehold Mortgagee (subject to any prior assignment to any Leasehold Mortgagee) of all agreements, plans, permits and licenses relating to the construction of such Facility Airspace Improvements and the bonds, if any, provided thereunder, and (y) delivered to Landlord a consent and acknowledgement to such collateral assignment in a form reasonably acceptable to Tenant, Landlord and Leasehold Mortgagee, executed by the counterparty under any such agreement

(and, to the extent that there are major subcontracts to which such counterparty is a party, by the counterparty to such major subcontracts); provided, however, that if a Leasehold Mortgage is being entered into in connection with the construction of such Facility Airspace Improvements, Tenant shall not be obligated to deliver any such consent and acknowledgement from any such counterparty unless such counterparty is also providing its consent and acknowledgement to a collateral assignment being given by Tenant in favor of the Leasehold Mortgagee; and

(viii) There shall be no outstanding Event of Default or material Non-Monetary Default under this Lease or the Project Documents; provided that such clause shall apply with respect to a material Non-Monetary Default only if Landlord has delivered to Tenant notice of such Non-Monetary Default to the extent required under the applicable provision of Section 31.01 of this Lease.

(b) Landlord acknowledges that the Facility Airspace Improvements Release to Proceed for the Building has been issued, and all of the foregoing conditions have been either satisfied or waived.

(c) Landlord acknowledges that Developer may perform FAI Preparation Work in accordance with the ERY Construction Agreement, and that such work (including the review of plans, release to proceed, etc.) shall be governed by the ERY Construction Agreement and not the provisions of this Lease.

Section 8.04 Construction Requirements for Facility Airspace Improvements.

(a) Each Facility Airspace Improvement constructed by Tenant on the Premises shall, upon the Commencement of Construction of such Facility Airspace Improvement, be constructed timely and reasonably continuously (subject to Force Majeure and Unavoidable Delay), in a good and workmanlike manner, in compliance with all applicable Legal Requirements and in accordance with all of the standards set forth in this Lease and the ERY Declaration of Easements, to the extent applicable (all of the foregoing, collectively, the "Minimum Standards"). Tenant shall use only new or first-quality material and equipment at least equal in quality and class to the standard of first-class residential, commercial and/or mixed-use buildings, as applicable, then being constructed in New York City. Tenant shall aim to achieve and maintain a Leadership in Energy and Environmental Design (LEED)-NC Silver rating or higher for each Building that is constructed on the Premises and a LEED-ND certification for the ERY. All Facility Airspace Improvements shall be constructed solely on the Premises and shall not depend on any access, services or foundation supports on any other land (except as may be permitted by the ERY Declaration of Easements, the Condominium Documents and valid non-terminable easements that run with the land, or other consents or rights from a Governmental Authority), except that utility services will be connected directly to the public street. Without limiting the foregoing, Landlord shall reasonably cooperate with Tenant (at Tenant's cost and expense) in obtaining such consents or rights from any Governmental Authority with respect to the utilization of space within and below 11th Avenue as may be in furtherance of the ERY Severed Parcel Project.

(b) Tenant shall obtain all necessary permits, consents, certificates and approvals for the construction of each Facility Airspace Improvement required by all applicable

Legal Requirements. Landlord, at the sole cost and expense of Tenant, shall promptly execute and deliver any documents, permits, plans and other instruments that require the execution by the fee owner of the Premises, and otherwise cooperate with Tenant as reasonably required or requested by Tenant in order for Tenant to obtain all permits, consents, certificates and approvals in connection with Tenant's construction of any Facility Airspace Improvements, provided such documents or instruments do not impose any material liability or obligation on Landlord (unless paid by Tenant or against which Landlord is indemnified by Tenant in a manner reasonably satisfactory to Landlord) or materially vary or modify the rights and obligations of the parties under this Lease or the Project Documents.

Section 8.05 Completion Certificates. As and when the following are received by Tenant with respect to a Building or other Facility Airspace Improvement, Tenant shall furnish Landlord with (a) a certificate from an Architect, in customary form, certifying that the Building or other Facility Airspace Improvement has been completed substantially in accordance with the Approved Facility Airspace Improvement Plans and Specifications therefor; (b) a true copy of the temporary or permanent Certificate(s) of Occupancy for the Building or other Facility Airspace Improvement; (c) a complete set of as-built drawings and a survey of the Building or other Facility Airspace Improvement; (d) true copies of all guarantees or certifications called for under any and all construction documents or otherwise received by Tenant; (e) true copies of all certificates required by the Building Code or the NYCDOB to be filed with the NYCDOB; and (f) a true copy of the New York Board of Fire Underwriters Certificate (or the equivalent certificate, if any, of any successor organization) for the Building or other Facility Airspace Improvement, if required.

Section 8.06 No Liens. Except as otherwise provided herein or in the Project Documents, the Premises shall be free and clear of all liens arising out of or connected with the construction of the Facility Airspace Improvements, and any portion thereof, except that the foregoing shall not modify Tenant's right to grant a Leasehold Mortgage or otherwise sublease all or any portion of the Premises in accordance with the provisions of Article 17.

Section 8.07 Title to the Materials, Fixtures and Equipment. The Facility Airspace Improvements and all materials, fixtures and equipment to be incorporated therein (which shall not include, however, personal property and fixtures of Tenant or any subtenants that are permitted to be removed by them pursuant to this Lease and/or any subleases, as applicable, upon the expiration of the terms hereof or thereof) shall, effective upon their installation, constitute the property of Landlord and shall constitute a portion of the Premises covered by this Lease. However, Landlord shall not be liable in any manner for payment or otherwise to any contractor, subcontractor, laborer or supplier of materials in connection with the construction of the Facility Airspace Improvements or the purchase of any such materials, fixtures or equipment, nor shall Landlord have any obligation to pay any compensation to Tenant or any subtenant by reason of Landlord's acquisition of title to the Facility Airspace Improvements or the materials, fixtures or equipment located therein. Notwithstanding the foregoing or anything to the contrary elsewhere contained in this Lease, Landlord will not claim, and during the Term Tenant (or its designee) alone shall be entitled to, all of the federal tax attributes of ownership, including, without limitation, the right to claim depreciation or cost recovery deductions. Tenant hereby acknowledges that Landlord shall own the fee title to the Facility Airspace Improvements (including, without limitation, all materials, fixtures and

equipment to be incorporated therein) effective as of the date the same are constructed on the Premises, subject to the terms and conditions of this Lease (including the immediately preceding sentence).

Section 8.08 Required Clauses in ERY Construction Agreements. All construction agreements for the Facility Airspace Improvements shall include the following provisions:

> "[Contractor]/[Subcontractor]/[Materialman] ("Contractor") hereby agrees that notwithstanding that Contractor performed work at and/or supplied materials to the Premises (as such term is defined in the lease pursuant to which Tenant acquired its leasehold interest (the "Lease")) or any part thereof, Landlord shall not be liable in any manner for payment or otherwise to Contractor in connection with the work performed at and/or materials supplied to the Premises. Contractor agrees that it will not file any mechanic's lien against Landlord's fee interest in the Premises or Landlord's interest as landlord under the Lease or bring any other action against Landlord's interest, and Contractor agrees to look solely to Tenant and Tenant's leasehold interest. Nothing contained herein shall prejudice any rights which Contractor may have under the Lien Law of the State of New York. The agreements made under this clause shall be deemed to be made for the benefit of Landlord under the Lease and shall be enforceable by Landlord."

Section 8.09 Coordination with Other Anticipated Development. Tenant acknowledges that significant portions of LIRR infrastructure (including the East River Tunnels, interlocking and track approaches to Penn Station, the track, platform and Level A space in Penn Station, the tracks and interlockings leading to the WSY, and the storage tracks and maintenance facilities of the WSY, all as more particularly set forth in the RFP) are located within the West 31st to 34th Street corridor between 6th Avenue and the Hudson River (the "Corridor"), and that many development projects (collectively, the "Other Projects") within the Corridor may be under construction simultaneously with the ERY Severed Parcel Project (including, but not limited to, other portions of the ERY Project, the potential development of the WRY, the redevelopment of the existing Penn Station and Madison Square Garden, the new Moynihan Station and related development between 9th and 10th Avenues, Landlord's East Side Access project, the rehabilitation of the 11th Avenue Viaduct, New Jersey Transit's "Access to the Region's Core" project, and the No. 7 Subway Extension), and each party hereby agrees to cooperate reasonably with the other in the coordination of the planning, design, preconstruction and construction activities for the ERY Severed Parcel Project with such Other Projects.

Section 8.10 [Intentionally Omitted].

Section 8.11 [Intentionally Omitted].

Section 8.12 ERY Severed Parcel Open Space Component. Tenant shall be responsible for the design and construction of all portions of the Open Space Component located on the Premises (the "ERY Severed Parcel Open Space Component") in accordance with all Legal Requirements (including, without limitation, the Zoning Resolution), and shall pay all costs and expenses in connection therewith. In furtherance of the foregoing, Tenant shall be responsible for obtaining any and all legal, administrative or other approvals that are required to be obtained, including pursuant to the Zoning Resolution, in connection with the design and construction of the ERY Severed Parcel Open Space Component. This Lease shall remain in full force and effect, and there shall be no abatement of Rental, adjustment to the Initial Land Value or any other modification to the terms of this Lease, notwithstanding any failure or inability of Tenant to obtain any necessary approvals with respect to the ERY Severed Parcel Open Space Component.

ARTICLE 9

CONDOMINIUM CONVERSION; SEVERANCE OF THE PREMISES

Section 9.01 Condominium Conversion. It is acknowledged that it is the intention of the parties to submit the Premises to a condominium form of ownership as set forth in this Section 9.01.

(a) Landlord hereby approves the following documents related to the conversion of the Premises to a condominium form of ownership: (i) the form of Declaration of [●] Hudson Yards Condominium (Pursuant to Article 9-B of the Real Property Law of the State of New York) attached hereto as Exhibit D (as same may be amended, modified or supplemented from time to time in accordance with the provisions of this Lease, the "Condominium Declaration"), and (ii) the form of master by-laws attached to the Condominium Declaration as Exhibit A and the form of residential by laws attached to the Condominium Declaration as Exhibit B (as same may be amended, modified or supplemented from time to time in accordance with the provisions of this Lease, collectively, the "Condominium By-Laws") (together with the floor plans (the "Floor Plans") to be attached to the Condominium Declaration and to be approved by Landlord in accordance with the procedure set forth in Section 9.01(b) hereof, collectively, the "Condominium Documents"). In accordance with the Condominium Documents, there will be created approximately [●] Units, each of which, together with its undivided interest in the Common Elements shall be deemed to be a separate Building Component (but not a separate Severed Subparcel) upon execution and recording of the Condominium Documents.

(b) Prior to the Condominium Conversion Date, Tenant (i) may amend or modify the Condominium Documents, provided that any amendment or modification shall be subject to the approval of Landlord, in its reasonable discretion, and (ii) shall obtain Landlord's approval of the Floor Plans, which approval shall be in Landlord's reasonable discretion. Landlord shall approve or disapprove such amendments or modifications to the Condominium Documents and/or the Floor Plans within thirty (30) days of its receipt thereof from Tenant, and in the event of a disapproval, Landlord shall include sufficient explanation of the basis for such disapproval. If Landlord shall fail to approve or disapprove such amended or modified Condominium Documents and/or the Floor Plans, as the case may be, within twenty-one (21)

days of Tenant's submission thereof to Landlord, Tenant may provide to Landlord a written notice, which notice shall include in capital letters on the first page thereof: "THIS NOTICE IS BEING GIVEN UNDER SECTION 9.01(b) OF THE AGREEMENT OF SEVERED PARCEL LEASE FOR THE EASTERN RAIL YARD SECTION OF THE JOHN D. CAEMMERER WEST SIDE YARD. YOUR FAILURE TO RESPOND WITHIN TEN (10) DAYS WILL RESULT IN YOUR DEEMED APPROVAL OF THE PENDING AMENDED CONDOMINIUM DOCUMENTS". In the event that Landlord does not approve or disapprove such amended or modified Condominium Documents and/or the Floor Plans, as the case may be, within ten (10) days after Tenant provides Landlord with such notice, Landlord shall be deemed to have approved such amended or modified Condominium Documents and/or the Floor Plans, as the case may be. Any dispute with respect to Landlord's approval or disapproval of the amended or modified Condominium Documents and/or the Floor Plans, as the case may be, shall be subject to resolution in accordance with Sections 40.01(a) and (b).

(c) Subject to Landlord's approval or deemed approval of the Condominium Documents, Landlord hereby designates and appoints Tenant, on behalf of Landlord, at no cost, expense or liability to Landlord, to make any necessary application to the New York State Department of Law (the "NYS Law Department") in connection with Tenant's efforts to obtain approval of any offering plan for the Condominium by the State of New York and/or make an application requesting a no-action letter, a no-filing required letter, a no jurisdiction letter or letter of similar advice in order to permit the creation of a condominium without the necessity of filing an offering plan and without such sales being made pursuant to an offering plan, which cooperation shall include furnishing to the NYS Law Department such documents, affidavits and information as the NYS Law Department shall reasonably request.

(d) At Tenant's request, Landlord shall execute, in its capacity as fee owner of the Premises, the Condominium Documents as declarant and hereby agrees to record the Condominium Documents, at Tenant's sole cost and expense. Landlord's obligation to execute and record the Condominium Documents is conditioned upon the following:

(i) at the time of the proposed recordation of the Condominium Documents there is no existing and continuing Event of Default or Default under this Lease or the Project Documents; provided that this clause shall apply with respect to a Non-Monetary Default only if Landlord has delivered to Tenant notice of such Non-Monetary Default to the extent required under the applicable provisions of Section 31.01 of this Lease;

(ii) Tenant shall have delivered to Landlord all necessary approvals for the recording of the Condominium Documents, including without limitation a no-action letter, or other required approvals from the NYS Law Department, and all approvals from the New York City Department of Finance;

(iii) Tenant shall have delivered to Landlord the Sponsor Guaranty, duly executed and acknowledged by the [●] Guarantor.

(e) Landlord agrees to reasonably cooperate with Tenant's efforts to obtain separate tax lots for each Unit, including each individual residential unit, and shall

execute, at no cost, expense or liability to Landlord, any documents required in connection therewith.

(f) Notwithstanding anything in this Agreement to the contrary:

(i) Landlord shall have no liability under or with respect to any offering plan, any no-action application or any no-action letter, the Condominium Documents or any other document entered into or action taken by Landlord or Tenant pursuant to this Section 9.01 and all obligations of Landlord arising under this Section 9.01 shall be performed at Tenant's sole cost and expense. Neither Landlord, nor any of its Affiliates, subsidiaries or their respective members, directors, officers, employees, agents or servants of Landlord shall have any liability (personal or otherwise) hereunder, and no property or assets of Landlord or the members, directors, officers, employees, agents or servants of Landlord shall be subject to levy, execution or other enforcement procedure under this Section 9.01. Tenant shall include in the offering plan for the Residential Units (or any other Units), and in every Unit sales contract, a waiver and release expressly exculpating and disclaiming any liability on the part of, and providing for the waiver of all claims against, the Declarant Indemnitees in connection with the offering plan or any other matters related to the Units, the Condominium, the Building or the Premises. Tenant further covenants that such waiver and release benefitting the Declarant Indemnitees shall be drafted as a separate waiver and release from any waiver or release benefitting Tenant or its Affiliates.

(ii) Tenant shall, to the fullest extent permitted by law, indemnify, defend and save Landlord and its Affiliates, subsidiaries and their respective agents, contractors, affiliates, licensees, invitees, trustees, members, directors, shareholders, partners, officers, employees and disclosed and undisclosed principals (collectively, the "Declarant Indemnitees"), harmless from and against any and all actions, liabilities, suits, judgments, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, engineers', architects' and attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against any of the Declarant Indemnitees arising out of or in connection with this Section 9.01.

(iii) If any claim, action or proceeding is made or brought against any of the Declarant Indemnitees by reason of any event (or allegation of any event) for which Tenant has agreed to indemnify the Declarant Indemnitees pursuant to clause (ii) of this Section 9.01(g) (any such event or allegation, a "Claim"), then, upon demand by Landlord, Tenant shall, at its sole cost and expense, resist or defend such claim, action or proceeding by such attorneys as Tenant shall select and such Declarant Indemnitee shall approve, which approval shall not be unreasonably withheld.

(iv) The Declarant Indemnitees will not withhold their respective consent(s) to any proposed settlement by the indemnifying party of any matter which is fully covered by such party's indemnification hereunder, provided that such settlement provides solely for the payment of money and does not impose any other liability on the respective Declarant Indemnitee.

(v) The obligations of Tenant under this Section 9.01(g) shall not be affected in any way by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises or any portion thereof.

(vi) The provisions of this Section 9.01(g) shall survive the expiration or termination of this Lease.

(g) Following the Condominium Conversion Date:

(i) the Condominium Documents shall be deemed to be and shall be superior to this Lease (and any further amendments, modifications and/or severances thereof), provided that to the extent there is any inconsistency between the terms of this Lease and the terms of the Condominium Documents then the terms of this Lease shall govern;

(ii) this Lease shall automatically be deemed amended so that all references to the "Premises" demised by this Lease shall refer to the Units, and the common interest appurtenant thereto;

(iii) Tenant shall automatically be deemed the "Declarant Net Lessee" with respect to the Units without any further action required by Landlord or Tenant, and this Lease shall be deemed a "Declarant Net Lease" with respect to such Units. In furtherance thereof, Landlord hereby assigns to Tenant, as Declarant Net Lessee, and Tenant hereby assumes, all of the rights and obligations of the Unit Owner (as such term is defined in the Condominium Documents) with respect to any such Unit that is demised by this Lease, including, without limitation (i) the voting rights appurtenant to a Unit, (ii) the right to appoint such member or members to the Condominium Board and (iii) the right to enter into subleases, in each case, subject in all respects to the terms and conditions of this Lease and the Condominium Documents. Such assignment and assumption of rights and obligations shall be automatic without any further action required by Landlord or Tenant, provided that upon the request of Landlord or Tenant, Landlord and Tenant shall execute, acknowledge and deliver an instrument in recordable form confirming (a) such assignment and assumption of rights and obligations; and (b) any amendments to this Lease necessary to reflect the conversion of the Premises to a condominium form of ownership as contemplated herein. Notwithstanding the foregoing, in no event shall such assignment and assumption derogate, limit or otherwise restrict any obligation of Tenant to obtain the consent of Landlord for the matter in question prior to taking action under the Condominium Documents where such matter either (x) requires Landlord's consent under this Lease or (y) requires the consent of the Declarant Net Lessor under the Condominium Documents;

(iv) Landlord will accept the performance by the Condominium Board or its designee of any obligation of Tenant hereunder, which the Condominium Board may perform pursuant to the Condominium Documents. Notwithstanding the foregoing, nothing contained herein shall limit Landlord's recourse to Tenant with respect to any Default under this Lease as provided herein;

(v) If a Monetary Default or an Event of Default under this Lease has occurred and is continuing, Tenant shall not vote or direct any representative of the Condominium Board to vote or take any action with respect to the FASP Owners Association without receiving the prior written consent of Landlord to the matter in question, which consent shall be in Landlord's sole discretion. In addition to the foregoing, if a Non-Monetary Default has occurred and is continuing (which has not yet ripened into an Event of Default), Tenant shall not vote its Condominium Unit interest (or otherwise direct any representative of the Condominium Board to vote or take any action with respect to the FASP Owners Association) without receiving the prior written consent of Landlord to the matter in question, which consent shall be in Landlord's reasonable discretion. Such consent shall be deemed granted if Landlord fails to approve or disapprove Tenant's request to vote its Condominium Unit interest (or to otherwise direct any representative of the Condominium Board to vote or take any action with respect to the FASP Owner's Association) following the delivery of a second notice at least ten (10) Business Days following the first request for approval, and Landlord fails to respond to such second notice within ten (10) Business Days after the delivery thereof;

(vi) If an Event of Default has occurred and is continuing, Landlord, by written notice to Tenant and the Condominium Board, shall have the right to replace Tenant's designees on the Condominium Board with a designee of Landlord; provided that such appointment shall be deemed rescinded upon the cure of such Event of Default (whether by Tenant, a Leasehold Mortgagee or Mezzanine Lender in accordance with the applicable provisions herein) without any further action required by Landlord or Tenant;

(vii) Tenant shall promptly provide copies to Landlord of any written notices of assessment or default received by Tenant under the Condominium Documents; and

(viii) In the event of any conflict between the terms of the Condominium Documents and the terms of this Lease with respect to the use and occupancy of a Unit demised by this Lease, the more restrictive terms shall govern.

Section 9.02 Severance.

(a) Intentionally Omitted.

(b) Intentionally Omitted.

(c) Intentionally Omitted.

(d) Upon Tenant's written request, at any time and from time to time, provided that the conditions set forth in this Section 9.02(d) have been satisfied, and at the sole cost and expense of Tenant, the Premises may be subdivided into separate parcels in accordance with this Section 9.02(d). Each of such parcels (sometimes referred to herein as a "Severed Subparcel") shall, following such severance (a "Subparcel Severance"), constitute a separate and distinct Severed Parcel and the tenants thereunder shall each be a Severed Parcel Tenant with respect to the applicable Severed Parcel (a "Severed Subparcel Tenant"). The Severed Subparcels which are permitted to be created hereunder are:[●].

(i) In furtherance of the foregoing, Landlord and Tenant (or any other Person to whom Tenant would be permitted to Transfer its interest in this Lease at the time of such Subparcel Severance) shall (A) execute, acknowledge and deliver new Severed Parcel Leases with respect to each such Severed Subparcel (other than a single Severed Subparcel designated by Tenant for which this Lease may be amended accordingly) in substantially the same form as this Lease, together with memoranda of such leases in recordable form, and terminations of such memoranda in recordable form to be held in escrow; and (B) execute, acknowledge and deliver an amendment to this Lease, including the information applicable to such Severed Subparcel as set forth in Section 9.02(d)(ii), together with an amendment to the memorandum of this Lease to reflect the change in the demised Premises (each of the new Severed Subparcel leases described in clause (A) and the amendment to this Lease described in clause (B), a "Severed Subparcel Lease"). For the avoidance of doubt, from and after each Subparcel Severance, wherever another Severed Parcel Lease refers to a Severed Parcel, Severed Parcel Lease or Severed Parcel Tenant, such references shall be deemed to include Severed Subparcels, Severed Subparcel Leases and Severed Subparcel Tenants.

(ii) Each Severed Subparcel Lease shall set forth: (A) the maximum Floor Area and zoning uses that may be utilized on such Severed Subparcel; (B) such Severed Subparcel Tenant's share of the Severed Parcel Allocable Share (which shall reflect the allocation set forth in the Condominium Documents); (C) a statement of the initial Annual Base Rent for such Severed Subparcel; and (D) a revised Severed Parcel Pro Forma Rent Schedule for such Severed Subparcel. In addition, Tenant shall deliver legal descriptions of each of the Severed Subparcels and undertake, at Tenant's sole cost and expense, all actions necessary to cause the Severed Subparcels to comprise separate tax lots. Landlord, in its capacity as fee owner, at the cost and expense of Tenant, shall execute all documents as shall be reasonably required in connection therewith.

(iii) Notwithstanding anything to the contrary in this Section 9.02(d), the Premises shall not be subdivided into Severed Subparcels, unless (A) there are no continuing Events of Default or material Non-Monetary Defaults under this Lease or the Project Documents; provided that such clause shall apply with respect to a material Non-Monetary Default only if Landlord has delivered to Tenant notice of such Non-Monetary Default to the extent required under the applicable provision of Section 31.01 of this Lease; (B) Substantial Completion of the Associated Portion of the LIRR Roof and Facilities shall have been achieved; (C) a core and shell Certificate of Occupancy for the entirety of the Building which is to be subdivided into Severed Subparcels shall have been issued, (D) the Building Component constituting a Severed Subparcel consists of a single use (i.e. office, retail, hotel, residential rental or residential condominium), and constitutes the entirety of such use within the Building that will remain subject to a Severed Subparcel Lease, (E) Landlord shall have reasonably approved any amendments to the Condominium Documents in accordance with the terms of Section 9.01(b) hereof (if applicable) and (F) the Condominium Conversion Date shall have occurred. Upon the consummation of a Subparcel Severance as provided in this Section 9.02(d), Tenant shall submit to Landlord an update to the Approved Severed Parcel Plan to reflect the creation of each Severed Subparcel and the portion of the Severed Parcel Allocable Share assigned to each such Severed Subparcel.

(iv) Landlord shall only be required to allow the creation of Severed Subparcels and enter into Severed Parcel Leases in accordance with this Section 9.02(d) to the extent that Tenant is creating the Severed Subparcels for a bona-fide commercial purpose in accordance with the financing, development and operation of several Building Components. Landlord shall not unreasonably withhold its consent to the creation of Severed Subparcels, subject to the provisions of this Section 9.02(d). Landlord and Tenant hereby acknowledge and agree that certain Severed Parcels are intended to include multiple Building Components for which Severed Subparcels are anticipated to be created, including (x) the Severed Parcel(s) located east of the planned Hudson Boulevard, which may include, in the aggregate, up to six (6) Building Components for which Severed Subparcels are anticipated to be created, and (y) the Severed Parcel(s) located west of the planned Hudson Boulevard, which may each include no more than three (3) Building Components for which Severed Subparcels are anticipated to be created. Notwithstanding the foregoing provisions of this Section 9.02(d)(iv) or clause (D) of Section 9.02(d)(iii), Tenant shall be permitted to create additional Severed Subparcels in accordance with this Section 9.02(d), provided that, simultaneously with the creation of such additional Severed Subparcel(s), Tenant shall close fee title to such Severed Subparcel(s) pursuant to the Fee Conversion Option in accordance with Article 10, such that, at any given time, there shall be no more than six (6) Severed Subparcel Leases, in the aggregate, for the Severed Parcel(s) located east of the planned Hudson Boulevard and no more than three (3) Severed Subparcel Leases for each Severed Parcel located west of the planned Hudson Boulevard.

(v) From and after the execution and delivery of a Severed Subparcel Lease, Tenant shall have no rights or obligations under this Lease with respect to such Severed Subparcel or Severed Subparcel Lease, and shall be released from all liabilities arising from such Severed Subparcel or under the Severed Subparcel Lease from and after the date of such Subparcel Severance. Notwithstanding anything to the contrary herein, with respect to each Severed Subparcel Lease, no Default or Event of Default under such Severed Subparcel Lease shall be deemed a Default or Event of Default under any other Severed Parcel Lease, Severed Subparcel Lease, and no Default or Event of Default under other Severed Parcel Leases and other Severed Subparcel Leases shall be deemed a Default or Event of Default under each such Severed Subparcel Lease. The foregoing shall be confirmed in an amendment to this Lease and in each Severed Subparcel Lease.

(e) Within thirty (30) days after receipt of an invoice from Landlord (together with reasonably substantiating evidence of costs), Tenant or the applicable Severed Subparcel Tenant shall pay any and all reasonable costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred by Landlord in connection with the creation of the condominium or reviewing and implementing any request for a Subparcel Severance or subdivision in accordance with this Section 9.02, including without limitation its review of the Condominium Documents.

ARTICLE 10

FEE CONVERSION OPTION

Section 10.01 Fee Conversion Option. Tenant shall have the option to purchase fee title to the Premises or any portion thereof (provided that such portion must consist of the entirety of one or more Residential Unit(s)) concurrently with and following the closing of the first residential condominium unit in the Building, notwithstanding that such closing may occur prior to Substantial Completion of such Building; provided, however, that it shall be a precondition of any such closing that Substantial Completion of the Associated Portion of the LIRR Roof and Facilities shall have been achieved prior to such closing. In addition, Tenant shall have the option to purchase fee title to any portion of the Premises upon which a portion of the ERY Severed Parcel Open Space Component has been constructed (an "ERY Open Space Parcel"), together with any Facility Airspace Improvements located thereon, at any time after: (i) Substantial Completion of the Associated Portion of the LIRR Roof and Facilities and (ii) the portion of the ERY Severed Parcel Open Space Component located within the ERY Open Space Parcel has been Substantially Completed (each of the purchase options set forth in this Section 10.01, a "Fee Conversion Option" and the Premises, Unit(s) or ERY Open Space Parcel to be purchased, an "Option Property").

Section 10.02 Conditions Precedent. Tenant shall exercise a Fee Conversion Option by delivery of written notice to Landlord (an "Election Notice"), which notice shall specify a closing date (an "Initial Fee Conversion Closing Date") for the closing of the sale and purchase of the Option Property, which Initial Fee Conversion Closing Date shall be not less than thirty (30) days and not more than ninety (90) days after the date of delivery of the Election Notice (an "Election Notice Date"). An Election Notice shall be valid only if, on the Fee Conversion Closing Date, all of the following conditions have been satisfied:

(a) Tenant shall have paid to Landlord all PILOST then due and owing, and shall have delivered any letter of credit required to be delivered, pursuant to the PILOST Agreement;

(b) Tenant shall have paid to Landlord all Annual Base Rent, Additional Rent and other Rental then due and payable (including, except for a purchase of an ERY Open Space Parcel, a pro rated portion of any Annual Base Rent due and payable for the month in which the Fee Conversion Closing occurs), as well as all other amounts due and owing by Tenant to Landlord under any other Project Document;

(c) In the event that Final Completion of the Associated Portion of the LIRR Roof and Facilities has not been achieved, Tenant shall deposit with MTA cash or letter of credit in the amount of twice the estimated cost of the Punch List items remaining for such Associated Portion of the LIRR Roof and Facilities, which amount shall be returned to Tenant or its designee upon Final Completion of the Associated Portion of the LIRR Roof and Facilities;

(d) Intentionally Omitted; and

(e) Tenant shall have cured any Monetary Default or Non-Monetary Default under this Lease of which Tenant has been given notice.

Section 10.03 Sale and Purchase Agreement. The following procedures shall apply for Fee Conversions, except that the provisions of Section 10.05 shall apply in lieu thereof exclusively to the Fee Conversion of individual Residential Units:

(a) If Tenant exercises a Fee Conversion Option, the closing of the sale and purchase of the Option Property (such sale and purchase, a "Fee Conversion" and such closing, a "Fee Conversion Closing") shall be held at the offices of Landlord's attorneys in the City of New York (or such other location as may be mutually agreed to by Landlord and Tenant), at 10:00 a.m., on the Initial Fee Conversion Closing Date. The Initial Fee Conversion Closing Date shall be subject to adjournment by Tenant upon reasonable advance notice from Tenant to Landlord at any time and from time to time; provided, that no adjournment shall excuse or delay Tenant's obligations under this Lease (the actual date on which a Fee Conversion Closing occurs, a "Fee Conversion Closing Date").

(b) Landlord shall cause the Option Property to be free and clear of any liens or encumbrances created by an act or omission of Landlord following the Commencement Date of this Lease, except to the extent requested or consented to by Tenant. Landlord shall, at its sole cost and expense, terminate, remove or discharge any such liens or encumbrances no later than the Fee Conversion Closing Date, but shall have no responsibility or liability for any other liens or encumbrances. Landlord shall have no obligation to cause the Option Property to be free and clear of any liens or encumbrances created by an act or omission of Tenant, including encumbrances on this Lease. Tenant shall be responsible for any costs and expenses to terminate, remove or discharge any such liens or encumbrances.

(c) Landlord, at a Fee Conversion Closing, shall convey title to the Option Property to Tenant or its designee, free and clear of liens and encumbrances, except for Permitted Exceptions, by delivery of a fully executed and acknowledged Bargain and Sale Deed without Covenant, in the form of Exhibit O-1 attached hereto in the case of the Premises or the entirety of an ERY Open Space Parcel, or for any Severed Subparcels which constitute one or more Units, a Condominium Unit Deed in the form of Exhibit O-2 attached hereto. At the time of the Fee Conversion Closing, at Tenant's election, in its sole discretion, the Bargain and Sale Deed shall be modified from the form attached hereto to include that Tenant shall have the right to assume Landlord's right, title and interest under this Lease whereupon Tenant's interest under the fee and leasehold interests of the Premises shall not be deemed to have merged. In furtherance of the foregoing, at a Fee Conversion Closing Landlord shall also deliver to Tenant or its designee a duly executed and acknowledged certificate of non-foreign status pursuant to Section 1445 of the Internal Revenue Code in the form of Exhibit S attached hereto and duly executed counterparts to any New York City and New York State real property transfer tax returns and forms. Simultaneously with the Fee Conversion Closing of an ERY Open Space Parcel or a Severed Subparcel which constitutes one or more Units, Landlord and Tenant shall (at the sole cost and expense of Tenant) execute an amendment to this Lease in recordable form, together with any affidavits, tax returns and/or other instruments customarily executed in connection with the same, amending:

(i) in the case of the ERY Open Space Parcel, the description of the Premises to exclude such ERY Open Space Parcel (but not otherwise amending the terms of this Lease, including, without limitation, the amount of Annual Base Rent); and

(ii) in the case of one or more Unit(s), (a) the description of the Premises to exclude such Unit(s) that is/are subject to a Fee Conversion and (b) the amount of Annual Base Rent payable under this Lease to exclude the portion of rent attributable to the purchased Unit(s), such excludable amount being the product of (x) the Annual Base Rent and (y) the allocation to each such Unit of a portion of the Severed Parcel Allocable Share (which shall be the aggregate proportionate undivided interests in the common elements appurtenant to such Unit(s) pursuant to the Condominium Documents) (but not otherwise amending the terms of this Lease).

(d) Tenant shall pay to Landlord (i) at a Fee Conversion Closing of the Premises or a Severed Subparcel consisting of one or more Units, the Option Price, or to such other party as directed by Landlord, by certified check drawn on a bank which is a member of the New York Clearinghouse Association (or a successor thereto) or, at Landlord's option, by wire transfer of immediately available federal funds to an account or accounts designated by Landlord, and (ii) at a Fee Conversion Closing of an ERY Open Space Parcel, Ten Dollars ($10.00).

(e) Tenant shall pay all New York City and New York State real property transfer taxes and recording charges which may be due and payable in connection with a Fee Conversion and the recording of the deed thereto. Tenant shall be solely responsible for any title search and survey charges and any title insurance premiums in respect of title insurance obtained by Tenant or its designee, as well as any and all costs associated with any loan obtained by Tenant or its designee, in connection with a Fee Conversion Option and a Fee Conversion Closing. Tenant shall be solely responsible for any reasonable legal fees and administrative costs incurred by Landlord in connection with a Fee Conversion Option and a Fee Conversion Closing.

(f) Tenant's obligation to close title under a Fee Conversion Option shall be expressly conditioned upon the truth and accuracy in all material respects of each of the following representations and warranties of Landlord to be made as of the applicable Fee Conversion Closing Date with respect to the Option Property, as applicable, any or all of which Tenant may waive in the exercise of its sole discretion:

(i) Landlord has not received any written notice of any actual or threatened condemnation proceeding with regard to all or any part of the Option Property; and

(ii) all consents, authorizations and other actions on the part of Landlord which are necessary in order to permit Landlord to consummate the sale of the Option Property have been obtained and taken.

(g) Except as otherwise set forth in this Article 10, Tenant, upon a Fee Conversion Closing, shall be deemed to have accepted the Option Property in its then "as is" and "where is" condition, without any representations, warranties or agreements in respect thereof;

provided that nothing herein shall reduce or otherwise limit any obligations of the Yards Parcel Owner under the ERY Declaration of Easements. Notwithstanding the foregoing, if the whole of the Premises or any material portion thereof shall be taken under eminent domain or condemnation proceedings, or if suit or other action shall be instituted for the taking or condemnation of the whole or any material portion thereof, Tenant shall nonetheless have the right to exercise a Fee Conversion Option, in which event Landlord shall pay and/or assign to Tenant (or its designee) on the applicable Fee Conversion Closing Date all condemnation awards paid and all of Landlord's right, title and interest in and to all such awards payable by reason of such damage, loss or taking.

Section 10.04 Purchase Price. The purchase price (the "Option Price") for (a) the entirety any Unit shall be equal to (i) the sum of (x) all future Annual Base Rent payments due under this Lease through the Fixed Expiration Date (taking into account all rent escalations and FMV Base Rent Resets, and assuming that the Annual Base Rent for the period during the Term immediately following each FMV Base Rent Reset shall be equal to one hundred twenty percent (120%) of the Annual Base Rent for the period expiring on the day immediately prior to the applicable Initial Reset Date or Reset Date), with each such payment discounted to the Fee Conversion Closing Date using a discount rate of six and one-half percent (6.5%) per annum, as more particularly set forth on the Severed Parcel Pro Forma Rent Schedule plus (y) Landlord's Reversionary Interest Value as of the Fee Conversion Closing Date multiplied by (ii) the proportionate undivided interest in the common elements appurtenant to such Unit pursuant to the Condominium Documents. An illustration of a calculation of the Option Price for the entirety of a Unit is attached hereto as Exhibit C.

Section 10.05 Special Procedures for Individual Residential Units. In lieu of purchasing the entirety of the Residential Units as contemplated under Section 10.04, Tenant shall have the right to purchase individual Residential Units (each a "Residential Unit Closing") pursuant to the following procedures:

(a) All of the conditions precedent for a Fee Conversion as set forth in Section 10.02 shall have been satisfied, except that Tenant shall provide Landlord no less than sixty (60) days prior notice as to the date it anticipates the first Residential Unit Closing to occur.

(b) The following additional conditions precedent shall have been satisfied:

(i) Tenant shall have included the waiver and release language in the offering plan for the Residential Units and in each Residential Unit sales contract as described in Section 9.01(f)(i) above.

(ii) Tenant shall have delivered to Landlord an instrument from a creditworthy entity reasonably acceptable to Landlord indemnifying the Declarant Indemnitees as set forth in Section 9.01(f)(ii) above. Tenant and Landlord acknowledge and agree that the Sponsor Guaranty, or the Substitute Collateral (as such term is defined in the Sponsor Guaranty), satisfies the requirement set forth in this Section 10.05(b)(ii).

(iii) Landlord and Tenant shall have entered into an escrow agreement in such form and with an escrow agent reasonably acceptable to Landlord and Tenant, which escrow agreement shall govern all Residential Unit Closings and shall provide, among other things, that (w) Landlord shall deposit in escrow executed (but undated) Condominium Unit Deeds for each of the Residential Units, (x) Tenant shall have the right to designate the grantee of each Condominium Unit Deed, (y) Landlord and Tenant shall each deposit in escrow executed (but undated) forms of modifications of this Lease, together with the other documents, instruments and affidavits, as contemplated by clauses (c)(iii) and (c)(iv)) below and (z) the escrow agent shall be permitted to release a Condominium Unit Deed only upon the confirmation by Landlord that the conditions for a Residential] Unit Closing as set forth therein have been satisfied (including its approval of the applicable Residential Unit Closing Statement).

(iv) Tenant shall deliver to Landlord no less than five (5) Business Days prior to each Residential Unit Closing a statement (the "Residential Unit Closing Statement") containing:

(1) A calculation of the purchase price for such Residential Unit (each, the "Residential Unit Purchase Price"), which shall be equal to (i) the sum of (x) all future Annual Base Rent payments due under this Lease through the Fixed Expiration Date (taking into account all rent escalations and FMV Base Rent Resets, and assuming that the Annual Base Rent for the period during the Term immediately following each FMV Base Rent Reset shall be equal to one hundred twenty percent (120%) of the Annual Base Rent for the period expiring on the day immediately prior to the applicable Initial Reset Date or Reset Date), with each such payment discounted to the Fee Conversion Closing Date using a discount rate of six and one-half percent (6.5%) per annum, as more particularly set forth on the Severed Parcel Pro Forma Rent Schedule plus (y) Landlord's Reversionary Interest Value as of the Fee Conversion Closing Date; multiplied by (ii) the proportionate undivided interest in the common elements appurtenant to such Residential Unit pursuant to the Condominium Documents, calculated as if the proportionate undivided interest in the common elements appurtenant to all of the Units in the Building collectively equaled 100% of the undivided interest in the common elements of the Condominium. An illustration of a calculation of the Residential Unit Purchase Price is attached hereto as Exhibit I;

(2) A calculation of the Annual Base Rent to be payable under this Lease following the Residential Unit Closing (the "Post Closing Annual Base Rent"), which shall be equal to the Annual Base Rent, less the product of (x) the Annual Base Rent and (y) the aggregate proportionate undivided interests in the common elements appurtenant to the Residential Units pursuant to the Condominium Documents that have been subject to a Fee Conversion, calculated as provided in clause b(iv)(1)(ii) above.

(c) At each Residential Unit Closing:

(i) Landlord shall cause each Residential Unit to be free and clear of any liens or encumbrances created by an act or omission of Landlord following the Commencement Date of this Lease, except to the extent requested or consented to by Tenant. Landlord shall, at its sole cost and expense, terminate, remove or discharge any such liens or encumbrances no later than the Residential Unit Closing Date, but shall have no responsibility or liability for any other liens or encumbrances. Landlord shall have no obligation to cause the Residential Unit to be free and clear of any liens or encumbrances created by an act or omission of Tenant, including encumbrances on this Lease. Tenant shall be responsible for any costs and expenses to terminate, remove or discharge any such liens or encumbrances.

(ii) Landlord shall convey title to the applicable Residential Unit to Tenant or its designee by delivery of a fully executed and acknowledged Condominium Unit Deed in the form of Exhibit O-2 attached hereto. In furtherance of the foregoing, at each Residential Unit Closing, Landlord shall also deliver to Tenant or its designee a duly executed and acknowledged certificate of non-foreign status pursuant to Section 1445 of the Internal Revenue Code in the form of Exhibit S attached hereto, duly executed counterparts to any New York City and New York State real property transfer tax returns and forms and such other affidavits or instruments that are customarily required in connection with such transactions.

(iii) Landlord and Tenant shall (at the sole cost and expense of Tenant) execute an amendment to this Lease in recordable form, together with any affidavits, tax returns and/or other instruments customarily executed in connection with the same, amending (x) the Annual Base Rent to equal the Post-Closing Annual Base Rent and (y) the legal description of the Premises to exclude all Residential Units that have been subject to a Fee Conversion.

(iv) Tenant or its designee shall pay all New York City and New York State real property transfer taxes and recording charges which may be due and payable in connection with a Residential Unit Closing and the recording of the deed thereto. Tenant or its designee shall be solely responsible for any title search and survey charges and any title insurance premiums in respect of title insurance obtained by Tenant or its designee, as well as any and all costs associated with any loan obtained by Tenant or its designee, in connection with a Residential Unit Closing. Tenant shall be solely responsible for any reasonable legal fees and administrative costs incurred by Landlord in connection with a Residential Unit Closing.

(v) Tenant (or its designee) shall pay to Landlord (x) the Residential Unit Purchase Price plus (y) a transaction fee ("Transaction Fee") equal to (1) the Residential Unit Purchase Price for such Residential Unit, multiplied by (2) the sum of the New York City Real Property Transfer Tax and New York State Real Estate Transfer Tax rates that would apply to a transfer of the entirety of the Residential Units (the "Commercial Rate"; under current Applicable Law, the Commercial Rate equals 3.025%). In the event that a Residential Unit is conveyed to Tenant or its designee (either as beneficial owner or nominee), in lieu of a direct conveyance by Landlord to a third party residential purchaser, then the Transaction Fee shall be reduced by the New York City Real Property Transfer Tax, New York State Real Estate Transfer Tax, and, if applicable, the tax imposed under New York Tax Law Section 1402-a (the "Mansion Tax") actually payable by Tenant or its designee to the applicable taxing authorities (all such taxes actually paid, the "Actual Taxes") in connection with such conveyance. Notwithstanding the foregoing, if Actual Taxes (such Actual Taxes, the "Additional Taxes") are

imposed by New York City and/or New York State, either as a result of an audit or otherwise, on any conveyance described in the first sentence of this clause (v) on the basis that a "conveyance" by Landlord to Tenant or its designee is deemed to have occurred in addition to the actual conveyance by Landlord to the third party residential purchaser, Landlord shall promptly credit to Tenant (or an Affiliate of Tenant) an amount equal to the portion of such Additional Taxes (but not interest or penalties thereon) (which credit shall not exceed the amount of Transaction Fee), which credit shall be applied, at Tenant's option, against the next sums due either from Tenant to Landlord under this Lease or from an Affiliate of Tenant to Landlord under the WRY Lease or any Severed Parcel Lease in effect on the WSY. The language contained in the last sentence of this Section 10.05(c)(v) shall survive the expiration or earlier termination of this Lease.

(d) Except as otherwise set forth in this Article 10, Tenant or its designee, upon a Residential Unit Closing, shall be deemed to have accepted the applicable Residential Unit in its then "as is" and "where is" condition, without any representations, warranties or agreements in respect thereof; provided that nothing herein shall reduce or otherwise limit any obligations of the Yards Parcel Owner under the ERY Declaration of Easements.

ARTICLE 11

GUARANTIES

Section 11.01 Sponsor Guaranty. Prior to the Condominium Conversion Date, Tenant shall cause the [●] Guarantor to enter into and deliver to Landlord that certain [●] Sponsor Guaranty (Eastern Rail Yard Section of the John D. Caemmerer West Side Yard) in the form attached hereto as Exhibit L-1.

Section 11.02 Building Completion Guaranty. Concurrently with the execution of this Lease, Tenant has caused the [●] Guarantor to enter into and deliver to Landlord that certain [●] Building Completion Guaranty (Eastern Rail Yard Section of the John D. Caemmerer West Side Yard) ("Building Completion Guaranty") in the form attached hereto as Exhibit L-2.

Section 11.03 Administration of Guarantees. Tenant shall pay or reimburse Landlord for all reasonable out-of-pocket costs and expenses incurred by Landlord in connection with its administration of each of the Building Completion Guaranty and the [●] Sponsor Guaranty, including, without limitation, Landlord's reasonable attorneys' and accountants' fees and expenses incurred in evaluating requests for Landlord's consent thereunder.

ARTICLE 12

INTENTIONALLY OMITTED

ARTICLE 13

BONDABLE NET LEASE

At Landlord's request, and at its sole cost and expense, and subject to Tenant's review and approval of all information relevant to the Bond Lease Financing, Tenant shall reasonably cooperate with Landlord and Landlord's tax and bond counsel in order to determine the legal and financial feasibility of the issuance of tax-exempt bonds based on this Lease to enable Landlord to receive the net proceeds of bonds where the principal, premium (if any) and interest on such bonds are entirely serviced by installments of Annual Base Rent (the "Bond Lease Financing"). In the event that Bond Lease Financing is legally and financially feasible, and Landlord desires to undertake such Bond Lease Financing, this Lease and the Project Documents shall be modified as shall be reasonably necessary to accommodate the Bond Lease Financing; provided, that such modifications do not adversely impact the schedule or the development of the ERY Severed Parcel Project or Tenant's (or its successors', assigns' or designees') financing thereof, or alter Tenant's right to exercise any Subparcel Severance or Fee Conversion Option provided for herein (and any Bondable Lease Financing shall be expressly subordinate thereto). All costs and expenses associated with the Bond Lease Financing, including the costs of all credit instruments or enhancements necessary to support an issuance of the Bond Lease Financing, as well as all debt service and other payments or penalties on the Bond Lease Financing (including without limitation any pre-payment obligations in connection with a Subparcel Severance or Fee Conversion), shall be the sole responsibility of Landlord. The components of Adjusted Initial Land Value shall be adjusted as necessary such that the Annual Base Rent calculated pursuant to Section 3.03 shall be equal to the total annual cost to Landlord of the debt service necessary to service the Bond Lease Financing; provided, however, that in the event Landlord obtains Bond Lease Financing, the total annual cost to Tenant shall not exceed the Annual Base Rent specified in Section 3.03; provided, further, that no Bond Lease Financing shall increase the Annual Base Rent or accelerate any payments of Annual Base Rent. Tenant understands and acknowledges that the use of a Bond Lease Financing may result in net proceeds to Landlord that exceed the Initial Land Value.

ARTICLE 14

INSURANCE

Section 14.01 Required Insurance.

(a) Tenant shall at all times maintain, or cause to be maintained, at its sole cost and expense, the insurance required to be maintained by the Facility Airspace Parcel Owner under Article VIII and Exhibit G of the ERY Declaration of Easements with respect to the Premises (subject to the provisions of Article XVI of the ERY Declaration of Easements), and shall comply with all of the provisions of Article VIII of the ERY Declaration of Easements in connection therewith.

(b) In addition to the foregoing, at all times following Substantial Completion of any Building on the Premises, Tenant shall maintain, or cause to be maintained, at its sole cost and expense, property insurance on such Building and its contents providing coverage for loss or damage by fire and other hazards covered under the equivalent of what was formerly known as an "all risk" policy, and including coverage for loss or damage by water, subsidence (excluding, at Tenant's option, normal settling only) and, to the extent, if any, from time to time hereafter commonly insured against by prudent owners of properties comparable to such Building in New York County, flood, earthquake, war risks, and terrorism; provided, however, that in no event shall the foregoing be deemed to obligate Tenant to carry or cause to be carried any insurance with respect to any item of movable personal property located in such Building. Such insurance shall be written on an "Agreed Amount" basis, for the full replacement cost of such Building, with a sublimit for business interruption in an amount, from time to time equal to not less than the sum of one hundred percent (100%) of the then Annual Base Rent, Impositions and insurance premiums for a twelve (12) month period, and provided that additional sublimits may be imposed with approval of Landlord (the "Replacement Cost"), as reasonably determined in the manner hereinafter provided. The Replacement Cost shall include, without limitation, the cost of demolition and debris removal, excavations, grading, paving, landscaping, architects, and development fees, after taking into account increased costs of construction attributable to building code requirements, and shall not be reduced by depreciation or obsolescence of such Building. Within thirty (30) days after Substantial Completion of such Building, the substantial completion of any Restoration or the substantial completion of any material Capital Improvement, as applicable, Tenant shall cause an examination of such Building to be made by an appraiser selected by Tenant and approved by the company providing the property insurance required by this Section 14.01(b) in order to determine the Replacement Cost thereof, and, promptly after each such examination is made, the amount of insurance required under this Section 14.01(b) shall be adjusted accordingly, in accordance with such examination and the requirements of this Section 14.01(b). In the absence of any material changes to such Building requiring an examination of such Building as hereinabove provided, the Replacement Cost thereof shall be deemed to have increased or decreased, as appropriate, to reflect increases or decreases in the Marshall and Swift Cost Index or such other published index of construction costs as shall be selected by Tenant with the concurrence of its insurance carrier and Landlord (acting reasonably). Each property insurance policy hereunder shall state that the valuation of any loss to be determined thereunder shall be made on a replacement-cost basis.

(c) In addition to the foregoing, Tenant shall maintain, or cause to be maintained, at its sole cost and expense, such other insurance in such amounts as may from time to time be reasonably required by Landlord against such other insurable hazards as at the time are commonly or customarily insured against in the case of premises similarly situated and/or with similar uses to the Premises.

Section 14.02 Additional Insurance Requirements.

(a) All insurance policies required to be maintained by Tenant hereunder shall be issued (i) by responsible companies authorized to do business in the State of New York, each having an AM Best rating of not less than A-VII (or its equivalent) and (ii) under insurance policies in form and content required by this Lease and otherwise reasonably satisfactory to Landlord.

(b) Tenant and Landlord shall cooperate in connection with the adjustment and collection of any insurance recoveries that may be due in the event of loss, and Tenant shall execute and deliver to Landlord such proofs of loss and other instruments which may reasonably be required for the purpose of obtaining the recovery of any such insurance monies.

(c) Tenant shall not carry separate liability or property insurance concurrent in form or contributing in the event of loss with that required by this Lease to be furnished by Tenant, unless Landlord, LIRR and any other parties designated by Landlord with a bona fide insurable interest are included therein as additional insureds with respect to liability or loss payees with respect to property, as their interests may appear, with loss payable as provided in this Lease. Tenant shall immediately notify Landlord of the carrying of any such separate insurance and shall cause a certified copy of such insurance policy, bearing notations evidencing the payment of the Insurance Premiums therefor or accompanied by other evidence reasonably satisfactory to Landlord of such payment, to be promptly delivered to Landlord as required pursuant to Section 14.03.

(d) Tenant shall not violate or permit to be violated any of the conditions or provisions of any insurance policy required to be maintained hereunder, and Tenant shall so perform and satisfy or cause to be performed and satisfied the requirements of the companies writing such policies so that at all times companies of good standing reasonably satisfactory to Landlord and meeting the requirements of this Lease shall be willing to write and/or continue such insurance. Tenant shall provide written notice to Landlord promptly after Tenant becomes aware that any claim or proceeding has been filed against Tenant with respect to matters occurring in or around the Premises whether or not alleging negligence on the part of Landlord which involves any actual or alleged serious personal injury or death, or any other claim that presents an unusual exposure to the coverage, including without limitation (i) cord injury (including without limitation paraplegia or quadriplegia), (ii) amputations requiring a prosthesis, (iii) brain damage affecting mentality or the central nervous system (including without limitation permanent disorientation, behavior disorder, personality change, seizures, motor deficit, inability to speak, hemiplegia or unconsciousness), (iv) blindness, (v) third-degree burns involving over ten percent (10%) of the body or second-degree burns involving over thirty percent (30%) of the body, (vi) multiple fractures (involving more than one member or non-union), (vii) fracture of both heel bones, (viii) nerve damage causing paralysis and loss of sensation in an arm and hand, (ix) massive internal injuries affecting body organs, (x) injury to a nerve at the base of the spinal canal or any other back injury resulting in incontinence of bowel and/or bladder, or (xi) fatalities.

(e) Tenant shall procure and maintain policies for all insurance required by the provisions of this Lease for periods of not less than one (1) year (if such policy term is customary and available) and shall procure renewals thereof from time to time and deliver evidence of the same to Landlord as promptly as reasonably practicable but in all events within five (5) days after renewal. If Tenant shall fail to procure any such policies or renewals thereof in accordance herewith within five (5) days after receiving notice of such failure, Landlord may procure the same, and Tenant shall be obligated to reimburse Landlord as Additional Rent hereunder for all costs and expenses incurred by Landlord in connection therewith.

(f) Each policy of insurance required to be obtained by Tenant hereunder shall contain, to the extent generally obtainable, and whether or not an additional premium shall be required in connection therewith, (i) a provision that no unintentional act or omission of any named insured or unintentional violation of warranties, declarations or conditions by any named insured shall prejudice the coverage afforded by such policy, (ii) an agreement by the insurer that such policy shall not be canceled (or not renewed) without at least thirty (30) days' (or in the case of nonpayment of premiums, ten (10) days') prior written notice to Landlord, all Fee Mortgagees, LIRR and any other parties designated by Landlord with a bona fide insurable interest, (iii) no exclusion for Yards Parcel Permitted Uses (as such term is defined in the ERY Declaration of Easements), and (iv) a waiver by the insurer of any claim for insurance premiums against any named insured other than Tenant.

Section 14.03 Delivery of Policies and Certificates. Upon the execution and delivery of this Lease and thereafter as promptly as reasonably practicable but in all events within five (5) days after the renewal of policies theretofore furnished pursuant to this Article 14, Tenant shall, upon the written request of Landlord, obtain and deliver to Landlord, within fifteen (15) days after the date of any such request, a certificate from Tenant's insurer or independent insurance agent certifying to Landlord, as certificate holder, in reasonable detail the insurance policies then being maintained by Tenant in accordance with the requirements of this Article 14. However, if requested by Landlord, Tenant shall deliver to Landlord, within forty-five (45) days after a request therefor or ninety (90) days after the binding of coverage, whichever is later, a copy of such policies. If Landlord exercises its option to request copies of original policies in the case of discovery or to resolve a legal matter, Developer shall deliver to Landlord, as the case may be, within thirty (30) days of the request, or within ninety (90) days after the binding of coverage, whichever is later, a copy of such policies.

Section 14.04 CPI Increase. All dollar amounts referenced in this Article 14 shall be subject to CPI Adjustment, and shall be reasonable and customary for similar exposures.

ARTICLE 15

CASUALTY AND USE OF INSURANCE PROCEEDS

Section 15.01. Tenant's Obligation to Restore.

(a) If all or any portion of the ERY Roof Component shall be destroyed or damaged in whole or in part by fire or other casualty (including, without limitation, any casualty for which insurance was not obtained or obtainable) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen (a "Casualty"), the rights and obligations of Landlord and Tenant with respect thereto shall be governed by the provisions of Section 3.4 and Article X of the ERY Declaration of Easements and, following the Condominium Conversion Date, the applicable provisions of the Condominium Documents.

(b) If all or any portion of the Facility Airspace Improvements located on the Premises (including any portions thereof encroaching on adjacent property) shall be destroyed or damaged in whole or in part by a Casualty, Tenant shall give to Landlord prompt notice thereof, and shall promptly undertake and pursue with reasonable diligence to completion

(subject to Force Majeure), at its sole cost and expense (unless such Casualty was caused by the gross negligence or willful misconduct of Landlord or its agents, in which event such Restoration shall be at the sole cost and expense of Landlord) and in accordance with the terms and conditions set forth herein, and regardless of whether or not insurance proceeds, if any, shall be sufficient therefor, to repair, alter, restore, replace and/or rebuild (collectively, "Restore"; and any such repair, alteration, restoration, replacement and/or rebuilding, a "Restoration") such portions of the Facility Airspace Improvements as shall have been so damaged or destroyed. Any Restoration of such Facility Airspace Improvements (a "Facility Airspace Improvements Restoration") shall be as nearly as possible to the condition thereof existing immediately prior to such occurrence (the "Pre-Casualty Condition"), or, with respect to any Building, the lesser of the Pre-Casualty Condition of such Building or the then-standard for a first-class quality building for a like use.

(c) Notwithstanding the foregoing, following the Condominium Conversion Date and the Fee Conversions of one or more Unit(s), Tenant shall only be obligated hereunder to Restore the Units demised by this Lease and not any portion of the Building that is the obligation of the Condominium Board or another Unit Owner to Restore in accordance with the Condominium Documents; provided that Tenant shall use commercially reasonable efforts to cause the Condominium Board to Restore in accordance with the Condominium Documents and subject to the further provisions of this Article 15, the Condominium common elements of the Building and any other portion of the Building that materially affects the value or usefulness of the Units demised by this Lease. Tenant shall in no event vote its Condominium Unit interest in favor of demolishing, rather than the Restoring, the Building, without the prior written consent of Landlord in each instance. The Condominium Documents shall provide, and Tenant shall use commercially reasonable efforts to enforce, that the Condominium Board shall comply with the provision of this Article 15 with respect to all portions of the Building which are the Condominium Board's obligation to restore.

Section 15.02 Restoration Plans and Specifications.

(a) Tenant shall submit to Landlord, not later than sixty (60) days prior to the commencement of any Facility Airspace Improvements Restoration, complete plans and specifications therefor (the "Proposed Restoration Plans and Specifications"), prepared by a licensed professional engineer or registered architect selected by Tenant for the performance of the Restoration and approved by Landlord therefor, which approval shall not be unreasonably withheld (provided that nothing herein shall prevent Tenant from making any immediately necessary repairs in the event of an emergency situation, to comply with Legal Requirements (to the extent so required) or minor repairs immediately required to comply with the requirements of any sublease). Such Proposed Restoration Plans and Specifications shall be subject to the review and approval of Landlord, which review and approval shall not be unreasonably withheld or delayed and shall be limited to determining whether such Proposed Restoration Plans and Specifications are consistent with the requirements of Section 15.01. If Landlord reasonably determines that such Proposed Restoration Plans and Specifications do not conform to the requirements of Section 15.01, and such deviations are not reasonably acceptable to Landlord, then Landlord shall notify Tenant of same, specifying in reasonable detail those respects in which such Proposed Restoration Plans and Specifications do not so conform and are not otherwise acceptable to Landlord. Upon receipt of notice from Landlord that the Proposed

Restoration Plans and Specifications are not in conformance with the requirements of Section 15.01 and have not been approved, Tenant shall then either (i) cause such Proposed Restoration Plans and Specifications to be revised and resubmitted to Landlord for review and approval as aforesaid, or (ii) dispute the disapproval of such Proposed Restoration Plans and Specifications under Section 40.01(a) and (b).

(b) If Landlord shall fail to approve or disapprove such Proposed Restoration Plans and Specifications within twenty-one (21) days after Tenant's submission thereof to Landlord, Tenant may provide to Landlord a written notice, which notice shall include in capital letters on the first page thereof: "THIS NOTICE IS BEING GIVEN UNDER SECTION 15.02 OF THE AGREEMENT OF SEVERED PARCEL LEASE FOR THE EASTERN RAIL YARD SECTION OF THE JOHN D. CAEMMERER WEST SIDE YARD. YOUR FAILURE TO RESPOND WITHIN THIRTY (30) DAYS WILL RESULT IN YOUR DEEMED APPROVAL OF THE RESTORATION PLANS" (such notice, the "Restoration Notice"). In the event Landlord does not approve or disapprove such Proposed Restoration Plans and Specifications within ten (10) days after Tenant provides Landlord with the Restoration Notice, Landlord shall be deemed to have approved such Proposed Restoration Plans and Specifications. As used herein, the term "Approved Restoration Plans and Specifications" shall mean the final Proposed Restoration Plans and Specifications that have been approved (or have otherwise been deemed approved) by Landlord.

(c) In the event Tenant shall desire to modify the Approved Restoration Plans and Specifications which Landlord theretofore approved pursuant to Section 15.02(a) and (b), Tenant shall submit the proposed modifications to Landlord and Landlord shall review the proposed changes to determine whether or not they (i) conform to the requirements of Section 15.01 and (ii) provide for design, equipment, engineering and materials which are comparable in quality to those provided for in the previously approved Approved Restoration Plans and Specifications. If Landlord determines that the proposed changes do not satisfy the criteria set forth in clauses (i) and (ii) of the immediately preceding sentence, Landlord shall so advise Tenant, specifying in reasonable detail the aspects of such proposed modifications that do not conform to the above requirements. Within twenty (20) Business Days after Landlord shall have so notified Tenant, Tenant shall submit revised plans and specifications for the Restoration to Landlord for review. Each review by Landlord of Tenant's submissions shall be carried out within twenty (20) Business Days of the date of delivery thereof, and if Landlord shall not have notified Tenant of its determination within such twenty (20) Business Day period, it shall be deemed to have determined that the proposed changes are satisfactory.

(d) The Approved Restoration Plans and Specifications shall comply with all Legal Requirements, including, but not limited to, the Building Code, as well as the same requirements of the ERY Declaration of Easements and the ERY Construction Agreement as are applicable to the Initial Construction of the Improvements, to the extent applicable. The responsibility to assure such compliance shall be that of Tenant and not of Landlord. Landlord's determination that the Approved Restoration Plans and Specifications conform to the requirements of Section 15.01 shall not be, nor shall it be construed to be, or relied upon as, a determination that the Approved Restoration Plans and Specifications comply with any Legal Requirements or with any of the requirements of the ERY Declaration of Easements and the ERY Construction Agreement as are applicable to the Initial Construction of the Improvements.

(e) All reasonable costs and expenses incurred by Landlord in reviewing the Proposed Restoration Plans and Specifications and any modifications thereto shall be paid by Tenant to Landlord (unless such Casualty was caused by the negligence or willful misconduct of Landlord or its agents, in which event such costs and expenses shall be borne exclusively by Landlord).

Section 15.03 No Obligation of Landlord. Except in the event a Casualty was caused by the negligence or willful misconduct of Landlord or its agents, Landlord shall not be obligated to undertake any Restoration of any Facility Airspace Improvements or to pay any of the costs or expenses thereof; provided, however, that if (a) Tenant shall fail or neglect to perform any Restoration required hereunder with reasonable diligence (subject to Force Majeure), or having so commenced such Restoration, shall fail or neglect to complete the same with reasonable diligence (subject to Force Majeure) in accordance with the terms of this Lease, and (b) except in the event of a failure which adversely affects Public Safety, Service Reliability or Legal Compliance in any respect or an emergency (in which event Landlord shall endeavor if practicable to give written notice of such failure to Tenant), Landlord shall give written notice of such failure to Tenant, and such failure shall continue for fifteen (15) days after the giving of such notice, then (subject to the cure rights of any Leasehold Mortgagee hereunder, except in the event of an emergency) Landlord may, but shall not be required to, complete such Restoration at Tenant's expense, which Restoration shall (except to the extent that the same would interfere with Public Safety, Service Reliability or Legal Compliance in any respect) be conducted by Landlord in a prompt and efficient manner so as to minimize interference with the operation and business activities on the Premises and upon the terms and conditions applicable to entry by Landlord upon the Premises in accordance with the ERY Declaration of Easements. In any case where this Lease shall expire or be terminated prior to the completion of Restoration, Landlord may elect, but shall not be required, to complete such Restoration, and (unless such Casualty was caused by the negligence or willful misconduct of Landlord or its agents) Tenant shall pay, or reimburse Landlord for, all amounts spent in connection with any Restoration so undertaken by Landlord within fifteen (15) days after demand therefor. Tenant's obligations under this Section 15.03 shall survive the expiration or termination of this Lease.

Section 15.04 Restoration in Accordance with Project Documents. Any Facility Airspace Improvements Restoration that utilizes the easements set forth in the ERY Declaration of Easements shall be conducted in accordance with the same terms and conditions of the ERY Declaration of Easements and the ERY Construction Agreement as are applicable to the Initial Construction of the Improvements.

Section 15.05 Progress Payments for Restoration.

(a) Prior to commencing any Facility Airspace Improvements Restoration that is reasonably likely to cost more than Three Million Dollars ($3,000,000), subject to CPI Adjustment, Tenant shall furnish Landlord with an estimate of the costs thereof, prepared by the licensed professional engineer or registered architect selected by Tenant and approved by Landlord pursuant to Section 15.02. Landlord, at its option and (subject to the last sentence of this Section 15.05(a)) expense, may engage a licensed professional engineer or registered architect to prepare its own estimate of the cost of such Facility Airspace Improvements Restoration (but only if such Restoration is estimated by the Tenant to cost more

than Three Million Dollars ($3,000,000), subject to CPI Adjustment). In the event of any dispute between the two estimates, such dispute shall be resolved in accordance with Sections 40.01(a) and (b). If Landlord engages an engineer or architect to prepare its own estimate as aforesaid and the estimate thereafter agreed upon by Landlord and Tenant or determined by a court or arbitrator, as the case may be, exceeds the estimate previously furnished by Tenant by not less than five percent (5%), then Tenant shall reimburse Landlord for the reasonable costs and expenses incurred by Landlord in connection with the preparation of its own estimate.

(b) In the event that the cost of any Facility Airspace Improvements Restoration as determined based on the estimate obtained pursuant to Section 15.05(a) is greater than Five Million Dollars ($5,000,000), subject to CPI Adjustment, all proceeds of insurance payable in respect of damage to such Facility Airspace Improvements, upon disbursement by the insurer, and any additional funds as may be needed from Tenant to complete any Restoration (the "Shortfall Amount") as determined based on such estimate (such insurance proceeds and Shortfall Amount, collectively, the "Restoration Funds") shall be deposited with the Restoration Fund Depository prior to the commencement of any Facility Airspace Improvements Restoration; provided, however, that (i) in lieu of depositing the Shortfall Amount, Tenant may deliver to Landlord a guaranty for such Shortfall Amount from a creditworthy guarantor subject to the reasonable approval of Landlord and (ii) if insurance proceeds are disbursed in installments as the Facility Airspace Improvements Restoration progresses, proceeds shall be deposited with the Restoration Funds Depositary upon disbursement and the Shortfall Amount shall be in excess of the total proceeds estimated to be made available.

(c) Subject to the further provisions of this Article 15, the Restoration Fund Depository shall pay over to Tenant from time to time, upon the following terms, the Restoration Funds, for the purpose of the performance by Tenant of any Facility Airspace Improvements Restoration; provided, however, that the Restoration Fund Depository, before paying such monies over to Tenant, shall reimburse Landlord (and shall be entitled to reimburse itself) therefrom to the extent, if any, of the necessary, reasonable and proper expenses (including reasonable attorneys' fees) paid or incurred by the Restoration Fund Depository and Landlord, respectively, in the collection of such Restoration Funds:

(i) Subject to the provisions of Sections 15.06 and 15.07, the Restoration Funds shall be paid to Tenant in installments as the Facility Airspace Improvements Restoration progresses, upon application by Tenant to both the Restoration Fund Depository and Landlord showing the cost of labor and materials purchased and delivered to the Premises for incorporation into such Restoration, or incorporated therein since the last previous application, and due and payable or paid by Tenant;

(ii) If any vendor's, mechanic's, laborer's, or materialman's lien is filed against the Premises or any part thereof, or if any public improvement lien relating to the Restoration is created or permitted to be created by Tenant and is filed against Landlord (or any assets of, or funds appropriated to Landlord), Tenant shall not be entitled to receive any further installment until all such liens are satisfied or discharged (by bonding or otherwise);

(iii) The amount of any installment to be paid to Tenant shall be (x) the product of (A) the total Restoration Funds and (B) a fraction, the numerator of which is

the cost of labor and materials theretofore incorporated (or delivered to the Premises to be incorporated) by Tenant in the Restoration and the denominator of which is the total estimated cost of the Restoration, such estimated cost determined in accordance with Section 15.05(a), less (y) (A) all payments theretofore made to Tenant out of the Restoration Funds and (B) ten percent (10%) of the amount so determined until the Restoration is fifty percent (50%) complete, with no additional retention after the Restoration is fifty percent (50%) complete (it being understood that the retention from the period prior to fifty percent (50%) completion may be reduced to a final retention of twice the estimated cost of punch list items upon substantial completion before a full payment upon final completion); and

(iv) Upon completion of and payment in full for the Restoration by Tenant, the balance of the Restoration Funds net of any Rental then due and owing shall be paid over to Tenant, subject to the rights of any Leasehold Mortgagee or Mezzanine Lenders to such balance of funds.

(d) Notwithstanding the foregoing, if Landlord shall perform or continue any Facility Airspace Improvements Restoration, pursuant to the provisions of Section 15.03, then the Restoration Fund Depository shall, upon request therefor by Landlord, pay over the Restoration Funds to Landlord to the extent not previously paid to Tenant pursuant to this Section 15.05, and Tenant shall pay to Landlord, within ten (10) days after demand therefor, any sums in excess of the portion of the Restoration Funds received by Landlord necessary to complete the Restoration. Upon request therefor by Tenant, Landlord shall deliver to Tenant from time to time, but no more frequently than monthly, a certificate setting forth, in reasonable detail, the expenditures made by Landlord for such Restoration.

Section 15.06 Conditions Precedent to Disbursements. The following shall be conditions precedent to each payment made by the Restoration Fund Depository to Tenant as provided in Section 15.05 above:

(a) Tenant shall have submitted to the Restoration Fund Depository and to Landlord a certificate from the aforesaid engineer or architect approved by Landlord pursuant to Section 15.02, which certificate shall (i) certify that the sum then requested to be withdrawn either has been paid by Tenant (or is due and payable) to contractors, subcontractors, materialmen, engineers, architects or other Persons (whose names and addresses shall be stated) who have rendered or furnished services or materials for the Restoration, (ii) give a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of said Persons in respect thereof, (iii) state in reasonable detail the progress of the work up to the date of said certificate, (iv) certify that no part of such expenditures has been or is being made the basis, in any previous or then pending requisition, for the withdrawal of the Restoration Funds or has been made out of the Restoration Funds previously received by Tenant, (v) certify that the sum then requested does not exceed the value of the services and materials described in the certificate and (vi) certify that the balance of the Restoration Funds held by the Restoration Fund Depository (whether from the proceeds of insurance or by deposit of Tenant's own funds) and any additional insurance proceeds not yet disbursed will be sufficient upon completion of the Restoration to pay for the same in full, and include a reasonably detailed estimate of the cost of such completion;

(b) Tenant shall have furnished to Landlord an official search, or a certificate of a title insurance company reasonably satisfactory to Landlord, or other evidence reasonably satisfactory to Landlord, showing that there has not been filed any vendor's, mechanic's, laborer's or materialman's statutory or other similar lien affecting the Premises or any portion thereof, or any public improvement lien with respect to the Premises or the Restoration affecting Landlord, or the assets of, or funds appropriated to, Landlord, which has not been discharged of record (by bonding or otherwise), except such as will be discharged upon payment of the requisite amount out of the sum then requested to be withdrawn; and

(c) at the time of making such payment, there shall be no existing and unremedied Event of Default on the part of Tenant; provided, however, that in the event that a Monetary Default shall then exist of which Landlord has provided Tenant notice to the extent required under this Lease, the Restoration Fund Depository shall be obligated to pay over to Landlord, prior to any payment to Tenant, the amount required to cure such Monetary Default, together with all other sums to which Landlord is then entitled pursuant to this Lease as a result of such Monetary Default.

Section 15.07 Additional Requirements for Restoration. Tenant shall deliver to Landlord:

(a) at least thirty (30) Business Days prior to commencement of any Facility Airspace Improvements Restoration, (i) any permits required by any Governmental Authority with respect to such Restoration and (ii) at the request of Landlord, any drawings, information or samples (in addition to the Approved Restoration Plans and Specifications) to which the Yards Parcel Operator would be entitled to under the ERY Declaration of Easements. All such materials for the Restoration (together with the Approved Restoration Plans and Specifications therefor) shall become the sole and absolute property of Landlord, subject to the rights of any architects and engineers who prepared the same, if for any reason this Lease shall be terminated; and

(b) at least ten (10) Business Days prior to commencement of such Restoration:

(i) a contract or construction management agreement reasonably satisfactory to Landlord in form collaterally assignable to Landlord (subject to any prior assignment to any Leasehold Mortgagee), made with a reputable and responsible contractor or construction manager approved by Landlord, which approval shall not be unreasonably withheld, providing for the completion of the Restoration in accordance with the Approved Restoration Plans and Specifications, free and clear of all liens, encumbrances, security agreements, interests and financing statements relating thereto;

(ii) (x) a collateral assignment to Landlord in a form reasonably acceptable to Tenant, Landlord and any Leasehold Mortgagee (subject to any prior assignment to any Leasehold Mortgagee) of all agreements, plans, permits and licenses relating to such Restoration and the bonds, if any, provided thereunder, and (y) a consent and acknowledgement to such collateral assignment in a form reasonably acceptable to Tenant, Landlord and Leasehold Mortgagee, executed by the counterparty under any such agreement

(and, to the extent that there are major subcontracts to which such counterparty is a party, by the counterparty to such major subcontracts); provided, however, that if a Leasehold Mortgage is being entered into in connection with such Restoration, Tenant shall not be obligated to deliver any such consent and acknowledgement from any such counterparty unless such counterparty is also providing its consent and acknowledgement to a collateral assignment being given by Tenant in favor of the Leasehold Mortgagee;

(iii) for any Restoration costing in excess of Five Million Dollars ($5,000,000), subject to CPI Adjustment, payment and performance bonds in forms and by sureties satisfactory to Landlord, naming the contractor performing the Restoration as obligor and Landlord and Tenant and any Leasehold Mortgagees, if applicable, as obligees, each in a penal sum equal to the Shortfall Amount or, in lieu thereof, such other security as shall be reasonably satisfactory to Landlord; and

(iv) evidence of the insurance policies required pursuant to Article 14 issued by responsible insurers, bearing notations evidencing the payment of premiums or accompanied by other evidence satisfactory to Landlord of such payments.

Section 15.08 As-Built Plans. Tenant shall deliver to Landlord, within thirty (30) days after the completion of any Restoration, a complete set of "as-built" plans therefor, together with a statement in writing from a registered architect or licensed professional engineer that such plans are complete and correct.

Section 15.09 Option to Terminate. Notwithstanding the foregoing, if, within five (5) years prior to the Fixed Expiration Date, all or substantially all of the Premises shall be destroyed or damaged, Tenant shall have the option to terminate this Lease, and upon the surrender thereof (a) Tenant shall be relieved from the Restoration requirements for the Facility Airspace Improvements set forth in this Lease and (b) Tenant shall assign and/or deliver all insurance proceeds to Landlord.

Section 15.10 No Abatement. Tenant hereby acknowledges and agrees that it shall have no right of reduction, abatement, setoff, refund or deduction of Rental, by reason of damage to or total, substantial or partial destruction of the ERY Roof Component or the Facility Airspace Improvements or any part thereof, due to any reason or cause whatsoever, and Tenant, notwithstanding any present or future law or statute, shall have no right to terminate this Lease or to quit or surrender the Premises or any part thereof except as set forth in Section 15.09. Tenant expressly agrees that its obligations hereunder, including, without limitation, the payment of Rental, shall continue as though the Improvements had not been damaged or destroyed and without abatement, suspension, diminution or reduction of any kind. It is the intention of Landlord and Tenant that the foregoing is an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York. Subject to the foregoing, nothing herein shall be deemed to limit or restrict any remedies available to Tenant at law or otherwise with respect to any Restorations that are the obligation of Landlord hereunder.

ARTICLE 16

CONDEMNATION

Section 16.01 Taking of All or Substantially All of the Premises.

(a) If the whole or substantially all of the Premises shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among Landlord, Tenant and those authorized to exercise such right, this Lease and the Term shall terminate and expire on the date of such taking and the Rental payable by Tenant hereunder shall be equitably apportioned as of the date of such taking. The term "substantially all of the Premises" shall mean such portion of the Premises as when so taken would leave remaining a balance of the Premises which, due either to the area so taken or the location of the part so taken in relation to the part not so taken, would not, under economic conditions, applicable zoning laws and/or building regulations then existing or prevailing, permit the economic operations of the Improvements located on such remaining portions of the Premises for their permitted uses hereunder.

(b) If the whole or substantially all of the Premises shall be taken or condemned as provided in Section 16.01(a), the award or damages received with respect to the Premises (the "Condemnation Proceeds") shall be apportioned as follows: (i) there shall first be paid to Landlord the sum of (x) all future Annual Base Rent payments due under this Lease through the Fixed Expiration Date (taking into account all rent escalations and FMV Base Rent Resets, and assuming that the Annual Base Rent for the period immediately following each FMV Base Rent Reset shall be equal to one hundred twenty percent (120%) of the Annual Base Rent for the period ending on the day immediately prior to the applicable Initial Reset Date or Reset Date), with each such payment discounted to the date of payment of the Condemnation Proceeds using a discount rate of six and one-half percent (6.5%) per annum, as more particularly set forth on the Severed Parcel Pro Forma Rent Schedule, plus (y) Landlord's Reversionary Interest Value as of the date of taking; and (ii) subject to the rights of any Leasehold Mortgagees and Mezzanine Lenders, Tenant shall receive the balance, if any, of such Condemnation Proceeds. Each of Landlord and Tenant shall execute any and all documents that may be reasonably required in order to facilitate collection by the other of its respective portion of the Condemnation Proceeds.

Section 16.02 Date of Taking. For purposes of this Article 16, the "date of taking" shall be deemed to be the earlier of (a) the date on which actual possession of the whole or substantially all of the Premises, or a part thereof, as the case may be, is acquired by any lawful power or authority pursuant to the provisions of the applicable federal or New York State law or (b) the date on which title to the Premises or a portion thereof shall have vested in any lawful power or authority pursuant to the provisions of the applicable federal or New York State law.

Section 16.03 Partial Taking; Tenant's Obligation to Restore. If less than substantially all of the Premises shall be taken as provided in Section 16.01(a), this Lease and the Term shall continue as to the portion of the Premises remaining, and the rate of Annual Base Rent to be paid by Tenant to Landlord during the Term thereafter shall be calculated as the

product of (a) the Annual Base Rent and (b) a fraction, (i) the numerator of which is the number of square feet of Floor Area remaining in the Premises after the taking and (ii) the denominator of which is the maximum Floor Area square footage available to the Premises prior to such taking. Tenant, whether or not the Condemnation Proceeds, if any, shall be sufficient for the purpose shall (subject to Force Majeure) undertake diligent Restoration of any remaining portion of the Improvements not so taken, such that the remaining part of the Improvements shall be complete, operable and in good condition and repair in conformity with the requirements of Section 15.01. In the event of any partial taking pursuant to this Section 16.03, the entirety of the Condemnation Proceeds for or attributable to the portion of the Premises so taken shall be apportioned as follows: (x) there shall first be paid to the Condemnation Proceeds Depository such sums as shall be necessary to pay the costs of Restoration of the portion of the Premises remaining; (y) after deducting the sums specified in (x), there shall next be paid to Landlord the product of (A) the sum of (I) all future Annual Base Rent payments due under this Lease through the Fixed Expiration Date (taking into account all rent escalations and FMV Base Rent Resets, and assuming that the Annual Base Rent for the period immediately following each FMV Base Rent Reset shall be equal to one hundred twenty percent (120%) of the Annual Base Rent for the period ending on the day immediately prior to the applicable Initial Reset Date or Reset Date), with each such payment discounted to the date of payment of the Condemnation Proceeds using a discount rate of six and one-half percent (6.5%) per annum, as more particularly set forth on the Severed Parcel Pro Forma Rent Schedule, plus (II) Landlord's Reversionary Interest Value as of the date of taking; and (B) a fraction, the numerator of which is the number of square feet of Floor Area available to the portion of the Premises so taken, and the denominator of which is the Floor Area square footage available to the Premises prior to such taking; and (z) the balance remaining, if any, of such Condemnation Proceeds shall be paid to Tenant, subject to any rights of Leasehold Mortgagees or Mezzanine Lenders. Subject to the provisions and limitations in this Article 16, the Condemnation Proceeds Depository shall make available to Tenant as much of that portion of the Condemnation Proceeds actually received and held by the Condemnation Proceeds Depository, if any (less all necessary and proper expenses paid or incurred by the Condemnation Proceeds Depository, the Leasehold Mortgagee most senior in lien and Landlord in the condemnation proceedings), as may be necessary to pay the costs of Restoration of the portion of the Premises remaining. Payments to Tenant as aforesaid shall be disbursed in the manner and subject to the conditions set forth in Article 15 as are applicable to the disbursement of Restoration Funds. Any balance of the award held by the Condemnation Proceeds Depository and any cash and the proceeds of any security deposited with the Condemnation Proceeds Depository pursuant to Section 16.04 remaining after completion of the Restoration, net of any Rental then due and owing, shall be paid to Tenant (subject to the rights of any Leasehold Mortgagees and Mezzanine Lenders). Each of Landlord and Tenant shall execute any and all documents that may be reasonably required in order to facilitate collection by the other of its respective portion of the Condemnation Proceeds.

Section 16.04 Deficiency in Proceeds. If the cost of any Restoration required by the terms of Section 16.03, as determined in the manner set forth in Section 15.05(a), exceeds both (a) Five Million Dollars ($5,000,000), subject to CPI Adjustment and (b) the balance of the Condemnation Proceeds after payment of the expenses set forth in the fourth sentence of Section 16.03, then, prior to the commencement of such Restoration, Tenant shall deposit with the Condemnation Proceeds Depository a bond, cash or other security reasonably satisfactory to Landlord (including a guaranty, as set forth in Section 15.05(b)) in the amount of such excess, to

be held and applied by the Condemnation Proceeds Depository in accordance with the provisions of Section 16.03, as security for the completion of the Restoration.

Section 16.05 Temporary Taking. If the temporary use of the whole or any part of the Premises shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement between Tenant and those authorized to exercise such right, Tenant shall give prompt notice thereof to Landlord and the Term shall not be reduced or affected in any way and Tenant shall continue to pay in full the Rental payable by Tenant hereunder without reduction or abatement, and Tenant, provided that no Event of Default shall then exist, shall be entitled to receive for itself any and all Condemnation Proceeds received in connection with such temporary taking; provided, however, that:

(a) if the taking is for a period not extending beyond the Term and if the Condemnation Proceeds therefor shall be paid less frequently than in monthly installments, the same shall be paid to and held by the Condemnation Proceeds Depository as a fund, which the Condemnation Proceeds Depository shall apply from time to time, first, to the payment of Rental, and next as set forth in the Leasehold Mortgage most senior in lien; provided, that in the event such taking results in changes or alterations in any of the Improvements, which would necessitate an expenditure for Restoration of such Improvements to their former condition, then a portion of such Condemnation Proceeds considered by Landlord, in its reasonable opinion, as appropriate to cover the expenses of such Restoration shall be retained by the Condemnation Proceeds Depository and applied and paid over toward the Restoration of such Improvements to their former condition, substantially in the same manner and subject to the same conditions as provided in Section 15.05; and any portion of such Condemnation Proceeds, which shall not be required pursuant to this Section 16.05(a) to be applied to the Restoration of the Improvements or to the payment of Rental or as set forth in the Leasehold Mortgage most senior in lien, shall be paid to Tenant; or

(b) if the taking is for a period extending beyond the Term, the Condemnation Proceeds with respect thereto shall be apportioned between Landlord and Tenant as of the Expiration Date, and Landlord's and Tenant's share thereof, if paid less frequently than in monthly installments, shall be paid to the Condemnation Proceeds Depository and applied in accordance with the provisions of Section 16.05(a); provided, however, that the amount of any Condemnation Proceeds allowed or retained for the Restoration of the Improvements and not previously applied for such purpose shall remain the property of Landlord if this Lease shall expire prior to the completion of such Restoration.

Section 16.06 Sale in Lieu of Condemnation. In the event of a negotiated sale of all or a portion of the Premises in lieu of condemnation, the proceeds of such sale shall be distributed as provided in this Article 16 as if such sale were a condemnation and such proceeds were Condemnation Proceeds, and all other provisions of this Article 16 shall apply as if such sale were a condemnation. Neither party shall agree to such a sale without the prior written consent of the other party (which may be withheld in such party's sole discretion).

Section 16.07 Participation in Proceedings. Landlord, Tenant and any Leasehold Mortgagee shall be entitled to file a claim and otherwise participate in any condemnation or similar proceeding and all hearings, trials and appeals in respect thereof.

Section 16.08 Claims for Personal Property. Notwithstanding anything to the contrary contained in this Article 16, in the event of any permanent or temporary taking of all or any part of the Premises, Tenant, its Leasehold Mortgagees and its subtenants (to the extent permitted under a sublease) shall have the exclusive right to assert claims for any trade fixtures and personal property so taken which were the property of Tenant or its subtenants (but not including any Equipment) and for relocation expenses of Tenant or its subtenants, and all awards and damages in respect thereof shall belong to Tenant and its subtenants, and Landlord hereby waives any and all claims to any part thereof; provided, however, that if there shall be no separate award or allocation for such trade fixtures or personal property, then such claims of Tenant and its subtenants, or awards and damages, shall be subject and subordinate to Landlord's claims under this Article 16, and in no event shall any such claim of Tenant or any subtenant in any way reduce the amount of any award otherwise payable to Landlord with respect to the taking of its fee interest in the Premises or the Yards Parcel or the amount of any award otherwise payable with respect to the taking of Tenant's leasehold interest hereunder.

Section 16.09 Taking of Yards Parcel and Facility Airspace Parcel. If all or portions of both the Yards Parcel and the Facility Airspace Parcel shall be taken or condemned as provided in Section 16.01(a), separate awards or damages in respect thereof shall be made as between the Yards Parcel and the Facility Airspace Parcel. If such taking constitutes the whole or substantially all of the Premises, the award or damages payable with respect to the Premises shall be apportioned as provided in Section 16.01(b), and the Condemnation Proceeds payable with respect to the Yards Parcel shall be paid to the Yards Parcel Owner. If such taking affects less than substantially all of the Premises, the provisions of Section 16.03 shall apply with respect to the Condemnation Proceeds payable with respect to the Premises, and the Condemnation Proceeds payable with respect to Yards Parcel shall be paid to the Yards Parcel Owner. If there shall be any dispute as to that portion of the Condemnation Proceeds which is attributable to the Yards Parcel or the Premises, such dispute shall be resolved in accordance with Section 40.01(a) and (b).

ARTICLE 17

ASSIGNMENT, SUBLETTING, MORTGAGES, ETC.

Section 17.01 No Transfers without Landlord Consent Permitted Transfers. Except as otherwise specifically provided in this Article 17,

(a) Tenant shall not sell, assign, transfer, pledge, mortgage or otherwise encumber, in whole or in part (any such action, an "Assignment") either this Lease or any interest of Tenant in this Lease, whether by operation of law or otherwise, nor shall any Assignment be effected of the issued or outstanding capital stock of a corporation that is Tenant or of a corporation owning a controlling interest in Tenant, whether held directly or indirectly, and whether made voluntarily, involuntarily by operation of law or otherwise, if such Assignment will result in a change of the Controlling Ownership of Tenant as of the

Commencement Date, nor shall any voting trust or similar agreement be entered into with respect to such stock, nor any reclassification or modification of the terms of such stock take place, nor shall there be any merger or consolidation of such corporation into or with another corporation, nor shall additional stock (or any warrants, options or debt securities convertible, directly or indirectly, into such stock) in any such corporation be issued if the issuance of such additional stock (or such other securities, when exercised or converted into stock), will result in a change of the Controlling Ownership of such corporation as held by the shareholders thereof as of the Commencement Date, nor shall any Assignment be effected with respect to any general partner's interest in a partnership, which is Tenant or in a partnership owning a controlling interest in Tenant, whether directly or indirectly, and whether made voluntarily, involuntarily by operation of law or otherwise, if such Assignment will result in a change of the Controlling Ownership of Tenant as of the Commencement Date, nor shall any Assignment be effected with respect to any managing member's interest in a limited liability company, which is Tenant or in a limited liability company owning a controlling interest in Tenant, whether directly or indirectly, and whether made voluntarily, involuntarily, by operation of law or otherwise, if such Assignment will result in a change of the Controlling Ownership of Tenant as of the Commencement Date, nor shall Tenant sublet the Premises (or, if the Improvements shall consist of, or are intended to consist of, multiple Buildings, any Building or portion of the Premises on which a Building is to be constructed) as an entirety or substantially as an entirety (any such subletting, a "Subletting", and such subtenant, a "Major Subtenant"), without the prior written consent of Landlord in each case, which consent may be granted or withheld in Landlord's sole discretion (each of the foregoing transactions is herein referred to as a "Transfer"). Nothing contained in this Section 17.01(a) shall restrict or prohibit or be deemed to restrict or prohibit (a) any Assignment or Transfer in the equity interests in any Person whose common stock is quoted on a recognized securities exchange such as the New York Stock Exchange or NASDAQ or (b) an Assignment or Transfer in the equity interests in Tenant or any other Person that does not, directly or indirectly, result in a change in the Controlling Ownership of Tenant.

(b) Notwithstanding anything to the contrary in Section 17.01(a), the following "Permitted Transfers" shall be permitted upon the terms set forth in this Section 17.01(b) and Section 17.02 without any consent or approval of Landlord:

(i) at any time, Tenant may Transfer all of its right, title, interest and obligations under this Lease (or otherwise effectuate a change in the Controlling Ownership of Tenant) to a Related Affiliate;

(ii) Tenant may effectuate a change in the Controlling Ownership of Tenant to Oxford Hudson Yards LLC (or any other Affiliate of OMERS Administration Corporation) and replace ERY Developer and any other Affiliate of The Related Companies, L.P. under the balance of the Project Documents insofar as they relate to the Premises (excluding the ERY Roof Completion Guaranty, any Buildings Completion Guaranty and any other guaranty given by The Related Companies, L.P., and/or OP USA Debt Holdings Limited Partnership to the MTA Parties, at any time following (x) the election of Oxford Hudson Yards LLC to remove Related Hudson Yards, LLC as the Administrative Member of Hudson Yards Gen-Par, LLC (the "GP") and exercise its right to direct the day-to-day business and affairs of the GP and Tenant pursuant to that certain Limited Liability Company Agreement of the GP, dated as of May 26, 2010, by and between Related Hudson Yards, LLC and Oxford

Hudson Yards LLC, as amended by that certain Amendment No. 1 to Limited Liability Company Agreement of Hudson Yards Gen-Par, LLC, dated as of October 10, 2012 (as the same have been or may be further amended from time to time, the "GP LLC Agreement"), or (y) consummation of the purchase by Oxford Hudson Yards LLC of one hundred percent (100%) of Related Hudson Yards, LLC's membership interests in the GP pursuant to the GP LLC Agreement, in each case provided that (A) Tenant shall notify Landlord of such change in Controlling Ownership and (B) if such a change in Controlling Ownership occurs prior to the Substantial Completion of the LIRR Work, Tenant is or retains as construction manager a Qualified Replacement Developer to perform the obligations of Developer under the ERY Construction Agreement; it being understood and agreed that Oxford Properties Group or any wholly-owned subsidiary thereof shall be a Qualified Replacement Developer so long as it (x) employs or, promptly following such change in Controlling Ownership, retains, New York-based personnel with reasonably sufficient construction experience in New York City to oversee the performance of the LIRR Work, (y) is not, at the applicable time, disqualified or disbarred from performing work on projects for the MTA Parties or their Affiliates or any other City of New York or New York State agency, and (z) is not a Prohibited Person. For the avoidance of doubt, following such a change in Controlling Ownership, the ERY Roof Completion Guaranty, any Buildings Completion Guaranty and any other guaranty given by The Related Companies, L.P., and/or OP USA Debt Holdings Limited Partnership to the MTA Parties shall remain in full force and effect and nothing contained in this Section 17.01(b)(ii) shall derogate from (1) the obligations of The Related Companies, L.P. or OP USA Debt Holdings Limited Partnership thereunder or (2) any obligations of any other Affiliate of The Related Companies, L.P. under any other Project Document to which it is a party to the extent accruing prior to the date of such replacement;

(iii) upon or after the Commencement of Construction of the Building, Tenant may Transfer all of its right, title, interest and obligations under this Lease (or otherwise effectuate a change in the Controlling Ownership of Tenant) to a user (or an entity or entities beneficially owned by such user) which will acquire such Building(s) and the Premises for its own use and occupancy pursuant to a fee-based development agreement with Tenant, Developer or their respective Affiliates and such user is not a Prohibited Person ("User"). Prior to the Substantial Completion of the Associated Portion of the LIRR Roof and Facilities, each User shall agree that Developer may not be removed or replaced under the ERY Construction Agreement, without the prior written consent of Landlord (which consent may be exercised in Landlord's sole discretion). In the event that Landlord grants its consent to the substitution of another party in lieu of Developer as developer of the Associated Portion of the LIRR Roof and Facilities, then (A) there shall be at all times a single point of contact reasonably satisfactory to the Yards Parcel Operator (which may be a joint venture among Developer and such Qualified Replacement Developer) which is responsible to the Yards Parcel Operator for coordinating and overseeing all work of Developer and any Qualified Replacement Developer in connection with the construction of the ERY Roof Component; (B) in the event of any dispute between Developer and the Qualified Replacement Developer over any matters related to construction sequencing, the Yards Parcel Operator shall give priority to the completion of the Associated Portion of the LIRR Roof and Facilities which is then under construction by the Qualified Replacement Developer and shall not be obligated to deliver any conflicting track outages to Developer; and (C) the Yards Parcel Operator shall be released and indemnified and held harmless by Developer, the Qualified Replacement Developer and Tenant in respect of any

decisions with respect to any construction sequencing made at the request of Developer or Qualified Replacement Developer while there is more than one party working in the Yards Parcel;

(iv) upon or after the Substantial Completion of the Associated Portion of the LIRR Roof and Facilities, Tenant may Transfer all of its right, title, interest and obligations under this Lease (or otherwise effectuate a change in the Controlling Ownership of Tenant) and the balance of the Project Documents insofar as they relate to the Premises (and/or Tenant is a party thereto) to any Qualified Transferee; provided that the Qualified Transferee shall be obligated to deliver a replacement of the Building Completion Guaranty; and

(v) from and after the Substantial Completion of the Building and Associated FASP Improvements and Substantial Completion of the Associated Portion of the LIRR Roof and Facilities, Tenant may Transfer all of its right, title, interest and obligations under this Lease (or otherwise effectuate a change in the Controlling Ownership of Tenant), together with the balance of the Project Documents insofar as they relate to the Premises (and/or the Tenant is a party thereto), to any Person who is not then a Prohibited Person.

(vi) Tenant may effectuate a change in the Controlling Ownership of Tenant to [●], upon the occurrence of a removal of [●] as the managing member pursuant to [●] of that certain Limited Liability Company Agreement of [●], and replace ERY Developer and any other Affiliate of The Related Companies, L.P. under the balance of the Project Documents insofar as they relate to the Premises (excluding the ERY Roof Completion Guaranty, any Buildings Completion Guaranty and any other guaranty given by The Related Companies, L.P., and/or OP USA Debt Holdings Limited Partnership to the MTA Parties, provided that (A) Tenant shall notify Landlord of such change in Controlling Ownership, (B) Tenant is or retains as construction manager a Qualified Replacement Developer to perform the obligations of Developer under the Project Documents with respect to the Facility Airspace Improvements, and (C) if such a change in Controlling Ownership occurs prior to the Substantial Completion of the Associated Portion of the LIRR Roof and Facilities Developer may not be removed or replaced under the ERY Construction Agreement, without the prior written consent of Landlord (which consent may be exercised in Landlord's sole discretion). In the event that at the time such change in Controlling Ownership occurs (x) a Non-Monetary Default by Tenant has occurred and is continuing, and (y) such change in Controlling Ownership of Tenant is required in order for the [●] Member to cure such Non-Monetary Default, then the time period to cure such Non-Monetary Default shall be extended for such period as shall be reasonably necessary for the [●] Member, using due diligence, to obtain Controlling Ownership of Tenant, provided that the [●] Member commences curing such Non-Monetary Default within thirty (30) days after obtaining such Controlling Ownership, and continuously prosecutes or causes to be prosecuted such cure to completion with reasonable diligence. Nothing in this Section 17.01(c) shall be deemed to extend the dates set forth in this Lease for the [●] Member to cure a Monetary Default hereunder, or to cure a Non-Monetary Default where such cure does not require the [●] Member to obtain Controlling Ownership.

Section 17.02 Conditions and Procedures for Permitted Transfers.

(a) All Permitted Transfers shall be subject to the following terms:

(i) at the time of making such Transfer there is no existing and continuing Event of Default or Default under this Lease or the Project Documents; provided that this clause shall apply with respect to a Non-Monetary Default only if Landlord has delivered to Tenant notice of such Non-Monetary Default to the extent required under the applicable provisions of Section 31.01 of this Lease;

(ii) if such Transfer is an Assignment of this Lease (but not including transfers in the equity interests of a Person that results in a change in the Controlling Ownership of Tenant), such Assignment shall be in writing, duly executed, acknowledged and in proper form (or a memorandum thereof that is in proper form) for recording;

(iii) Tenant shall give written notice to Landlord of the making of such Transfer, which notice shall include the proposed effective date thereof, not less than twenty (20) days prior to the proposed effective date, together with (x) in the event of an Assignment of this Lease, the proposed form of the Assignment agreement and (y) relevant background information about the proposed transferee and its principals, including, without limitation, all information reasonably necessary to confirm that the proposed transferee is in compliance with the provisions of Section 17.01(b) (as applicable) and is not a Prohibited Person;

(iv) upon the effective date of such Transfer, the proposed transferee shall not be a Prohibited Person; it being agreed that Landlord shall notify Tenant within fifteen (15) days after Tenant's delivery of the notice referenced in subsection (iii) above as to whether the proposed transferee is a Prohibited Person;

(v) the assignee, Major Subtenant or successor entity is not entitled, directly or indirectly, to diplomatic or sovereign immunity and shall be subject to the service of process in the jurisdiction of the federal, state and local courts sitting in New York State (unless such sovereign immunity is waivable and waived by such Person in connection with its obligations under this Lease);

(vi) in the event of an Assignment of this Lease (but not including transfers in the equity interests of a Person that results in a change in the Controlling Ownership of Tenant), not later than ten (10) Business Days after the effective date of any such Assignment, Tenant shall deliver to Landlord a duplicate original or certified copy of such Assignment instrument; and

(vii) anything contained in Section 17.01(a) to the contrary notwithstanding, the exercise by a Mezzanine Lender of (y) any rights it may have under its Mezzanine Loan with respect to obtaining title to the direct or indirect equity interests of Tenant, which may have been pledged to such Mezzanine Lender pursuant to such Mezzanine Loan, or (z) any foreclosure remedies it may have, shall not be a Transfer or Assignment requiring the consent of Landlord hereunder; provided that such Mezzanine Loan shall have been made for a valid business purpose and not principally for the purpose of transferring such equity interests and/or the leasehold estate created hereby.

(b) Any Assignment of this Lease (but not including transfers in the equity interests of a Person that results in a change in the Controlling Ownership of Tenant or Assignments by mortgage or pledge), shall not be effective for purposes of this Lease unless and until the transferee shall execute, acknowledge and deliver to Landlord an agreement or certificate, in form and substance reasonably satisfactory to Landlord, whereby the transferee shall (i) assume the obligations and performance of this Lease and agree to be bound by all of the covenants, agreements, terms, provisions and conditions hereof on the part of Tenant to be performed or observed on and after the effective date of any such Transfer, and (ii) agree that no further Transfer shall be made except in accordance with this Article 17. Tenant acknowledges that, if Tenant engages in a Transfer in violation of the provisions of this Lease, and notwithstanding the acceptance of Rental by Landlord from an assignee or transferee or any other party, then Tenant shall remain fully and primarily and jointly and severally liable for the payment of the Rental due and to become due under this Lease and for the performance and observance of all of the covenants, agreements, terms, provisions and conditions of this Lease on the part of Tenant to be performed or observed. If, as and when Tenant Transfers this Lease as permitted hereunder, and an assignee assumes all of Tenant's obligations under this Lease, then from and after the date of such Transfer, the Tenant who has so assigned this Lease shall be released from and shall have no further obligations under this Lease other than any obligations that arose before the effective date of such Transfer (unless assumed in writing, in recordable form, by assignee). Promptly after request by Tenant, Landlord shall confirm the foregoing by a writing in form and substance reasonably satisfactory to Landlord and Tenant.

Section 17.03 Leasehold Mortgages.

(a) Notwithstanding anything to the contrary in Section 17.01(a), Tenant shall have the right to mortgage or pledge its interest in this Lease to one or more Leasehold Mortgagees and/or to permit the direct or indirect interest in Tenant to be pledged to a Mezzanine Lender, in each case without Landlord's consent, at any time and from time to time during the Term, provided that no holder of any Leasehold Mortgage or Mezzanine Loan, nor anyone claiming by, through or under any such Leasehold Mortgage or Mezzanine Loan, shall by virtue thereof acquire any greater rights hereunder than Tenant has, except the right to cure or remedy Tenant's defaults or to become entitled to a new lease as more fully set forth in this Section 17.03 and Section 17.04 and such other rights as are expressly granted to Leasehold Mortgagees or Mezzanine Lenders hereunder. A permitted subtenant shall have the right to mortgage or permit its interest in a permitted sublease to be pledged to one or more Leasehold Mortgagees and/or permit the direct or indirect interests in subtenant to be pledged to Mezzanine Lenders without Landlord's consent, at any time and from time to time during the Term. Notwithstanding the foregoing, however, no Leasehold Mortgage or Mezzanine Loan shall be effective, unless:

(i) at the time of making such Leasehold Mortgage or Mezzanine Loan there is no existing and unremedied Default or Event of Default on the part of Tenant under this Lease; provided that this clause shall apply with respect to a Non-Monetary Default only if Landlord has delivered to Tenant notice of such Non-Monetary Default to the extent required under the applicable provisions of Section 31.01 of this Lease; and provided, further that if an Event of Default exists, but this Lease has not been terminated and such Event of Default will be cured simultaneously with the granting of such Leasehold Mortgage or

Mezzanine Loan or with the proceeds from such Leasehold Mortgage or Mezzanine Loan, Tenant may mortgage its interest in this Lease and/or pledge the direct or indirect interests in Tenant subject to such cure;

(ii) such Leasehold Mortgage shall be subject to all the agreements, terms, covenants and conditions of this Lease;

(iii) such Leasehold Mortgage shall contain in substance each of the following provisions (and no provisions inconsistent therewith in any material respect):

(1) "This instrument is executed upon condition that (unless this condition be released or waived by Landlord under said Lease or its successors in interest by an instrument in writing) no purchaser or transferee of said Lease at any foreclosure sale hereunder, or other transfer authorized by law by reason of a default hereunder where no foreclosure sale is required, shall, as a result of such sale or transfer, acquire any right, title or interest in or to said Lease or the leasehold estate hereby mortgaged or pledged, unless (A) Landlord shall be given written notice of such sale or transfer of said Lease and the effective date thereof within ten (10) days after the effective date of such sale or transfer, and (B) such purchaser or transferee shall agree that a duplicate original or certified copy of the instrument of sale or transfer, together with the recording data therefor (to the extent then available), shall be delivered to Landlord within twenty (20) days after the date of recordation thereof."

(2) "The purchaser or transferee of said Lease shall, effective from and after the effective date of the foreclosure or transfer in lieu of foreclosure, assume and agree to perform all of the terms, covenants and conditions of the Lease to be observed or performed on the part of Tenant and agree that no further or additional mortgage or assignment of the Lease hereby mortgaged shall be made except in accordance with the provisions contained in Article 17 of that Lease."

(3) "This mortgage is not a security interest in or lien on the fee interest in the Premises covered by the Lease hereby mortgaged or on Landlord's interest in the Yards Parcel or the ERY".

(4) "The mortgagee hereunder waives all right and option to retain and apply the proceeds of any insurance or the proceeds of any condemnation award toward payment of the sum secured by this mortgage to the extent such proceeds are required for and applied to the demolition, repair or restoration of the mortgaged premises in accordance with the provisions of the Lease hereby mortgaged."

(5) Intentionally omitted,

(6) "This mortgage and all rights of the mortgagee hereunder are, without the necessity for the execution of any further

documents, subject and subordinate to the rights of Landlord under the Lease hereby mortgaged, as said Lease may have been previously modified, amended or renewed, or may hereafter be modified, amended or renewed with the consent of the mortgagee. Nevertheless, the holder of this mortgage agrees from time to time upon request and without charge to execute, acknowledge and deliver any instruments reasonably requested by Landlord to evidence the foregoing subordination."

(b) Tenant or the Leasehold Mortgagee or Mezzanine Lender shall give to Landlord written notice of the making of any Leasehold Mortgage or Mezzanine Loan (which notice shall contain the name and office address of the Leasehold Mortgagee or Mezzanine Lender) within ten (10) days after the execution and delivery of such Leasehold Mortgage or Mezzanine Loan and a duplicate original or certified copy thereof; provided that Landlord shall recognize the rights of a Leasehold Mortgagee or Mezzanine Lender hereunder upon the receipt of the foregoing information from and after the date so delivered even if such date is after such ten (10) day period.

(c) Landlord shall give to each Leasehold Mortgagee or Mezzanine Lender, at the address of such Leasehold Mortgagee or Mezzanine Lender set forth in the notice from such Leasehold Mortgagee or Mezzanine Lender or from Tenant delivered in the manner provided by Article 32, a copy of each notice given by Landlord to Tenant hereunder (including Default and Event of Default notices) at the same time as and whenever any such notice shall thereafter be given by Landlord to Tenant, and no such notice by Landlord shall be deemed to have been duly given to Tenant (and no grace or cure period shall be deemed to have commenced) unless and until a copy thereof shall have been given to each such Leasehold Mortgagee or Mezzanine Lender. Each Leasehold Mortgagee and Mezzanine Lender (i) shall thereupon have a period of ten (10) days more in the case of a Default in the payment of Annual Base Rent or other Rental and, subject to Sections 17.03(d) and 17.03(j), thirty (30) days more in the case of any other Default (or in the case of a non-Monetary Default which shall require more than thirty (30) days to cure using due diligence, then such longer period of time as shall be necessary so long as such Leasehold Mortgagee or Mezzanine Lender shall have commenced to cure (or caused to be commenced such cure) within such thirty (30) day period and continuously prosecutes or causes to be prosecuted the same to completion with reasonable diligence), after the applicable period afforded Tenant for remedying the Default or causing the same to be remedied has expired and (ii) shall, within such period and otherwise as herein provided, have the right (but not the obligation) to remedy such Default or cause the same to be remedied. Landlord shall accept performance by or on behalf of a Leasehold Mortgagee or Mezzanine Lender of any covenant, condition or agreement on Tenant's part to be performed hereunder with the same force and effect as though performed by Tenant, so long as such performance is made in accordance with the terms and provisions of this Lease. Landlord shall not object to any entry onto the Premises by or on behalf of a Leasehold Mortgagee or a Mezzanine Lender to the extent necessary to effect such Leasehold Mortgagee's or Mezzanine Lender's cure rights, provided that such entry is in compliance with applicable law.

(d) No Non-Monetary Default by Tenant or Event of Default arising from a non-monetary obligation shall be deemed to exist (including, for the avoidance of doubt, for purposes of Sections 17.02(a)(i) and 17.03(a)(i)) as long as a Leasehold Mortgagee or

Mezzanine Lender, in good faith, (i) shall have commenced to cure (or caused to be commenced such cure) such Default within thirty (30) days after the expiration of the applicable period afforded to Tenant for remedying such Default, and continuously prosecutes or causes to be prosecuted the same to completion with reasonable diligence (subject to Force Majeure) or (ii) if possession or control of the Premises or any part thereof is required in order to cure such Default, and Leasehold Mortgagee or Mezzanine Lender shall have notified Landlord within thirty (30) days after the expiration of the applicable period afforded to Tenant for remedying the Default of its intention to institute foreclosure proceedings to obtain possession or control directly or through a receiver, and thereafter commences such foreclosure proceedings, prosecutes such proceedings with all reasonable diligence and continuity (subject to Force Majeure) and, upon obtaining possession and ownership of Tenant's estate hereunder, commences or causes its designee to commence promptly to cure the Default (if not theretofore commenced pursuant to subclause (ii) of Section 17.03(j)) and prosecutes the same to completion with all reasonable diligence and continuity (subject to Force Majeure); provided that the Leasehold Mortgagee or Mezzanine Lender or its designee shall have delivered to Landlord, in writing, within the time periods set forth in subclause (i) or (ii) herein, its agreement, subject to the last sentence of this Section 17.03(d), to cause the party obtaining possession and ownership of Tenant's estate hereunder to agree to take the action described in subclause (i) or (ii) herein (and, if applicable, the action described in subclause (i) or (ii) of Section 17.03(j)) (the "Leasehold Mortgagee/Mezzanine Lender Notice of Cure"); and provided, further, that during the period in which the actions comprising the Leasehold Mortgagee/Mezzanine Lender Notice of Cure are being performed, all of the other obligations of Tenant under this Lease (other than those that require possession or control of the Premises in order to cure) are being duly performed (including, without limitation, payment of all Rental due hereunder) within any applicable notice and grace periods (subject, however to the notice and cure rights of Leasehold Mortgagees and Mezzanine Lenders under Section 17.03(c)). In the event that at any time after the delivery of the Leasehold Mortgagee/Mezzanine Lender Notice of Cure, the Leasehold Mortgagee or Mezzanine Lender notifies Landlord, in writing, that it has relinquished possession or control of the Premises or that it will not institute foreclosure proceedings or, if such proceedings have been commenced, that it has discontinued them, thereupon, Landlord shall have the unrestricted right to terminate this Lease by reason of any Event of Default (and to take any other action it deems appropriate by reason of any Default by Tenant), and upon any such termination the provisions of Section 17.04 shall apply.

(e) A Leasehold Mortgagee, Mezzanine Lender, successor leasehold owner, assignee or transferee gaining possession or control of the Premises pursuant to a foreclosure or transfer in lieu of foreclosure shall not be bound by any deadline for completion of any construction or alterations required of Tenant under this Lease; provided, however, that such party gaining possession and ownership of Tenant's estate hereunder pursuant to a foreclosure or transfer in lieu of foreclosure shall with all reasonable diligence and continuity prosecute completion of same. Notwithstanding anything in this Section 17.03 to the contrary, a Leasehold Mortgagee, Mezzanine Lender, successor leasehold owner, assignee or transferee gaining possession or control of the Premises pursuant to a foreclosure or transfer in lieu of foreclosure shall not, be required to cure any Non-Monetary Defaults or Events of Default arising from non-monetary obligations of Tenant that are not capable of being cured by such party gaining possession or control of the Premises, and if any Leasehold Mortgagee, Mezzanine Lender, successor leasehold owner, assignee or transferee shall acquire the Premises pursuant to a

foreclosure or transfer in lieu of foreclosure, then any such Non-Monetary Default or Events of Default arising from a non-monetary obligation by Tenant that is not capable of being cured shall no longer be deemed a Default or Event of Default.

(f) With respect to any Non-Monetary Default, so long as a Leasehold Mortgagee or Mezzanine Lender shall be diligently exercising its cure rights under this Section 17.03 (or the rights described in Section 17.03(d)(ii), as the case may be), Landlord shall not (i) re-enter the Premises (except as provided in Section 17.03(j)), (ii) serve a termination notice, or (iii) bring a proceeding on account of such Default to (x) dispossess Tenant and/or other occupants of the Premises, (y) re-enter the Premises, or (z) terminate this Lease or the leasehold estate (such rights described in clauses (i), (ii) and (iii)) "Landlord's Termination Rights"). In addition, with respect to any Monetary Default, Landlord shall not exercise any of Landlord's Termination Rights so long as a Leasehold Mortgagee or a Mezzanine Lender shall be diligently exercising its cure rights under this Section 17.03 within the time periods set forth above; provided, however, that (A) nothing contained in this Section 17.03(f) shall in any way affect, diminish or impair the right of Landlord to exercise any of Landlord's Termination Rights or to enforce any other remedy in the event of any other Event of Default or Default, as applicable, by Tenant in the performance of its obligations hereunder, and (B) upon any cessation of a Leasehold Mortgagee or Mezzanine Lender so exercising such rights and undertaking such activities, Landlord may exercise any of Landlord's Termination Rights hereunder. Nothing in the protections to Leasehold Mortgagees or Mezzanine Lenders provided in this Lease shall be construed to either (I) extend the Term beyond the Fixed Expiration Date provided for in this Lease that would have applied if no Default had occurred, or (II) require such Leasehold Mortgagee or Mezzanine Lender to cure any non-Monetary Default by Tenant that is not capable of being cured as a condition to preserving this Lease or to such Leasehold Mortgagee obtaining a New Lease as provided in Section 17.03(a).

(g) Notwithstanding anything to the contrary herein, the exercise of any rights or remedies of a Leasehold Mortgagee under a Leasehold Mortgage or a Mezzanine Lender under a Mezzanine Loan, including the consummation of any foreclosure or Transfer in lieu of foreclosure, shall not constitute a Default under this Lease or require the consent of Landlord; provided, however, that any Transfer of this Lease resulting from any such foreclosure or transfer in lieu of foreclosure to an entity other than a Leasehold Mortgagee, Mezzanine Lender or their Affiliates shall be a Default under this Lease unless (x) such Transfer meets the requirements of Section 17.02 (excluding the requirement that the transferee be a Related Affiliate, which shall be inapplicable to any Transfer resulting from or following any such foreclosure or transfer in lieu of foreclosure), and (y) the transferee is a Qualified Transferee.

(h) No Leasehold Mortgagee or Mezzanine Lender shall become liable under the provisions of this Lease unless and until such time as it becomes, and then only for so long as it remains, the owner of the leasehold estate created hereby and no performance by or on behalf of a Leasehold Mortgagee or Mezzanine Lender of Tenant's obligations hereunder shall cause such Leasehold Mortgagee or Mezzanine Lender to be deemed to be a "mortgagee in possession" unless and until such Leasehold Mortgagee shall take possession or control of the Premises, or such Mezzanine Lender take possession or control of Tenant, as applicable.

(i) If there is more than one Leasehold Mortgagee, the rights and obligations afforded by this Section 17.03 to a Leasehold Mortgagee shall be exercisable only by the party whose collateral interest in the Premises is senior in lien (or which has obtained the consent of any Leasehold Mortgagees that are senior to such Leasehold Mortgagee).

Section 17.04 New Lease.

(a) In the event of a termination of this Lease, prior to the Fixed Expiration Date, whether by summary proceedings to dispossess, service of notice to terminate, or otherwise, due to an event specified in Article 31, Landlord shall serve upon each Leasehold Mortgagee who is entitled to notice, written notice of such termination promptly following the same, 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. Subject to clause (e) of this Section 17.04, the Leasehold Mortgagee entitled to the rights afforded by this Section 17.04 shall thereupon have the option to obtain a new lease in accordance with and upon the following terms and conditions (a "New Lease"):

(i) Upon the written request of such Leasehold Mortgagee, served upon Landlord in accordance with Article 32, within forty-five (45) days after service upon the Leasehold Mortgagee of notice of termination by Landlord, Landlord shall enter into a New Lease of the Premises with such Leasehold Mortgagee, a special-purpose Affiliate thereof or any designee of such Leasehold Mortgagee that is an Institutional Lender (such Leasehold Mortgagee, Affiliate thereof or designee, the "New Tenant"), as provided in clause (ii) of this Section 17.04(a).

(ii) The New Lease shall be effective as of the date of termination of this Lease and shall be for the remainder of the Term and at the Rental and upon all the agreements, terms, covenants and conditions hereof. Upon the execution of such New Lease, the New Tenant shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for its termination, and shall otherwise with reasonable diligence commence to remedy any non-Monetary Defaults under this Lease and shall pay all costs and expenses, including, without limitation, reasonable attorneys' fees, court costs and disbursements incurred by Landlord in connection with such Defaults and termination, the recovery of possession of the Premises and the preparation, execution and delivery of such New Lease, less any net monies received by Landlord from the date of termination of this Lease for rent or for use and occupancy of the Premises. Landlord shall have no obligation to deliver physical possession of the Premises in connection with the giving of any such New Lease to the extent that Landlord shall not previously have recovered possession of same. Nothing herein contained shall release Tenant from any of its obligations under this Lease which shall not have been discharged or fully performed by Tenant or by such Leasehold Mortgagee or New Tenant.

(b) As between Landlord and New Tenant, any New Lease, and the leasehold estate created thereby, subject to the same conditions contained in this Lease, shall continue to maintain the same priority as this Lease with regard to any Leasehold Mortgage or Fee Mortgage or any other lien, charge or encumbrance whether or not the same shall then be in existence.

(c) Upon the execution and delivery of a New Lease under this Section 17.04, all subleases which theretofore may have been assigned to Landlord shall be assigned and transferred, without recourse, by Landlord to the New Tenant. Between the date of termination of this Lease and the date of execution and delivery of the New Lease, if a Leasehold Mortgagee shall have requested such New Lease as provided in Section 17.04(a), Landlord shall not enter into any new subleases, cancel or modify in any material respect any then-existing subleases or accept any cancellation, termination or surrender thereof (unless such termination shall be effected as a matter of law on the termination of this Lease) without the written consent of the Leasehold Mortgagee, not to be unreasonably withheld or delayed, except as permitted in the subleases.

(d) If there is more than one Leasehold Mortgagee, Landlord shall enter into a New Lease with the Leasehold Mortgagee whose Leasehold Mortgage is senior in lien (or which has obtained the consent of any Leasehold Mortgagees that are senior to such Leasehold Mortgagee) as the Leasehold Mortgagee entitled to the rights afforded by this Section 17.04.

(e) Any rejection of this Lease by any trustee of Tenant in any bankruptcy, reorganization, arrangement or similar proceeding which would otherwise cause this Lease to terminate, shall, without any action or consent by Landlord, Tenant or any Mortgagee, effect the transfer of Tenant's interest hereunder to the most senior Leasehold Mortgagee or its nominee or designee. Upon any such transfer to a Leasehold Mortgagee, such Leasehold Mortgagee may (i) reject the transfer of this Lease upon giving notice thereof to Landlord no later than forty-five (45) days after notice from Landlord of such transfer, in which case such Leasehold Mortgagee shall have no further obligations hereunder or (ii) may request a new lease in accordance with the provisions of this Section 17.04. In the event that the most senior Leasehold Mortgagee shall fail either to effect the transfer of this Lease or request a new lease, then Landlord shall notify all remaining Leasehold Mortgagees that the most senior Leasehold Mortgagee has failed to exercise such right whereupon each other Leasehold Mortgagee may, within twenty (20) days of receiving such notice have the same alternative rights, exercisable within the same period after receipt of such notice. If more than one Leasehold Mortgagee shall have elected to either effect such transfer or request such new lease (subject to the liens of all Leasehold Mortgagees senior in lien in each case) the Leasehold Mortgagee with the most senior lien priority shall be deemed to have exercised such right.

Section 17.05 Additional Mortgagee Protective Clauses. In addition to the other rights, notices and cure periods afforded to Leasehold Mortgagees, Landlord further agrees that:

(a) without the prior written consent of each Leasehold Mortgagee, Landlord will neither agree to any modification or amendment of this Lease (other than an immaterial modification or amendment), nor accept a surrender or cancellation of this Lease;

(b) Landlord shall consider in good faith any modification to this Lease requested by a Leasehold Mortgagee as a condition or term of granting financing to Tenant; provided that the same does not materially increase Landlord's obligations or diminish Landlord's rights and immunities hereunder;

(c) the Leasehold Mortgagee most senior in lien priority (or as otherwise agreed by the Leasehold Mortgagees) shall have the right to participate in any arbitration proceedings under Section 40.01(b); provided, that only one (1) Leasehold Mortgagee shall have such participation rights at any given time;

(d) the Leasehold Mortgagee most senior in lien priority (or as otherwise agreed by the Leasehold Mortgagees) shall have the right to participate in the adjustments of any insurance claims of the nature set forth in Articles 14 and 15 and condemnation awards of the nature set forth in Article 16 and to serve as the Condemnation Proceeds Depository; provided, however, that only one (1) Leasehold Mortgagee shall have such participation rights at any given time; and provided, further, that any such Leasehold Mortgagee (i) shall irrevocably agree that all insurance proceeds shall be paid directly to the Condemnation Proceeds Depository for distribution in accordance with the terms of this Lease and (ii) shall give to the Condemnation Proceeds Depository, in the Condemnation Proceeds Depository's favor, a direction to execute and/or endorse any claims or checks necessary for the payment of, or representing the payment of, insurance proceeds, to be distributed by the Condemnation Proceeds Depository, in accordance with the terms of this Lease; and

(e) at the request of Tenant from time to time, Landlord shall execute and deliver an instrument addressed to the holder of any Leasehold Mortgage or Mezzanine Loan confirming that such holder is a Leasehold Mortgagee or Mezzanine Lender and entitled to the benefit of all provisions contained in the Lease which are expressly stated to be for the benefit of Leasehold Mortgagees or Mezzanine Lenders.

Section 17.06 Subleases.

(a) Without limiting the provisions of Section 17.01, Tenant may grant a sublease or license to any Person or Persons to use or occupy less than substantially all of the Premises without the necessity of obtaining the consent of Landlord; provided, that if more than one Building is located on the Premises, the consent of Landlord shall be required with respect to any sublease or license of all or substantially all of any single Building.

(b) Each sublease or license of any portion of the Premises shall provide that: (i) such sublease or license is subject to this Lease; (ii) such sublease shall expire on or prior to the Fixed Expiration Date or, subject to Section 17.06(d), upon the earlier termination of this Lease pursuant to Article 31; (iii) subject to Section 17.06(d), Landlord shall have no obligation to the subtenant or licensee with respect to any right or obligation of the landlord under such sublease or the licensor under such license, as the case may be; and (iv) the subtenant or licensee shall not be a Prohibited Person as of the date of such sublease or license.

(c) At Tenant's option (or upon the request of Landlord), Tenant shall deliver to Landlord a copy of any sublease or license of any portion of the Premises (which may be unexecuted but which shall, in all other respects, be in final form), together with a summary of the material terms thereof (including, without limitation, a description of the subleased or licensed premises, the rent and the term of such sublease or license), prior to or promptly after execution and delivery of the same. Within thirty (30) days after receipt of the same by Landlord, Landlord shall notify Tenant whether same is a "Qualifying Sublease". Landlord shall

have the right to designate any sublease or license as a Qualifying Sublease; provided, however, that Landlord shall be required to designate any sublease or license a Qualifying Sublease if (i) a Leasehold Mortgagee has executed a non-disturbance agreement (a "Non-Disturbance and Attornment Agreement") with respect to such sublease or license; or (ii) the subtenant or licensee thereunder is either (x) a Major Subtenant that has acquired its interest in the Premises pursuant to a Permitted Transfer or (y) any other subtenant or licensee of a space lease consisting of (I) not less than a full floor of office space or (II) a retail or restaurant space, each made to an unrelated third party at a rental not less than the prevailing market rental (as reasonably determined by Landlord) (the subtenant or licensee under any Qualifying Sublease, a "Qualifying Subtenant"). If Landlord shall determine that any sublease or license is a Qualifying Sublease, then the provisions of Section 17.06(d) shall apply. If Landlord shall determine that any sublease or license is not a Qualifying Sublease, Landlord shall provide to Tenant written notice thereof, setting forth the reason for such determination in reasonable detail. If Tenant disputes such determination in writing within ten (10) days after its receipt of such notice from Landlord, such dispute shall be resolved in accordance with Section 40.01(a) and (b).

(d) In the event Landlord acquires or succeeds to the interest of Tenant under a Qualifying Sublease (the date upon which such event occurs hereinafter referred to as the "Succession Date"), then, provided, that on the Succession Date no event of default exists and is continuing under such Qualifying Sublease which would permit the landlord thereunder to terminate such Qualifying Sublease or exercise any dispossess remedies provided for in such Qualifying Sublease, then (i) such Qualifying Sublease shall continue as a direct lease between Landlord and the Qualifying Subtenant upon all of the terms, covenants, conditions and agreements set forth in the Qualifying Sublease and remaining to be performed, with the same force and effect as if Landlord, as landlord under the Qualifying Sublease, and the Qualifying Subtenant as tenant under the Qualifying Sublease, entered into a lease (on such terms, covenants and conditions, including any renewals thereof) as of the date of the termination of this Lease, for a term equal to the unexpired term of the Lease, (ii) at the request of either party, Landlord and the Qualifying Subtenant shall execute and exchange an instrument confirming such direct lease relationship, but the failure of either party to execute such instrument shall not affect their rights and obligations with respect to said direct lease relationship, and (iii) the Qualifying Subtenant shall be bound by said direct lease relationship and to attorn to Landlord and recognize Landlord as its landlord and shall pay its rent, additional rent and all other sums due under the Qualifying Sublease at the address designated by Landlord by written notice to such Qualifying Subtenant from time to time. Notwithstanding the foregoing or anything else contained in this Lease, neither Landlord, nor anyone claiming by, through or under Landlord, shall be:

(i) bound by the provisions of this Section 17.06(d) until after Tenant shall have delivered to the Qualifying Subtenant possession of the portion of the Premises demised by the Qualifying Sublease;

(ii) liable for any act or omission of any prior landlord (including, without limitation, the then defaulting landlord); provided, however, that nothing herein shall be construed to relieve a successor landlord of liability in respect of any acts or omissions of the landlord under the Qualifying Sublease (i) first occurring on or after the Succession Date, or (ii) first occurring prior to the Succession Date and continuing after the

Succession Date; provided, that (x) such successor landlord receives notice following the Succession Date of such continuing actions or omissions, (y) notwithstanding any shorter time limitation set forth in the Qualifying Sublease, following the later of the Succession Date or the date of notice to such successor landlord of such actions or omissions, such successor landlord shall be entitled to a period of ninety (90) days to cure such acts or omissions which constitute a breach of the Qualifying Sublease (or such longer period as may be reasonably necessary to cure such acts or omissions; provided, that such successor landlord is proceeding diligently), and (z) such successor landlord shall in no event be liable for any such acts or omissions in respect of any time period prior to the expiration of such cure period;

(iii) subject to any offsets or defenses that the Qualifying Subtenant may have against any prior landlord (including, without limitation, Tenant); provided, however, that such successor landlord will recognize offsets expressly provided in the Qualifying Sublease to the extent that they relate to recoupment of any actual overpayment by the Qualifying Subtenant for the lease year immediately preceding the Succession Date of operating expense or real estate tax escalations which were paid by the Qualifying Subtenant based on estimates, and which exceed the actual operating expense or real estate tax escalations due for such period under the Qualifying Sublease;

(iv) bound by any payment that the Qualifying Subtenant might have made to any prior landlord (including, without limitation, the then defaulting landlord), or any other Person of (x) rental, common area charges, or any other charge payable under the Qualifying Sublease for more than the current month, except to the extent such payments are actually turned over to Landlord or (y) any security deposit which shall not have been actually turned over to Landlord;

(v) bound by any covenant to undertake or complete any construction of a Building, the premises demised by the Qualifying Sublease, or any portion of either;

(vi) bound by any obligation to make any payment to such Qualifying Subtenant (except where the obligation to make such payment is expressly set forth in the Lease and such obligation first arises after the Succession Date); or

(vii) bound by any amendment to any such Qualifying Sublease or modification thereof, which is not specifically referenced in such Qualifying Sublease (by way of example, confirmation of expansion or renewal options specifically referenced in the Qualifying Sublease shall not be affected by this clause (vii)), which reduces the basic rent, additional rent, supplemental rent or other charges payable under such Qualifying Sublease (except to the extent equitably reflecting a reduction in the space covered by such Qualifying Sublease), or shortens or lengthens the term thereof, or otherwise increases the obligations of the landlord or reduces the benefits to the landlord thereunder, or results in such sublease no longer being a Qualifying Sublease, made without the prior written consent of Landlord (unless such amendment or modification has been approved by the Leasehold Mortgagee, in which event no such consent of Landlord shall be required).

The provisions of this Section 17.06(d) are self-operative and shall apply, without any further action by any party, upon a determination in accordance with Section 17.06(c) that a sublease or license is a Qualifying Sublease. Notwithstanding the foregoing, promptly upon request by Landlord, Tenant or the Qualifying Subtenant, each of Landlord and the Qualifying Subtenant shall duly execute, acknowledge and deliver one or more counterparts of an instrument confirming its rights and obligations under this Section 17.06(d) in the form of Exhibit T attached hereto (each such instrument, an "RNDA"). Landlord's recognition of any Qualifying Sublease shall be conditioned on the provisions in this Section 17.06(d).

ARTICLE 18

REPAIRS AND MAINTENANCE

Section 18.01 Repairs. Tenant shall take good care of the Premises, including, without limitation, the Facility Airspace Improvements and the roofs, foundations and appurtenances thereto, water, sewer, gas and other utility connections, pipes and mains which are located on or service the Premises (unless the same is within the sole legal and operational control of the City, a public utility company or any other third party) and all Equipment, and shall put, keep and maintain the Facility Airspace Improvements in good and safe order and condition, and make all repairs therein and thereon, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary or appropriate to keep the same in good and safe order and condition, and whether or not necessitated by wear, tear, obsolescence or defects, latent or otherwise; provided, however, that Tenant's obligations with respect to Restoration resulting from a casualty or condemnation shall be as provided in Articles 15 and 16. Tenant shall not commit or suffer, and shall use all reasonable precaution to prevent, waste, damage or injury to the Premises. When used in this Section 18.01, the term "repairs" shall include all necessary replacements, alterations and additions. All repairs made by Tenant shall be at least equal in quality and class to the original work and shall be made in compliance with (a) all Legal Requirements, (b) the New York Board of Fire Underwriters or any successor thereto, and (c) any other applicable rules, regulations and requirements governing means and methods of construction over the Yards Parcel set forth in the ERY Declaration of Easements.

Section 18.02. No Obligation on Landlord. Landlord shall not be required to furnish any services, utilities or facilities whatsoever to the Premises, nor shall Landlord have any duty or obligation to make any alteration, change, improvement, replacement, Restoration or repair to, nor to demolish, any Improvements, except as otherwise expressly set forth herein or the ERY Declaration of Easements. Except as expressly provided herein or in the ERY Declaration of Easements, Tenant assumes the full and sole responsibility for the condition, operation, repair, alteration, improvement, replacement, maintenance and management of the Premises and the Facility Airspace Improvements located thereon.

ARTICLE 19

CHANGES, ALTERATIONS AND ADDITIONS

Section 19.01 Capital Improvements. From and after Substantial Completion of the Facility Airspace Improvements on the Premises, Tenant shall not demolish, replace or materially alter the Facility Airspace Improvements, or any part thereof (except as provided with respect to Equipment in Article 21), or make any material addition thereto, whether voluntarily or in connection with repairs required by this Lease (any such demolition, replacement, alteration, rebuilding or addition of improvements, a "Capital Improvement"), unless Tenant shall comply with the following requirements:

(a) No Capital Improvement shall be undertaken unless and until Tenant shall have procured from all Governmental Authorities all Improvement Approvals for the proposed Capital Improvement which are required to be obtained prior to the commencement of the proposed Capital Improvement and paid for the same. Landlord, at the sole cost and expense of Tenant, shall promptly execute and deliver any applications for Improvement Approvals that require the execution by the fee owner of the Premises, and otherwise cooperate with Tenant as reasonably required or requested by Tenant in order for Tenant to obtain all Improvement Approvals, provided such documents or instruments do not impose any liability or obligation on Landlord (unless paid by Tenant or against which Landlord is indemnified by Tenant in a manner reasonably satisfactory to Landlord) or reduce any of the rights of Landlord under this Lease or the Project Documents in more than a de minimis manner. True copies of all such Improvement Approvals shall be delivered by Tenant to Landlord prior to commencement of any proposed Capital Improvement.

(b) All Capital Improvements, when completed, shall be of such a character as not to reduce the value and quality of the Premises below its value immediately prior to the commencement of such Capital Improvement. Landlord shall have the right to review plans and specifications for any proposed Capital Improvement to determine whether such standards have been met. Any disputes with respect to such standards shall be resolved in accordance with Section 40.01(a) and (b). The ERY Roof Component, the LIRR Relocations and New LIRR Facilities shall not be altered except pursuant to the provisions of the ERY Declaration of Easements.

(c) All Capital Improvements shall be made with reasonable diligence and continuity (subject to Force Majeure) and in a good and workmanlike manner and in compliance with (i) all Improvement Approvals, (ii) if required pursuant to Section 19.01(b), the plans and specifications for such Capital Improvements as approved by Landlord, (iii) the orders, rules, regulations and requirements of any Board of Fire Underwriters or any similar body having jurisdiction, (iv) the provisions of the ERY Declaration of Easements, and (v) all other Legal Requirements.

(d) No construction of any Capital Improvement shall be commenced until Tenant shall have delivered to Landlord original insurance policies, or certificates of insurance with respect to such policies together with copies of such policies, issued by responsible insurers and bearing notations evidencing the payment of premiums or installments

thereof then due or accompanied by other evidence satisfactory to Landlord of such payments, for the insurance required by Article 14 (or, if applicable, the ERY Declaration of Easements). If, under the provisions of any casualty, liability or other insurance policy or policies then covering the Premises or any part thereof, any consent to such Capital Improvement by the insurance company or companies issuing such policy or policies shall be required to continue and keep such policy or policies in full force and effect, Tenant, prior to the commencement of construction of such Capital Improvement, shall obtain such consent and pay any additional premiums or charges therefor that may be imposed by said insurance company or companies.

Section 19.02 As-Built Plans. All Capital Improvements shall be carried out under the supervision of an architect selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld. Upon completion of any Capital Improvement, Tenant shall furnish to Landlord a complete set of "as-built" plans for such Capital Improvement together with a copy of the Certificate of Occupancy issued therefor, to the extent a modification thereof was required.

Section 19.03 Title. Title to all additions, alterations, improvements and replacements made to the Improvements, including, without limitation, the Capital Improvements, shall forthwith vest in Landlord as provided in Section 8.07, without any obligation by Landlord to pay any compensation therefor to Tenant.

ARTICLE 20

REQUIREMENTS OF PUBLIC AUTHORITIES AND OF INSURANCE UNDERWRITERS AND POLICIES

Section 20.01 Compliance with Legal Requirements. Tenant promptly shall comply with all Legal Requirements without regard to the nature or cost of the work required to be done, extraordinary, as well as ordinary, of all Governmental Authorities now existing or hereafter created, and of any and all of their departments and bureaus, of any applicable fire rating bureau or other body exercising similar functions, affecting the Premises, or affecting the construction, maintenance, use, operation, management or occupancy of the Premises, whether or not the same involve or require any structural changes or additions in or to the Premises, without regard to whether or not such changes or additions are required on account of any particular use to which the Premises, or any part thereof, may be put, and without regard to the fact that Tenant is not the fee owner of the Premises. Tenant also shall comply with any and all provisions and requirements of any casualty, liability or other insurance policy required to be carried by Tenant under the provisions of this Lease.

Section 20.02 Right to Contest. Tenant, at its sole cost and expense, after notice to Landlord, may contest, by appropriate proceedings prosecuted diligently and in good faith, the validity or applicability of any Legal Requirement; provided, that (a) Landlord shall not be subject to civil liability or criminal penalty or to prosecution for a crime, nor shall the Premises or any part thereof be subject to being condemned or vacated, by reason of noncompliance or otherwise, by reason of such contest; (b) if an adverse decision in such proceeding or the failure to pay any judgment resulting from such adverse decision could result in the imposition of any lien against the Premises, then before the commencement of such contest, Tenant shall furnish to

Landlord the bond of a surety company reasonably satisfactory to Landlord, or other deposit or security in each case in form, substance and amount reasonably satisfactory to Landlord, and shall indemnify Landlord against the cost of such compliance and liability resulting from or incurred in connection with such contest or non-compliance (including the costs and expenses in connection with such contest); (c) Tenant shall keep Landlord regularly advised as to the status of such proceedings; (d) such contest shall be prosecuted with diligence and in good faith to final adjudication, settlement, compliance or other disposition of the Legal Requirement so contested; (e) such contest, and any disposition thereof (including, without limitation, the cost of complying therewith and paying all interest, penalties, fines, liabilities, fees and expenses in connection therewith), shall be at the sole cost of and shall be paid by Tenant; (f) promptly after disposition of the contest, Tenant shall comply with such Legal Requirement to the extent determined by such contest; and (g) notwithstanding any bond, deposit or other security furnished to Landlord, Tenant shall comply with any Legal Requirement in accordance with the applicable provisions of this Lease if the Premises, or part thereof, shall be in danger of being forfeited or if Landlord is in danger of being subject to criminal liability or penalty, or civil liability, in connection with such contest. Landlord shall be deemed subject to prosecution for a crime if Landlord or any of its respective officers, directors, partners, shareholders, agents or employees is charged with a crime of any kind whatever unless such charge is withdrawn ten (10) days before such party is required to plead or answer thereto.

Section 20.03 Environmental Requirements. Without limiting anything contained in the ERY Declaration of Easements, Landlord and Tenant shall not undertake, permit or suffer any Environmental Activity other than (a) in compliance with all applicable Legal Requirements and all of the terms and conditions of all insurance policies covering, related to or applicable to the Premises (including the ERY Declaration of Easements), and (b) in such a manner as shall keep the Premises free from any lien imposed in respect of or as a consequence of such Environmental Activity. Landlord shall take all necessary steps to ensure that any Environmental Activity undertaken by it or on its behalf is undertaken, and Tenant shall take all necessary steps to ensure that any other Environmental Activity undertaken or permitted at the Premises is undertaken, in each case in such a manner as to provide prudent safeguards against potential risks to human health or the environment or to the Premises. Each party shall notify the other within twenty-four (24) hours of the Release of any Hazardous Substance from or at the Premises. If Tenant shall breach the covenants provided in this Section 20.03, then in addition to any other rights and remedies which may be available to Landlord under this Lease or otherwise at law or in equity, Landlord may require Tenant to take all actions, or to reimburse Landlord for the costs of any and all actions taken by Landlord upon Tenant's failure to act promptly, as are necessary or reasonably appropriate to cure such breach. Landlord shall have the right from time to time and at Landlord's expense to conduct an environmental audit of the Premises during regular business hours, and Tenant shall cooperate in the conduct of such environmental audit. Landlord shall provide a copy of any such audit to Tenant; provided, however, that in the event such environmental audit concludes that there has been a material breach by Tenant of the terms and conditions set forth in this Section 20.03, Tenant shall reimburse Landlord for the reasonable costs of such environmental audit. Landlord shall use its reasonable efforts to minimize interference with Tenant's use and occupancy of the Premises in performing such environmental audit, and shall repair any damage to the Premises caused by the same, except that Landlord shall have no such repair obligation to the extent the damage was due to any Environmental Activity.

ARTICLE 21

EQUIPMENT

Section 21.01 Property of Landlord. Until the Fee Conversion Closing, all Equipment on the Premises shall be and shall remain the property of Landlord; provided, that Tenant (or its designee) shall be deemed the owner of Equipment for federal income tax purposes. Tenant shall not have the right, power or authority to, and shall not, remove any Equipment from the Premises without the consent of Landlord, which consent shall not be unreasonably withheld; provided, however, that any such consent shall not be required in connection with repairs, cleaning or other servicing, or if the same is promptly replaced (subject to Force Majeure) by Equipment which is at least equal in utility and value to the Equipment being removed, and such removal and replacement does not materially reduce the value of the Premises or materially increase the risk to life or safety of the occupants or users of the Improvements. Notwithstanding the foregoing, Tenant shall not be required to replace any Equipment which performed a function which has become obsolete or otherwise is no longer necessary or desirable in connection with the use or operation of the Premises, unless such failure to replace would reduce the value of the Premises or would result in a reduced level of maintenance of the Premises, in which case Tenant shall be required to install such Equipment as may be necessary to prevent such reduction in the value of the Premises or in the level of maintenance.

Section 21.02 Replacement. Tenant shall keep all Equipment in good order and repair and shall replace the same when necessary with items at least equal in utility and value to the Equipment being replaced.

ARTICLE 22

DISCHARGE OF LIENS; BONDS

Section 22.01 Creation of Liens. Subject to the provisions of Section 22.02, and except as otherwise expressly provided herein, Tenant shall not create or permit to be created any lien, encumbrance or charge upon the Premises or any part thereof, the income therefrom or any assets of, or funds appropriated to, Landlord, and Tenant shall not suffer any other matter or thing whereby the estate, right and interest of Landlord in the Premises or any part thereof might be impaired.

Section 22.02 Discharge of Liens. If any mechanic's, laborer's or materialman's lien (other than a lien arising out of any work performed by or on behalf of Landlord) at any time shall be filed in violation of the obligations of Tenant pursuant to Section 22.01 against the Premises or any part thereof, the Yards Parcel or any part thereof, or, if any public improvement lien created or permitted to be created by Tenant shall be filed against any assets of, or funds appropriated to, Landlord, Tenant shall (a) within forty-five (45) days after notice of the filing thereof shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise, and (b) indemnify, defend, protect and hold the MTA Parties harmless from and against any and all loss, cost, injury, damage or expense (including reasonable attorneys' fees and charges) arising out of such lien and/or the sums

claimed to be due which give rise to such lien. If Tenant shall fail to cause such lien to be discharged of record within such forty-five (45) day period, and if such lien shall continue for an additional ten (10) days following the last day of such forty-five (45) day period, then, in addition to any other rights or remedies, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event, Landlord shall be entitled, if Landlord so elects, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances. Any amount so paid by Landlord, including all reasonable costs and expenses incurred by Landlord in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements, together with interest thereon at the Involuntary Rate from the respective dates of Landlord's making of the payment or incurring of the costs and expenses until the date of actual repayment to Landlord of such amounts, shall constitute Rental and shall be paid by Tenant to Landlord within ten (10) days after demand therefor. Notwithstanding the foregoing provisions of this Section 22.02, Tenant shall not be required to discharge any such lien if Tenant is in good faith contesting the same and has furnished a cash deposit or a security bond or other such security reasonably satisfactory to Landlord in an amount sufficient to pay such lien with interest and penalties.

Section 22.03 No Authority to Contract in Name of Landlord. Nothing contained in this Lease shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to or repair of the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of materials that would give rise to the filing of any lien against Landlord's interest in the Premises or any part thereof, the WSY or any part thereof, or any assets of, or funds appropriated to, Landlord. Notice is hereby given, and Tenant shall cause all Construction Contracts to provide, that Landlord shall not be liable for any work performed or to be performed at the Premises for Tenant or any subtenant, for any materials furnished or to be furnished at the Premises for any of the foregoing, and that no mechanic's or other lien for such work or materials shall attach to or affect the estate or interest of Landlord in and to the Premises or any part thereof, the Yards Parcel or any part thereof, the WSY or any part thereof, or any assets of, or funds appropriated to, Landlord. Tenant shall have no power to do any act or make any contract which may create or be the foundation for any lien, mortgage or other encumbrance upon the estate or assets of, or funds appropriated to, Landlord or of any interest of Landlord in the Premises.

ARTICLE 23

DELIVERY OF POSSESSION AND PERMITTED EXCEPTIONS TO TITLE

Section 23.01 As-Is Condition; No Representations. Tenant acknowledges that Tenant is fully familiar with the Premises and the zoning status, physical condition and environmental condition thereof, and the Permitted Exceptions. Tenant accepts the Premises in its existing legal and physical condition and state of repair, and, except as otherwise expressly set forth in this Lease, no representations or warranties, express or implied, have been made by or on

behalf of Landlord in respect of the Premises or the status of title or the physical condition thereof, including, without limitation, the environmental condition thereof and the zoning or other laws, regulations, rules and orders applicable thereto, the amount of Taxes or other Impositions that may be assessed against the Premises or the use that may be made of the Premises. Tenant hereby acknowledges and represents that Tenant has not relied on any such representations or warranties, and that Landlord shall in no event whatsoever be liable for any latent or patent defects in the Premises. Nothing herein shall limit the obligations of the Yards Parcel Owner under the ERY Declaration of Easements, or any rights Tenant may have as a Facility Airspace Parcel Owner thereunder.

Section 23.02 Delivery of Possession. Landlord shall deliver possession of the Premises on the Commencement Date vacant and free of occupants and tenancies, subject only to the Permitted Exceptions; provided, that Tenant acknowledges and agrees that the use and occupancy of the Yards Parcel (and, by way of easement, portions of the Premises to the extent permitted by the ERY Declaration of Easements) by LIRR and/or any other Yards Parcel Operator subject to and in accordance with the ERY Declaration of Easements shall at all times be permitted and shall in no event constitute a default of Landlord under this Lease.

Section 23.03 Tenant's Representations. Tenant hereby represents, warrants and covenants to Landlord that:

(a) Tenant is a limited liability company duly organized and existing in good standing under the laws of the State of Delaware, and qualified to do business in the State of New York;

(b) Tenant has the full, right, power, authority and legal capacity to execute and deliver this Lease, to execute and deliver the instruments referred to herein, and to enter into and fully perform the transactions contemplated hereby, or thereby;

(c) all actions and consents required by Tenant to authorize the transactions contemplated by this Lease have been duly performed and obtained;

(d) all Persons who execute this Lease and the instruments contemplated by this Lease on behalf of Tenant will be duly authorized and empowered on behalf of Tenant to do so and to enter into all transactions contemplated by this Lease, and by such instruments;

(e) the execution, delivery and consummation of the transactions contemplated hereby and performance of this Lease have not and will not conflict with any provisions of any federal, state laws or regulations to which Tenant is subject, or conflict with, result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or credit agreement, corporate charter, bylaws or other instrument to which Tenant is a party or by which Tenant or its assets may be bound or affected;

(f) this Lease is a legal, valid and binding obligation of Tenant, enforceable against Tenant in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally;

(g) Tenant is not, as of the Commencement Date (and Tenant covenants that Tenant shall not, at any time during the Term, be) a Prohibited Person;

(h) Tenant is as of the Commencement Date (i) in compliance with the Patriot Act, as applicable; (ii) in compliance with the Office of Foreign Assets Control sanctions and regulations promulgated under the authority granted by the Trading with the Enemy Act, 12 U.S.C. § 95(a) et seq., and the International Emergency Economic Powers Act, 50 U.S.C. § 1701, et seq., in each case as applicable and as amended or replaced from time to time; and (iii) a Person which (w) is not, and has never been, under investigation by any Governmental Authority for, and has not been charged with or convicted of a crime under, 18 U.S.C. §§ 1956 or 1957 (as amended or replaced from time to time) or any predicate offense thereunder; (x) has never been assessed a civil penalty under, or had any of its funds seized, frozen or forfeited in any action relating to, any anti-money laundering laws or predicate offenses thereunder; (y) has taken such steps and implemented such policies as are reasonably necessary to ensure that it is not promoting, facilitating or otherwise furthering, intentionally or unintentionally, the transfer, deposit or withdrawal of criminally-derived property, or of money or monetary instruments which are (or which Tenant suspects or has reason to believe are) the proceeds of any illegal activity or which are intended to be used to promote or further any illegal activity; and (z) has taken such steps and implemented such policies as are reasonably necessary to ensure that it is in compliance with all laws and regulations applicable to its business for the prevention of money laundering and with anti-terrorism laws and regulations, with respect both to the source of funds from its investors and from its operations, which steps include the development and implementation of an anti-money laundering compliance program within the meaning of Section 352 of the Patriot Act, to the extent Tenant is required to develop such a program under the rules and regulations promulgated pursuant to Section 352 of the Patriot Act;

(i) Tenant has not dealt with any broker in connection with this Lease or the transactions contemplated hereby, and Tenant shall indemnify, defend and hold Landlord harmless from and against any claim for commission or other compensation that is asserted by any broker, finder or other agent which claims to have dealt with Tenant in connection with this Lease and/or the ERY Severed Parcel Project, together with the cost of defending any such claim; and

(j) the Associated Portion of the LIRR Roof and Facilities means that portion of the LIRR Roof and Facilities which constitutes the "Associated Portion of the LIRR Roof and Facilities."

Section 23.04 Landlord's Representations. Landlord hereby represents, warrants and covenants to Tenant that:

(a) Landlord is duly organized and validly existing under the laws of the State of New York and has the full right, power, authority and legal capacity to execute and deliver this Lease, to execute and deliver the instruments referred to herein, and to enter into and fully perform the transactions contemplated hereby, or thereby;

(b) all actions and consents required by Landlord to authorize the transactions contemplated by this Lease have been duly performed and obtained;

(c) all Persons who execute this Lease and the instruments contemplated by this Lease on behalf of Landlord will be duly authorized and empowered on behalf of Landlord to do so and to enter into all transactions contemplated by this Lease, and by such instruments;

(d) the execution, delivery and consummation of the transactions contemplated hereby and performance of this Lease have not and will not conflict with any provisions of any federal, state laws or regulations to which Landlord is subject, or conflict with, result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or credit agreement, corporate charter, bylaws or other instrument to which Landlord is a party or by which Landlord or its assets may be bound or affected;

(e) this Lease is a legal, valid and binding obligation of Landlord, enforceable against Landlord in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally; and

(f) Landlord has not dealt with any broker in connection with this Lease or the transactions contemplated hereby, and Landlord shall indemnify, defend and hold Tenant harmless from and against any claim for commission or other compensation that is asserted by any broker, finder or other agent which claims to have dealt with Landlord in connection with this Lease and/or the ERY Severed Parcel Project, together with the cost of defending any such claim.

ARTICLE 24

INTENTIONALLY OMITTED

ARTICLE 25

LANDLORD NOT LIABLE FOR INJURY OR DAMAGE, ETC.

Section 25.01 No Liability for Injury. Without limiting Section 7.01, Landlord shall not in any event whatsoever be liable to Tenant or to any other Person for any injury or damage happening on, in or about the Premises and its appurtenances to Tenant or any other Person, nor for any injury or damage to the Premises or to any property belonging to Tenant or to any other Person, which may be caused by any fire or breakage, or by the use, misuse or abuse of the ERY Roof Component or any of the Facility Airspace Improvements (including, but not limited to, any of the common areas within the Facility Airspace Improvements, Equipment, elevators, hatches, openings, installations, stairways, hallways, or other common facilities), or the streets or sidewalk area within the Premises or which may arise from any other cause whatsoever, except to the extent any of the foregoing shall have resulted from the negligence or intentional misconduct of Landlord, its officers, agents, employees or licensees; nor shall Landlord in any event be liable for the acts or failure to act of any other tenant of any premises within the WSY other than the Premises, or of any agent, representative, employee, contractor or servant of such other tenant.

Section 25.02 No Liability for Utility Failure. Without limiting Section 7.01, Landlord shall not be liable to Tenant or to any other Person for any failure of water supply, gas or electric current, nor for any injury or damage to any property of Tenant or of any other Person or to the Premises caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storms or disturbances, or water, rain or snow which may leak or flow from the street, sewer, gas mains or subsurface area or from any part of the Premises, or leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein, or from any other place, nor for interference with light or other incorporeal hereditaments by anybody, or caused by any public or quasi-public work, except to the extent any of the foregoing shall have resulted from the negligence or intentional misconduct of Landlord or its officers, agents, employees or licensees.

Section 25.03 No Liability for Soil Conditions. Without limiting Section 7.01, in no event shall Landlord be liable to Tenant or to any other Person for any injury or damage to any property of Tenant or of any other Person or to the Premises, arising out of any sinking, shifting, movement, subsidence, failure in load-bearing capacity of, or other matter or difficulty related to, the soil, or other surface or subsurface materials, on the Premises or in the WSY, it being agreed that Tenant shall assume and bear all risk of loss with respect thereto.

ARTICLE 26

INDEMNIFICATION OF LANDLORD AND OTHERS

Section 26.01 Indemnification. Tenant shall not do, or knowingly permit any subtenant, or sublessee of a subtenant or any employee, agent or contractor of Tenant or of any subtenant, or sublessee of a subtenant to do, any act or thing upon the Premises which may reasonably be likely to subject Landlord to any liability or responsibility for injury or damage to persons or property, or to any liability by reason of any violation of law or any other Legal Requirement, and shall use its best efforts to exercise such control over the Premises so as to fully protect Landlord against any such liability. Tenant, to the fullest extent permitted by law, shall indemnify, defend and save Landlord, LIRR, any former Landlord which held its interest herein at any time from and after the Commencement Date, the State of New York and their respective agents, directors, officers and employees (collectively, the "Indemnitees"), harmless from and against any and all loss, cost, liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses (including, without limitation, engineers', architects' and attorneys' fees and charges), which may be suffered by, imposed upon or incurred by or asserted against any of the Indemnitees, by reason of any of the following occurring during the Term, except to the extent that the same shall have been caused in whole or in part by the negligence or intentional misconduct of any of the Indemnitees:

(a) construction of the Facility Airspace Improvements or any other work or thing done in or on the Premises or any part thereof;

(b) any use, non-use, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises or any part thereof;

(c) any negligent or tortious act or failure to act (or act or failure to act which is alleged to be negligent or tortious) within the Premises or any part thereof;

(d) any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in or on the Premises or any part thereof or ill, or about any sidewalk or vault located thereon or adjacent thereto (unless such sidewalk or vault is solely within the control of a utility company);

(e) any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in or on the WSY or the Yards Parcel or any part thereof, but only to the extent caused by or suffered or incurred by any negligent or tortious act or failure to act (or act which is alleged to be negligent or tortious) within the Premises or any part thereof;

(f) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with;

(g) any lien or claim which may have arisen out of any act of Tenant, any subtenant, any sublessee of a subtenant, or any of their respective agents, contractors, servants or employees against or on the Premises, or any lien or claim created or permitted to be created by Tenant, any subtenant, any sublessee of a subtenant, or any of their respective agents, contractors, servants or employees, in respect of the Premises against any assets of, or funds appropriated to, any of the Indemnitees under the laws of the State of New York or of any other Governmental Authority, or any liability which may be asserted against any of the Indemnitees with respect thereto;

(h) any failure on the part of Tenant to keep, observe and perform any of the terms, covenants, agreements, provisions, conditions or limitations on Tenant's part to be kept, observed or performed contained in the ERY Declaration of Easements, the Design and Construction Requirements, the ERY Construction Agreement, any subleases, or any other contracts and agreements affecting the Premises;

(i) any default by [●] Guarantor under the Building Completion Guaranty;

(j) any tax attributable to the execution, delivery or recording of this Lease other than any real property transfer gains tax or other transfer tax which may be imposed on Landlord; or

(k) any contest by Tenant permitted pursuant to the provisions of this Lease, including, without limitation, Article 4 and Article 20.

Section 26.02 Landlord Indemnification Obligations. Nothing herein shall reduce or otherwise limit the indemnification obligations of Landlord as Yards Parcel Owner to Tenant as Facility Airspace Parcel Owner pursuant to the ERY Declaration of Easements.

Section 26.03 Obligations Not Affected by Insurance. The obligations of Tenant under this Article 26 shall not be affected in any way by the absence in any case of insurance coverage or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises.

Section 26.04 Notice and Defense Process. If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event for which Tenant has agreed to indemnify the Indemnitees in Section 26.01, then, upon demand by such Indemnitee, Tenant shall resist or defend such claim, action or proceeding (in such Indemnitee's name, if necessary) by the attorneys for Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance maintained by Tenant) or (in all other instances) by such attorneys as Tenant shall select and such Indemnitee shall approve, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, and except with respect to personal injury or other liability claims within the coverage limits afforded by Tenant's liability insurance and being defended by attorneys for, or approved by, Tenant's insurance carrier, an Indemnitee may, in the event that there exists a dispute, an actual or potential conflict of interest or a divergence of interest that (in each case) would make it inadvisable in the good-faith judgment of such Indemnitee to be (or continue to be) represented by such attorneys, engage its own attorneys to defend or to assist in its defense of such claim, action or proceeding, and the Indemnitee shall pay the reasonable fees and disbursements of such attorneys; provided, that the Indemnitee shall be entitled to recover the reasonable fees and disbursements of such attorneys as part of any judgment in favor of the Indemnitee with respect to such claim, action or proceeding. No Indemnitee will unreasonably withhold its consent to any proposed settlement by Tenant of a matter which is fully covered by Tenant's indemnification hereunder; provided, that such settlement provides solely for the payment of money and does not impose any other liability on any Indemnitee.

Section 26.05 No Consequential Damages. Notwithstanding anything to the contrary herein, in no event shall Tenant be liable for any consequential damages to Landlord, any other Indemnitee or any other Person and in no event shall Landlord or any other Indemnitee be liable for any consequential damages to Tenant or any other Person.

Section 26.06 Survival. The provisions of this Article 26 shall survive the Expiration Date with respect to actions or the failure to take any actions or any other matter arising prior to the Expiration Date.

ARTICLE 27

RIGHT OF INSPECTION, ETC.

Section 27.01 Landlord Right of Inspection. Tenant shall permit Landlord and its agents or representatives to enter the Premises at all reasonable times and upon reasonable notice (except in cases of emergency) for the purpose of (a) inspecting the Premises, (b) determining whether or not Tenant is in compliance with its obligations under this Lease or any other Project Document, and (c) making any necessary repairs to the Premises and performing any work therein (i) that Landlord may elect to perform pursuant to Section 18.03, or (ii) that may be necessary by reason of Tenant's failure to make any such repairs or perform any such work or

perform any other obligations of Tenant under this Lease; provided, that, except in the event of an emergency and except as otherwise provided in this Lease, Landlord shall have delivered to Tenant written notice specifying such repairs or work and Tenant shall have failed to make such repairs or to do such work within thirty (30) days after the giving of such notice (subject to Force Majeure), or if such repairs or such work cannot reasonably be completed during such thirty (30) day period, to have commenced and be diligently pursuing the same (subject to Force Majeure). Notwithstanding the foregoing, Landlord's right to inspect the interior of any completed Buildings shall be further limited to the extent that Tenant has only limited rights to enter same in accordance with any agreements with subtenants and other occupants, except in case of an emergency.

Section 27.02 No Duty on Landlord. Nothing in this Article 27 or elsewhere in this Lease shall imply any duty upon the part of Landlord to do any work required to be performed by Tenant hereunder and performance of any such work by Landlord shall not constitute a waiver of Tenant's Default in failing to perform the same; provided, however, that nothing contained in this Section 27.02 shall derogate from the obligations of the Yards Parcel Owner under the ERY Declaration of Easements. Landlord, during the progress of any such work, may keep and store at the Premises all necessary materials, tools, supplies and equipment. Except in the event of gross negligence or willful misconduct, Landlord shall not be liable for any damage to Tenant or any subtenant by reason of the making of such repairs or the performance of any such work, or on account of bringing or storing materials, tools, supplies and equipment onto the Premises during the course thereof; provided that Landlord shall use reasonable efforts to minimize damage or any interference to Tenant's operations resulting from Landlord's exercise of its rights under this Article 27, and the obligations of Tenant under this Lease shall not be affected thereby. To the extent that Landlord undertakes such work or repairs, such work or repairs shall be commenced and completed in a good and workmanlike manner, and with reasonable diligence, subject to Force Majeure.

ARTICLE 28

LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

Section 28.01 Landlord Right to Cure. If Tenant at any time shall be in Default after notice thereof and after the expiration of any applicable grace periods provided under this Lease for Tenant or a Leasehold Mortgagee, to cure or commence to cure same, Landlord, without waiving or releasing Tenant from any obligation of Tenant contained in this Lease, may (but shall be under no obligation to) perform such obligation on Tenant's behalf.

Section 28.02 Reimbursement of Landlord. All reasonable sums paid by Landlord and all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by Landlord in connection with its performance of any obligation pursuant to Section 28.01, together with interest thereon at the Involuntary Rate from the date of Landlord's making of each such payment or incurring of each such sum, cost, expense, charge, payment or deposit until the date of actual repayment to Landlord, shall be paid by Tenant to Landlord within ten (10) days after Landlord shall have submitted to Tenant a statement substantiating, in reasonable detail, the amount demanded by Landlord. No payment or performance by Landlord pursuant to Section 28.01 shall be or be deemed to be a waiver or

release of any breach or Default of Tenant with respect thereto or of the right of Landlord to terminate this Lease, institute summary proceedings or take any such other action as may be permissible hereunder if an Event of Default by Tenant shall have occurred. Landlord shall not be limited in the scope of any damages (other than consequential damages) which Landlord may claim against Tenant arising out of or by reason of Tenant's failure to provide and keep insurance in force to the amount of the insurance premium or premiums not paid, but Landlord also shall be entitled to recover, as damages for such breach, the uninsured amount of any loss and damage and the reasonable costs and expenses of suit (including, without limitation, reasonable attorneys' fees and disbursements) suffered or incurred by reason of damage to or destruction of the Premises.

ARTICLE 29

NO ABATEMENT OF RENTAL

Except as may be otherwise expressly provided herein, Tenant shall have no right of abatement, diminution, reduction, setoff or refund of Rental payable by Tenant hereunder or of the other obligations of Tenant hereunder under any circumstances. The parties intend that Tenant's obligation to pay Rental hereunder is absolute except where expressly provided otherwise in this Lease, and the obligations of Tenant hereunder shall be separate and independent covenants and agreements and shall continue unaffected unless such obligations shall have been modified or terminated pursuant to an express provision of this Lease.

ARTICLE 30

PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 30.01 Permitted Use. Subject to the provisions of law, this Lease and the other Project Documents binding on Tenant, Tenant shall occupy the Premises for the purpose of constructing, maintaining and operating the Facility Airspace Improvements for the ERY Severed Parcel Project (as may be modified from time to time in accordance with the provisions hereof), any other incidental uses thereto or in furtherance thereof and any other purposes approved by Landlord in its sole discretion (collectively, the "Permitted Uses"), and for no other use or purpose.

Section 30.02 No Unlawful Use. Tenant shall not use or occupy the Premises, nor permit or suffer the Premises or any part thereof to be used or occupied, for any unlawful, illegal or extra-hazardous business, use or purpose, or in such manner as to constitute a nuisance of any kind (public or private) or that unreasonably interferes with the beneficial use of other property, or for any purpose or in any way in violation of any Certificate of Occupancy or of any Legal Requirements, or which may make void or voidable any insurance then in force with respect to the Premises. Immediately upon the discovery of any such unpermitted, unlawful, illegal or extra-hazardous use, Tenant shall take all necessary actions, legal and equitable, to compel the discontinuance of such use. If for any reason Tenant shall fail to take such actions in a timely fashion, and such failure shall continue for thirty (30) days after notice from Landlord to Tenant specifying such failure, Landlord is hereby irrevocably authorized (but not obligated) to take all such actions in Tenant's name and on Tenant's behalf, Tenant hereby appointing

Landlord as Tenant's attorney-in-fact coupled with an interest for all such purposes. Tenant shall, within ten (10) days after demand therefor by Landlord, reimburse Landlord for all reasonable sums paid by Landlord and all reasonable costs and expenses incurred by Landlord acting pursuant to the immediately preceding sentence (including, without limitation, reasonable attorneys' fees and disbursements), together with interest thereon at the Involuntary Rate from the respective dates of Landlord's making of each such payment or incurring of each such cost, expense or charge until the date of actual repayment of such amounts to Landlord.

Section 30.03 No Adverse Possession. Tenant shall not knowingly suffer or permit the Premises or any portion thereof to be used by the public in such manner as might reasonably tend to impair title to the Premises or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse usage, prescriptive rights or adverse possession by the public, as such, or of implied dedication of the Premises or any portion thereof.

ARTICLE 31

EVENTS OF DEFAULT; CONDITIONAL LIMITATIONS, REMEDIES, ETC.

Section 31.01 Events of Default. Each of the following events shall be an "Event of Default" hereunder (provided that, any written notice of Default required to be given by Landlord to Tenant as set forth in this Section 31.01 shall contain a clear and conspicuous statement that Landlord intends to exercise its rights hereunder in the event that such Default becomes an Event of Default) and any such notice shall also be sent to the Persons listed on Exhibit R hereto:

(a) if Tenant shall fail to pay any item of Rental, or any part thereof, when the same shall become due and payable and such failure shall continue for five (5) Business Days after written notice from Landlord to Tenant;

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

(c) if Tenant shall admit, in writing, that it is unable to pay its debts as such become due;

(d) if Tenant shall make an assignment for the benefit of creditors;

(e) if Tenant shall file a voluntary petition under Title 11 of the United States Code or if such petition is filed against it, and an order for relief is entered, or if Tenant shall file any petition or answer seeking, consenting to or acquiescing in any reorganization,

arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other statute or law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, or of all or any substantial part of its properties or of the Premises or any interest therein of Tenant, or if Tenant shall take any corporate action in furtherance of any action described in Section 31.01(c), (d) or (e);

(f) if within ninety (90) days after the commencement of any proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other statute or law, such proceeding shall not have been dismissed, or if, within ninety (90) days after the appointment, without the consent or acquiescence of Tenant, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant or of all or any substantial part of its properties or of the Premises or any interest therein of Tenant, such appointment shall not have been vacated or stayed on appeal or otherwise, or if, within thirty (30) days after the expiration of any such stay, such appointment shall not have been vacated;

(g) if Tenant shall abandon the Premises, and such abandonment shall continue for thirty (30) days after written notice thereof from Landlord;

(h) if this Lease or the estate of Tenant hereunder or any portion thereof (whether by operation of law or otherwise) shall be assigned, subleased, transferred, mortgaged or encumbered, or there shall be a Transfer, in each case without Landlord's approval to the extent required hereunder or without compliance with the provisions of this Lease applicable thereto and such transaction shall not be made to comply or be voided ab initio within thirty (30) days after written notice thereof from Landlord to Tenant;

(i) if a levy under execution or attachment shall be made against the Premises and such execution or attachment shall not be vacated or removed by court order, bonding or otherwise within a period of thirty (30) days;

(j) if Tenant shall at any time fail to maintain its corporate existence in good standing, or to pay any corporate franchise tax when and as the same shall become due and payable, and such failure shall continue for thirty (30) days after written notice thereof from Landlord to Tenant;

(k) if, solely with respect to the Premises, a default by Tenant under the ERY Restrictive Declaration or the ERY Restrictive Declaration (93-70) shall occur and remain unremedied for thirty (30) days after written notice thereof from Landlord to Tenant;

(l) if a default by Tenant under any of the ERY Declaration of Easements (solely to the extent applicable to the Premises as set forth in Section 7.01 hereof), the PILOST Agreement, or a default by [●] Guarantor under the Building Completion Guaranty (whenever in force and effect), shall occur and remain outstanding after the expiration of any applicable notice and cure period therefor; provided, that if there is no notice and cure period

under such declaration, agreement or guaranty, Tenant shall be entitled to the notice and cure period set forth in Section 31.01(b) as if such default were a failure by Tenant to observe or perform one or more of the other terms, conditions, covenants or agreements contained in this Lease; provided further that it shall not be deemed a default under the Building Completion Guaranty if a replacement guaranty is delivered to MTA within the cure period set forth in such guaranty; and/or

(m) if a default under the ERY Construction Agreement shall occur and remain outstanding and Tenant has not commenced the Cure Obligations (as defined in the ERY Construction Agreement) with respect solely to the Associated Portion of the LIRR Roof and Facilities within the cure period provided to Tenant in the ERY Construction Agreement.

Section 31.02 Primary Remedies; Expiration and Termination of Lease.

(a) If any Event of Default described in Sections 31.01(b) through (k), shall occur and Landlord, at any time thereafter (unless such Event of Default has been remedied), at its option, gives notice to Tenant stating that this Lease and the Term shall expire and terminate on the date specified in such notice, which date shall be not less than twenty (20) days after the giving of such notice, then this Lease and the Term and all rights of Tenant under this Lease shall expire and terminate as if the date specified in the notice given pursuant to this Section 31.02(a) were the Fixed Expiration Date, and Tenant immediately shall quit and surrender the Premises and the provisions of Article 37 shall apply. Notwithstanding anything to the contrary contained herein, if such termination shall be stayed by order of any court having jurisdiction over any proceeding described in Sections 31.01(e) or (f), or by federal or state statute and such stay expires, or if the trustee appointed in any such proceeding (the "Trustee"), Tenant or Tenant as debtor-in-possession shall fail to assume Tenant's obligations under this Lease within the period prescribed therefor by law or within one hundred twenty (120) days after entry of the order for relief or as may be allowed by the court, or if Tenant, Tenant as debtor-in-possession or the Trustee shall fail to provide adequate protection of Landlord's right, title and interest in and to the Premises or adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease as provided in Section 31.15, Landlord, to the extent permitted by law or by leave of the court having jurisdiction over such proceeding, shall have the right, at its election, to terminate this Lease on ten (10) days notice to Tenant, Tenant as debtor-in-possession or the Trustee and upon the expiration of said ten (10) day period this Lease shall cease and expire as aforesaid and Tenant, Tenant as debtor-in-possession and/or the Trustee, as the case may be, shall immediately quit and surrender the Premises as aforesaid.

(b) If an Event of Default described in Section 31.01(a), (l) or (m) shall occur, or this Lease shall be terminated as provided in Section 31.02(a), Landlord, without notice, may re-enter and repossess the Premises by summary proceedings or other lawful process.

Section 31.03 Effect of Termination. If this Lease shall be terminated as provided in Section 31.02(a), or Tenant shall be dispossessed by summary proceedings or otherwise as provided in Section 31.02(b):

(a) Tenant shall pay to Landlord all Rental payable by Tenant under this Lease through the date upon which this Lease and the Term shall have expired or through the date of re-entry upon the Premises by Landlord, as the case may be;

(b) Landlord may complete all construction required to be performed by Tenant hereunder and may repair and alter the Premises in such manner as Landlord may deem necessary or advisable (and may apply to the foregoing all funds, if any, then held by any Depository pursuant to the terms of this Lease) without relieving Tenant of any liability under this Lease or otherwise affecting any such liability, and/or let or relet the Premises or any portion thereof for the whole or any part of the remainder of the Term or for a longer period, in Landlord's name or as agent of Tenant, and out of any rent and other sums collected or received as a result of such reletting Landlord shall: (i) first, pay to itself the reasonable cost and expense of terminating this Lease, re-entering, retaking, repossessing, completing construction and repairing or altering the Premises, or any part thereof, and the cost and expense of removing all persons and property therefrom, including in such costs brokerage commissions, legal expenses and reasonable attorneys' fees and disbursements, (ii) second, pay to itself the reasonable cost and expense sustained in securing any new tenant or other occupant, including in such costs brokerage commissions, legal expenses and reasonable attorneys' fees and disbursements and other expenses of preparing the Premises for reletting, and, if Landlord shall maintain and operate the Premises, the reasonable cost and expense of operating and maintaining the Premises, and (iii) third, pay to itself any balance remaining on account of the liability of Tenant to Landlord. Landlord shall, within a reasonable period of time following the repossession of the Premises, undertake a request for proposals or other process in accordance with Landlord's official policy for real property dispositions to seek a replacement tenant for the Premises, it being understood and agreed that (x) Landlord shall have discretion as to whether or not to enter into a new lease for the Premises with a replacement tenant, and as to the terms of any such new lease, (y) no prospective lease shall diminish the amount of any Deficiency owed to Landlord pursuant to the terms of Section 31.03(c) unless and until such new lease is actually executed and delivered between Landlord and a replacement tenant, and (z) except as in the aforesaid clauses, Landlord in no way shall be responsible or liable for any failure to relet the Premises or any part thereof, or for any failure to collect any rent due on any such reletting, and no such failure to relet or to collect rent under any new lease shall operate to relieve Tenant of any liability under this Lease or to otherwise affect any such liability;

(c) Tenant shall be liable for and shall pay to Landlord, as damages, any deficiency (referred to as a "Deficiency") between the Rental reserved in this Lease for the period which otherwise would have constituted the unexpired portion of the Term and the net amount, if any, of rents collected under any reletting effected pursuant to the provisions of Section 31.03(b) for any part of such period (first deducting from the rents collected under any such reletting all of the payments to Landlord described in Section 31.03(b)); any such Deficiency shall be paid in installments by Tenant on the days specified in this Lease for the payment of installments of Rental, and Landlord shall be entitled to recover from Tenant each Deficiency installment as the same shall arise, and no suit to collect the amount of the Deficiency for any installment period shall prejudice Landlord's right to collect the Deficiency for any subsequent installment period by a similar proceeding; and

(d) whether or not Landlord shall have collected any Deficiency installments as aforesaid, Landlord shall be entitled to recover from Tenant, and Tenant shall pay to Landlord, on demand, in lieu of any Deficiency, as and for liquidated and agreed final damages (it being agreed that it would be impracticable or extremely difficult to fix the actual damage), a sum equal to the amount by which the Rental reserved in this Lease for the period which otherwise would have constituted the unexpired portion of the Term exceeds the then fair and reasonable rental value of the Premises for the same period, both discounted to present worth at the rate of six and one-half percent (6.5%) per annum, less the aggregate amount of any Deficiencies theretofore collected by Landlord pursuant to the provisions of Section 31.03(c) for the same period; it being agreed that before presentation of proof of such liquidated damages to any court, commission or tribunal, if the Premises, or any part thereof, shall have been relet by Landlord on an arm's-length basis for the period which otherwise would have constituted the unexpired portion of the Term, or any part thereof, the amount of rent reserved upon such reletting shall be deemed, prima facie, to be the fair and reasonable rental value for the part or the whole of the Premises so relet during the term of the reletting. Upon payment of such sum by Tenant, Tenant shall no longer be liable to make payments for a Deficiency.

Section 31.04 Survival of Obligations. No termination of this Lease pursuant to Section 31.02(a) or taking possession of or reletting the Premises, or any part thereof, pursuant to Sections 31.02(b) and 31.03(b), shall relieve Tenant of its liabilities and obligations hereunder, all of which shall survive such expiration, termination, repossession or reletting.

Section 31.05 [Intentionally Omitted].

Section 31.06 Tenant's Waiver. To the extent not prohibited by law, Tenant hereby waives and releases all rights now or hereafter conferred by statute or otherwise which would have the effect of limiting or modifying any of the provisions of this Article 31. Tenant shall execute, acknowledge and deliver any instruments which Landlord may request, whether before or after the occurrence of an Event of Default, evidencing such waiver or release.

Section 31.07 Successive Suits. Suit or suits for the recovery of damages, or for a sum equal to any installment or installments of Rental payable hereunder or any Deficiencies or other sums payable by Tenant to Landlord pursuant to this Article 31, may be brought by Landlord from time to time at Landlord's election, and nothing herein contained shall be deemed to require Landlord to await the date whereon this Lease or the Term would have expired had there been no termination by reason of an Event of Default.

Section 31.08 Bankruptcy Damages. Nothing contained in this Article 31 shall limit or prejudice the right of Landlord to prove and obtain as liquidated damages in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding an amount equal to the maximum allowed by statute or rule of law governing such proceeding and in effect at the time when such damages are to be proved, whether or not such amount shall be greater than, equal to or less than the amount of the damages referred to in any of the preceding Sections of this Article 31.

Section 31.09 No Reinstatement. No receipt of monies by Landlord from Tenant after the termination of this Lease, or after the giving of any notice of the termination of this

Lease, shall reinstate, continue or extend the Term or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Landlord to enforce the payment of Rental payable by Tenant hereunder or thereafter falling due, or operate as a waiver of the right of Landlord to recover possession of the Premises by proper remedy, except as herein otherwise expressly provided, it being agreed that after the service of notice to terminate this Lease or the commencement of any suit or summary proceedings, or after a final order or judgment for the possession of the Premises, Landlord may demand, receive and collect any monies due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such monies collected being deemed payments on account of the use and operation of the Premises or, at the election of Landlord, on account of Tenant's liability hereunder.

Section 31.10 Waiver of Notice of Re-Entry. Except as otherwise expressly provided herein or as prohibited by applicable law, Tenant hereby expressly waives the service of any notice of intention to re-enter provided for in any statute, or of the institution of legal proceedings to that end, and Tenant, for and on behalf of itself and all persons claiming through or under Tenant, also waives any and all right of redemption provided by any law or statute now in force or hereafter enacted or otherwise, or re-entry or repossession or to restore the operation of this Lease in case Tenant shall be dispossessed by a judgment or by warrant of any court or judge or in case of re-entry or repossession by Landlord or in case of any expiration or termination of this Lease, and Landlord and Tenant waive and shall waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any claim of injury or damage. The terms "enter", "re-enter", "entry" or "re-entry" as used in this Lease are not restricted to their technical legal meanings.

Section 31.11 No Waiver by Landlord. No failure by Landlord (or its predecessor as interest as Landlord) to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial Rental during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by a party, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the non-breaching party. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof.

Section 31.12 Injunction. In the event of any breach or threatened breach by a party of any of the covenants, agreements, terms or conditions contained in this Lease, the non-breaching party shall be entitled to seek to enjoin such breach or threatened breach and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Lease. To the extent permitted by law, each party hereby waives any requirement for the posting of bonds or other security in any such action.

Section 31.13 Rights Cumulative. Each right and remedy of Landlord provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise. Notwithstanding the foregoing, in no event shall Landlord be entitled, directly or indirectly, to recover more than once from Tenant, any tenant under a Severed Parcel Lease, or Developer for the same element of Landlord's damage.

Section 31.14 Enforcement Costs. Tenant shall pay to Landlord all costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Landlord in any action or proceeding to which Landlord may be made a party by reason of any act or omission of Tenant. In the event that Landlord is the prevailing party, Tenant also shall pay to Landlord all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by Landlord in enforcing any of the covenants and provisions of this Lease and incurred in any action brought by Landlord against Tenant on account of the provisions hereof, and all such costs and expenses may be included in and form a part of any judgment entered in any proceeding brought by Landlord against Tenant on or under this Lease. All of the sums paid or obligations incurred by Landlord as aforesaid, with interest at the Involuntary Rate, shall be paid by Tenant to Landlord within thirty (30) days after demand by Landlord.

Section 31.15 Adequate Assurance. If an order for relief is entered or if a stay of proceeding or other act becomes effective in favor of Tenant or Tenant's interest in this Lease in any proceeding which is commenced by or against Tenant under the present or any future federal Bankruptcy Code or any other present or future applicable federal, state or other statute or law, Landlord shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy code, statute, law or this Lease, including, without limitation, such rights and remedies as may be necessary to adequately assure the complete and continuous future performance of Tenant's obligations under this Lease. Adequate protection of Landlord's right, title and interest in and to the Premises, and adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease, shall include, without limitation, the following requirements:

(a) that Tenant shall comply with all of its obligations under this Lease;

(b) that Tenant shall pay to Landlord, on the first day of each month occurring subsequent to the entry of such order, or on the effective date of such stay, a sum equal to the amount by which the Premises diminished in value during the immediately preceding monthly period, but, in no event, an amount which is less than the aggregate Rental payable for such monthly period;

(c) that Tenant shall continue to use the Premises in the manner required by this Lease;

(d) that Landlord shall be permitted to supervise the performance of Tenant's obligations under this Lease;

(e) that Tenant shall hire, at its sole cost and expense, such security personnel as may be necessary to insure the adequate protection and security of the Premises;

(f) that Tenant shall pay to Landlord within thirty (30) days after entry of such order or the effective date of such stay, as partial adequate protection against future diminution in value of the Premises and adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease, a security deposit as may be required by law or ordered by the court;

(g) that Tenant has and will continue to have unencumbered assets after the payment of all secured obligations and administrative expenses to assure Landlord that sufficient funds will be available to fulfill the obligations of Tenant under this Lease;

(h) that Landlord be granted a security interest acceptable to Landlord in property of Tenant, other than property of any of Tenant's officers, directors, shareholders, employees or partners, to secure the performance of Tenant's obligations under this Lease; and

(i) that if Tenant, Tenant as debtor-in-possession or the Trustee assumes this Lease and proposes to assign the same (pursuant to Title 11 U.S.C. Section 365, as the same may be amended) to any Person who shall have made a bona fide offer to accept an assignment of this Lease on terms acceptable to the Trustee, Tenant or Tenant as debtor-in-possession, then notice of such proposed assignment, setting forth (i) the name and address of such Person, (ii) all of the terms and conditions of such offer, and (iii) the adequate assurance to be provided Landlord to assure such Person's future performance under the Lease, including, without limitation, the assurances referred to in Title 11 U.S.C. Section 365(b)(3) (as the same may be amended), shall be given to Landlord by the Trustee, Tenant or Tenant as debtor-in-possession no later than twenty (20) days after receipt by the Trustee, Tenant or Tenant as debtor-in-possession of such offer, but in any event no later than ten (10) days prior to the date that the Trustee, Tenant or Tenant as debtor-in-possession shall make application to a court of competent jurisdiction for authority and approval to enter into such assignment and assumption, and Landlord shall thereupon have the prior right and option, to be exercised by notice to the trustee given at any time prior to the effective date of such proposed assignment, to accept an assignment of this Lease upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such Person, less any brokerage commissions which may be payable out of the consideration to be paid by such Person for the assignment of this Lease.

Section 31.16 Leasehold Mortgagee Protections. Nothing contained in this Article 31 shall be deemed to modify the provisions of Sections 17.03, 17.04 or 17.05.

Section 31.17 Severed Parcels. Notwithstanding anything to the contrary contained herein, upon the Subparcel Severance of any Severed Subparcel from this Lease, in no event shall any Default or Event of Default arising under any Severed Subparcel Lease or the Severed Subparcel demised thereby constitute or be deemed a Default or Event of Default under this Lease. In no event shall any Default or Event of Default arising under any other Severed

Parcel Lease or any Severed Subparcel Lease, or the premises demised thereby, constitute or be deemed a Default or Event of Default under this Lease.

ARTICLE 32

NOTICES

Section 32.01 Notice Addresses. Whenever it is provided in this Lease that a notice, demand, request, consent, approval or other communication (each, a "Notice") shall or may be given to or served upon either of the parties by the other, and whenever either of the parties shall desire to give or serve upon the other any Notice with respect hereto or the Premises, each such Notice shall be in writing and, any law or statute to the contrary notwithstanding, shall not be effective for any purpose unless given or served as follows: (a) by personal delivery (with receipt acknowledged), (b) delivered by reputable, national overnight delivery service (with its confirmatory receipt therefor), next Business Day delivery specified, (c) sent by registered or certified United States mail, postage prepaid, or (d) sent by a telephonic facsimile transmitting machine (with the receipt of such transmittal acknowledged in writing or by telephone), with a confirmatory copy to be delivered thereafter by duplicate notice in accordance with any of clauses (a), (b) or (c) of this Section 32.01, in each case to the parties as follows:

if to Landlord to its address first set forth above, attention: Director of Real Estate, with a copy at the same time to the address set forth above, attention: General Counsel, and to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas New York, New York 10019
Attention: Meredith J. Kane, Esq.

if to Tenant, to its address first set forth above, attention: Jeff T. Blau;

with a copy at the same time to the address set forth above, attention: L. Jay Cross and Richard O'Toole, Esq.

and to:

Fried, Frank, Harris, Shriver and Jacobson LLP
One New York Plaza
New York, New York 10014
Attention: Tal J. Golomb, Esq.

Either party may change the address(es) to which any such Notice is to be delivered by furnishing ten (10) days written notice of such change(s) to the other party in accordance with the provisions of this Section 32.01. The attorney for any party may send Notices on that party's behalf.

Section 32.02 When Notices Deemed Given. Every Notice shall be deemed to have been given or served (a) if given by hand or overnight delivery service, upon delivery thereof, (b) if given by telephonic facsimile transmitting machine, upon delivery by such means

to the addressee, regardless of the timing of receipt of any confirmatory copy, and (c) if given by certified or registered mail, on the third (3rd) Business Day after the posting of the same, postage prepaid; in each case with failure to accept delivery to constitute delivery for such purpose.

Section 32.03 Notices to Mortgagees. If requested in writing by any Leasehold Mortgagee or Mezzanine Lender (which request shall be made in the manner provided in Section 32.01 and shall specify an address to which Notices shall be given), any Notice of Default to a Tenant shall also be given contemporaneously to such Leasehold Mortgagee or Mezzanine Lender with a copy thereof, if requested, to such Leasehold Mortgagee's or Mezzanine Lender's attorneys, in the manner herein specified.

ARTICLE 33

SUBORDINATION; FEE MORTGAGES

Section 33.01 Lease Not Subordinate. Landlord's interest in this Lease (as this Lease may be modified, amended or supplemented) and in the Premises shall not be subject or subordinate to (a) any mortgage now or hereafter placed upon Tenant's interest in this Lease or (b) any other liens, security interests or encumbrances now or hereafter affecting Tenant's interest in this Lease (other than the Permitted Exceptions and the ERY Declaration of Easements).

Section 33.02 Fee Mortgage. This Lease and Tenant's interest in this Lease, as the same may be modified, amended or renewed, and any New Lease or the interest of Tenant under a New Lease as provided for in Section 17.04 shall not be subject or subordinate to (a) any Fee Mortgage or (b) to any other liens or encumbrances on Landlord's fee estate, except for the Permitted Exceptions and any other liens or encumbrances created or consented to by Tenant or as a consequence of Tenant's acts or omissions or the construction of the Improvements. Each Fee Mortgage shall contain an express statement confirming its subordination to this Lease (and any Severed Parcel Leases) as set forth in the immediately preceding sentence.

Section 33.03 Successor Landlord. If any Fee Mortgagee or any of its successors or assigns, or any designee of any Fee Mortgagee, shall succeed to the rights of Landlord under this Lease, whether through possession or foreclosure action or delivery of a deed, then, at the request of such party so succeeding to Landlord's rights (such party, a "Successor Landlord"), Tenant shall automatically attorn to and recognize such Successor Landlord as Tenant's landlord under this Lease. Upon such attornment this Lease shall continue in full force and effect as a direct lease between the Successor Landlord and Tenant upon and subject to all of the terms, conditions and covenants as are set forth in this Lease, except that the Successor Landlord shall not (a) be liable for any previous act or omission of Landlord under this Lease which shall not be continuing; (b) be subject to any offset, not expressly provided for in this Lease, which theretofore shall have accrued to Tenant against Landlord; (c) be bound by any modification of this Lease entered into subsequent to the date of the applicable Fee Mortgage, or by any previous prepayment of more than one month's Rental, unless such modification or prepayment shall have been expressly approved in writing by the Fee Mortgagee; or (d) be obligated to make any improvements to, or perform any work at, or furnish any services to, the Premises (it being understood that Landlord has no such obligations under this Lease; provided, however, that

nothing contained in this Section 33.03 shall derogate from the obligations of the Yards Parcel Owner under the ERY Declaration of Easements). The provisions of this Section 33.03 shall be self-operative, and no instrument of any such attornment shall be required or needed by the holders of any such Fee Mortgage. In confirmation of any such attornment Tenant shall, at Landlord's request or at the request of any such Fee Mortgagee, promptly execute and deliver such further instruments as may be reasonably required by any such Fee Mortgagee. Notwithstanding anything to the contrary herein, in the event that any such transfer causes the Premises no longer to be exempt from sales and use taxes, then Tenant shall have no obligation to pay Successor Landlord PILOST hereunder, the PILOST Agreement shall be deemed void and of no further force and effect and any obligation of Tenant contingent on paying PILOST (including Section 10.02(a)) shall be deemed to be stricken from this Lease and of no further force and effect.

Section 33.04 Notices and Cure Rights of Fee Mortgagee. If Landlord or a Fee Mortgagee gives Tenant Notice of the name and address of a Fee Mortgagee, then Tenant hereby agrees to give to any such Fee Mortgagee copies of all Notices sent by Tenant to Landlord under this Lease at the same time and in the same manner as and whenever Tenant shall give any such Notice to Landlord, and no such Notice shall be deemed given to Landlord hereunder unless and until a copy of such Notice shall have been so delivered to such Fee Mortgagee. Such Fee Mortgagee shall have the right to remedy any default of Landlord under this Lease, or to cause any default of Landlord under this Lease to be remedied, and, for such purpose, Tenant hereby grants such Fee Mortgagee such additional period of time as may be reasonable to enable such Fee Mortgagee to remedy, or cause to be remedied, any such default in addition to the period given to Landlord for remedying, or causing to be remedied, any such default. Tenant shall accept performance by such Fee Mortgagee of any term, covenant, condition or agreement to be performed by Landlord under this Lease with the same force and effect as though performed by Landlord. No default under this Lease shall exist or shall be deemed to exist (a) as long as such Fee Mortgagee, in good faith, shall have commenced to cure such default and shall be prosecuting the same to completion with reasonable diligence, subject to Force Majeure, (b) if such default is not susceptible of being cured by such Fee Mortgagee, or (c) as long as such Fee Mortgagee, in good faith, shall have notified Tenant that such Fee Mortgagee intends to institute proceedings under the Fee Mortgage to acquire possession of the Premises, and, thereafter, as long as such proceedings shall have been instituted and shall be prosecuted with reasonable diligence. In the event of the termination of this Lease by reason of Landlord's default hereunder, upon such Fee Mortgagee's written request, given within thirty (30) days after any such termination, Tenant, within fifteen (15) days after receipt of such request, shall execute and deliver to such Fee Mortgagee or its designee or nominee a new lease of the Premises for the remainder of the Term of this Lease upon all of the terms, covenants and conditions of this Lease. Neither such Fee Mortgagee nor its designee or nominee shall become liable under this Lease unless and until such Fee Mortgagee or its designee or nominee becomes, and then only for so long as such Fee Mortgagee or its designee or nominee remains, the fee owner of the Premises. Such Fee Mortgagee shall have the right, without Tenant's consent, to foreclose the Fee Mortgage or to accept a deed in lieu of foreclosure of such Fee Mortgage.

Section 33.05 No Impairment of Title.

(a) Nothing contained in this Lease or any action or inaction by Landlord shall be deemed or construed to mean that Landlord has granted to Tenant any right, power or permission to do any act or make any agreement which may create, give rise to, or be the foundation for, any right, title, interest, lien, charge or other encumbrance other than this Lease upon the estate of Landlord in the Premises. In amplification and not in limitation of the foregoing, Tenant shall not permit any portion of the Premises to be used by any person or persons or by the public, as such, at any time or times during the term of this Lease, in such manner as might impair Landlord's title to or interest in the Premises or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse use, adverse possession, prescription, dedication, or other similar claims of, in, to or with respect to the Premises or any part thereof.

(b) Notwithstanding the provisions of this Section 33.05 to the contrary, Tenant shall have the right to create customary and ordinary utility easements which are reasonably required in connection with the construction of the Improvements, any Restoration or Capital Improvement or the operation of the Premises for the Permitted Uses; provided, that Tenant provides each such utility easement to Landlord for its prior written approval, which approval shall not be unreasonably withheld or delayed; and provided, further, that in no event shall Landlord be subject to any liability whatsoever under such utility easements, and Tenant shall indemnify, protect and hold harmless Landlord from any such liability. In addition, Landlord shall agree to cooperate with Tenant in the execution, acknowledgment and recordation of any restrictive declarations or easement agreements required by Governmental Authorities (including without limitation the New York City Planning Commission), including any documents subordinating this Lease to such restrictive declarations or easement agreements, provided, however, that (i) such restrictive declarations or easement agreements shall be in form and substance reasonably acceptable to Landlord, (ii) Landlord shall have no personal liability with respect to such restrictive declarations or easement agreements, (iii) no such restrictive declarations or easement agreements shall impair the value or operation of the Yards Parcel or any rights of the Yards Parcel Owner, and (iv) all costs (including reasonable attorneys' fees) for reviewing and/or executing and recording the same shall be at Tenant's sole cost and expense.

ARTICLE 34

EXCAVATIONS AND SHORING; STREET WIDENING; COORDINATION OF ROOF MECHANICAL EQUIPMENT

Section 34.01 Excavations and Shoring. If any excavation shall be made or contemplated to be made for construction or other purposes upon property adjacent to the Premises, Tenant shall either:

(a) afford to Landlord, or, at Landlord's option, to the person or persons causing or authorized to cause such excavation, the right to enter upon the Premises in a reasonable manner (and subject to the reasonable security requirements of Tenant and the occupants of the Premises) for the purpose of doing such work as may be necessary, without

expense to Landlord, to preserve any of the walls or structures of the Facility Airspace Improvements or ERY Roof Component from injury or damage and to support the same by proper foundations; provided, that (i) such work shall be done promptly, in a good and workmanlike manner and subject to all applicable Legal Requirements, (ii) Tenant shall have an opportunity to have its representatives present during all such work and (iii) Tenant shall be indemnified by such Person performing such excavation, as the case may be, against any injury or damage to the Improvements or persons or property therein which may result from any such work, but shall not have any claim against Landlord for suspension, diminution, abatement, offset or reduction of Rental payable by Tenant hereunder, or in connection with any injury or damage to the improvements or persons or property therein; or

(b) do or cause to be done all such work, without expense to Landlord, as may be necessary to preserve any of the walls or structures of the Improvements from injury or damage and to support the same by proper foundations; provided, that Tenant shall not, by reason of any such excavation or work, have any claim against Landlord for damages or for indemnity or for suspension, diminution, abatement, offset or reduction of Rental payable by Tenant hereunder, or in connection with any injury or damage to the Improvements or persons or property therein.

Section 34.02 Street Widening. If at any time during the term of this Lease any proceedings are instituted or orders made for the widening or other enlargement of any street contiguous to the Premises, which requires removal of any projection or encroachment on, under or above any such street, or any changes or alterations upon the Premises or in the sidewalks, grounds, parking facilities, plazas, areas, vaults, gutters, alleys, exit ways, curbs or appurtenances, Tenant, at Tenant's sole cost and expense, shall promptly comply with such requirements. In the event that Tenant shall fail to comply with any such proceedings or orders within thirty (30) days after Tenant's receipt of notice thereof, Landlord may perform the work necessary to cause compliance with the same, and the amount expended therefor, together with any interest, fines, penalties, reasonable architect's and attorneys' fees, or other expenses incurred by Landlord in effecting such compliance or by reason of the failure of Tenant so to comply, shall be payable by Tenant to Landlord on demand as Additional Rent. Tenant shall be permitted to contest in good faith any proceeding or order for street widening in accordance with Section 20.02.

ARTICLE 35

CERTIFICATES BY LANDLORD AND TENANT

Section 35.01 Tenant Estoppels. At any time, and from time to time, upon not less than twenty-one (21) days notice by Landlord, Tenant shall execute, acknowledge and deliver to Landlord and to any other party specified by Landlord a statement certifying: (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications), (b) the date to which each obligation constituting Rental has been paid, (c) stating whether or not any other amounts due and owing by Tenant to Landlord under any other Project Documents have been paid, (d) stating whether or not, to the best knowledge of Tenant, Landlord is in default in performance of any covenant, agreement or condition contained in this Lease or other Project Document, and, if

so, specifying each such default of which Tenant may have knowledge, (e) stating whether Substantial Completion of any Building or portion thereof has occurred, whether Substantial Completion and/or Final Completion of the ERY Roof Component (or an applicable Associated Portion of the LIRR Roof and Facilities) has occurred, and whether Substantial Completion of any other Facility Airspace Improvements has occurred, and (f) certifying as to any other matter with respect to this Lease as Landlord or such other addressee may reasonably request.

Section 35.02 Landlord Estoppels. At any time, and from time to time, upon not less than twenty-one (21) days notice by Tenant, Landlord shall execute, acknowledge and deliver to Tenant and to any other party specified by Tenant a statement certifying: (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications), (b) the date to which each obligation constituting Rental has been paid, (c) stating whether or not any other amounts due and owing by Tenant to Landlord under any other Project Documents have been paid, (d) stating whether or not, to the best knowledge of Landlord, Tenant is in default in performance of any covenant, agreement or condition contained in this Lease or other Project Document, and, if so, specifying each such default of which Landlord may have knowledge, (e) stating whether Substantial Completion of any Building has occurred, whether Substantial Completion of any other Facility Airspace Improvements has occurred, and whether Substantial Completion and/or Final Completion of the Associated Portion of the LIRR Roof and Facilities has occurred, and (f) certifying as to any other matter with respect to this Lease as Tenant or such other addressee may reasonably request.

ARTICLE 36

CONSENTS AND APPROVALS

Section 36.01 Consents to Be in Writing. All consents and approvals which may be given under this Lease shall, as a condition of their effectiveness, be in writing.

Section 36.02 Consent Not a Waiver. It is understood and agreed that the granting of any consent or approval by Landlord to Tenant to perform any act of Tenant requiring Landlord's consent or approval under the terms of this Lease, or the failure on the part of Landlord to object to any such action taken by Tenant without Landlord's consent or approval, shall not be deemed a waiver by Landlord of its right to require such consent or approval for any further similar act by Tenant, and Tenant hereby expressly covenants and warrants that as to all matters requiring Landlord's consent or approval under the terms of this Lease Tenant shall secure such consent or approval for each and every happening of the event requiring such consent or approval, and shall not claim any waiver on the part of Landlord of the requirement to secure such consent or approval.

Section 36.03 Consent Not to Be Unreasonably Delayed. Anywhere in this Lease where Landlord has agreed not unreasonably to withhold its consent, Landlord also agrees that its consent shall not be unreasonably delayed or conditioned.

Section 36.04 Landlord Not Liable for Money Damages. Whenever in this Lease Landlord's consent or approval is required and this Lease provides that Landlord's consent or

approval shall not be unreasonably withheld and Landlord shall refuse such consent or approval, or in any instance in which Landlord shall delay its consent or approval, Tenant shall in no event be entitled to make, nor shall Tenant make, any claim, and Tenant hereby waives any claim, for money damages (nor shall Tenant claim any money damages by way of set-off, counterclaim or defense) based upon any claim or assertion by Tenant that Landlord unreasonably withheld or unreasonably delayed its consent or approval. Tenant's sole remedy shall be an action or proceeding to enforce any such provision, for specific performance, injunction or declaratory judgment or for a determination in accordance with Section 40.01(a) and (b) as to whether Landlord reasonably withheld its consent.

Section 36.05 Landlord's Discretionary Consents. Notwithstanding anything to the contrary contained in this Lease, whenever in this Lease Landlord's consent or approval is required and this Lease does not provide that Landlord's consent or approval shall not be unreasonably withheld (or such consent or approval is subject to Landlord's reasonable discretion or words of like meaning), Landlord shall have the right to withhold such consent or approval in its sole and absolute discretion.

ARTICLE 37

SURRENDER AT END OF TERM

Section 37.01 Surrender at End of Term. On the Expiration Date of this Lease, or upon a re-entry by Landlord upon the Premises pursuant to the terms of Article 31, Tenant shall well and truly surrender and deliver up to Landlord the Premises in good order, condition and repair, reasonable wear and tear excepted, free and clear of all lettings, occupancies, liens and encumbrances other than those, if any, (a) existing as of the date hereof, (b) created, or consented to, by Landlord or (c) which lettings and occupancies by their express terms and conditions extend beyond the Expiration Date and which Landlord shall have consented and agreed, in writing, may extend beyond the Expiration Date without any payment or allowance whatever by Landlord. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises on any such Expiration Date or date of re-entry.

Section 37.02 Delivery of Premises Agreements. On the Expiration Date, or upon a re-entry by Landlord upon the Premises pursuant to Article 31, Tenant shall deliver to Landlord (a) fully-executed counterparts of all subleases in effect with respect to the Premises, and of any service and maintenance contracts then affecting the Premises, (b) true and complete maintenance records for the Premises in Tenant's possession or control, (c) all original licenses and permits then pertaining to the Premises, (d) permanent or temporary Certificates of Occupancy then in effect for each of the Improvements, (e) all warranties and guarantees then in effect which Tenant has received in connection with any work or services performed or Equipment installed at the Premises or in the Improvements and (f) all financial records, reports and books pertaining to the Premises, and any and all other documents of every kind and nature whatsoever relating to the Premises in Tenant's possession or control, together with duly executed assignments thereof to Landlord, where applicable.

Section 37.03 Abandonment of Property. Any personal property of Tenant or of any subtenant or other occupant of the Premises which shall remain on the Premises for thirty

(30) days after the termination of this Lease and after the removal of Tenant or such subtenant or other occupant from the Premises, may, at the option of Landlord, be deemed to have been abandoned by Tenant or such subtenant or other occupant and either may be retained by Landlord as its property or be disposed of, without accountability, in such manner as Landlord may see fit. Landlord shall not be responsible for any loss or damage occurring to any such property owned by Tenant or any subtenant or other occupant of the Premises.

Section 37.04 Survival. The provisions of this Article 37 shall survive any termination of this Lease.

ARTICLE 38

ENTIRE AGREEMENT

This Lease, together with the Exhibits hereto and with the other Project Documents, contains all the promises, agreements, conditions, inducements and understandings between Landlord and Tenant relative to the Premises and there are no promises, agreements, conditions, understandings, inducements, warranties, or representations, oral or written, expressed or implied, between them other than as herein or therein set forth and other than as may be expressly contained in any written agreement between the parties executed simultaneously herewith.

ARTICLE 39

QUIET ENJOYMENT

Landlord covenants that so long as this Lease is in full force and effect and Tenant is not in default beyond any applicable notice and grace period hereunder, Tenant shall and may (subject, however, to the exceptions, reservations, terms and conditions of this Lease) peaceably and quietly have, hold and enjoy the Premises for the term hereby granted without molestation or disturbance by or from Landlord or any Person claiming through Landlord and free of any encumbrance created or suffered by Landlord, except for (a) those encumbrances, liens or defects of title, created or suffered by Tenant and (b) the Permitted Exceptions. This covenant shall be construed as running with the ERY to and against subsequent owners and successors in interest and is not, nor shall it operate or be construed as, a personal covenant of Landlord, except to the extent of Landlord's interest in the Premises and only so long as such interest shall continue, and thereafter this covenant shall be binding upon such subsequent owners and successors in interest of Landlord's interest under this Lease, to the extent of their respective interests, as and when they shall acquire the same, and only so long as they shall retain such interest.

ARTICLE 40

DISPUTE RESOLUTION

Section 40.01 Dispute Resolution Procedures.

(a) In any cases where this Lease expressly provides for the settlement of a dispute in accordance with this Section 40.01(a), the parties shall attempt in good faith for a period of not less than thirty (30) days to resolve any dispute, and if such dispute remains unresolved despite such efforts, Tenant shall have the right to refer such dispute to the President (or a similar official) of Landlord. If such dispute remains unresolved for an additional period of not less than twenty-one (21) days, despite good-faith efforts by Tenant to resolve the same through discussions with the President (or a similar official) of Landlord, then the parties shall have the right to pursue all available legal and equitable remedies (unless such dispute is an Arbitrable Claim, in which case the same shall be resolved in accordance with Section 40.01(b)).

(b) In any cases concerning a dispute of a Financial Matter or where this Lease expressly provides for the settlement of any other dispute in accordance with Section 40.01(a) and this Section 40.01(b) ("Arbitrable Claims"), and Landlord and Tenant are unable to negotiate a resolution to such Arbitrable Claim as set forth in Section 40.01(a), either party may submit such Arbitrable Claim to binding arbitration by giving written notice thereof to the other party and to the Arbitrator. The following provisions shall apply to any such arbitration:

(i) The arbitration shall be administered and conducted by a neutral Person in New York, New York, mutually agreed to by Landlord and Tenant from time to time (the "Arbitrator"). The Arbitrator shall have not less than ten (10) years' experience in the subject area of the Arbitrable Claim, and shall not have been employed by, or engaged in a professional capacity (other than as an arbitrator) for either of Landlord or Tenant. In the event that Landlord and Tenant cannot agree within fifteen (15) days on the identity of the Arbitrator, either party may apply to the Supreme Court, New York County, for the appointment of an Arbitrator, provided however, that if an arbitrator has been appointed and is still serving in such capacity under any Project Document for the resolution of a dispute between Landlord and Tenant concerning the same or any similar issue, such arbitrator shall serve as Arbitrator hereunder. The Arbitrator shall, once so selected, serve as Arbitrator for all disputes hereunder in the subject matter of the Arbitrable Claim until the earlier of (x) the fifth (5^{th}) anniversary of the date hereof and (y) any death, incapacity, resignation or removal (by mutual agreement of Landlord and Tenant) of the Arbitrator. Landlord and Tenant (acting reasonably and in good faith) shall from time to time thereafter select a successor Arbitrator, who may or may not have previously served as the Arbitrator, through the procedures set forth above. The fees and expenses of the Arbitrator in connection with the arbitration shall be borne fifty percent (50%) by Landlord and fifty percent (50%) by Tenant.

(ii) Within fifteen (15) Business Days after the delivery of an arbitration notice in accordance with the foregoing provisions of this Section 40.01(b), each party shall submit to the Arbitrator a single proposed settlement of the dispute (which settlement shall not be inconsistent with this Lease), together with such written explanation or evidence

relating thereto as such party deems appropriate. After making its submission, a party may not make any additions to or deletions from, or otherwise change, the same. If either party fails to make a submission within such fifteen (15) Business Day period, TIME BEING OF THE ESSENCE WITH RESPECT THERETO, such party shall be deemed to have irrevocably waived its right to make any submission.

(iii) Within five (5) Business Days after the earlier of (x) the receipt by the Arbitrator of submissions from both parties in accordance with clause (ii) of this Section 40.01(b) or (y) the end of the fifteen (15) Business Day period described in such clause, the Arbitrator shall select the settlement proposed in one of such submissions, in its entirety and without any modification thereto, and shall render a determination to such effect in a signed and acknowledged written instrument, originals of which shall be sent simultaneously to the parties. Such determination shall be conclusive, final and binding on the parties, shall constitute an "award" by the Arbitrator for the purposes of applicable law, and judgment may be entered thereon in any court of competent jurisdiction.

(iv) It is expressly understood and agreed that the pendency of a dispute hereunder shall at no time and in no respect constitute a basis for either party not to comply, or otherwise fully perform in accordance with, this Lease.

(v) If either party protests the determination of the Arbitrator, such party may commence a lawsuit in the New York Supreme Court for New York County under Article 75 or Article 78 of the New York Civil Practice Law and Rules, as applicable, it being understood that the review of the Court shall be limited to the question of whether or not the Arbitrator's determination is arbitrary, capricious or without a rational basis. No evidence or information about the matter in dispute shall be introduced or relied upon in any such actions or proceedings that has not been submitted to the Arbitrator in accordance with clause (ii) of this Section 40.01(b).

ARTICLE 41

INVALIDITY OF CERTAIN PROVISIONS

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

ARTICLE 42

RECORDING OF MEMORANDUM

The parties hereto agree that this Lease shall not be recorded. Notwithstanding the foregoing, simultaneously with the execution of this Lease, the parties have executed: (a) a memorandum of this Lease substantially in the form of Exhibit M attached hereto which may be recorded by either party; and (b) to be held in escrow by Landlord, a recordable memorandum of

termination of this Lease in the form of Exhibit N attached hereto and all transfer tax forms required to be filed in connection with a termination of this Lease; provided that such memorandum of termination of Lease may not be recorded prior to the expiration of any applicable notice and cure rights of any Leasehold Mortgagee or Mezzanine Lender relating to such termination. In the event of a termination of this Lease, Landlord shall have the right, without prior notice to or the consent of Tenant, (i) to cause to be recorded such memorandum of termination and (ii) to file any such transfer tax forms as are required in connection therewith. Tenant hereby appoints Landlord as its attorney-in-fact to execute such a termination statement on its behalf. This appointment shall be deemed to be coupled with an interest and irrevocable. Notwithstanding the foregoing, in the event Tenant brings a legal action against Landlord in a court of competent jurisdiction seeking to enjoin Landlord's termination of this Lease, Landlord shall not record such memorandum of termination until a final non-appealable judgment upholding such termination has been entered in such legal action. Supplementing the other liabilities and indemnities of Tenant to Landlord under this Lease, and notwithstanding any other provision of this Lease (including, without limitation, any provision purporting to create a sole and exclusive remedy for the benefit of Landlord), agrees to indemnify and hold Landlord harmless from and against any and all losses, costs, damages, liens, claims, counterclaims, liabilities or expenses (including, but not limited to, attorneys' fees, court costs and disbursements) incurred by Landlord arising from or by reason of the recording of this Lease, or any notice of pendency (unless Tenant prevails in a final non-appealable order against Landlord in the action underlying such notice of pendency). The provisions of this Article 42 shall survive any Fee Conversion Closing or any early termination of this Lease.

ARTICLE 43

MISCELLANEOUS

Section 43.01 Captions. The captions of this Lease are for convenience of reference only and in no way define, limit or describe the scope or intent of this Lease or in any way affect this Lease.

Section 43.02 Table of Contents. The Table of Contents is for the purpose of convenience of reference only and is not to be deemed or construed in any way as part of this Lease or as supplemental thereto or amendatory thereof.

Section 43.03 Pronouns. The use herein of the neuter pronoun in any reference to Landlord or Tenant shall be deemed to include any individual Landlord or Tenant, and the use herein of the words "successors and assigns" or "successors or assigns" of Landlord or Tenant shall be deemed to include the heirs, legal representatives and assigns of any individual Landlord or Tenant.

Section 43.04 Depository Charges. Any Depository may pay to itself out of the monies held by such Depository pursuant to this Lease its reasonable charges for services rendered hereunder. Tenant shall pay to such Depository any additional charges for such Depository's services.

Section 43.05 More than One Person. If more than one Person is named as or becomes Tenant hereunder, Landlord may require the signatures of all such Persons in connection with any notice to be given or action to be taken by Tenant hereunder except to the extent that any such Person shall designate another such Person as its attorney-in-fact to act on its behalf, which designation shall be effective until receipt by Landlord of notice of its revocation. Subject to Section 43.06, each Person named as Tenant shall be fully, and jointly and severally, liable for all of Tenant's obligations hereunder. Any notice by Landlord to any Person named as Tenant shall be sufficient and shall have the same force and effect as though given to all parties named as Tenant. If all such parties designate in writing one Person to receive copies of all notices, Landlord agrees to send copies of all notices to that Person.

Section 43.06 Limitation of Liability.

(a) The liability of Landlord or of any other Person who has at any time acted as Landlord hereunder for damages or otherwise shall be limited to Landlord's interest in the Premises, including, without limitation, the rents and profits therefrom, the proceeds of any insurance policies covering or relating to the Premises, any awards payable in connection with any condemnation of the Premises or any part thereof, and any other rights, privileges, licenses, franchises, claims, causes of action or other interests, sums or receivables appurtenant to the Premises. Neither Landlord nor any such Person nor any of the members, managers, trustees, directors, officers, employees, agents or servants of Landlord or any such Person shall have any liability (personal or otherwise) hereunder beyond Landlord's interest in the Premises, and no other property or assets of Landlord or any such Person or any of the members, managers, trustees, directors, officers, employees, agents or servants of either shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies hereunder.

(b) The liability of Tenant, or of any Person who has at any time acted as Tenant hereunder, for damages or otherwise shall be limited to Tenant's interest in the Premises, including, without limitation, the rents and profits therefrom, the proceeds of any insurance policies covering or relating to the Premises, any awards payable in connection with any condemnation of the Premises or any part thereof, any funds held by a Depository pursuant to any of the provisions of this Lease, and any other rights, privileges, licenses, franchises, claims, causes of action or other interests, sums or receivables appurtenant to the Premises. Neither Tenant nor any such Person nor any of the members, managers, trustees, directors, officers, employees, agents or servants or either shall have any liability (personal or otherwise) hereunder beyond Tenant's interest in the Premises, and no other property or assets of Tenant or any such Person or any of the members, managers, trustees, directors, officers, employees, agents or servants of either shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies hereunder. Nothing herein shall be construed as limiting or affecting the liability or obligation of [●] Guarantor under the Building Completion Guaranty; such liability and obligations being governed in all respects by the terms of the Building Completion Guaranty.

Section 43.07 No Merger. Except as otherwise expressly provided in this Lease, there shall be no merger of this Lease or the leasehold estate created hereby with the fee estate in the Premises or any part thereof by reason of the same Person acquiring or holding, directly or

indirectly, this Lease or the leasehold estate created hereby or any interest in this Lease or in such leasehold estate as well as the fee estate in the Premises.

Section 43.08 No Brokers. Each of the parties warrants and represents to the other party that neither it nor any affiliate has dealt with any broker, finder or like entity or agent in connection with this Lease transaction or the transactions contemplated hereby, or on account of introducing the parties, the preparation or submission of brochures, the negotiation or execution of this Lease or the execution of the transactions contemplated hereby. If any claim is made by any Person who shall claim to have acted or dealt with Tenant or Landlord in connection with this transaction, the party through which such broker is claiming such entitlement shall pay the brokerage commission, fee or other compensation to which such Person is entitled, shall indemnify and hold harmless the other party against any claim asserted by such Person for any such brokerage commission, fee or other compensation and shall reimburse such other party for any costs or expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred in defending itself against claims made against it for any such brokerage commission, fee or other compensation.

Section 43.09 Amendments in Writing. This Lease may not be changed, modified or terminated orally, but only by a written instrument of change, modification or termination executed and delivered by each of Landlord and Tenant.

Section 43.10 Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of New York.

Section 43.11 Successors and Assigns. The agreements, terms, covenants and conditions herein shall be binding upon, and shall inure to the benefit of, Landlord and Tenant and their respective successors and (except as otherwise provided herein) assigns.

Section 43.12 Sections. Except as otherwise specified herein, all references in this Lease to "Articles" or "Sections" shall refer to the designated Article(s) or Section(s), as the case may be, of this Lease.

Section 43.13 Plans and Specifications. All of Tenant's right, title and interest in all plans and drawings required to be furnished by Tenant to Landlord under this Lease and in any and all other plans, drawings, specifications or models prepared in connection with the construction of the Improvements, any Restoration or Capital Improvement, or any other construction at the Premises shall become the sole and absolute property of Landlord upon the Expiration Date, subject to the rights of the architects and engineers that prepared the same. Tenant shall deliver all such documents to Landlord promptly upon the Expiration Date. Tenant's obligation under this Section 43.13 shall survive the expiration or termination of this Lease.

Section 43.14 Licensed Professionals. All references in this Lease to "licensed professional engineer," "licensed surveyor" or "registered architect" shall mean a professional engineer, surveyor or architect who is licensed or registered, as the case may be, by the State of New York.

Section 43.15 Amendments to ERY Declaration of Easements. Landlord shall not enter into or cause to be entered into any amendment or supplement to the ERY Declaration of Easements, which (a) increases, materially alters or otherwise materially affects Tenant's rights or obligations under this Lease or the ERY Declaration of Easements, (b) further limits the permitted uses of the Premises, (c) limits Tenant's rights under this Lease to dispose of, or assign its interest in, the Premises or (d) decreases or alters the rights of a Leasehold Mortgagee, unless the same is consented to by Tenant (and, in the case of (d), by such Leasehold Mortgagee) or is made subject and subordinate to this Lease and to the rights of such Leasehold Mortgagee. In the event Landlord shall enter into or cause to be entered into an amendment or supplement to the ERY Declaration of Easements which is not in conformity with this Section 43.15, Tenant shall not be obligated to comply with the provisions of such amendment or supplement which do not so conform and the same shall have no force or effect with respect to Tenant or any Leasehold Mortgagee.

Section 43.16 No Joint Venture. Nothing herein is intended nor shall be deemed to create a joint venture or partnership between Landlord and Tenant, nor to make Landlord in any way responsible for the debts or losses of Tenant.

Section 43.17 Tax Benefits. To the extent permitted by law, notwithstanding that Landlord shall own the Premises and the Improvements, Tenant shall have the right to all depreciation deductions, investment tax credits and other similar tax benefits attributable to any construction, demolition and Restoration performed by Tenant or attributable to the ownership of the Improvements. Landlord, from time to time, shall execute and deliver such instruments as Tenant shall reasonably request in order to effect the provisions of this Section 43.17, and Tenant shall pay Landlord's reasonable costs and expenses thereof. Landlord makes no representations as to the availability of any such deductions, credits or tax benefits.

Section 43.18 Submission Not an Offer. Submission of this Lease by Landlord to Tenant does not constitute an offer by Landlord to lease the Premises upon the terms hereof, and in no event will Landlord be bound hereunder except until the closing occurs under the ERY Agreement to Enter Into Lease.

Section 43.19 Construction. This Lease shall be construed without regard to any presumption or other rule requiring construction against the party causing this Lease to be drafted. In the event of any action, suit, arbitration, dispute or proceeding affecting the terms of this Lease, no weight shall be given to any deletions or striking out of any of the terms of this Lease contained in any draft of this Lease and no such deletion or strike out shall be entered into evidence in any such action, suit, arbitration, dispute or proceeding nor given any weight therein.

Section 43.20 Separate Obligations. Whenever it is provided in this Lease that Tenant shall take certain actions, fulfill certain obligations or incur certain liabilities, Landlord acknowledges and agrees that, without limiting Section 7.01, (a) Tenant's obligations and liabilities shall be limited to those obligations and liabilities arising on the Premises and shall not extend to any other Severed Parcel (or Severed Subparcel not demised under this Lease) or the WRY; and (b) each other Severed Parcel Tenant's obligations and liabilities shall be limited to those obligations and liabilities arising on the Severed Parcel demised thereby and shall not extend to any other portion of the ERY or WRY. Tenant shall have no liability for any acts or

omissions by any other Severed Parcel Tenant or the tenant under the WRY Lease (or any lease demising a portion of the WRY) with respect to any portion of the WSY that is not demised by this Lease. Conversely, none of the tenant under the WRY Lease (nor any lease demising a portion of the WRY), or any other Severed Parcel Tenant shall be liable for any acts or omissions by Tenant or arising from the Premises (as adjusted following a Subparcel Severance). Accordingly, the obligation of Tenant hereunder is several and not joint with any other tenant under any lease other than this Lease.

Section 43.21 Further Assurances. Each party shall execute and deliver such further documents, and perform such further acts, as may be reasonably necessary to achieve the parties' intent in entering into this Lease.

ARTICLE 44

CONFIDENTIALITY; PUBLICITY

Section 44.01 Tenant's Confidentiality Obligations. This Lease and all terms set forth herein (and the other Project Documents and all terms set forth therein) and all information relating to the ERY and the ERY Project supplied by Landlord or LIRR (pursuant to the RFP or otherwise) shall be kept strictly confidential by Tenant except to the extent such information is available in the public domain (unless Tenant has caused confidential information to enter the public domain in breach of this Section 44.01) or as otherwise required by law or agreed to by Landlord, provided that Tenant may share such information as it deems pertinent with prospective lenders, investors, counsel, consultants, accountants and employees but shall require that they shall maintain similar confidentiality and shall be responsible for any breach of the terms of this confidentiality requirement by such parties.

Section 44.02 Landlord's Confidentiality Obligations. Landlord acknowledges that Tenant has provided and will be hereafter providing confidential information, including trade secrets and proprietary information, the disclosure of which may be harmful to Tenant's competitive position. Accordingly, Landlord agrees that, if disclosure requests are received by Landlord pursuant to the Freedom of Information Law or any judicial or legislative subpoena, requesting any financial information concerning Tenant or its principals, or any trade secret or proprietary information provided to Landlord or the Yards Parcel Operator by Tenant, Landlord shall give Tenant prior notice and the opportunity to object to such Freedom of Information Law request or subpoena (it being understood and agreed that Landlord and the Yards Parcel Operator shall have the right to make disclosures believed in good faith to be required under the Freedom of Information Law or other applicable law notwithstanding any objection of Tenant). Tenant understands and acknowledges that Landlord is a public authority of the State of New York and is subject to review and oversight by legislative and other regulatory bodies, and that Landlord and the Yards Parcel Operator are required by law and may be compelled or requested by such oversight bodies to make public disclosure of information regarding the ERY Project and the terms of the disposition of the Premises, and shall be fully entitled to do so without objection from Tenant, except in the limited circumstances described in this Section 44.02.

Section 44.03 Press Releases. Except as may be required by applicable Legal Requirements, no press release, publicity notice or announcement, regarding or in any way

directly or indirectly referring to, any of the terms or provisions of this Lease or any other Project Document, or the transactions contemplated hereby or thereby, shall be made or caused to be made by Tenant or any Affiliate of Tenant without the prior consent of Landlord, which consent may be granted or denied in Landlord's sole and absolute discretion. Tenant shall furnish to Landlord advance copies of any press release, publicity notice or announcement which it desires to make public with respect to this Lease and/or the transactions contemplated hereby. Notwithstanding the foregoing, Landlord may, in response to inquiries from the press, confirm the fact that Tenant has entered into a ground lease of a portion of the ERY; provided, however, whether or not in response to any such inquiry, Tenant shall not disclose or confirm any of the terms or provisions of this Lease or any other Project Document.

ARTICLE 45

MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES

Tenant acknowledges that it is the policy of Landlord that minority and women-owned business enterprises ("M/WBEs") shall have significant opportunity to participate in the performance of the ERY Project. Tenant hereby agrees to undertake to achieve meaningful participation of M/WBEs in the development and construction of the ERY Severed Parcel Project on the Premises to the maximum extent practicable.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

LANDLORD:

METROPOLITAN TRANSPORTATION AUTHORITY

By:_____
Name:
Title:

TENANT:

ERY TENANT LLC

By:_____
Name:
Title:

EXHIBIT A-1
LEGAL DESCRIPTION OF THE ERY

As such parcel is described in the ERY Declaration of Easements.

EXHIBIT A-2
LEGAL DESCRIPTION OF THE PREMISES

1.

EXHIBIT A-3
LEGAL DESCRIPTION OF THE YARDS PARCEL

As such parcel is described in the ERY Declaration of Easements.

EXHIBIT B
PERMITTED EXCEPTIONS

1. Rights of tenants, as tenants only, with no options to purchase or rights of first refusal.

2. Declaration of Easements (Eastern Rail Yard Section of the John D. Caemmerer West Side Yard) made by Metropolitan Transportation Authority, and consented to by The Long Island Rail Road Company, dated as of 5/26/10 and recorded in the Register's Office on 6/10/10 as CRFN 2010000194078.

    a. First Amendment to Declaration of Easements (Eastern Rail Yard Section of the John D. Caemmerer West Side Yard) made by Metropolitan Transportation Authority, and consented to by The Long Island Rail Road Company dated as of 4/10/13 and recorded in the Register's Office on 7/12/13 as CRFN 2013000276090.

    b. Notice of Cultural Facility Agreement and Change of Cultural Facility Area by and between Metropolitan Transportation Authority and ERY CS Parcel LLC, and consented to by The Long Island Rail Road Company, dated as of 12/30/13 and recorded in the Register's Office on 1/15/14 as CRFN 2014000018895.

    c. Supplement to Declaration of Easements (Eastern Rail Yard Section of the John D. Caemmerer West Side Yard) by and between Metropolitan Transportation Authority and ERY Tenant LLC, and consented to by The Long Island Rail Road Company, dated as of 11/16/15 and recorded in the Register's Office on 11/18/15 as CRFN 2015000410387.

3. Amended and Restated Declaration Establishing the ERY Facility Airspace Parcel Owners' Association and of Covenants, Conditions, Easements and Restrictions Relating to the Premises known as the Eastern Rail Yard Section of the John D. Caemmerer West Side Yard made by Metropolitan Transportation Authority, dated as of 12/7/15 and recorded in the Register's Office on 12/8/15 as CRFN 2015000434131.

4. Restrictive Declaration for the Eastern Rail Yard made by ERY Tenant LLC and Legacy Yards Tenant LLC, dated as of 4/10/13 and recorded in the Register's Office on 7/12/13 as CRFN 2013000276101.

    a. Waiver of Execution of Restrictive Declarations and Subordination of Mortgages made by Starwood Property Mortgage, L.L.C., dated as of 4/10/13 and recorded in the Register's Office on 7/12/13 as CRFN 2013000276103.

    b. Waiver of Execution of Restrictive Declarations and Subordination of Mortgage made by New York City Industrial Development Agency, dated as of 4/10/13 and recorded in the Register's Office on 7/12/13 as CRFN 2013000276104.

c. Waiver of Execution of Restrictive Declarations and Subordination of Mortgage made by Hudson Yards Infrastructure Corporation, dated as of 4/10/13 and recorded in the Register's Office on 7/12/13 as CRFN 2013000276105.

d. Consent to Execution of Restrictive Declaration and Agreement to Subordinate Future Fee Encumbrances made by Metropolitan Transportation Authority, dated as of 4/10/13 and recorded in the Register's Office on 7/12/13 as CRFN 2013000276106.

5. Restrictive Declaration (Zoning Resolution Section 93-70 Certification) made by ERY Tenant LLC and Legacy Yards Tenant LLC, dated as of 4/10/13 and recorded in the Register's Office on 7/12/13 as CRFN 2013000276102.

a. Waiver of Execution of Restrictive Declarations and Subordination of Mortgages made by Starwood Property Mortgage, L.L.C., dated as of 4/10/13 and recorded in the Register's Office on 7/12/13 as CRFN 2013000276103.

b. Waiver of Execution of Restrictive Declarations and Subordination of Mortgage made by New York City Industrial Development Agency, dated as of 4/10/13 and recorded in the Register's Office on 7/12/13 as CRFN 2013000276104.

c. Waiver of Execution of Restrictive Declarations and Subordination of Mortgage made by Hudson Yards Infrastructure Corporation, dated as of 4/10/13 and recorded in the Register's Office on 7/12/13 as CRFN 2013000276105.

d. Consent to Execution of Restrictive Declaration and Agreement to Subordinate Future Fee Encumbrances made by Metropolitan Transportation Authority, dated as of 4/10/13 and recorded in the Register's Office on 7/12/13 as CRFN 2013000276106.

e. First Amendment to Restrictive Declaration (Zoning Resolution 93-70 Certification) made by ERY Tenant LLC, Legacy Yards Tenant LLC and ERY CS Parcel LLC, dated as of 3/17/15 and recorded in the Register's Office on 3/25/15 as CRFN 2015000100759.

f. Second Amendment to Restrictive Declaration (Zoning Resolution 93-70 Certification) made by ERY Tenant LLC, Legacy Yards Tenant LLC and ERY CS Parcel LLC, dated as of 3/27/15 and recorded in the Register's Office on 4/2/15 as CRFN 2015000110565.

g. Third Amendment to Restrictive Declaration (Zoning Resolution 93-70 Certification) made by ERY Tenant LLC, Legacy Yards Tenant LLC, ERY CS Parcel LLC, ERY South Residential Tower LLC, ERY Retail Podium LLC and Hudson Yards North Tower Tenant LLC, dated as of 3/18/16 and recorded in the Register's Office on 4/06/16 as CRFN 2016000120423

6. Declaration of Zoning Lot Restrictions (Eastern Rail Yard Section of the John D. Caemmerer West Side Yard) made by Metropolitan Transportation Authority, dated as of 3/27/13 and recorded in the Register's Office on 4/4/13 as CRFN 2013000136155.

7. Zoning Lot Development Agreement (Eastern Rail Yard Section of the John D. Caemmerer West Side Yard) made by Metropolitan Transportation Authority, dated as of 4/10/13 and recorded in the Register's Office on 7/12/13 as CRFN 2013000276092.

   a. Waiver of Right to Execute Zoning Lot Development Agreement and Subordination of Interest made by New York City Industrial Development Agency, dated as of 4/10/13 and recorded in the Register's Office on 7/12/13 as CRFN 2013000276095.

   b. Waiver of Right to Execute Zoning Lot Development Agreement and Subordination of Interest made by Hudson Yards Infrastructure Corporation, dated as of 4/10/13 and recorded in the Register's Office on 7/12/13 as CRFN 2013000276094.

   c. Waiver of Right to Execute Zoning Lot Development Agreement and Subordination of Interest made by Starwood Property Mortgage, L.L.C., dated as of 4/10/13 and recorded in the Register's Office on 7/12/13 as CRFN 2013000276093.

   d. Supplemental ZLDA No. 1 (Tower A/Retail) made by Metropolitan Transportation Authority, and consented to by ERY Tenant LLC, dated as of 3/17/14 and recorded in the Register's Office on 4/8/14 as CRFN 2014000117749.

   e. Supplemental ZLDA No. 2 (Tower D) made by Metropolitan Transportation Authority, and consented to by ERY Tenant LLC and ERY South Residential Tower LLC, dated as of 11/23/15 and recorded in the Register's Office on 12/3/15 as CRFN 2015000428829.

   f. Supplemental ZLDA No. 3 (Tower A, Retail and Pavilion) made by Metropolitan Transportation Authority, and consented to by ERY Tenant LLC, dated as of dated as of 12/11/15 and recorded in the Register's Office on 1/8/16 as CRFN 2016000007891.

   g. Supplemental ZLDA No. 4 made by Metropolitan Transportation Authority, and consented to by ERY Tenant LLC, Hudson Yards North Tower Tenant LLC, ERY Retail Podium LLC, Legacy Yards Tenant LLC and ERY South Residential Tower LLC, to be submitted for recording in the Register's Office.

   h. Supplemental ZLDA No. 5 (Tower E) made by Metropolitan Transportation Authority, and consented to by ERY Tenant LLC, to be submitted for recording in the Register's Office.

8. The following Water Grants may affect the property:

Liber 578 cp 548, Liber 511 cp 6, Liber 623 cp 176, Liber 90 cp 532, Liber 400 cp 116, as confirmed in Liber 495 cp 311, Liber 546 cp 605 and Liber 551 cp 1; and

Release of Covenants by and between The City of New York and Triborough Bridge and Tunnel Authority, dated as of 5/13/83 and recorded in the Register's Office on 5/23/83 in Reel 688 page 1317, releasing certain street maintenance covenants and perpetual rent covenants contained in Liber 90 cp 532, Liber 495 cp 311, Liber 546 cp 605 and Liber 551 cp 1.

a. .

EXHIBIT C
ILLUSTRATED OPTION PRICE CALCULATION

(see attached)

EXHIBIT D
FORM OF CONDOMINIUM DECLARATION

(see attached)

EXHIBIT E
INTENTIONALLY OMITTED

EXHIBIT F
INTENTIONALLY OMITTED

EXHIBIT G
INTENTIONALLY OMITTED

EXHIBIT H
PILOST AGREEMENT

(see attached)

EXHIBIT I
INTENTIONALLY OMITTED

EXHIBIT J
INTENTIONALLY OMITTED

EXHIBIT K
INTENTIONALLY OMITTED

EXHIBIT L-1
FORM OF SPONSOR GUARANTY

(see attached)

EXHIBIT L-2
FORM OF BUILDING COMPLETION GUARANTY

(see attached)

EXHIBIT M
MEMORANDUM OF LEASE

(see attached)

EXHIBIT N
TERMINATION OF MEMORANDUM OF LEASE

(see attached)

EXHIBIT O-1
BARGAIN AND SALE DEED WITHOUT COVENANT AGAINST GRANTOR'S ACTS

(Follows immediately)

BARGAIN AND SALE DEED WITHOUT COVENANT AGAINST GRANTOR'S ACTS

THIS INDENTURE, made as of this ____ day of _____, 2____.

BETWEEN METROPOLITAN TRANSPORTATION AUTHORITY, a body corporate and politic constituting a public benefit corporation of the State of New York, having an office at 2 Broadway, New York, New York 10004, party of the first part, and [_____], a [_____], with offices at [_____], party of the second part,

WITNESSETH, that the party of the first part, in consideration of ten dollars ($10.00) and other valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second party forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the County of New York, City and State of New York, and more particularly described on **Exhibit A** attached hereto (the "**Severed Parcel**") and hereby made part hereof.

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described Severed Parcel to the center lines thereof;

TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said Severed Parcel;

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

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose. The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

[SIGNATURES ON FOLLOWING PAGE]

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

In Presence of: **METROPOLITAN TRANSPORTATION AUTHORITY**

By:_____
Name:
Title:

By:

Name: Title:

Exhibit A

Premises

EXHIBIT O-2
CONDOMINIUM UNIT DEED

(Follows immediately)

CONDOMINIUM UNIT DEED

TITLE No.:

METROPOLITAN TRANSPORTATION AUTHORITY

GRANTOR

TO

_____

GRANTEE

[_____] Unit [____]
Tower [____] Condominium
BLOCK: [_____]
LOT: [_____]
CITY: New York
COUNTY: New York

RECORD AND RETURN TO:

Fried, Frank, Harris, Shriver & Jacobson LLP
One New York Plaza
New York, New York 10004
Attention:

[INSERT NAME OF CONDOMINIUM]
UNIT DEED

This **INDENTURE**, made the _____ day of _____, 201__, by and between METROPOLITAN TRANSPORTATION AUTHORITY, a body corporate and politic constituting a public benefit corporation of the State of New York ("**Grantor**"), having an office at 2 Broadway, New York, New York 10004 and [_____], a Delaware limited liability company (the "**Grantee**") having an office at c/o [_____].

W I T N E S S E T H :

That the Grantor, in consideration of Ten Dollars ($10.00) and other good and valuable consideration paid by the Grantee, does hereby grant and release unto the Grantee, and the heirs or successors and assigns of the Grantee, forever:

The condominium unit known as [_____] Unit [_____] (the "**Unit**") in the condominium known as Tower [___] Condominium in the building known as and by the street number, [____ Avenue], New York, New York, Borough of Manhattan, City, County and State of New York (the "**Building**") , such Unit being designated and described as the [_____] Unit in a certain declaration dated as of _____, 201_ made by the Grantor pursuant to Article 9-B of the Real Property Law of the State of New York, as amended (the "**Condominium Act**"), establishing a plan for condominium ownership of the Building and the land upon which the Building is situate as more particularly described on Schedule A annexed hereto and made a part hereof (the "**Land**"), which declaration was recorded in the New York County Office of the Register of the City of New York on the day ____ of _____, 201_, as City Register File No. _____ (together with all amendments thereto, collectively, the "**Declaration**"). The Building and the Land are referred to herein as the "**Property**." This Unit is also designated as Tax Lot ____ in Block [___] of the Borough of Manhattan on the Tax Map of the Real Property Assessment Department of the City of New York and on the Floor Plans of the Building, certified by [*INSERT NAME*], on the ____ day of _____, 201_, and filed with the Real Property Assessment Department of the City of New York on the ____ day of _____, 201_, as Condominium Plan No. _____ and also filed in the New York County Office of the Register of the City of New York on the ____ day of _____, 201_, as City Register File No. _____.

TOGETHER with an undivided ____% interest in the Common Elements (as such term is defined in the Declaration);

TOGETHER with the appurtenances and all the estate and rights of the Grantor in and to the Unit;

TOGETHER with and subject to the rights, obligations, easements, restrictions and other provisions of the Declaration and of the By-Laws (including the Rules and Regulations) (as such terms are defined in the Declaration) of Tower [____] Condominium, as such Declaration and By-Laws may be amended from time to time by instruments recorded in the New York

County Office of the Register of the City of New York, all of which rights, obligations, easements, restrictions and other provisions, shall constitute covenants running with the land and shall bind any and all persons having at any time any interest or estate in the Unit, as though recited and stipulated at length herein;

TO HAVE AND TO HOLD THE SAME UNTO the Grantee, and the heirs or successors and assigns of the Grantee, forever.

If any provision of the Declaration or the By-Laws is invalid under, or would cause the Declaration or the By-Laws to be insufficient to submit the Property to the provisions of the Condominium Act, or if any provision that is necessary to cause the Declaration and the By-Laws to be sufficient to submit the Property to the provisions of the Condominium Act is missing from the Declaration or the By-Laws, or if the Declaration and the By-Laws are insufficient to submit the Property to the provisions of the Condominium Act, the applicable provisions of Article [ ] of the Declaration will control.

Except as otherwise permitted by the provisions of the Declaration and the By-Laws, the Unit is intended for [_____] use.

The Grantor, in compliance with Section 13 of the Lien Law of the State of New York, covenants that the Grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund for the purpose of paying the cost of the improvements at the Property and will apply such consideration first to the payment of the cost of such improvements before using any part thereof for any other purposes.

The Grantee, by accepting delivery of this deed, accepts and ratifies the provisions of the Declaration and the By-Laws of Tower [____] Condominium recorded simultaneously with and as part of the Declaration (including, without limitation, the exculpation and indemnity of Grantor set forth therein) and agrees to comply with all the terms and provisions thereof by instruments recorded in the Register's Office of the City and County of New York and adopted in accordance with the provisions of said Declaration and By-Laws.

This conveyance is made in the regular course of business actually conducted by the Grantor.

The term "**Grantee**" shall be read as "**Grantees**" whenever the sense of this indenture so requires.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, this Memorandum has been duly executed by the parties hereto as of the day and year first above written.

GRANTOR:

METROPOLITAN TRANSPORTATION AUTHORITY

By:_____
Name:
Title:

GRANTEE:

[_____]

By:_____
Name:
Title:

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

On the ____ day of_____ in the year 20__, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____

Signature and Office of individual taking acknowledgment

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

On the ____ day of _____ in the year 20__, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____

Signature and Office of individual taking acknowledgment

SCHEDULE A

Description of Unit and Land

The condominium unit known as the [_____] Unit (the "**Unit**") in the condominium known as [_____] in the building known as and by the street number, [_____], New York, New York, Borough of Manhattan, City, County and State of New York (the "**Building**") , such Unit being designated and described as the [_____] Unit in a certain declaration dated as of _____, 201_ made by the Grantor pursuant to Article 9-B of the Real Property Law of the State of New York, as amended, establishing a plan for condominium ownership of the Building and the land upon which the Building is situate as more particularly described below (the "**Land**"), which declaration was recorded in the New York County Office of the Register of the City of New York, on the ____ day of _____, 201_, as City Register File No. _____. This Unit is also designated as Tax Lot ____ in Block ____ of the Borough of Manhattan on the Tax Map of the Real Property Assessment Department of the City of New York and on the Floor Plans of the Building, certified by [*INSERT NAME*], on the ____ day of [_____], 201_, and filed with the Real Property Assessment Department of the City of New York on the ____ day of [_____], 201_, as Condominium Plan No. _____ and also filed in the New York County Office of the Register of the City of New York on the ____ day of _____, 201_, as City Register File No. _____.

TOGETHER with an undivided ____% interest in the Common Elements (as such term is defined in the Declaration).

The Land upon which the Building containing the Unit is erected is described as follows:

ALL THAT CERTAIN plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

[INSERT LEGAL DESCRIPTION OF BUILDING]

EXHIBIT P
SEVERED PARCEL PRO FORMA RENT SCHEDULE

(see attached)

EXHIBIT Q
ERY SEVERED PARCEL PROJECT REQUIREMENTS

- Construction of Building of approximately 884,910 square feet of Floor Area containing any uses permitted under the Zoning Resolution of the City of New York, as amended. Such amount of Floor Area may be adjusted upwards (up no more than +15,000 square feet) or downwards (down no less than -15,000 square feet) by an amendment to the Approved Severed Parcel Plan in accordance with Section 9.05(a)(v) of the Original Lease. Any such adjustment shall be confirmed in a writing executed by Landlord and Tenant. Such adjustments shall not result in a change in Severed Parcel Allocable Share and/or the amount of Rental due and payable under this Lease.

- Construction of the Associated Portion of the LIRR Roof and Facilities set forth on Schedule 1 to this Exhibit Q.

Schedule 1

Associated Portion of LIRR Roof and Facilities

EXHIBIT R
ADDITIONAL DEFAULT NOTICE PARTIES

OMERS Administration Corporation
One University Avenue, Suite 400
Toronto, Ontario M5J 2P1,Canada
Attn: Chief Financial Officer

OMERS Administration Corporation
One University Avenue, Suite 400
Toronto, Ontario M5J 2P1,Canada
Attn: General Counsel

The Related Companies, L.P.
60 Columbus Circle, 19th Floor
New York, New York 10023
Attn: Jeff T. Blau

The Related Companies, L.P.
60 Columbus Circle, 19th Floor
New York, New York 10023
Attn: L. Jay Cross

The Related Companies, L.P.
60 Columbus Circle, 19th Floor
New York, New York 10023
Attn: Richard O'Toole, Esq.

Fried Frank Harris Shriver & Jacobson LLP
One New York Plaza
New York, New York 10004
Attn: Tal J. Golomb, Esq.

OP USA Debt Holdings Limited Partnership
c/o Oxford Properties Group
Royal Bank Plaza North Tower
200 Bay Street, Suite 900
Toronto, Ontario M5J 2J2 Canada
Attn: Chief Legal Officer

Oxford Hudson Yards LLC
c/o Oxford Properties Group
450 Park Avenue, Suite 900
New York, New York 10022
Attn: Dean J. Shapiro

Schulte Roth & Zabel LLP
919 Third Avenue
New York, New York 10022
Attn: Stuart D. Freedman, Esq.

EXHIBIT S
FIRPTA CERTIFICATION

Section 1445 of the Internal Revenue Code of 1986, as amended, provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. For U.S. tax purposes, (including Section 1445), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by the Metropolitan Transportation Authority ("MTA"), the undersigned hereby certifies the following on behalf of MTA:

1. MTA is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations).

2. MTA is not a disregarded entity as defined in Treasury Regulation Section 1.1445-2(b)(2)(iii).

3. MTA's U.S. employer identification number is 13-2552035.

4. MTA's office address is 2 Broadway, New York, New York 10004.

MTA understands that this certification may be disclosed to the Internal Revenue Service by transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury the undersigned declares that the undersigned has examined this certificate and to the best of the undersigned's knowledge and belief it is true, correct and complete, and the undersigned further declares that the undersigned has authority to sign this document on behalf of MTA.

[SIGNATURE PAGE FOLLOWS]

Dated as of the day of , 2016.

METROPOLITAN TRANSPORTATION AUTHORITY

By:_____
Name:
Title:

SWORN AND SUBSCRIBED TO BEFORE
ME THIS ____ DAY OF _____, 2016

_____
Notary Public

EXHIBIT T
FORM OF QUALIFYING SUBTENANT RNDA

(see attached)

EXHIBIT U
ILLUSTRATED RESIDENTIAL UNIT PURCHASE PRICE CALCULATION

(see attached)

AGREEMENT OF LEASE
(WESTERN RAIL YARD SECTION OF THE JOHN D. CAEMMERER WEST SIDE YARD)

by and between

METROPOLITAN TRANSPORTATION AUTHORITY,

as Landlord,

and

WRY TENANT LLC (f/k/a RG WRY LLC),

as Tenant,

dated as of April 10, 2014

Premises:

Facility Airspace Parcel Terra Firma and Airspace Above a Limiting Plane
Western Rail Yard Section of the John D. Caemmerer West Side Yard
New York, NY
(Manhattan Block 676, Lot 3, to be Lots 1 and 5)

TABLE OF CONTENTS

List of Exhibits

THIS AGREEMENT OF LEASE (WESTERN RAIL YARD SECTION OF THE JOHN D. CAEMMERER WEST SIDE YARD) is made as of the 10th day of April, 2014, by and between **METROPOLITAN TRANSPORTATION AUTHORITY**, a body corporate and politic constituting a public benefit corporation of the State of New York, having an office at 347 Madison Avenue, New York, New York 10017-3739, as landlord, and **WRY TENANT LLC (f/k/a RG WRY LLC)**, a Delaware limited liability company having an office c/o The Related Companies, L.P., 60 Columbus Circle, New York, New York 10023, as tenant.

WITNESSETH:

It is hereby mutually covenanted and agreed by and between the parties hereto that this Lease is made upon the terms, covenants and conditions hereinafter set forth.

ARTICLE 1

DEFINITIONS

The terms defined in this Article 1 shall, for all purposes of this Lease, have the following meanings.

"34th Street Station" shall mean the subway station for the No. 7 Subway Line Extension at 11th Avenue and West 34th Street in New York, New York, which is under construction as of the date hereof.

"Abatement Commencement Date" shall mean December 3, 2013.

"Abatement Extension Adjustment Amount" shall have the meaning provided in Section 3.04(d).

"Act or Omission" shall have the meaning provided in the WRY Declaration of Easements.

"Actual No. 7 Line Date" shall mean the date upon which the 34th Street Station is opened for operation and available for general use of the No. 7 Subway Line Extension by the public.

"Additional Rent" shall have the meaning provided in Section 3.09.

"Adjusted GLV Rent Notice" shall have the meaning provided in Section 9.04(a).

"Adjusted Initial Land Value" shall have the meaning provided in Section 3.03(a).

"Affiliate" shall mean, with respect to any specified Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the specified Person. For purposes of this definition and the definition of "Affiliated Person", the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting stock, by contract or otherwise. For the avoidance of doubt, any Person that

is a party to any agreement with MTA or LIRR relating to the WRY Project, which Person is controlled by a Related Control Person, shall constitute an Affiliate of Tenant.

"Affiliated Person" shall mean, with respect to any specified Person, (a) any Affiliate of such specified Person and (b) any other Person if such other Person and/or its Affiliates collectively own, directly or indirectly, not less than twenty percent (20%) of the economic interests in an entity which controls such specified Person.

"Annual Base Rent" shall have the meaning provided in Section 3.03.

"Approved Facility Airspace Improvement Plans and Specifications" shall have the meaning provided in Section 8.02(d).

"Approved LIRR Work Project Plans and Specifications" shall have the meaning provided in the WRY Construction Agreement.

"Approved MFAI Contractor Submittal" shall have the meaning set forth in Section 2.3(c)(vi) of Exhibit D of the WRY Declaration of Easements.

"Approved Restoration Plans and Specifications" shall have the meaning provided in Section 15.02(b).

"Approved Severed Parcel Plan" shall have the meaning provided in Section 9.05(c).

"Arbitrator" shall have the meaning provided in Section 40.01(b).

"Assignment" shall have the meaning provided in Section 17.01(a).

"Associated FASP Improvements" shall have the meaning provided in the WRY Declaration of Easements.

"Associated Portion of the LIRR Roof and Facilities" shall mean, with respect to the Balance Parcel (if applicable) or any Severed Parcel (other than a Terra Firma Severed Parcel), those portions of the LIRR Roof and Facilities to be constructed in conjunction with such Parcel, as described in (a) the Approved LIRR Work Project Plans and Specifications, (b) in the case of a Severed Parcel, the applicable Severed Parcel Lease, and (c) in the case of the Balance Parcel, the Approved Severed Parcel Plan.

"Association Documents" shall have the meaning provided in the WRY Declaration of Easements.

"Balance Lease" shall have the meaning provided in Section 9.01(a)(iii).

"Balance Lease Amendment" shall have the meaning provided in Section 9.01(a)(iii).

"Balance Parcel" shall have the meaning provided in Section 9.01(a)(i).

"Bond Lease Financing" shall have the meaning provided in Article 13.

"Budgeted Roof Costs" shall mean the total amount of the Lender-Approved Budget (as defined in the WRY Construction Agreement) for the LIRR Roof and Facilities, or in the event there is no Lender-Approved Budget, the total amount of the MTA-Approved Budget (as defined in the WRY Construction Agreement) for the LIRR Roof and Facilities. The Budgeted Roof Costs shall take into account and credit any work performed in furtherance of the construction of the LIRR Roof and Facilities prior to the applicable date on which the Budgeted Roof Costs are being determined.

"Building" shall mean any building erected within the Premises, excluding the footings, foundations, columns, FAI Preparation Work and the LIRR Roof and Facilities.

"Building Code" shall mean the Building Code of the City of New York, as applicable to the Facility Airspace Improvements.

"Buildings Completion Guarantor" shall have the meaning provided in Section 11.04.

"Buildings Completion Guaranty" shall have the meaning provided in Section 11.04.

"Business Day" shall mean any day which is not a Saturday, Sunday or a day observed as a holiday by either the State of New York or the federal government.

"Capital Improvement" shall have the meaning provided in Section 19.01.

"Casualty" shall have the meaning provided in Section 15.01(a).

"Certificate of Occupancy" shall mean (a) with respect to the LIRR Relocations, the New LIRR Facilities, the Roof Mechanical Equipment, the Roof Utility Facilities or any portion of any of the foregoing, as applicable, a code compliance certificate issued by LIRR acting in its capacity as a Governmental Authority pursuant to Part 1204 of Chapter XXXII of Title 19 of the New York Code, Rules and Regulations, (b) with respect to the Roof Slab and Support Facilities, a certificate of occupancy or similar sign-off issued by the Governmental Authority responsible for review and approval of code compliance for the Roof Slab and Support Facilities (to the extent applicable), and (c) with respect to the Facility Airspace Improvements, a certificate of occupancy issued by the NYCDOB pursuant to Section 645 of the New York City Charter or any successor provision thereto (to the extent applicable).

"City" shall mean The City of New York, a municipal corporation of the State of New York.

"City Register" shall mean the Office of the City Register, New York County.

"Closing Payment" shall have the meaning provided in Section 3.01.

"Commencement Date" shall mean the date of this Lease.

"Commencement of Construction" or "Commenced Construction" shall mean (a) with respect to each Building, the commencement of initial construction of such Building and the Associated FASP Improvements pursuant to a Severed Parcel Lease (including, without limitation, any excavation or other on-site preparation work on Facility Airspace Parcel Terra Firma but excluding (i) test borings, test pilings, soil testing, environmental remediation and other similar pre-construction activities, (ii) construction of any portion of the LIRR Roof and Facilities (whether or not such portion is located above the Roof Slab), (iii) performance of FAI Preparation Work, (iv) construction of the Associated FASP Improvements only, if construction of the Building within the same Severed Parcel has not yet commenced, and (v) any work performed by or on behalf of LIRR, and (b) with respect to the LIRR Roof and Facilities and any Associated Portion of the LIRR Roof and Facilities, the respective meanings ascribed to "Commencement of Construction" or "Commenced Construction" in the WRY Construction Agreement.

"Commencement of Construction of the LIRR Roof and Facilities" shall mean the "Commencement of Construction of the LIRR Roof and Facilities" as such term is defined in the WRY Construction Agreement.

"Condemnation Proceeds" shall have the meaning provided in Section 16.01(b).

"Condemnation Proceeds Depository" shall mean an Institutional Lender which is regularly engaged in the business of administering construction loans, and reasonably acceptable to both Landlord and Tenant to hold the Condemnation Proceeds in accordance with the provisions of Article 16. A Leasehold Mortgagee which is an Institutional Lender shall, upon request, be entitled to serve as Condemnation Proceeds Depository hereunder; provided that such Leasehold Mortgagee shall have agreed in writing, for the benefit of Landlord and pursuant to an instrument reasonably satisfactory to Landlord, to hold such funds in a segregated special account to be used and distributed solely as set forth in Article 16. All funds held by a Condemnation Proceeds Depository pursuant to this Lease shall be drawable in New York City.

"Construction Contracts" shall mean agreements executed by or on behalf of Tenant for the construction of Facility Airspace Improvements, Restoration, Capital Improvement, rehabilitation, alteration, repair, demolition or other construction performed on the Premises pursuant to this Lease.

"Contested Imposition Deposit" shall have the meaning provided in Section 4.05(b).

"Controlling Ownership" shall mean the ownership of the right to direct the day-to-day business and affairs of a Person; provided that the ownership of the right to approve or consent to certain business or affairs of a Person only through major decision rights or similar protective provisions shall not constitute "Controlling Ownership".

"Corridor" shall have the meaning provided in Section 8.10.

"CPI" shall mean the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor or its successors,

New York Northern New Jersey Long Island NY-NJ-CT-PA area, All Items (1982-84 = 100), or any successor index thereto, appropriately adjusted. If the Consumer Price Index ceases to be published and there is no successor thereto, such other index as Landlord and Tenant shall agree upon (or, if they are unable to agree, as determined in accordance with Section 40.01(a)), as appropriately adjusted, shall be substituted for the Consumer Price Index.

"CPI Adjustment" shall mean an adjustment of each specified dollar amount that is subject to CPI Adjustment under this Lease which shall occur as of each anniversary of the Abatement Commencement Date by multiplying the original dollar amount being adjusted by the sum of (a) one hundred percent (100%), plus (b) the CPI Increase. As so adjusted, such amount will be utilized until the next CPI Adjustment is calculated as of the next applicable anniversary of the Abatement Commencement Date. All CPI Adjustments shall be calculated annually.

"CPI Increase" shall mean the percentage increase, if any (but not decrease, if any) between the CPI for the calendar month which is three (3) months prior to the Abatement Commencement Date and the CPI for the calendar month which is three (3) months prior to the relevant anniversary of the Abatement Commencement Date.

"Default" shall mean any condition or event which constitutes or, after notice or lapse of time, or both, would constitute an Event of Default.

"Default Payments Guarantor" shall mean the Guarantor under the Default Payments Guaranty.

"Default Payments Guaranty" shall have the meaning provided in Section 11.01.

"Default Payments Schedule" shall mean the schedule attached hereto as Exhibit E.

"Default Rate" shall have the meaning provided in Article 6.

"Deficiency" shall have the meaning provided in Section 31.03(c).

"Delayed Party" shall have the meaning provided in the definition of "Force Majeure".

"Depository" shall mean any of the Restoration Fund Depository, the Condemnation Proceeds Depository or the Impositions Depository.

"Design and Construction Requirements" shall have the meaning provided in the WRY Declaration of Easements.

"Developer" shall have the meaning provided in the WRY Construction Agreement.

"Due Date" shall mean, with respect to an Imposition or Insurance Premium, the last date on which such Imposition or Insurance Premium can be paid without any fine, penalty, interest or cost being added thereto or imposed by law for the non-payment thereof (but

excluding any early payment discount) or, in the case of an Insurance Premium, cancellation, expiration or termination of the applicable insurance policy.

"Election Notice" shall have the meaning provided in Section 10.02.

"Election Notice Date" shall have the meaning provided in Section 10.02.

"Environmental Activity" shall mean any storage, installation, existence, release, threatened release, discharge, generation, abatement, removal, disposal, handling or transportation from, under, into or on the Premises of any Hazardous Substance.

"Environmental Claim" shall have the meaning provided in the WRY Declaration of Easements.

"Environmental Obligation" shall have the meaning provided in the WRY Declaration of Easements.

"Environmental Obligations Allocable Share" shall mean, with respect to a Severed Parcel, a fraction, the numerator of which is the Severed Parcel Allocable Share with respect to such Severed Parcel, and the denominator of which is the sum of such Severed Parcel Allocable Share plus the Severed Parcel Allocable Share attributable to the Balance Parcel.

"Equipment" shall mean all fixtures incorporated in the Premises, including, without limitation, all machinery, dynamos, boilers, heating and lighting equipment, pumps, tanks, motors, air conditioning compressors, pipes, conduits, fittings, ventilating and communications apparatus, elevators, escalators, antennas, computers and sensors.

"ERY" shall mean that certain parcel of land in the Borough of Manhattan, which is, as of the Commencement Date, owned by Landlord, and known as the Eastern Rail Yard Section of the John D. Caemmerer West Side Yard, which is bounded by West 30th Street on the south, West 33rd Street on the north, 11th Avenue on the west and 10th Avenue on the east.

"ERY Lease" shall mean (i) as of the date hereof, collectively (A) the ERY Original Balance Lease and (B) the Tower A/Retail Balance Lease and (ii) from and after the Tower A/Retail Final Severance (as such term is defined in the Omnibus Amendment to ERY Documents Regarding Balance Leases), the ERY Original Balance Lease only.

"ERY Original Balance Lease" shall mean that certain Agreement of Lease dated as of April 10, 2013 by and between Landlord and ERY Tenant, as amended by that certain First Amendment to Lease dated as of December 30, 2013, and that certain Second Amendment to Lease, dated as of March 17, 2014, and as the same may hereafter be amended, modified or supplemented in accordance with the terms thereof.

"ERY Tenant" shall mean ERY Tenant LLC (f/k/a RG ERY LLC).

"Estimated WRY Roof Costs" shall have the meaning provided in Section 9.04(a).

"Event of Default" shall have the meaning provided in Section 31.01.

"Expiration Date" shall mean the date upon which the term of this Lease shall expire or terminate, whether such date be (a) the Fixed Expiration Date or (b) such earlier date upon which the Term shall cease or be terminated pursuant to the terms hereof.

"Extended No. 7 Line Date" shall have the meaning provided in Section 3.04(e)(ii).

"Extension Determination Date" shall have the meaning provided in Section 3.04(e)(ii).

"Facility Airspace Improvements" shall mean the improvements constructed as part of the WRY Project on the Premises and including, without limitation, the residential, commercial, community facility and accessory uses and open space improvements and High Line Component (as applicable) but excluding the LIRR Roof and Facilities and any work that is the property of the Yards Parcel Owner or the Yards Parcel Operator pursuant to their respective rights under the WRY Declaration of Easements.

"Facility Airspace Improvements Release to Proceed" shall have the meaning provided in Section 8.03(a).

"Facility Airspace Improvements Restoration" shall have the meaning provided in Section 15.01(b).

"Facility Airspace Parcel" shall have the meaning provided in the WRY Declaration of Easements.

"Facility Airspace Parcel Environmental Obligation" shall mean an Environmental Obligation arising from an Act or Omission of Tenant.

"Facility Airspace Parcel Owner" shall have the meaning provided in the WRY Declaration of Easements.

"Facility Airspace Parcel Terra Firma" shall mean those portions of the WRY described and depicted on Exhibit A-4 attached hereto.

"FAI Construction Commencement Notice" shall have the meaning provided in Section 8.03(a).

"FAI Preparation Work" shall have the meaning provided in the WRY Construction Agreement.

"FASP Owners Association" shall have the meaning provided in the WRY Declaration of Easements.

"Fee Mortgage" shall mean any mortgage, deed of trust, pledge or similar instrument, including, without limitation, any modification, amendment, spreader, consolidation

or renewal thereof, which constitutes a lien on Landlord's interest in this Lease and/or the fee interest in the Premises.

"Fee Mortgagee" shall mean the mortgagee under a Fee Mortgage.

"Final Completion" shall have the meaning provided in the WRY Construction Agreement.

"Financial Matter" shall mean the determination in accordance with this Lease of (a) FMV Land Value and the WRY Roof Component Financing Cost Savings (if any), (b) Annual Base Rent (only to the extent based on either of the items specified in clause (a) of this definition), and (c) the respective portions of the Condemnation Proceeds attributable to the Facility Airspace Parcel and Improvements thereon, and the Severed Parcel Allocable Shares thereof, but shall expressly exclude (i) any matters related to Tenant's obligations under this Lease to pay any of the foregoing, and (ii) the calculation of the amount of the Closing Payment, the First Post-Closing Payment, the Second Post-Closing Payment and, to the extent not adjusted or otherwise determined based on either of the items specified in clause (a) of this definition, the Annual Base Rent.

"Financial Obligations" shall mean the financial obligations of Tenant under this Lease.

"First FMV Reset Period" shall have the meaning provided in Section 3.03(c).

"First Post-Closing Payment" shall have the meaning provided in Section 3.02(a).

"Fixed Expiration Date" shall mean the day immediately preceding the ninety-ninth (99^{th}) anniversary of the Abatement Commencement Date.

"Floor Area" shall have the meaning provided in Section 12-10 of the Zoning Resolution and shall be measured in accordance with the standards set forth in the Zoning Resolution (notwithstanding that the Premises may be exempt from the application of the Zoning Resolution under Public Authorities Law Section 1266(8)).

"FMV Base Rent Reset" shall have the meaning provided in Section 3.03(e).

"FMV Land Value" shall have the meaning provided in Section 3.03(a)(iv).

"FMV Rental Value" shall have the meaning provided in Section 3.03(a)(i).

"FMV Reset Period" shall have the meaning provided in Section 3.03(e).

"Force Majeure" shall have the meaning provided in the WRY Declaration of Easements.

"Form of Severed Parcel Lease" shall mean the Form of Severed Parcel Lease attached hereto as Exhibit J.

"Governmental Authority" shall have the meaning provided in the WRY Declaration of Easements.

"Guaranteed Default Payments" shall have the meaning provided in Section 31.05(c).

"Guarantor" shall mean, as the context so indicates, the guarantor under the Default Payments Guaranty, the Rent/Financial Payment Guaranty and/or a Buildings Completion Guaranty.

"Guaranty" shall mean, as the context so indicates, the Default Payments Guaranty, the Rent/Financial Payment Guaranty and/or a Buildings Completion Guaranty.

"Hazardous Substance" shall have the meaning provided in the WRY Declaration of Easements.

"High Line" shall mean that certain rail viaduct structure, together with the easements and appurtenances associated therewith, located along the west side of Manhattan, portions of which viaduct structure are located on, and portions of which easements encumber, the Premises.

"High Line Easement" shall have the meaning provided in Section 7.03.

"High Line Component" shall have the meaning provided in Section 8.01.

"HYIC" shall mean the Hudson Yards Infrastructure Corporation, a local development corporation incorporated under the Not-for-Profit Corporation Law of the State of New York, and its successors or assigns.

"IDA" shall mean the New York City Industrial Development Agency, and its successors or assigns.

"Impositions" shall have the meaning provided in Section 4.01.

"Impositions Depository" shall mean an Institutional Lender which is reasonably acceptable to both Landlord and Tenant to hold the Contested Imposition Deposit and the Monthly Impositions and Insurance Deposits in accordance with the provisions of Section 4.05 and Article 5. A Leasehold Mortgagee which is an Institutional Lender shall, upon request, be entitled to serve as Impositions Depository hereunder; provided that such Leasehold Mortgagee shall have agreed in writing, for the benefit of Landlord and pursuant to an instrument reasonably satisfactory to Landlord, to hold such funds in a segregated special account to be used and distributed solely as set forth in Section 4.05 or Article 5, as applicable. All funds held by the Impositions Depository pursuant to this Lease shall be drawable in New York City.

"Improvement Approvals" shall mean all permits, consents, certificates and approvals required from any Governmental Authority having jurisdiction for, as the context may require, (a) the construction of the applicable Facility Airspace Improvements in accordance with

the Approved Facility Airspace Improvement Plans and Specifications or (b) any Capital Improvement.

"Improvements" shall mean, collectively, the Roof Component, the Capital Improvements and Facility Airspace Improvements, and any and all alterations and replacements thereof, additions thereto and substitutions therefor, only to the extent each of the same are located within the Premises.

"Included Floor Area" shall have the meaning provided in the WRY Declaration of Easements.

"Indemnitees" shall have the meaning provided in Section 26.01.

"Initial Abatement Extension" shall have the meaning provided in Section 3.04(d)(i).

"Initial Abatement Period" shall have the meaning provided in Section 3.04(a).

"Initial Construction of the Improvements" shall have the meaning provided in the WRY Declaration of Easements.

"Initial Open Space Fee Conversion" shall have the meaning provided in Section 10.03(a).

"Initial Land Value" shall have the meaning provided in Section 3.03(a)(i).

"Initial No. 7 Line Date" shall mean January 1, 2014, extended on a day-for-day basis by the number of days between May 31, 2009, and the Abatement Commencement Date.

"Initial Rental Period" shall have the meaning provided in Section 3.03(b).

"Initial Reset Date" shall mean the first day on which the first FMV Base Rent Reset takes effect.

"Institutional Lender" shall mean (a) a savings bank, a savings and loan association, a commercial bank or trust company (whether acting individually or in a fiduciary capacity), an investment bank, a real estate investment trust, an insurance company organized and existing under the laws of the United States or any state thereof, a not-for-profit religious, educational or eleemosynary institution, an employee welfare, benefit, pension or retirement fund, a Governmental Authority (or subsidiary thereof), a credit union, an endowment fund, or any combination of the foregoing, provided, that any Person referred to in this clause (a), other than a Governmental Authority acting as a conduit issuer of securities, satisfies the Eligibility Requirements (as hereinafter defined); (b) an investment company, a money management firm, a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional "accredited investor" within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any Person referred to in this clause (b) satisfies the Eligibility Requirements; (c) an institution substantially similar to any of the entities described in clauses (a) or (b) that satisfies the Eligibility Requirements; (d) any entity

controlled by any of the entities described in clauses (a), (b) or (c) above; (e) a Qualified Trustee (as hereinafter defined) in connection with a securitization of, or the creation of collateralized debt obligations or commercial mortgage backed securities ("CDO") secured by, or financing through an "owner trust" of, a loan to finance the ERY Project or an Improvement (collectively, "Securitization Vehicles"), so long as (i) the special servicer or manager of such Securitization Vehicle has the Required Special Servicer Rating (as hereinafter defined), (ii) in the case of a Securitization Vehicle other than a CDO Securitization Vehicle, the entire "controlling class" of such Securitization Vehicle is held by one or more entities that are otherwise Institutional Lenders under clauses (a), (b), (c) or (d) of this definition and (iii) in the case of a CDO Securitization Vehicle, the operative documents of such Securitization Vehicle require that the "equity interest" in such Securitization Vehicle is owned by one or more entities that are Institutional Lenders under clauses (a), (b), (c) or (d) of this definition (provided, that if any trustee, special servicer or manager fails to meet the requirements of this clause (e), such Person must be replaced by a Person meeting the requirements of this clause (e) within (30) days); or (f) an investment fund, limited liability company, limited partnership or general partnership (i) of which one or more Institutional Lenders under clauses (a), (b), (c) or (d) of this definition acts as the general partner, managing member or fund manager and owns, directly or indirectly, at least fifty percent (50%) or more of the equity interest or (ii) which, or the general partner, managing member or fund manager of which, has been in the business of investment banking, private investing or private equity for at least five (5) years and satisfies the Eligibility Requirements (including, for purposes of the asset test, assets of an Affiliate or unconditional capital commitments). For the purpose of this definition, (w) the "Required Threshold" means, in the case of (A) an Institutional Lender providing a construction loan, Twenty Billion and 00/100 Dollars ($20,000,000,000.00), (B) an Institutional Lender providing a permanent loan or mezzanine financing, Fifteen Billion and 00/100 Dollars ($15,000,000,000.00) and (C) an Institutional Lender acting as a depository, Five Hundred Million Dollars ($500,000,000.00), provided that if an Institutional Lender is composed of more than one Person, the Required Threshold shall be the combined assets of all such Persons; (x) the "Eligibility Requirements" means, with respect to any Person, that such Person (A) is subject to the jurisdiction of the courts of the State of New York and (B) has assets of not less than Required Threshold, subject to CPI Adjustment; (y) "Qualified Trustee" means (A) a corporation, national bank, national banking association or trust company, organized and doing business under the laws of the United States of America or any state thereof, authorized under such laws to exercise corporate trust powers and to accept the trust conferred, subject to supervision or examination by federal or state regulatory authority, and having a combined capital and surplus of at least the Required Threshold, subject to CPI Adjustment, (B) an institution insured by the Federal Deposit Insurance Corporation and having a combined capital and surplus of at least the Required Threshold, subject to CPI Adjustment, or (C) an institution whose long-term senior unsecured debt is rated in either of the top two rating categories then in effect of Standard & Poor's ("S&P"), Moody's Investors Services, Inc. ("Moody's"), Fitch, Inc. ("Fitch"), or any other nationally recognized statistical rating agency; and (z) "Required Special Servicer Rating" means (A) in the case of Fitch, a rating of "CSSI", (B) in the case of S&P, being on the list of approved special servicers and (C) in the case of Moody's, acting as special servicer in a commercial mortgage loan securitization that was rated within the twelve (12) month period prior to the date of determination, provided that Moody's has not downgraded or withdrawn the then-current rating on any class of commercial mortgage securities or placed any class of commercial

mortgage securities on watch citing the continuation of such special servicer as special servicer of such commercial mortgage securities. In all of the above cases, any Person shall qualify as an Institutional Lender only if it shall (I) be subject (X) by law or by consent to service of process within the State of New York and (Y) to the supervision of (1) the Comptroller of the Currency or the Department of Labor of the United States or the Federal Home Loan Bank Board or the Insurance Department or the Banking Department or the Comptroller of the State of New York, or the Board of Regents of the University of the State of New York, or the Comptroller of New York City or any successor to any of the foregoing agencies or officials, or (2) any agency or official exercising comparable functions on behalf of any other state within the United States, or (3) in the case of a commercial credit corporation, the laws and regulations of the state of its incorporation, or (4) any federal, state or municipal agency or public benefit corporation or public authority advancing or insuring mortgage loans or making payments that, in any manner, assist in the financing, development, operation and maintenance of improvements, and (II) have individual or combined assets, as the case may be, of not less than the Required Threshold, subject to CPI Adjustment. Notwithstanding anything to the contrary in this definition, in the event that an Institutional Lender consists of more than one Person, such Institutional Lender shall designate by written notice to Landlord a single Person with full authority to act on behalf of such Institutional Lender for the purposes of this Lease, and any notice delivered to, or consent or approval obtained from, such Person shall be deemed to have been delivered to, or obtained from, such Institutional Lender for the purposes of this Lease. An amendment of such written notice may be delivered from time to time to Landlord designating a new Person with full authority to act on behalf of such Institutional Lender.

"Insurance Premiums" shall mean the aggregate annual insurance premiums to be paid in respect of any insurance required to be carried by Tenant pursuant to this Lease.

"Involuntary Rate" shall mean the Prime Rate plus two percent (2%) per annum, but in no event in excess of the maximum permissible interest rate then in effect in the State of New York.

"Landlord" shall mean MTA, or any successor to MTA's rights and interests in the Premises or any portion thereof.

"Landlord's Reversionary Interest Value" shall mean the value of Landlord's reversionary interest in any Balance Parcel or Severed Parcel, which shall be an amount equal to the Severed Parcel Allocable Share of: (i) FOUR BILLION SEVEN HUNDRED SIX MILLION EIGHT HUNDRED NINETY-NINE THOUSAND ONE HUNDRED SEVENTY-SIX AND 00/100 DOLLARS ($4,706,899,176.00) in the year commencing on the ninety-ninth (99th) anniversary of the Abatement Commencement Date and (ii) FOUR BILLION SEVEN HUNDRED SIX MILLION EIGHT HUNDRED NINETY-NINE THOUSAND ONE HUNDRED SEVENTY-SIX AND 00/100 DOLLARS ($4,706,899,176.00) discounted to the "date of taking" (as defined in Article 16) using a discount rate of six and one-half percent (6.5%) per annum for each year prior to the year commencing on the ninety-ninth (99th) anniversary of the Abatement Commencement Date.

"Landlord's Termination Rights" shall have the meaning provided in Section 17.03(f).

"Lease" shall mean this Agreement of Lease (Western Rail Yard Section of the John D. Caemmerer West Side Yard) and all future amendments, modifications, extensions and renewals hereof and exhibits attached hereto.

"Lease Year" shall mean each consecutive twelve (12) month period during the Term, the first Lease Year commencing on the Abatement Commencement Date and expiring at midnight of the day immediately preceding the first anniversary of the Abatement Commencement Date, and the last Lease Year being a partial year commencing on the last anniversary date of the Commencement Date during the Term and expiring at midnight of the Fixed Expiration Date.

"Leasehold Mortgage" shall mean any mortgage, deed of trust, pledge or similar instrument, including, without limitation, any modification, amendment, spreader, consolidation or renewal thereof, which constitutes a lien on Tenant's interest in this Lease and the leasehold estate created hereby, provided that such mortgage is held by an Institutional Lender that is not an Affiliate of Tenant, except if such Institutional Lender is providing bona-fide and substantial secured debt financing in connection with the Premises.

"Leasehold Mortgagee" shall mean the mortgagee under a Leasehold Mortgage.

"Leasehold Mortgagee Agreement" shall have the meaning provided in Section 17.03(d).

"Legal Compliance" shall have the meaning provided in the WRY Declaration of Easements.

"Legal Requirements" shall mean any and all applicable present and future laws, rules, orders, ordinances, regulations, statutes, requirements, directives, permits, consents, certificates, approvals, environmental statutes, codes and executive orders of all Governmental Authorities now existing or hereafter created, of all their departments and bureaus, including the zoning regulations to the extent applicable, and of any applicable fire rating bureau or other body exercising similar functions affecting the Premises, any real property upon or over which the WRY Project is being constructed on the Premises, or any portion thereof, or any street, avenue or sidewalk comprising a part or in front thereof or any vault in or under the same.

"Lender-Approved Budget" shall have the meaning provided in the Buildings Completion Guaranty.

"LIRR" shall mean The Long Island Rail Road Company, a body corporate and politic constituting a public benefit corporation of the State of New York, having an office at Jamaica Station, Jamaica, New York 11435 and any successor entities thereto.

"LIRR Relocations" shall have the meaning provided in the WRY Declaration of Easements.

"LIRR Roof and Facilities" shall have the meaning provided in the WRY Declaration of Easements.

"LIRR Work" shall have the meaning provided in the WRY Construction Agreement.

"Lower Limiting Plane" shall have the meaning provided in the WRY Declaration of Easements (and shall be adjusted in accordance with the terms thereof).

"M/WBEs" shall have the meaning provided in Article 45.

"Major Subtenant" shall have the meaning provided in Section 17.01(a).

"Material Facility Airspace Improvements" shall have the meaning provided in the WRY Declaration of Easements.

"Memorandum of Lease" shall mean a memorandum of this Lease in the form attached hereto as Exhibit M to be executed by Landlord and Tenant on the Commencement Date and recorded in the City Register.

"Mezzanine Lender" shall mean the lender under a Mezzanine Loan.

"Mezzanine Loan" shall mean financing secured by the equity interests in Tenant (and not by a lien on Tenant's interest in this Lease), provided that such Mezzanine Loan is held by an Institutional Lender that is not an Affiliate of Tenant, except if such Institutional Lender is providing bona-fide and substantial secured debt financing in connection with the Premises.

"Minimum Standards" shall have the meaning provided in Section 8.04(a).

"MFAI Schedule" shall have the meaning provided in the WRY Declaration of Easements.

"Monetary Default" shall mean a Default by Tenant in the payment of Annual Base Rent, Insurance Premiums, Impositions or any other item of Rental or other amount payable under this Lease, whether such amount is payable to Landlord or to a third party.

"Monthly Impositions and Insurance Deposits" shall have the meaning provided in Section 5.01(a).

"MTA" shall mean the Metropolitan Transportation Authority, a body corporate and politic constituting a public benefit corporation of the State of New York, having its principal place of business at 347 Madison Avenue, New York, New York 10017 and any successor entities thereto.

"MTA Parties" shall mean the LIRR and MTA, collectively.

"New Lease" shall have the meaning provided in Section 17.04(a).

"New LIRR Facilities" shall have the meaning provided in the WRY Declaration of Easements.

"New Tenant" shall have the meaning provided in Section 17.04(a)(i).

"No. 7 Line Abatement Period" shall mean any time period during which Annual Base Rent is abated pursuant to any No. 7 Line Abatement.

"No. 7 Line Abatements" shall mean any abatements of Annual Base Rent pursuant to Section 3.04(e).

"No. 7 Subway Line Extension" shall mean the extension of the No. 7 subway line to its new planned western terminus at 11th Avenue and West 34th Street in New York, New York.

"Non-Monetary Default" shall mean a Default by Tenant under this Lease, other than a Monetary Default.

"Non-Terra Firma Severed Parcel" shall mean any Severed Parcel that is not a Terra Firma Severed Parcel.

"Non-Terra Firma Severed Parcel Lease" shall mean any Severed Parcel Lease demising a Severed Parcel other than a Terra Firma Severed Parcel.

"Notice" shall have the meaning provided in Section 32.01.

"Notice of Dispute" shall have the meaning provided in Section 3.08.

"NYCDOB" shall mean the New York City Department of Buildings (or its successor in function).

"Omnibus Amendment to ERY Documents Regarding Balance Leases" shall mean that certain Omnibus Amendment to ERY Documents Regarding Balance Leases, dated as of March 17, 2014, by and among Landlord, LIRR, ERY Tenant, Legacy Yards Tenant LLC, ERY CS Parcel LLC, ERY Developer LLC, The Related Companies, L.P., and OP USA Debt Holdings Limited Partnership.

"Open Space Fee Conversion" shall have the meaning provided in Section 10.03(a).

"Open Space Fee Conversion Closing" shall have the meaning provided in Section 10.03(a).

"Open Space Fee Conversion Closing Date" shall have the meaning provided in Section 10.03(a).

"Open Space Fee Conversion Option" shall have the meaning provided in Section 10.01.

"Other Projects" shall have the meaning provided in Section 8.10.

"Outside No. 7 Line Date" shall mean January 1, 2020, extended on a day-for-day basis by the number of days between June 30, 2010, and the Abatement Commencement Date.

"Parcel" shall have the meaning provided in the WRY Declaration of Easements.

"Parking Component" shall have the meaning provided in Section 8.01.

"Patriot Act" shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, and all rules and regulations promulgated thereunder from time to time, in each case as amended from time to time.

"Penn Station" shall mean New York Pennsylvania Station.

"Permitted Exceptions" shall have the meaning provided in the WRY Agreement to Enter into Lease.

"Permitted Severed Parcel Tenant" shall mean: (a) a Related Affiliate; (b) a User; and (c) a Qualified Transferee, provided that with respect to a Non-Terra Firma Severed Parcel Lease, a Qualified Transferee shall only be considered a Permitted Severed Parcel Tenant from and after the Substantial Completion of the Associated Portion of the LIRR Roof and Facilities associated with such Non-Terra Firma Severed Parcel

"Permitted Transfer" shall have the meaning provided in Section 17.01(b).

"Permitted Uses" shall have the meaning provided in Section 30.01.

"Person" shall mean an individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, limited liability company, or government or any agency or subdivision thereof.

"PILOST" shall mean payments in lieu of sales and use taxes that would otherwise have been levied under the New York State Tax Law on the tangible materials and equipment incorporated into the Premises but for the exemption therefrom arising on account of the ownership of the Premises by Landlord.

"PILOST Agreement" shall mean that certain agreement between Landlord, on the one hand, and Tenant, on the other hand, executed simultaneously herewith and attached hereto as Exhibit H, as the same may be modified or amended in accordance with the terms thereof.

"PILOT" shall mean payments in lieu of Taxes that are payable to HYIC, the New York City Industrial Development Authority or any other applicable party on the Premises.

"PILOT Agreement" shall mean any agreement(s) in effect from time to time between Tenant, on the one hand, and HYIC, the New York City Industrial Development Authority or any other Governmental Authority, on the other hand, with respect to the payment of PILOT, as the same may be modified or amended in accordance with the terms thereof.

"Pre-Casualty Condition" shall have the meaning provided in Section 15.01(b).

"Pre-Construction Event of Default" shall have the meaning provided in Section 31.05.

"Preliminary Severed Parcel Plan" shall mean the Preliminary Severed Parcel Plan described in Exhibit B attached hereto.

"Premises" shall mean the Facility Airspace Parcel, as more particularly described in Exhibit A-2 attached hereto; provided that upon the establishment of the Lower Limiting Plane in accordance with the WRY Construction Agreement, Landlord and Tenant shall execute an amendment to this Lease in recordable form amending the legal description of the Premises to reflect the adjusted Lower Limiting Plane. Landlord and Tenant shall also execute, acknowledge, deliver and record any related tax returns and/or affidavits customarily executed and delivered in connection with such amendment to this Lease. All costs and expenses associated with preparing and recording such amendment, including any taxes, recording fees, costs or other expenses associated therewith, shall be paid by Tenant. Without limiting the foregoing, upon the first Severance, the Premises shall mean the Balance Parcel, as further amended pursuant to subsequent Severances.

"Prime Rate" shall mean the prime or base rate announced as such from time to time by Citibank, N.A., or its successors, at its principal office. Any interest payable under this Lease with reference to the Prime Rate shall be adjusted on a daily basis, based upon the Prime Rate in effect at the time in question, and shall be calculated on the basis of a three hundred sixty (360) day year with twelve (12) months of thirty (30) days each.

"Pro Forma Rent Schedule" shall mean the Pro Forma Rent Schedule attached hereto as Exhibit C-1, or, if Tenant exercises the Initial Abatement Extension, the Pro Forma Rent Schedule attached hereto as Exhibit C-2.

"Prohibited Person" shall mean any Person if:

(a) such Person or any of its Affiliated Persons is in monetary default or in breach of any non-monetary obligation under any written agreement with the State of New York (including, without limitation, Landlord or LIRR) or the City of New York after notice and beyond any applicable cure periods, unless, in each instance, such monetary default or breach either (i) has been waived in writing by the State or City of New York, (ii) is being disputed in a court of law, administrative proceeding, arbitration or other similar forum, (iii) is cured within thirty (30) days after a determination and notice to Tenant from Landlord that such Person is a Prohibited Person as a result of such default or breach, or (iv) is in connection with a payment default under a mortgage loan that is either recourse or non-recourse to a single purpose entity borrower and issued by an agency or authority of the State or City of New York other than the MTA or its subsidiaries;

(b) such Person or any of its Affiliated Persons has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude, is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime

figure, or has had a contract terminated by any governmental agency for breach of contract or for any cause directly or indirectly related to an indictment or conviction. The determination as to whether any Person is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure for purposes of this paragraph (b) shall be within the sole discretion of Landlord, which discretion shall be exercised in good faith; provided, however, that such Person shall not be deemed a Prohibited Person if the State of New York, having actual knowledge that such Person meets the criteria set forth in this paragraph (b), entered into a contract and is then doing business with such Person;

(c) such Person or any of its Affiliated Persons is a terrorist or terrorist organization or is reputed to have substantial business or other affiliations with a terrorist or terrorist organization, including those Persons included on any relevant lists maintained by the United Nations, the North Atlantic Treaty Organization, the Organization for Economic Cooperation and Development, the Financial Action Task Force, or the Office of Foreign Assets Control, Securities and Exchange Commission, Federal Bureau of Investigation, Central Intelligence Agency or Internal Revenue Service of the United States, all as may be amended from time to time. The determination as to whether any Person is a terrorist or terrorist organization or is reputed to have substantial business or other affiliations with a terrorist or terrorist organization for purposes of this paragraph (c) shall be within the sole discretion of Landlord, which discretion shall be exercised in good faith; provided, however, that such Person shall not be deemed a Prohibited Person if the State of New York, having actual knowledge that such Person meets the criteria set forth in this paragraph (c), entered into a contract and is then doing business with such Person;

(d) such Person is a government, or is directly or indirectly controlled (rather than only regulated) by a government, which is (i) finally determined, beyond right to appeal, by the Federal Government of the United States or any agency, branch or department thereof to be in violation of (including, but not limited to, any participant in an international boycott in violation of) the Export Administration Act of 1979, as amended, or any successor statute, or the regulations issued pursuant thereto, or (ii) subject to the regulations or controls thereof. Such control shall not be deemed to exist in the absence of a determination to that effect by a Federal court or by the Federal Government of the United States or any agency, branch or department thereof;

(e) such Person is a government, or is directly or indirectly controlled (rather than only regulated) by a government, the effects of the activities of which are regulated or controlled pursuant to regulations of the United States Treasury Department or executive orders of the President of the United States of America issued pursuant to the Trading with the Enemy Act of 1917, as amended; or

(f) such Person has received written notice of default in the payment to the City of New York of any real property taxes, sewer rents or water charges, in an amount greater than Ten Thousand Dollars ($10,000), unless such default is then being contested in good faith in accordance with applicable legal requirements with due diligence in proceedings in a court or other appropriate forum or unless such default is cured within thirty (30) days after a

determination and notice to Tenant from Landlord that such Person is a Prohibited Person as a result of such default.

"Project Documents" shall mean, collectively, this Lease, the WRY Declaration of Easements (only to the extent it relates to an obligation of the Tenant in its capacity as a Facility Airspace Parcel Owner thereunder as further set forth in Section 7.01 of this Lease), the WRY Construction Agreement, the PILOT Agreement (if any), the PILOST Agreement, and the Default Payments Guaranty.

"Projected No. 7 Line Date" shall mean the date upon which Landlord anticipates that the 34th Street Station will be opened for operation and available for general use of the No. 7 Subway Line Extension by the public, as evidenced by the official construction schedule maintained by MTA Capital Construction for the No. 7 subway extension. As of the date hereof, the Projected No. 7 Line Date is June 1, 2014.

"Proposed Facility Airspace Improvement Plans and Specifications" shall have the meaning provided in Section 8.02(c).

"Proposed Facility Airspace Improvement Plans and Specifications Notice" shall have the meaning provided in Section 8.02(d).

"Proposed Restoration Plans and Specifications" shall have the meaning provided in Section 15.02.

"Proposed Severed Parcel Plan" shall have the meaning provided in Section 9.05(a).

"Proposed Severed Parcel Plan Notice" shall have the meaning provided in Section 9.05(b).

"Public Safety" shall have the meaning provided in the WRY Declaration of Easements.

"Qualified Replacement Developer" shall mean any Person that (a) has, in the MTA Parties' reasonable judgment, substantial and satisfactory experience in constructing/developing public infrastructure of a scale and complexity (and with operational sensitivities) similar to the LIRR Work, (b) is not, at the applicable time, disqualified or disbarred from performing work on projects for the MTA Parties or their Affiliates or any other the City of New York or New York State agency, and (c) is not a Prohibited Person.

"Qualified Transferee" shall mean (a) a managing member or general partner of Tenant, (b) a Person that is or retains (as construction manager for the construction of the Building(s) on the applicable Severed Parcel), a Person with no less than ten (10) years of experience in large scale development projects in an urban environment, or (c) a Person that is reasonably acceptable to Landlord; provided, in each case, such Person is not a Prohibited Person.

"Related Affiliate" shall mean any Person (a) over which any Related Control Person exercises day-to-day operational and managerial control as a managing member or otherwise, and (b) of which one or more Related Beneficial Owners or one or more Persons controlled by any Related Control Persons collectively own, directly or indirectly, at least two percent (2%) of the economic interests; provided, that the aggregate equity investment of such Related Control Persons with respect to both the WRY and ERY shall not be required to exceed ONE HUNDRED MILLION AND 00/100 DOLLARS ($100,000,000.00).

"Related Beneficial Owner" shall mean any of Stephen M. Ross and/or Jeff T. Blau and/or Bruce A. Beal, Jr. and their respective spouses, descendants, heirs, legatees and devisees, and any trust created for the benefit of any of such persons.

"Related Control Person" shall mean any of Stephen M. Ross and/or Jeff T. Blau and/or Bruce A. Beal, Jr.

"Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, migration, leaching, dumping or disposing of a Hazardous Substance into the environment, including the abandonment, discarding, burying or disposing of barrels, containers or other receptacles containing a Hazardous Substance.

"Rent Abatement Expiration Date" shall mean the date which is the sixth (6^{th}) anniversary of the Abatement Commencement Date.

"Rent Factor" shall have the meaning provided in Section 3.03(a)(iii).

"Rent/Financial Payment Guarantor" shall have the meaning provided in Section 11.02.

"Rent/Financial Payment Guaranty" shall have the meaning provided in Section 11.02.

"Rental" shall have the meaning provided in Section 3.05.

"Rental Notice" shall have the meaning provided in Section 3.08.

"Reset Date" shall mean the respective dates on which each of the FMV Base Rent Resets take effect hereunder.

"Residential Component" shall have the meaning provided in Section 8.01(b).

"Restoration" shall have the meaning provided in Section 15.01(b).

"Restoration Fund Depository" shall mean an Institutional Lender which is regularly engaged in the business of administering construction loans, and reasonably acceptable to both Landlord and Tenant to hold the Restoration Funds in accordance with the provisions of this Lease. A Leasehold Mortgagee which is an Institutional Lender shall, upon request, be entitled to serve as Restoration Fund Depository hereunder; provided that such Leasehold Mortgagee shall have agreed in writing, for the benefit of Landlord and pursuant to an instrument

reasonably satisfactory to Landlord, to hold such funds in a segregated special account to be used and distributed solely as set forth in Article 15. All funds held by a Restoration Fund Depository pursuant to this Lease shall be drawable in New York City.

"Restoration Funds" shall have the meaning provided in Section 15.05(b).

"Restoration Notice" shall have the meaning provided in Section 15.02(b).

"Restore" shall have the meaning provided in Section 15.01(b).

"RFP" shall mean that certain Request for Proposals for Development at the Western Rail Yard Section of the LIRR West Side Yard, issued by Landlord on July 13, 2007, by which Landlord heretofore solicited proposals for the development of the WRY.

"Roof Cost Dispute Notice" shall have the meaning provided in Section 9.04(b).

"Roof Mechanical Equipment" shall have the meaning provided in the WRY Declaration of Easements.

"Roof Segment Completion Guaranty" shall have the meaning provided in the WRY Construction Agreement.

"Roof Slab" shall have the meaning provided in the WRY Declaration of Easements.

"Roof Tax-Exempt Financing" shall have the meaning provided in Article 12.

"Roof Utility Facilities" shall have the meaning provided in the WRY Declaration of Easements.

"Second Abatement Period" shall have the meaning provided in Section 3.04(b).

"Second FMV Reset Period" shall have the meaning provided in Section 3.04(b).

"Second Post-Closing Payment" shall have the meaning provided in Section 3.02.

"Service Reliability" shall have the meaning provided in the WRY Declaration of Easements.

"Severance" shall have the meaning provided in Section 9.01(a)(i).

"Severed Parcel" shall have the meaning provided in Section 9.01(a)(i).

"Severed Parcel Allocable Share" shall mean, with respect to the tenant under the Balance Lease or any Severed Parcel Lease, the share of the Financial Obligations payable by such tenant under such Balance Lease or Severed Parcel Lease, as set forth in the Approved Severed Parcel Plan. The Severed Parcel Allocable Share shall be expressed as a percentage and

based on the pro rata allocation of Floor Area for each applicable Severed Parcel or Balance Parcel, as the same may be adjusted pursuant to Section 9.05.

"Severed Parcel Lease" shall have the meaning provided in Section 9.01(a)(ii).

"Severed Parcel Pro Forma Rent Schedule" shall have the meaning provided in Section 9.01(a)(ii).

"Severed Parcel Tenant" shall have the meaning provided in Section 9.01(a)(ii).

"Shortfall Amount" shall have the meaning provided in Section 15.05(b).

"Subletting" shall have the meaning provided in Section 17.01(a).

"Substantial Completion" or "Substantially Completed" shall mean (a) with respect to the LIRR Roof and Facilities, the respective meaning set forth in the WRY Construction Agreement; (b) with respect to a commercial Building, the condition of construction for which a temporary or permanent Certificate of Occupancy has been issued for such Building (or the core and shell of such Building); (c) with respect to a residential Building, the condition of construction for which a temporary or permanent Certificate of Occupancy has been issued for such Building; and (d) with respect to any other Facility Airspace Improvements, the condition of construction for which (i) a temporary or permanent Certificate of Occupancy has been issued for such Facility Airspace Improvement, if applicable, or (ii) if not applicable, the architect for such Facility Airspace Improvement has delivered a certification that, in such architect's opinion, the construction of such Facility Airspace Improvement has been substantially completed in accordance with all applicable Legal Requirements.

"Successor Landlord" shall have the meaning provided in Section 33.03.

"Support Facilities" shall have the meaning provided in the WRY Declaration of Easements.

"Tax Year" shall mean each tax fiscal year of the City.

"Taxes" shall mean the real property taxes or any taxes or other payments substituted in lieu thereof of any kind or nature that are, or would be but for any applicable exemption or abatement, assessed, levied or imposed by any Governmental Authority against the Premises or any part thereof which may become payable during the Term.

"Tenant" shall mean the Tenant Named Herein, unless and until the Tenant Named Herein shall assign or transfer its interest hereunder in accordance with the terms of this Lease (other than with respect to a Severed Parcel), in which case the term "Tenant" shall mean only such permitted assignee or permitted transferee.

"Tenant Encumbrances" shall have the meaning provided in Section 10.03(b).

"Tenant Named Herein" shall mean WRY Tenant LLC (f/k/a RG WRY LLC), a Delaware limited liability company having an office c/o The Related Companies, L.P., 60 Columbus Circle, New York, NY 10023.

"Term" shall mean the term of this Lease, which shall commence on the Commencement Date and expire on the Expiration Date.

"Terra Firma Severed Parcel" shall mean a Severed Parcel located entirely on Facility Airspace Parcel Terra Firma.

"Terra Firma Severed Parcel Lease" shall mean a Severed Parcel Lease demising a Terra Firma Severed Parcel.

"Third FMV Reset Period" shall have the meaning provided in Section 3.03(e).

"Tower A/Retail Balance Lease" shall mean that certain Agreement of Lease (Eastern Rail Yard Section of the John D. Caemmerer West Side Yard – Tower A/Retail Parcel), dated as of March 17, 2014, by and between MTA, as landlord, and ERY Tenant, as tenant, as the same may hereafter be amended, modified or supplemented in accordance with the terms thereof.

"Transfer" shall have the meaning provided in Section 17.01(a).

"Trustee" shall have the meaning provided in Section 31.02(a).

"Unavoidable Delay" shall have the meaning provided in the WRY Declaration of Easements.

"User" shall mean a Person that will acquire a Building to be constructed on a Severed Parcel for its (or its Affiliates') own use and occupancy pursuant to a fee-based development agreement with a Related Affiliate, provided that such Person is not a Prohibited Person.

"UTEP" shall mean the Second Amended and Restated Uniform Tax Exemption Policy of the IDA as approved on December 12, 2006, by the Board of Directors of the IDA, as may be further amended, modified or supplemented by the Board of Directors of the IDA.

"WRY" shall mean that certain parcel known as the Western Rail Yard Section of the John D. Caemmerer West Side Yard, which is, as of the Commencement Date, owned by Landlord, and located between 30th and 33rd Streets and between 11th and 12th Avenues in Manhattan (Manhattan Block 676, Lot 3, to be Lots 1 and 5), as more particularly described in Exhibit A-1 attached hereto.

"WRY Agreement to Enter Into Lease" shall mean that certain Agreement to Enter into Lease (Western Rail Yard Section of the John D. Caemmerer West Side Yard) dated as of May 26, 2010, by and among Landlord, LIRR and Tenant as amended by that certain First Amendment to Agreement to Enter into Lease and WRY Construction Agreement among MTA,

LIRR, Tenant and WRY Developer LLC, dated as of December 3, 2012 (as the same may be further amended or replaced from time to time, in accordance with the provisions thereof).

"WRY Construction Agreement" shall mean that certain WRY Construction Agreement dated as of May 26, 2010, by and among Landlord, LIRR and Developer, as amended by that certain First Amendment to Agreement to Enter into Lease and WRY Construction Agreement among MTA, LIRR, Tenant and WRY Developer LLC, dated as of December 3, 2012 (as the same may be further amended or replaced from time to time, in accordance with the provisions thereof).

"WRY Declaration of Easements" shall mean that certain WRY Declaration of Easements (Western Rail Yard Section of the John D. Caemmerer West Side Yard) dated as of May 26, 2010, and recorded on June 10, 2010 as CRFN 2010000194077 in the City Register, made by MTA as declarant, as amended by that certain First Amendment to Declaration of Easements (Western Rail Yard Section of the John D. Caemmerer West Side Yard) dated as of the date hereof, to be recorded in the City Register immediately prior to the recordation of the Memorandum of Lease, made by MTA as declarant, as the same may be further amended or replaced from time to time in accordance with the provisions hereof, thereof and the WRY Agreement to Enter Into Lease.

"WRY Open Space Component" shall have the meaning provided in Section 8.01.

"WRY Open Space Parcel" shall have the meaning provided in Section 10.01(a).

"WRY Project" shall have the meaning provided in Section 8.01.

"WRY Project Component" shall have the meaning provided in Section 8.01.

"WRY Project Documents" shall have the meaning provided in the WRY Declaration of Easements.

"WRY Restrictive Declaration" shall mean that certain Restrictive Declaration for the Western Railyard of even date herewith, made by Tenant following the execution and delivery of this Lease, and which shall be recorded in the City Register following the recordation of the Memorandum of Lease.

"WRY Roof Component" shall have the meaning provided in the WRY Declaration of Easements.

"WRY Roof Component Financing Cost Savings" shall mean fifty percent (50%) of the actual aggregate net financing cost savings (after taking into account all fees and expenses incurred by Tenant over and above those that would have been incurred in connection with conventional debt) attributable to the use of tax-exempt debt, if available, to fund some or all of the construction costs of all or any portion of the WRY Roof Component and WRY Open Space Component, over the cost of commercially available taxable debt for such construction, as well as any other costs or economic loss to Tenant of such financing, such as increased taxes or loss of depreciation deductions, if applicable, as determined at the closing of any construction loan

for such portion of the WRY Roof Component. Notwithstanding the foregoing, "WRY Roof Component Financing Cost Savings" shall not include any amounts attributed to any portion of the WRY Roof Component or Open Space Component funded out of the proceeds of tax-exempt financing provided by any Governmental Authority for the construction of affordable housing.

"WSY" shall mean that certain parcel of land known as John D. Caemmerer West Side Yard comprised of the ERY and WRY.

"Yards Parcel" shall have the meaning provided in the WRY Declaration of Easements, as more particularly described in Exhibit A-3 attached hereto.

"Yards Parcel Operator" shall have the meaning provided in the WRY Declaration of Easements. On the date hereof, LIRR is the Yards Parcel Operator.

"Yards Parcel Owner" shall have the meaning provided in the WRY Declaration of Easements.

"Zoning Resolution" shall mean the Zoning Resolution of the City of New York, as the same may be amended from time to time.

ARTICLE 2

PREMISES AND TERM OF LEASE

Landlord does hereby demise and lease to Tenant, and Tenant does hereby hire and take from Landlord, the Premises, together with all easements, appurtenances and other rights and privileges now or hereafter belonging or appertaining to the Premises, subject to the Permitted Exceptions. For the avoidance of doubt, the demise and lease of the Premises to Tenant shall include the exclusive right to utilize the Included Floor Area, subject to and as more particularly set forth in the WRY Declaration of Easements.

TO HAVE AND TO HOLD unto Tenant, its successors and assigns, for a term of years commencing on the Commencement Date and expiring on the Expiration Date.

ARTICLE 3

RENT

Section 3.01. Closing Payment. On or prior to the Commencement Date, Tenant shall pay to Landlord the sum of TWENTY-FIVE MILLION TWO HUNDRED AND TWENTY-TWO THOUSAND EIGHT HUNDRED AND SIXTEEN AND 67/100 DOLLARS ($25,222,816.67) (the "Closing Payment"), the amount of which Closing Payment shall, upon payment, be deducted from the Initial Land Value. The Closing Payment shall be payable in accordance with the escrow procedures set forth in the WRY Agreement to Enter Into Lease. Landlord hereby acknowledges receipt of the Closing Payment.

Section 3.02. Post-Closing Payments.

(a) On the first (1st) anniversary of the Commencement Date, Tenant shall pay to Landlord the sum of TWELVE MILLION SIX HUNDRED AND ELEVEN THOUSAND FOUR HUNDRED AND EIGHT AND 33/100 DOLLARS ($12,611,408.33) (the "First Post-Closing Payment"), the amount of which First Post-Closing Payment shall, upon payment, be deducted from the Initial Land Value.

(b) On the second (2nd) anniversary of the Commencement Date, Tenant shall pay to Landlord the sum of TWELVE MILLION SIX HUNDRED AND ELEVEN THOUSAND FOUR HUNDRED AND EIGHT AND 33/100 DOLLARS ($12,611,408.33) (the "Second Post-Closing Payment"), the amount of which Second Post-Closing Payment shall, upon payment, be deducted from the Initial Land Value.

Section 3.03. Annual Base Rent. Tenant shall pay to Landlord, for each and every year commencing on the Abatement Commencement Date and continuing thereafter through and including the Fixed Expiration Date, the annual sums set forth in this Section 3.03 ("Annual Base Rent"), in equal monthly installments (subject to the last sentence of Section 3.03(b)) in advance, on the first (1st) day of each calendar month (unless any such date is not a Business Day, in which case payment shall be due on the immediately preceding Business Day). Landlord acknowledges receipt of all Annual Base Rent and Additional Rent with respect to the period commencing on the Abatement Commencement Date and ending on the day preceding the Commencement Date.

(a) Definitions. For purposes of this Section 3.03, the following terms shall have the following definitions:

(i) "Initial Land Value" shall mean an amount equal to FOUR HUNDRED NINETY-FOUR MILLION AND 00/100 DOLLARS ($494,000,000.00).

(ii) "Adjusted Initial Land Value" shall mean the excess of (x) the sum of (A) the Initial Land Value, (B) the WRY Roof Component Financing Cost Savings, if any, and (C) if Tenant exercises its option to extend the Initial Abatement Period pursuant to Section 3.02(e), the Abatement Extension Adjustment Amount, over (y) the sum of (A) the Closing Payment, (B) the First Post-Closing Payment, if such amount has been paid by Tenant to Landlord pursuant to this Lease and (C) the Second Post-Closing Payment, if such amount has been paid by Tenant to Landlord pursuant to this Lease.

(iii) "Rent Factor" shall mean six and one-half percent (6.5%).

(iv) "FMV Land Value" shall mean the fair market value of the Premises as of the commencement of the FMV Reset Period in question, determined pursuant to Section 3.08 and calculated as if the Premises were (x) encumbered by this Lease, (y) unimproved by the WRY Roof Component and any Facility Airspace

Improvements and (z) to be used for the actual uses in place or under development on the Premises at the time that such FMV Land Value determination is being made (or, if construction has not commenced on any portion of the Premises at the time that such FMV Land Value determination is being made, the highest and best use permitted for such portion of the Premises in accordance with the Zoning Resolution, this Lease and the other applicable Project Documents.

(v) "FMV Rental Value" shall mean the product of (a) ninety percent (90%) of the FMV Land Value and (b) the Rent Factor.

(b) Initial Rental Period. Annual Base Rent for each of Lease Years 1 through 30 (the "Initial Rental Period") shall be as follows:

(i) Lease Years 1-5: the product of (x) the Rent Factor and (y) the Adjusted Initial Land Value applicable for such Lease Year.

(ii) Lease Years 6-10: one hundred ten percent (110%) of Annual Base Rent in Lease Year 5.

(iii) Lease Years 11-15: one hundred ten percent (110%) of Annual Base Rent in Lease Year 10.

(iv) Lease Years 16-20: one hundred ten percent (110%) of Annual Base Rent in Lease Year 15.

(v) Lease Years 21-25: one hundred ten percent (110%) of Annual Base Rent in Lease Year 20.

(vi) Lease Years 26-30: one hundred ten percent (110%) of Annual Base Rent in Lease Year 25.

(vii) Notwithstanding the foregoing, if the closing of a construction loan for any portion of the WRY Roof Component occurs during any calendar month in the Initial Rental Period and there are WRY Roof Component Financing Cost Savings, the installment of Annual Base Rent payable for each succeeding calendar month in the Initial Rental Period shall, subject to any applicable rent abatements, be an amount equal to the amount of such installment that would have been payable if Annual Base Rent for the Lease Year in which such closing occurs (and each subsequent Lease Year during the Initial Rental Period that occurs prior to the next applicable rent escalation described in any of clauses (ii) through (vi)) were increased by an amount equal to the product of (x) the WRY Roof Component Financing Cost Savings and (y) the Rent Factor.

(c) First Reset Period. Annual Base Rent for each of Lease Years 31 through 55 (the "First FMV Reset Period") shall be as follows:

(i) Lease Years 31-35: the FMV Rental Value as of Lease Year 31, but not less than one hundred percent (100%) and not greater than one hundred twenty percent (120%) of the Annual Base Rent in Lease Year 30.

(ii) Lease Years 36-40: one hundred ten percent (110%) of Annual Base Rent in Lease Year 35.

(iii) Lease Years 41-45: one hundred ten percent (110%) of Annual Base Rent in Lease Year 40.

(iv) Lease Years 46-50: one hundred ten percent (110%) of Annual Base Rent in Lease Year 45.

(v) Lease Years 51-55: one hundred ten percent (110%) of Annual Base Rent in Lease Year 50.

(d) Second Reset Period. Annual Base Rent for each of Lease Years 56 through 80 (the "Second FMV Reset Period") shall be as follows:

(i) Lease Years 56-60: the FMV Rental Value as of Lease Year 56, but not less than one hundred percent (100%) and not greater than one hundred twenty percent (120%) of the Annual Base Rent in Lease Year 55.

(ii) Lease Years 61-65: one hundred ten percent (110%) of Annual Base Rent in Lease Year 60.

(iii) Lease Years 66-70: one hundred ten percent (110%) of Annual Base Rent in Lease Year 65.

(iv) Lease Years 71-75: one hundred ten percent (110%) of Annual Base Rent in Lease Year 70.

(v) Lease Years 76-80: one hundred ten percent (110%) of Annual Base Rent in Lease Year 75.

(e) Third Reset Period. Annual Base Rent for each of Lease Years 81 through 99 (the "Third FMV Reset Period"; each of the First Reset Period, the Second Reset Period and the Third Reset Period, an "FMV Reset Period"; and each adjustment to Annual Base Rent as set forth in Section 3.03(c) though (e), an "FMV Base Rent Reset") shall be as follows:

(i) Lease Years 81-85: the FMV Rental Value as of Lease Year 81, but not less than one hundred percent (100%) and not greater than one hundred twenty percent (120%) of the Annual Base Rent in Lease Year 80.

(ii) Lease Years 86-90: one hundred ten percent (110%) of Annual Base Rent in Lease Year 85.

(iii) Lease Years 91-95: one hundred ten percent (110%) of Annual Base Rent in Lease Year 90.

(iv) Lease Years 96-99: one hundred ten percent (110%) of Annual Base Rent in Lease Year 95.

Section 3.04. Rent Abatements. Provided that this Lease is in full force and effect, Annual Base Rent set forth in Section 3.03 shall be abated as follows:

(a) Commencing on the Abatement Commencement Date and ending on the day immediately prior to the date which is the second (2^{nd}) anniversary of the Abatement Commencement Date (i.e., Lease Years 1 through 2) (the "Initial Abatement Period"), in an amount equal to one hundred percent (100%) of the Annual Base Rent payable pursuant to the provisions of Section 3.03;

(b) Commencing on the second (2^{nd}) anniversary of the Abatement Commencement Date and ending on the day immediately prior to the date which is the fifth (5^{th}) anniversary of the Abatement Commencement Date (i.e., Lease Years 4 through 6) (the "Second Abatement Period"), in an amount equal to fifty percent (50%) of the Annual Base Rent payable pursuant to the provisions of Section 3.03; and

(c) From and after the fifth (5^{th}) anniversary of the Abatement Commencement Date (the "Rent Abatement Expiration Date"), Annual Base Rent shall not be abated except as provided with respect to the No. 7 Line Abatement pursuant to Section 3.04(e).

(d) Initial Abatement Extension.

(i) Notwithstanding anything to the contrary contained in Section 3.04(a), (b), (e) or (f), Tenant shall have the option to extend the Initial Abatement Period for a period not to exceed twenty-four (24) months (such period, the "Initial Abatement Extension"); provided, that Tenant shall exercise such option by written notice given to Landlord on a date no later than the expiration of the Initial Abatement Period.

(ii) If Tenant duly exercises the Abatement Extension Option, (x) the Adjusted Initial Land Value shall be increased effective as of commencement of the Initial Abatement Extension by the Abatement Extension Adjustment Amount; (y) the commencement date for the Second Abatement Period shall be extended so as to commence upon the expiration of the Initial Abatement Extension, and the Rent Abatement Expiration Date shall be extended accordingly; and (z) the Guaranteed Default Payments shall equal the sum of (A) all payments listed in the column of the Default Payment Schedule named "WRY Ground Lease Payment Amount Due" from the Abatement Commencement Date through the Lease Year in which the Pre-Construction Event of Default, if any, occurs, to the extent not theretofore paid, as if the Initial Abatement Extension had not been in effect, plus (B) the amount set forth in the column of the Default Payment Schedule named "Guaranteed Additional Amounts Due" corresponding to the year in which the Pre-Construction Event of Default, if any, occurs.

(iii) As used herein, the term "Abatement Extension Adjustment Amount" shall mean the amount that when added to the Initial Land Value increases the net present value as of the Abatement Commencement Date, utilizing a six percent (6.0%) discount rate, of the stream of all Annual Base Rent and other payments set forth on the Pro Forma Rent Schedule (taking into account all rent escalations and FMV Base Rent Resets, and assuming that the Annual Base Rent for the Lease Year following each FMV Base Rent Reset shall be equal to one hundred twenty percent (120%) of the Annual Base Rent for the Lease Year expiring on the day immediately prior to the applicable Initial Reset Date or Reset Date) by fifty percent (50%) of the net present value reduction resulting from the Initial Abatement Extension using the same method of calculation for such payments after giving effect to the Initial Abatement Extension.

(e) No. 7 Line Abatements. In addition to the other abatements set forth in this Section 3.04, Annual Base Rent shall be abated as follows:

(i) If the 34th Street Station is not opened for operation and available for general use of the No. 7 Subway Line Extension by the public on or before the Initial No. 7 Line Date, but is opened for operation and so available on or before the first (1st) anniversary of the Initial No. 7 Line Date, then on a day-for-day basis commencing on the Initial No. 7 Line Date until the Actual No. 7 Line Date, in an amount equal to fifty percent (50%) of the Annual Base Rent otherwise due and payable by Tenant pursuant to the terms of this Lease (taking into account the other abatements set forth in this Section 3.04); and

(ii) If at any time or from time to time the Projected No. 7 Line Date shall be extended to a date that is later than the first (1st) anniversary of the Initial No. 7 Line Date (the date on which such extension is made, an "Extension Determination Date", and the resultant new Projected No. 7 Line Date, the "Extended No. 7 Line Date"), then (x) commencing on the applicable Extension Determination Date and continuing until the date that is twenty-four (24) months prior to the then-current Extended No. 7 Line Date, in an amount equal to one hundred percent (100%) of the Annual Base Rent otherwise due and payable by Tenant for such period, and (y) from and after the date that is twenty-four (24) months prior to the then-current Extended No. 7 Line Date and continuing until the Actual No. 7 Line Date, in an amount equal to fifty percent (50%) of the Annual Base Rent otherwise due and payable by Tenant for such period (taking into account the other abatements set forth in this Section 3.04). Landlord agrees to promptly inform Tenant of any Extended No. 7 Line Dates due to changes in the timetable for the construction of the No. 7 Subway Line Extension and the 34th Street Station.

(iii) Promptly following the Actual No. 7 Line Date, Landlord shall calculate the amount of Annual Base Rent that would have been payable under this Lease (x) for all periods prior to twenty-four (24) months prior to the Actual No. 7 Line Date, and (y) during the twenty-four (24) month period immediately prior to the Actual No. 7 Line Date, taking into account the abatements set forth in this Section 3.04 and the abatement reductions set forth in this Section 3.04 and in Section 9.03(a) (i.e., so that Annual Base Rent shall have been (A) one hundred percent (100%) abated for all periods prior to twenty-four (24) months prior to the Actual No. 7

Line Date, and (B) fifty percent (50%) abated during the twenty-four (24) month period immediately prior to the Actual No. 7 Line Date). Landlord shall deliver to Tenant a statement setting forth the calculation of Annual Base Rent that would have been payable hereunder as aforesaid, and setting forth the amounts, if any, by which Tenant has overpaid or underpaid Annual Base Rent. Upon the delivery of such statement (absent manifest error), (x) in the event of an underpayment, Tenant shall pay the entire amount of any underpayment to Landlord as shown on such statement within twenty (20) days following the delivery of such statement, without interest; or (y) in the event of an overpayment of Annual Base Rent by Tenant, Landlord shall credit the amount of such overpayment against the next monthly installments of Annual Base Rent thereafter coming due, without interest.

Section 3.05. Rental. All of the amounts payable by Tenant to Landlord pursuant to this Lease (except, in all events, PILOT or PILOST payments), including, without limitation, the Closing Payment, the First Post-Closing Payment, the Second Post-Closing Payment, Annual Base Rent, Additional Rent, and all other sums, costs, expenses or deposits which Tenant in any of the provisions of this Lease assumes or agrees to pay to and/or deposit with Landlord (such amounts, collectively, "Rental") shall constitute rent under this Lease and, in the event of Tenant's failure to pay Rental after the expiration of any applicable notice and cure periods, Landlord (in addition to all other rights and remedies) shall have all of the rights and remedies provided for herein and by law in the case of non-payment of rent. All Rental shall be payable without any abatement, deduction, counterclaim, set-off or offset whatsoever (except as expressly set forth herein), and without notice or demand, in lawful money of the United States, by wire transfer to a bank account designated by Landlord or at such other place as Landlord shall direct from time to time by written notice to Tenant.

Section 3.06. Proration of Rental Payments. Rental of whatever kind that is due for any partial month, year or other applicable period shall be appropriately prorated.

Section 3.07. Net Lease. Except as expressly set forth herein or in any other Project Document, it is the purpose and intention of Landlord and Tenant, and Landlord and Tenant hereby agree that, all Rental shall be absolutely net to Landlord without any abatement, deduction, counterclaim, set-off or offset whatsoever, so that this Lease shall yield, net, to Landlord, the Rental in each year during the term of this Lease, and that all costs, expenses and charges of every kind and nature (including, without limitation, all public and private utilities and services and any easement or agreement maintained for the benefit of the Premises), relating to the Premises shall be paid by Tenant, such that this Lease shall be a so-called "triple net lease".

Section 3.08. FMV Land Value, FMV Rental Value and Interim Annual Base Rent. The FMV Land Value and FMV Rental Value for each FMV Reset Period shall be determined in the following manner: not more than one (1) year and six (6) months prior to the commencement of the relevant FMV Reset Period, Landlord shall submit to Tenant an appraisal, setting forth Landlord's determination of the FMV Land Value and the FMV Rental Value, together with a letter making express reference to this Section 3.08 and stating that Tenant has thirty (30) days to respond to such notice (the "Rental Notice"). If Tenant shall dispute Landlord's determination (the "Notice of Dispute") by notice given by Tenant to Landlord not

later than thirty (30) days after delivery to Tenant of the applicable Rental Notice (TIME BEING OF THE ESSENCE as to the giving of the Notice of Dispute), then Tenant shall engage its own appraiser and deliver to Landlord its determination of the FMV Land Value (and calculation of the corresponding FMV Rental Value) no later than forty-five (45) days following the delivery of the Notice of Dispute. Landlord and Tenant shall attempt to resolve any disagreement in the FMV Land Value in good faith, and if such disagreement is not resolved within thirty (30) days, then such dispute shall be resolved in accordance with Sections 40.01(a) and (b); provided that any appraiser selected by the parties pursuant to this Section 3.08 shall be a member of the American Institute of Real Estate Appraisers (or its successor organization) and shall have been engaged in the business of real estate appraisals in the City of New York for no less than ten (10) years. If for any reason the FMV Rental Value for any FMV Reset Period has not been finally determined by the first day of such FMV Reset Period, then until such final determination, Tenant shall pay as Annual Base Rent the lesser of (a) one hundred ten percent (110%) of the Annual Base Rent payable in the previous Lease Year and (b) the Annual Base Rent calculated using Landlord's determination of FMV Rental Value. Upon final determination of the FMV Land Value and corresponding FMV Rental Value for such FMV Reset Period (i) in the event that the application of such FMV Rental Value shall result in a greater Annual Base Rent than that theretofore paid in respect of such FMV Reset Period, Tenant shall pay the entire amount of any underpayment to Landlord within twenty (20) days of such final determination, without interest, or (ii) in the event that the application of such FMV Rental Value shall result in a lesser Annual Base Rent than that theretofore paid in respect of such FMV Reset Period, Landlord shall credit the amount of such overpayment against the next monthly installments of Annual Base Rent thereafter due and owing, without interest.

Section 3.09. Additional Rent.. Tenant shall pay to Landlord, as additional rent ("Additional Rent") under this Lease, the following amounts (except, in all events, PILOT or PILOST payments, which shall be payable in accordance with Section 4.11 and shall not be deemed "rent"): all taxes, assessments, charges, costs, expenses and other sums of money as shall become due and payable by Tenant to or on behalf of Landlord under this Lease, or which Tenant shall assume to pay to or on behalf of Landlord under this Lease (whether or not designated as Additional Rent in this Lease). Upon any failure on the part of Tenant to pay any Additional Rent, Landlord shall have the same legal, equitable and contractual rights, powers and remedies provided in this Lease, by statute, at common law or as are otherwise available to Landlord, in the case of nonpayment of Annual Base Rent, including all interest and penalties that may accrue thereon in the event of Tenant's failure to pay such amounts when due, and all damages, costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements which Landlord may incur by reason of any Default of Tenant or failure on Tenant's part to comply with any of the terms of this Lease, or arising out of any indemnity and/or "hold harmless" agreement given or made by Tenant to Landlord in this Lease, or otherwise incurred by Landlord in connection with the enforcement of its rights and Tenant's obligations under this Lease (provided that Landlord is the prevailing party), and Tenant hereby agrees to pay any such amounts within twenty (20) days after demand by Landlord unless otherwise specifically provided in this Lease.

Section 3.10. Section 467. Upon Tenant's written request, Landlord shall cooperate with Tenant to enable Tenant to account for the appropriate treatment of Annual Base Rent under Section 467 of the Internal Revenue Code of 1986, as amended.

ARTICLE 4

IMPOSITIONS

Section 4.01. Impositions. Subject to any exemptions or abatements which may be granted by any Governmental Authority, Tenant shall pay, as hereinafter provided, all of the following items imposed by any Governmental Authority with respect to the Premises (collectively, "Impositions"), all of which shall be calculated without taking into account available exemptions arising on account of the ownership of the Premises by Landlord: (a) real property general and special assessments, including Taxes, (b) personal property taxes, (c) commercial rent or occupancy taxes, (d) water, water meter and sewer rents, rates and charges, (e) levies, (f) license and permit fees, (g) service charges with respect to police protection, fire protection, street and highway construction, maintenance and lighting, sanitation and water supply, if any, (h) all excise, sales, value added, use and similar taxes, (i) governmental charges for utilities, communications and other services rendered or used in or about the Premises, (j) fines, penalties and other similar or like governmental charges applicable to the foregoing and any interest or costs with respect thereto arising from the failure to make timely payment thereof and (k) any and all other governmental levies, fees, rents, assessments and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, and any interest, penalties or costs with respect thereto arising from the failure to make timely payment thereof, which at any time during (or after, but attributable to a period falling within) the Term are (or, if the Premises or any part thereof or the owner thereof were not exempt therefrom, would have been) (1) assessed, levied, confirmed, imposed upon or would have become due and payable out of or in respect of, or would have been charged with respect to, the Premises or any document to which Tenant is a party creating or transferring an interest or estate in the Premises or the use and occupancy thereof by Tenant and (2) encumbrances or liens on (i) the Premises, or (ii) the sidewalks or streets in front of or adjoining the Premises, or (iii) any vault, passageway or space in, over or under such sidewalk or street (other than any of the foregoing that are within the sole legal and operational control of a Person other than Tenant), or (iv) any appurtenances of the Premises, or (v) any personal property (except personal property which is not owned by or leased to Tenant), Equipment or other facility used in the operation thereof, or (vi) the Rental (or any portion thereof) payable by Tenant hereunder. Each such Imposition, or installment thereof, during the Term shall be paid not later than the Due Date thereof. However, if, by law, any Imposition may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the same in such installments and shall be responsible for the payment of such installments only, together with applicable interest, if any, relating to periods prior to the Expiration Date. Tenant shall promptly notify Landlord if Tenant shall have elected to pay any such Imposition in installments. Notwithstanding anything to the contrary herein, Tenant shall have no obligation to pay any Imposition levied on or payable with respect to the Yards Parcel or the High Line Component; provided that Tenant shall indemnify and hold Landlord harmless for any such Impositions. For the avoidance of doubt,

Landlord shall have no liability for any Impositions levied on or payable with respect to the Premises (without limiting its obligation, as agent, to remit any PILOT received from Tenant as provided in Section 4.11).

Section 4.02. Receipts. Tenant, from time to time upon request of Landlord, shall promptly furnish to Landlord official receipts of the appropriate taxing authority, or other evidence reasonably satisfactory to Landlord, evidencing the payment of Impositions.

Section 4.03. Landlord's Taxes. Nothing herein contained shall require Tenant to pay municipal, state or federal income, gross receipts, inheritance, estate, succession, profit or capital gains taxes of Landlord, or any corporate franchise tax imposed upon Landlord or any gains tax imposed on Landlord. Notwithstanding the foregoing, if at any time during the Term, a tax or excise on Rental or the right to receive rents or any other tax, however described, is levied or assessed against Landlord as a substitute, in whole or in part, for any Impositions that would otherwise be payable by Tenant, Tenant shall pay and discharge such tax or excise on Rental or other tax before interest or penalties accrue and the same shall be deemed an Imposition levied against the Premises.

Section 4.04. Impositions Beyond Term. Any Imposition relating to a period a part of which is included within the Term and a part of which is included in a period of time before the Commencement Date or after the Expiration Date (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon or in respect of or become a lien upon the Premises, or shall become payable, during the Term) shall be apportioned between Landlord and Tenant as of the Commencement Date or the Expiration Date, as the case may be, so that Tenant shall pay that portion of such Imposition which that part of such fiscal period included in the period of time after the Commencement Date or before the Expiration Date bears to such fiscal period. Notwithstanding the foregoing, no such apportionment of Impositions as of the Expiration Date shall be made if this Lease is terminated prior to the Fixed Expiration Date as the result of an Event of Default.

Section 4.05. Tenant's Contest.

Tenant shall have the right to contest the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith, in which event, payment of such Imposition may be postponed at the election of Tenant if and only as long as:

(a) neither the Premises, nor any part thereof or interest therein or income therefrom or any other assets of or funds appropriated to Landlord would, by reason of such postponement or deferment, be, in the reasonable judgment of Landlord, in imminent danger of being forfeited or lost, and neither Landlord nor Tenant would by reason thereof be subject to any civil or criminal liability;

(b) if the contested amount (together with all interest and penalties in connection therewith) exceeds One Hundred Thousand Dollars ($100,000.00), subject to CPI Adjustment, Tenant shall have either (i) deposited with the Impositions Depository, prior to or simultaneously with such contest, an amount equal to one hundred percent (100%) of the amount so contested and unpaid, together with all interest and penalties in connection therewith and all

charges that may or might be assessed against or become a charge on the Premises or any part thereof in (or during the pendency of) such proceedings (collectively, the "Contested Imposition Deposit") or (ii) delivered to Landlord a letter of credit for the benefit of Landlord in such amount issued by an Institutional Lender or other security, in form and substance reasonably satisfactory to Landlord; and

(c) upon the termination of such proceedings, Tenant shall pay the amount of such Imposition or part thereof as finally determined in such proceedings (the payment of which may have been deferred during the prosecution of such proceedings), together with any costs, fees (including attorneys' fees and disbursements), interest, penalties or other liabilities imposed on Tenant or Landlord in connection therewith. Upon such payment, the Impositions Depository shall return, with interest, if any, any amount deposited with it in respect of such Imposition as aforesaid; provided, however, that the Impositions Depository, at Tenant's request (or, upon Tenant's failure to make such payment in a timely manner, at Landlord's request), shall disburse said monies on deposit with it directly to the taxing authority to whom such Imposition is payable and any remaining monies, with interest, if any, shall be returned promptly to Tenant. If at any time during the continuance of such proceedings any accrued and unpaid interest, penalties and/or charges in connection with such Imposition cause the amount of such Imposition (together with all interest and penalties in connection therewith and all charges that may or might be assessed against or become a charge on the Premises or any part thereof in (or during the pendency of) such proceedings) to exceed the amount of the Contested Imposition Deposit, Tenant, within fifteen (15) days after accrual of the same, shall deposit an amount equal to such excess with the Impositions Depository, and upon failure of Tenant to do so, the amount theretofore deposited may be applied, at the request of Landlord, to the payment, removal and/or discharge of such Imposition, together with the interest and penalties incurred in connection therewith and any costs, fees (including attorneys' fees and disbursements) or other liabilities accruing in any such proceedings, and the balance, if any, together with any interest earned thereon, shall be returned to Tenant or the deficiency, if any, shall be paid by Tenant to Landlord within ten (10) days after demand therefor by Landlord. Notwithstanding anything to the contrary contained in this Section 4.05, if by law an Imposition may be challenged only after payment of such Imposition, Tenant shall pay the same prior to, and as a condition to, the institution of any challenge thereof.

Section 4.06. No Postponement of Tenant's Obligation. Tenant shall have the right, at its sole cost and expense, to seek a reduction in the valuation of the Premises assessed for Taxes by appropriate proceedings diligently conducted in good faith, and to prosecute any action or proceeding in connection therewith; provided, that (a) Tenant shall notify Landlord of any such actions or proceedings, and shall deliver to Landlord copies of any applications or submissions in connection with any such proceeding, at least five (5) Business Days prior to Tenant's submission of the same to the applicable taxing authority and (b) no such action or proceeding shall postpone Tenant's obligation to pay any Imposition except in accordance with the provisions of Section 4.05.

Section 4.07. Landlord Cooperation. Landlord shall not be required to join in any proceedings referred to in Section 4.05 or 4.06 unless the provisions of any law, rule or regulation in effect at the time shall require that Landlord join such proceedings or that such proceedings be brought by or in the name of Landlord, in which event, Landlord shall join and

reasonably cooperate in such proceedings, or permit the same to be brought in its name, upon compliance by Tenant with such conditions as Landlord may reasonably require; provided, however, that Landlord shall not be liable for the payment of any costs or expenses in connection with any such proceedings and Tenant shall reimburse Landlord for, and shall indemnify and hold Landlord harmless from and against, any and all costs or expenses which Landlord may reasonably sustain or incur in connection with any such proceedings, including, without limitation, reasonable attorneys' fees and disbursements. In the event that Tenant shall institute a proceeding referred to in Section 4.05 or 4.06 and no law, rule or regulation in effect at the time requires that such proceeding be brought by and/or in the name of Landlord, Landlord, nevertheless, shall, at Tenant's sole cost and expense, and subject to the reimbursement provisions hereinabove set forth, reasonably cooperate with Tenant in any such proceeding.

Section 4.08. Tax Bills. Any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition asserting non-payment of such Imposition shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill at the time or date stated therein.

Section 4.09. Invoices for Impositions. Tenant shall make all necessary arrangements with the applicable taxing authorities to have invoices for Impositions sent directly to Tenant and, if necessary, Landlord shall, at the request of Tenant and at no cost to Landlord, reasonably cooperate in making such arrangements. In the event that Landlord shall receive after the Commencement Date any invoices for Impositions, Landlord shall promptly forward the same to Tenant.

Section 4.10. Separation of Tax Lots. Landlord agrees to cooperate reasonably with Tenant in any applications to be made by Tenant for the creation of a separate tax lot or lots for the Facility Airspace Parcel, and for any Balance Parcel or Severed Parcels within the Premises, including the execution of any documents as may be required by a Governmental Authority in connection therewith. The costs associated with any such applications for a separate tax lot, including surveying costs, shall be paid by Tenant.

Section 4.11. PILOT; PILOT Agreements; PILOST.

(a) During any period in which a PILOT Agreement is not in effect, Tenant shall pay PILOT to Landlord, as collection agent but not as a portion of Rental, not later than five (5) Business Days prior to the Due Date thereof, which PILOT shall be received, held and maintained by Landlord in a separate account in trust for the benefit of HYIC and shall be remitted to HYIC within five (5) business days of Landlord's receipt thereof, or otherwise remitted as and when HYIC may designate to Landlord from time to time. It is acknowledged and agreed that HYIC is an intended third party beneficiary of Tenant's obligation to pay PILOT and Landlord's obligation to remit PILOT in accordance with the previous sentence. In no event shall PILOT be deemed an Imposition or a payment of Rental for purposes of this Lease; provided, however that Tenant may contest any payment of PILOT in accordance with procedures set forth in Section 4.05.

(b) Landlord agrees reasonably to cooperate with Tenant (at Tenant's sole cost and expense) in any applications to be made by Tenant to any Governmental Authority for abatements or exemptions to PILOT payments, including UTEP benefits. In connection therewith, Landlord agrees to enter into any modifications of this Lease or other agreements reasonably required by the Governmental Authority conveying such benefits; provided that such modifications or agreements do not materially increase Landlord's obligations or reduce its rights and privileges hereunder. In addition, Landlord and Tenant acknowledge that the City has committed, upon the request of Tenant, to request that IDA amend the UTEP to include the WRY. If the UTEP is so amended, in determining PILOT, Tenant will be entitled to claim an abatement under the UTEP (if Tenant is granted the UTEP abatement by IDA in accordance with IDA's application procedures). Upon request of Tenant, Landlord, at Tenant's sole cost and expense, will reasonably cooperate with the efforts of Tenant, to cause the City to amend the UTEP to include the WRY.

(c) It is the understanding of the parties that Tenant shall be liable for the payment of PILOST in accordance with the PILOST Agreement. In no event shall PILOST be deemed an Imposition or a payment of Rental for purposes of this Lease; provided, however that Tenant may contest any payment of PILOST in accordance with the procedures set forth in Section 4.05.

ARTICLE 5

DEPOSITS FOR IMPOSITIONS

Section 5.01. Monthly Deposits following Event of Default.

(a) At Landlord's option, which may be exercised solely at any time during the pendency of an uncured Event of Default under this Lease and no other time, Tenant shall make monthly deposits for Impositions and Insurance Premiums, as set forth in this Article 5. Landlord shall provide Tenant with written notice setting forth Landlord's reasonable estimate of the annual Insurance Premiums and aggregate annual Impositions for such Lease Year, and Tenant shall deposit with the Impositions Depository on the first day of each month during the Term, an amount equal to one-twelfth ($1/12^{th}$) of such annual Impositions and one-twelfth ($1/12^{th}$) of such Insurance Premiums as reasonably estimated by Landlord (such deposits, the "Monthly Impositions and Insurance Deposits"). Notwithstanding the foregoing, in the event that a Leasehold Mortgagee shall require Tenant to deposit funds with such Leasehold Mortgagee to insure payment of Impositions or Insurance Premiums, any amount so deposited by Tenant shall be credited against the amount, if any, which Tenant would otherwise be required to deposit with the Impositions Depository under this Article 5; provided that such Leasehold Mortgagee shall have agreed in writing, for the benefit of Landlord and pursuant to an instrument reasonably satisfactory to Landlord, to hold such funds in a segregated special account for the payment of Impositions and Insurance Premiums, and for no other use, and that the Leasehold Mortgagee shall use such funds to pay Impositions and Insurance Premiums as and when the same are required to be paid hereunder and for no other purpose.

(b) If at any time the monies so deposited by Tenant shall be insufficient to pay the next installment of Impositions or Insurance Premiums then due, Tenant

shall deposit with the Impositions Depository the amount of any such insufficiency to enable the Impositions Depository to pay the next installment of Impositions or Insurance Premiums at least thirty (30) days prior to the Due Date thereof. It is acknowledged that all or a portion of the Insurance Premiums may be payable to the FASP Owners Association in accordance with the Association Documents.

(c) The Impositions Depository shall hold monies deposited by Tenant pursuant to this Article 5 in a segregated special account for the purpose of paying the charges for which such amounts have been deposited as they become due, and the Impositions Depository shall apply the deposited monies for such purpose not later than the Due Date for such charges.

(d) If at any time during the period that Tenant shall be required to make the deposits required by this Section 5.01 the amount of any Imposition or Insurance Premium is increased or Landlord receives information from the Persons imposing such Imposition that an Imposition will be increased and the monthly deposits then being made by Tenant under this Section 5.01 would be insufficient to pay such Imposition or Insurance Premium thirty (30) days prior to the Due Date thereof, then upon notice from Landlord to Tenant of such fact, the monthly deposits shall thereupon be increased and Tenant shall deposit with the Impositions Depository promptly (but in no event later than twenty (20) days from the applicable notice) sufficient monies for the payment of the increased Imposition or Insurance Premium. Thereafter, the monthly payments shall be adjusted such that Tenant shall deposit with the Impositions Depository an amount sufficient to pay each Imposition and Insurance Premium at least thirty (30) days prior to the Due Date thereof.

(e) For the purpose of determining whether the Impositions Depository has on hand sufficient monies to pay any particular Imposition or Insurance Premium at least thirty (30) days prior to the Due Date thereof, deposits for each category and payee of Imposition and for each Insurance Premium shall be treated separately. The Impositions Depository shall not be obligated to use monies deposited for the payment of an Imposition or Insurance Premium not yet due and payable for the payment of an Imposition or Insurance Premium that is due and payable.

(f) Notwithstanding the foregoing, Tenant expressly acknowledges and agrees that (i) monies deposited with the Impositions Depository pursuant to the provisions of this Article 5 may be held by the Impositions Depository in a single bank account, and (ii) the Impositions Depository shall, in the event Tenant fails to make any payment or perform any obligation required under this Lease, at Landlord's option and direction but subject to the rights of any Leasehold Mortgagees or Mezzanine Lenders, use any such monies for the payment of any Rental.

(g) If this Lease shall be terminated by reason of any Event of Default, or if dispossession occurs pursuant to Article 31 of this Lease, all monies deposited pursuant to this Article 5 then held by the Impositions Depository shall be paid to, and applied by, Landlord in payment of any and all sums due under this Lease and Tenant shall promptly pay the resulting deficiency.

(h) Any interest paid on monies deposited pursuant to this Article 5 shall be applied pursuant to the foregoing provisions against amounts thereafter becoming due and payable by Tenant.

(i) Notwithstanding anything to the contrary herein, if at any time after monies have been deposited with the Impositions Depository pursuant to the provisions of this Article 5 there are no pending Events of Default for a period of thirty (30) consecutive days, all monies so deposited with the Impositions Depository shall be paid over to Tenant, subject to the rights of any Leasehold Mortgagees or Mezzanine Lenders.

ARTICLE 6

LATE CHARGES

In the event that (a) any payment of Rental shall not have been paid by Tenant to Landlord within five (5) Business Days following the date due and (b) Landlord delivers written notice thereof to Tenant (provided that no such notice shall be required with respect to late payments of Annual Base Rent or Closing Payments), such unpaid amount shall bear interest at a rate equal to the sum of the Prime Rate plus two percent (2%) (such rate, the "Default Rate"), from the date on which such payment became due and payable through the date of actual payment. The amount of interest accrued pursuant to the immediately preceding sentence shall become due and payable to Landlord as liquidated damages for the administrative costs and expenses incurred by Landlord by reason of Tenant's failure to make prompt payment, and such amounts shall constitute Additional Rent hereunder. No failure by Landlord to insist upon the strict performance by Tenant of its obligations to pay any such interest shall constitute a waiver by Landlord of its right to enforce the provisions of this Article 6 in any instance thereafter occurring. The provisions of this Article 6 shall not be construed in any way to extend the grace periods or notice periods otherwise set forth in this Lease.

ARTICLE 7

LEASE SUBORDINATE TO WRY DECLARATION OF EASEMENTS; ASSUMPTION BY TENANT OF RIGHTS AND OBLIGATIONS; FASP OWNERS ASSOCIATION; LEASE SUBORDINATE TO HIGH LINE EASEMENT

Section 7.01. WRY Declaration of Easements. This Lease, and the rights and obligations of Landlord and Tenant hereunder, shall be subject and subordinate in all respects to the WRY Declaration of Easements. During the Term, Tenant shall be entitled to all rights and benefits, and shall comply with all obligations, of the Facility Airspace Parcel Owner (or, following the first Severance, Balance Parcel Owner) of the Premises in accordance with and subject to the WRY Declaration of Easements which obligations shall be incorporated into this Lease as obligations of Tenant hereunder, as if fully set forth herein. For the avoidance of doubt, nothing in this Section 7.01 shall be deemed to expand Tenant's obligations as Facility Airspace Parcel Owner (or Balance Parcel Owner, as applicable) within the meaning of Article XVI of the WRY Declaration of Easements, including, without limitation,, the limitation of Tenant's obligations (in its capacity as Facility Airspace Parcel Owner (or Balance Parcel Owner, as applicable)) with respect to its Allocable Share (as such term is defined in the WRY Declaration

of Easements) of the obligations of the Facility Airspace Parcel Owner (which constitute Association Matters under the WRY Declaration of Easements). In addition, notwithstanding anything to the contrary in this Lease, nothing in this Lease shall whatsoever be deemed to (a) derogate from the rights and obligations of the Yards Parcel Owner (including Landlord in its capacity as Yards Parcel Owner) and Yards Parcel Operator as set forth in the WRY Declaration of Easements, or (b) derogate from the rights and obligations of Tenant in its capacity as Facility Airspace Parcel Owner (or Balance Parcel Owner, as applicable) in accordance with the WRY Declaration of Easements.

Section 7.02. FASP Owners Association. Landlord acknowledges and agrees that, following the approval or deemed approval of the Association Documents in accordance with the WRY Declaration of Easements, Landlord will accept the performance by the FASP Owners Association of any obligation of Tenant hereunder which constitutes an Association Matter. Notwithstanding the foregoing, nothing contained herein shall limit Landlord's recourse to Tenant with respect to any Default under this Lease.

Section 7.03. Highline Easement. This Lease, and the rights and obligations of Landlord and Tenant hereunder, shall be subject and subordinate in all respects to that certain Amended, Modified, and Restated High Line Easement Agreement (the "High Line Easement") dated as of April 10, 2013, by and among Landlord, LIRR and the City, and recorded in the City Register on July 12, 2013 at CRFN 2013000276097. During the Term, Tenant shall be entitled to all rights and benefits, and shall comply with all obligations, of a WRY Facility Airspace Parcel Owner (as such term is defined in the High Line Easement) of the Premises thereunder in accordance with and subject to the High Line Easement which obligations shall be incorporated into this Lease as obligations of Tenant hereunder, as if fully set forth herein.

ARTICLE 8

DEVELOPMENT RIGHTS AND DEVELOPMENT AND CONSTRUCTION OF THE PROJECT

Section 8.01. Agreement to Develop the WRY Project.

(a) Subject to and in accordance with the terms and conditions set forth in this Lease, the WRY Declaration of Easements and the other Project Documents which are binding on Tenant, Tenant shall cause, at no cost or expense to Landlord, the design, construction and completion of a project (the "WRY Project") utilizing up to the Included Floor Area, which WRY Project shall consist of the following components (each such component, a "WRY Project Component"): (i) commercial, residential, community facility, school and accessory space, (ii) twenty-six (26) of the sixty-five (65) parking spaces for automobiles required to be located within the WRY and/or the ERY for use by the Yards Parcel Operator in connection with its operations at the WSY (the "Parking Component"); (iii) publicly-accessible open space in accordance with the provisions of the Zoning Resolution (the "WRY Open Space Component"), (iv) the treatment of the portion of the High Line located on the Premises as publicly-accessible open space pursuant to the High Line Easement (the "High Line Component"), (v) the WRY Roof Component, subject to and in accordance with the WRY Construction Agreement, and (vi) the New LIRR Facilities and LIRR Relocations, subject to and

in accordance with the WRY Construction Agreement. Landlord and Tenant each acknowledges and agrees that the WRY Project Components described in clauses (i) and (iii) of the immediately preceding sentence are subject to change (subject to the applicable provisions of the WRY Declaration of Easements and the other Project Documents which are binding on Tenant) in response to changing market and economic conditions; provided, however, that the WRY Project shall in all events be developed and maintained (x) in compliance with the Zoning Resolution and the WRY Restrictive Declaration, (y) in accordance with the Minimum Standards, and (z) if the WRY Project contains a hotel, compliance with the provisions of Public Authorities Law § 2879-b, to the extent applicable. Nothing contained in this Section 8.01(a) shall be deemed to require the construction of the LIRR Roof and Facilities or any portion thereof (including any New LIRR Facilities and LIRR Relocations) prior to the date required by the WRY Construction Agreement.

(b) Each Severed Parcel Lease shall set forth the WRY Project Component(s) that is intended to be constructed on the premises demised thereby. From and after the date of each such Severance, Tenant shall have no obligation hereunder to construct the WRY Project Component(s) specified in such Severed Parcel Lease and Tenant shall be released from any such obligation under Section 8.01(a).

Section 8.02. Facility Airspace Improvement Plans and Specifications.

(a) Intentionally omitted.

(b) The provisions of this Section 8.02 and Exhibit D of the WRY Declaration of Easements are intended to collectively constitute a single set of requirements for the review and approval by the Yards Parcel Owner, the Yards Parcel Operator and Landlord, collectively, of the Proposed Facility Airspace Improvement Plans and Specifications (including, if applicable, portions thereof that may relate to Material Facility Airspace Improvements on the Premises), other design and scheduling matters, and the imposition of any other requirements hereunder and under the WRY Declaration of Easements with respect to the design and construction of any Facility Airspace Improvements (including any Restoration and Capital Improvement thereto) on the Premises. Landlord hereby appoints the Yards Parcel Operator (and Tenant hereby consents thereto) for all responsibilities in coordinating in all respects the implementation of such provisions on behalf of the Yards Parcel Owner, the Yards Parcel Operator and Landlord. Landlord acknowledges and agrees that Tenant shall be entitled to rely on all consents and approvals (including deemed approvals) by the Yards Parcel Operator as binding on Landlord, Yards Parcel Owner and the Yards Parcel Operator for all such purposes hereunder and under the WRY Declaration of Easements without the requirement of any further inquiry on the part of Tenant.

(c) Prior to the initial Commencement of Construction of any portion of the Facility Airspace Improvements on the Premises (or any portion thereof) pursuant to this Lease, Tenant shall submit to Yards Parcel Operator plans and specifications in a form sufficiently detailed and progressed to enable the Yards Parcel Operator to review the same to the extent provided in this Section 8.02(c) for such portions of the Facility Airspace Improvements to be constructed (the "Proposed Facility Airspace Improvement Plans and Specifications") prepared by a licensed professional engineer or registered architect selected by

Tenant, which Proposed Facility Airspace Improvement Plans and Specifications shall be in conformance with all applicable Legal Requirements, the Approved Severed Parcel Plan, and all requirements of the WRY Declaration of Easements. Without limiting any additional requirements under Exhibit D of the WRY Declaration of Easements, the Yards Parcel Operator shall have the right pursuant to this Section 8.02 to review and approve such Proposed Facility Airspace Improvement Plans and Specifications; provided, that such review and approval shall be limited to (i) determining whether such Proposed Facility Airspace Improvement Plans and Specifications conform to the Approved Severed Parcel Plan in all material respects (i.e., with respect to allocation of Floor Area, zoning use and the Parking Component to the extent set forth therein) and (ii) to the extent applicable, that any portion of the WRY Open Space Component complies with Legal Requirements. If the Yards Parcel Operator reasonably determines that such Proposed Facility Airspace Improvement Plans and Specifications do not conform to the standards set forth (to the extent applicable) in the preceding sentence, and such deviations are not reasonably acceptable to Yards Parcel Operator (on behalf of Landlord and Yards Parcel Owner), then Yards Parcel Operator shall notify Tenant of same within twenty-one (21) days of receipt thereof, specifying in reasonable detail those respects in which such Proposed Facility Airspace Improvement Plans and Specifications do not so conform and are otherwise not reasonable to Yards Parcel Operator. Upon receipt of such notice from Yards Parcel Operator, Tenant shall then either (i) cause such Proposed Facility Airspace Improvement Plans and Specifications to be revised and resubmitted to Landlord for review and approval as aforesaid, or (ii) dispute the disapproval of the Proposed Facility Airspace Improvement Plans and Specifications in accordance with Sections 40.01(a) and (b).

(d) If Yards Parcel Operator shall fail to approve or disapprove any Proposed Facility Airspace Improvement Plans and Specifications within twenty-one (21) days of Tenant's submission thereof to Yards Parcel Operator, Tenant may provide to Yards Parcel Operator a written notice, which notice shall include in capital letters on the first page thereof: "THIS NOTICE IS BEING GIVEN UNDER SECTION 8.02 OF THE AGREEMENT OF LEASE (WESTERN RAIL YARD SECTION OF THE JOHN D. CAEMMERER WEST SIDE YARD). YOUR FAILURE TO RESPOND WITHIN TEN (10) DAYS WILL RESULT IN YOUR DEEMED APPROVAL OF THE PENDING PROPOSED FACILITY AIRSPACE IMPROVEMENT PLANS AND SPECIFICATIONS" (such notice, the "Proposed Facility Airspace Improvement Plans and Specifications Notice"). In the event that Yards Parcel Operator does not approve or disapprove such Proposed Facility Airspace Improvement Plans and Specifications within ten (10) days after Tenant provides Yards Parcel Operator with such Proposed Facility Airspace Improvement Plans and Specifications Notice, Yards Parcel Operator shall be deemed to have approved such Proposed Facility Airspace Improvement Plans and Specifications. As used herein, the term "Approved Facility Airspace Improvement Plans and Specifications" shall mean, with respect to any Facility Airspace Improvements, the Proposed Facility Airspace Improvement Plans and Specifications that have been approved (or have otherwise been deemed approved) by Yards Parcel Operator.

(e) In the event that Tenant shall desire from time to time to modify the Approved Facility Airspace Improvement Plans and Specifications in a material manner, Tenant shall first submit such proposed modifications to Yards Parcel Operator. The submittal, review and approval of any such proposed modifications shall be upon the same terms and

conditions as apply to the submittal, review and approval of the applicable Proposed Facility Airspace Improvement Plans and Specifications pursuant to Sections 8.02(c) and (d).

(f) Each Approved Facility Airspace Improvement Plans and Specifications shall comply with all Legal Requirements, including, but not limited to, the Building Code, as well as all requirements under the WRY Declaration of Easements, to the extent applicable. The responsibility to assure such compliance shall be that of Tenant and not of Landlord or Yards Parcel Operator. Yards Parcel Operator's determination that such Approved Facility Airspace Improvement Plans and Specifications conform to the applicable provisions of Section 8.02(c) shall not be, nor shall it be construed to be, or relied upon as, a determination that such Approved Facility Airspace Improvement Plans and Specifications comply with any Legal Requirements.

(g) All reasonable costs and expenses incurred by Landlord in reviewing the Proposed Facility Airspace Improvement Plans and Specifications and any modifications thereto shall be paid by Tenant to Landlord within thirty (30) days following delivery of an invoice by Landlord, together with evidence reasonably substantiating such costs.

Section 8.03. Facility Airspace Improvements Release to Proceed.

(a) Tenant shall provide to Yards Parcel Operator notice of the date upon which it desires to initiate the Commencement of Construction of any Facility Airspace Improvements on the Premises (the "FAI Construction Commencement Notice"), which FAI Construction Commencement Notice shall be given not less than thirty (30) days prior to such desired commencement date (and shall be delivered concurrently with an Estimated Sales Tax Statement (as such term is defined in the PILOST Agreement)). Within twenty (20) days after receipt of such notice, Yards Parcel Operator shall provide Tenant with a written release to proceed with the commencement of construction in accordance with the applicable Approved Facility Airspace Improvement Plans and Specifications (the "Facility Airspace Improvements Release to Proceed"), upon satisfaction (or waiver in writing by Yards Parcel Operator) of each of the following conditions:

(i) The Yards Parcel Operator (on behalf of Landlord) shall have approved or shall have been deemed to have approved the Approved Facility Airspace Improvements Plans and Specifications;

(ii) If required pursuant to Exhibit D of the WRY Declaration of Easements:

(1) The Yards Parcel Operator shall have approved or shall be deemed to have approved any Approved MFAI Contractor Submittals for the initial stage of the construction work and Tenant's MFAI Schedule;

(2) Tenant shall have provided to the Yards Parcel Operator work and safety plans, including job hazard analyses where required;

(iii) Tenant shall have procured and paid for all Improvement Approvals with respect to all of the particular elements of such Facility Airspace Improvements;

(iv) If such construction involves the construction of a Building, Tenant (or a Permitted Severed Parcel Tenant designated by Tenant) shall have entered into a Severed Parcel Lease with respect to the portion of the Premises on which such Building is to be constructed in accordance with Section 9.01(c) and shall have complied with the conditions set forth in such Severed Parcel Lease applicable to the Facility Airspace Improvements Release to Proceed;

(v) Tenant shall have complied with the insurance requirements of this Lease and the WRY Declaration of Easements applicable to such Facility Airspace Improvements and the construction thereof (it being acknowledged that the FASP Owners Association has the right to procure and maintain any such insurance on behalf of Tenant in accordance with the WRY Declaration of Easements); and

(vi) Tenant's obligations set forth in Section 4.4 of the WRY Declaration of Easements with respect to Section 5 of the New York Lien Law shall have been satisfied.

(vii) Tenant shall have (x) executed and delivered to Landlord a collateral assignment in a form reasonably acceptable to Tenant, Landlord and Leasehold Mortgagee (subject to any prior assignment to any Leasehold Mortgagee) of all agreements, plans, permits and licenses relating to the construction of such Facility Airspace Improvements and the bonds, if any, provided thereunder, and (y) delivered to Landlord a consent and acknowledgement to such collateral assignment in a form reasonably acceptable to Tenant, Landlord and Leasehold Mortgagee, executed by the counterparty under any such agreement (and, to the extent that there are major subcontracts to which such counterparty is a party, by the counterparty to such major subcontracts); provided, however, that if a Leasehold Mortgage is being entered into in connection with the construction of such Facility Airspace Improvements, Tenant shall not be obligated to deliver any such consent and acknowledgement from any such counterparty unless such counterparty is also providing its consent and acknowledgement to a collateral assignment being given by Tenant in favor of the Leasehold Mortgagee; and

(viii) There shall be no outstanding Event of Default or material Non-Monetary Default under this Lease or the Project Documents; provided that such clause shall apply with respect to a material Non-Monetary Default only if Landlord has delivered to Tenant notice of such Non-Monetary Default to the extent required under the applicable provision of Section 31.01 of this Lease.

(b) Landlord acknowledges that Developer may perform FAI Preparation Work in accordance with the WRY Construction Agreement, and that such work (including the review of plans, release to proceed, etc.) shall be governed by the WRY Construction Agreement and not the provisions of this Lease.

Section 8.04. Construction Requirements for Facility Airspace Improvements.

(a) Each Facility Airspace Improvement constructed by Tenant on the Premises shall, upon the Commencement of Construction of such Facility Airspace Improvement, be constructed timely and reasonably continuously (subject to Force Majeure and Unavoidable Delay), in a good and workmanlike manner, in compliance with all applicable Legal Requirements and in accordance with all of the standards set forth in this Lease and the WRY Declaration of Easements, to the extent applicable (all of the foregoing, collectively, the "Minimum Standards"). Tenant shall use only new or first-quality material and equipment at least equal in quality and class to the standard of first-class residential, commercial and/or mixed-use buildings, as applicable, then being constructed in New York City. Tenant shall aim to achieve and maintain a Leadership in Energy and Environmental Design (LEED)-NC Silver rating or higher for each Building that is constructed on the Premises and a LEED-ND certification for the WRY. All Facility Airspace Improvements shall be constructed solely on the Premises and shall not depend on any access, services or foundation supports on any other land except as may be permitted by the WRY Declaration of Easements, valid non-terminable easements that run with the land, or other consents or rights from a Governmental Authority, except that utility services will be connected directly to the public street. Without limiting the foregoing, Landlord shall reasonably cooperate with Tenant (at Tenant's cost and expense) in obtaining such consents or rights from any Governmental Authority with respect to the utilization of space within and below 11th Avenue as may be in furtherance of the WRY Project.

(b) Tenant shall obtain all necessary permits, consents, certificates and approvals for the construction of each Facility Airspace Improvement required by all applicable Legal Requirements. Landlord, at the sole cost and expense of Tenant, shall promptly execute and deliver any documents, permits, plans and other instruments that require the execution by the fee owner of the Premises, and otherwise cooperate with Tenant as reasonably required or requested by Tenant in order for Tenant to obtain all permits, consents, certificates and approvals in connection with Tenant's construction of any Facility Airspace Improvements, provided such documents or instruments do not impose any material liability or obligation on Landlord (unless paid by Tenant or against which Landlord is indemnified by Tenant in a manner reasonably satisfactory to Landlord) or materially vary or modify the rights and obligations of the parties under this Lease or the Project Documents.

Section 8.05. Completion Certificates. As and when the following are received by Tenant with respect to a Building or other Facility Airspace Improvement, Tenant shall furnish Landlord with (a) a certificate from an Architect, in customary form, certifying that the Building or other Facility Airspace Improvement has been completed substantially in accordance with the Approved Facility Airspace Improvement Plans and Specifications therefor, (b) a true copy of the temporary or permanent Certificate(s) of Occupancy for the Building or other Facility Airspace Improvement; (c) a complete set of as-built drawings and a survey of the Building or other Facility Airspace Improvement; (d) true copies of all guarantees or certifications called for under any and all construction documents or otherwise received by Tenant; (e) true copies of all certificates required by the Building Code or the NYCDOB to be filed with the NYCDOB; and (f) a true copy of the New York Board of Fire Underwriters Certificate (or the equivalent certificate, if any, of any successor organization) for the Building or other Facility Airspace Improvement, if required.

Section 8.06. No Liens. Except as otherwise provided herein or in the Project Documents, the Premises shall be free and clear of all liens arising out of or connected with the construction of the Facility Airspace Improvements, and any portion thereof, except that the foregoing shall not modify Tenant's right to grant a Leasehold Mortgage or otherwise sublease all or any portion of the Premises in accordance with the provisions of Article 17.

Section 8.07. Title to the Materials, Fixtures and Equipment. The Facility Airspace Improvements and all materials, fixtures and equipment to be incorporated therein (which shall not include, however, personal property and fixtures of Tenant or any subtenants that are permitted to be removed by them pursuant to this Lease and/or any subleases, as applicable, upon the expiration of the terms hereof or thereof) shall, effective upon their installation, constitute the property of Landlord and shall constitute a portion of the Premises covered by this Lease. However, Landlord shall not be liable in any manner for payment or otherwise to any contractor, subcontractor, laborer or supplier of materials in connection with the construction of the Facility Airspace Improvements or the purchase of any such materials, fixtures or equipment, nor shall Landlord have any obligation to pay any compensation to Tenant or any subtenant by reason of Landlord's acquisition of title to the Facility Airspace Improvements or the materials, fixtures or equipment located therein. Notwithstanding the foregoing or anything to the contrary elsewhere contained in this Lease, Landlord will not claim, and during the Term Tenant (or its designee) alone shall be entitled to, all of the federal tax attributes of ownership, including, without limitation, the right to claim depreciation or cost recovery deductions. Tenant hereby acknowledges that Landlord shall own the fee title to the Facility Airspace Improvements (including, without limitation, all materials, fixtures and equipment to be incorporated therein) effective as of the date the same are constructed on the Premises, subject to the terms and conditions of this Lease (including the immediately preceding sentence).

Section 8.08. Required Clauses in WRY Construction Agreements. All construction agreements for the Facility Airspace Improvements shall include the following provisions:

> "[Contractor]/[Subcontractor]/[Materialman] ("Contractor") hereby agrees that notwithstanding that Contractor performed work at and/or supplied materials to the Premises (as such term is defined in the lease pursuant to which Tenant acquired its leasehold interest (the "Lease")) or any part thereof, Landlord shall not be liable in any manner for payment or otherwise to Contractor in connection with the work performed at and/or materials supplied to the Premises. Contractor agrees that it will not file any mechanic's lien against Landlord's fee interest in the Premises or Landlord's interest as landlord under the Lease or bring any other action against Landlord's interest, and Contractor agrees to look solely to Tenant and Tenant's leasehold interest. Nothing contained herein shall prejudice any rights which Contractor may have under the Lien Law of the State of New York. The agreements made under this clause shall be deemed to be made for the benefit of Landlord under the Lease and shall be enforceable by Landlord."

Section 8.09. Coordination with Other Anticipated Development. Tenant acknowledges that significant portions of LIRR infrastructure (including the East River Tunnels, interlocking and track approaches to Penn Station, the track, platform and Level A space in Penn Station, the tracks and interlockings leading to the WSY, and the storage tracks and maintenance facilities of the WSY, all as more particularly set forth in the RFP) are located within the West 31st to 34th Street corridor between 6th Avenue and the Hudson River (the "Corridor"), and that many development projects (collectively, the "Other Projects") within the Corridor may be under construction simultaneously with the WRY Project (including, but not limited to, the potential development of the ERY, the redevelopment of the existing Penn Station and Madison Square Garden, the new Moynihan Station and related development between 9th and 10th Avenues, Landlord's East Side Access project, the rehabilitation of the 11th Avenue Viaduct, New Jersey Transit's "Access to the Region's Core" project, and the No. 7 subway extension), and each party hereby agrees to cooperate reasonably with the other in the coordination of the planning, design, preconstruction and construction activities for the WRY Project with such Other Projects.

Section 8.10. Intentionally omitted.

Section 8.11. Intentionally omitted.

Section 8.12. Intentionally omitted.

Section 8.13. WRY Open Space Component. Tenant shall be responsible for the design and construction of the WRY Open Space Component on the Premises in accordance with all Legal Requirements, and shall pay all costs and expenses in connection therewith. In furtherance of the foregoing, Tenant shall be responsible for obtaining any and all legal, administrative or other approvals that are required to be obtained, including pursuant to the Zoning Resolution, in connection with the design and construction of the WRY Open Space Component. This Lease shall remain in full force and effect, and there shall be no abatement of Rental, adjustment to the Initial Land Value or any other modification to the terms of this Lease, notwithstanding any failure or inability of Tenant to obtain any necessary approvals with respect to the WRY Open Space Component.

ARTICLE 9

SEVERANCE OF THE PREMISES

Section 9.01. Severance.

(a) Upon written request from Tenant (or a Permitted Severed Parcel Tenant designated by Tenant) at any time and from time to time, provided that the conditions to Severance set forth in Section 9.01(c) have been satisfied, and at Tenant's sole cost and expense:

(i) The Premises shall be subdivided in accordance with an Approved Severed Parcel Plan to create one (1) or more parcels upon which Building(s), together with the Associated FASP Improvements and Associated Portion of the LIRR Roof and Facilities (if any) shall be constructed (each such separate parcel, a "Severed Parcel"). The balance of the Premises shall remain subject to this Lease (such

parcel, the "Balance Parcel"; and the subdivision of the Premises as aforesaid, a "Severance").

(ii) Landlord and Tenant (or a Permitted Severed Parcel Tenant designated by Tenant) shall each execute, acknowledge and deliver a new lease with respect to such Severed Parcel in the form attached hereto as Exhibit J (such lease, a "Severed Parcel Lease"), subject to any additional provisions required for Terra Firma Severed Parcel Leases to the extent required as set forth in Section 9.04. From and after the execution and delivery of a Severed Parcel Lease, Tenant shall have no rights or obligations under this Lease with respect to the Severed Parcel or the Severed Parcel Lease, and shall be released from all liabilities arising from such Severed Parcel or under the Severed Parcel Lease from and after the date of such Severance. The foregoing shall be confirmed in the Balance Lease Amendment. The Balance Lease Amendment and the Severed Parcel Lease shall state the revised Annual Base Rent that Tenant hereunder and the tenant under the applicable Severed Parcel Lease (each, a "Severed Parcel Tenant") shall each be obligated to pay. The Annual Base Rent payable under a Severed Parcel Lease shall equal the Severed Parcel Allocable Share of the total Annual Base Rent (and, to the extent not paid prior to creation of the Severed Parcel Lease, the Severed Parcel Allocable Share of the First Post-Closing Payment and Second Post-Closing Payment) due and payable under this Lease as of the date of the Severance. The Annual Base Rent (and, if applicable, such post-closing payments) payable under the Balance Lease shall be reduced to reflect the Balance Lease's Severed Parcel Allocable Share of each of such obligations. At the time of each Severance, the total aggregate Annual Base Rent payable by Tenant under the Balance Lease and by the Severed Parcel Tenants under their respective Severed Parcel Leases being severed as of such date, collectively, will (subject, in each case, to any applicable rent abatements) equal the full amount of Annual Base Rent (and, if applicable, the First Post-Closing Payment and the Second Post-Closing Payment) that would be payable by Tenant as of the date of such Severance had no Severance of this Lease occurred. Attached to each Severed Parcel Lease will be a "Severed Parcel Pro Forma Rent Schedule" which shall set forth (x) the Annual Base Rent due under each Severed Parcel Lease during the term thereof, reflecting the increases to Annual Base Rent and the FMV Base Rent Resets set forth in Section 3.03 of the Form of Severed Parcel Lease (assuming that the Annual Base Rent for the period following each FMV Base Rent Reset (as defined in the Form of Severed Parcel Lease) shall be equal to one hundred twenty percent (120%) of the Annual Base Rent for the period expiring on the day immediately prior to the applicable Initial Reset Date or Reset Date), and (y) the Annual Base Rent abatement provisions described in Sections 3.04(a), (b) and (d), as applicable (provided, that the abatement of Annual Base Rent described in Section 3.04(d) shall be set forth in the Severed Parcel Pro Forma Rent Schedule only if as of the date of such Severance, Tenant shall have exercised the Initial Abatement Extension.

(iii) Notwithstanding anything to the contrary herein, no Default or Event of Default under any Severed Parcel Lease (including, without limitation, with respect to the payment of Rental) shall be deemed a Default or Event of Default under any other Severed Parcel Lease or the Balance Lease, and no Default or Event of Default under the Balance Lease (including, without limitation, with respect to the

payment of Rental) shall be deemed a Default or Event of Default under any Severed Parcel Lease.

(iv) Simultaneously with the execution and delivery of such Severed Parcel Lease, (A) Landlord and Tenant shall each execute, acknowledge and deliver to the other an amendment to this Lease in form and substance reasonably satisfactory to Landlord and Tenant (each such amendment, a "Balance Lease Amendment", and this Lease, as amended by any Balance Lease Amendment, shall sometimes be referred to herein as the "Balance Lease") that (i) replaces the legal description of the Premises attached as Exhibit A-2 with the legal description of the Balance Parcel, (ii) replaces the Preliminary Severed Parcel Plan attached as Exhibit B with the Approved Severed Parcel Plan (as approved in accordance with Section 9.05), (iii) replaces the Pro Forma Rent Schedule attached as Exhibit C with a new pro forma rent schedule reflecting the Balance Lease's Severed Parcel Allocable Share of the Annual Base Rent payable by Tenant following the Severance, (iv) revises Section 3.02 to state that Tenant shall only pay the Severed Parcel Allocable Share of the First Post-Closing Payment and Second Post-Closing Payment (to the extent such payments have not heretofore been made), (v) revises Section 3.03 to state that Tenant shall only pay the Severed Parcel Allocable Share of Annual Base Rent due under this Lease and (vi) includes the statement in the second sentence of Section 9.01(a)(ii); (B) Landlord and Tenant shall each execute, acknowledge and deliver an amendment to the Memorandum of Lease that replaces the legal description of the Premises attached thereto as Exhibit A, with the legal description of the Balance Parcel, which amendment shall be recorded in the City Register; (C) Landlord and the applicable Severed Parcel Tenant shall each execute, acknowledge and deliver to the other a new PILOST agreement, in the form attached as Exhibit H to the Form of Severed Parcel Lease; (D) Landlord and the applicable Severed Parcel Tenant shall each execute, acknowledge and deliver to the other a memorandum of lease, in the form attached as Exhibit M to the Form of Severed Parcel Lease; and (E) Landlord and the applicable Severed Parcel Tenant shall each execute, acknowledge and deliver to the other a termination of memorandum of lease, in the form attached as Exhibit N to the Form of Severed Parcel Lease and all transfer tax forms required to be filed in connection with a termination of such Severed Parcel Lease, to be held in escrow by Landlord.

(v) Each Severed Parcel Lease shall include: (A) a list of the plans and specifications comprising the Associated Portion of LIRR Roof and Facilities (if any) to be constructed under such Severed Parcel Lease; (B) the portions of the WRY Project Components to be constructed on the Severed Parcel; (C) the maximum Floor Area and zoning uses that may be utilized on the Severed Parcel as "Included Floor Area" thereunder (each of (A), (B), and (C) shall be attached as Exhibit Q to the Severed Parcel Lease); (D) the Severed Parcel Pro Forma Rent Schedule, which shall be attached to the Severed Parcel Lease as Exhibit P, and which shall set forth the Annual Base Rent payable as of the Commencement Date (as such term is defined in the Form of Severed Parcel Lease); and (E) the list of Severed Parcel Lease Defined Terms, the form of which is attached as Exhibit R to the Severed Parcel Lease; each of the foregoing in accordance with the Approved Facility Airspace Improvement Plans and Specifications (if applicable) and the Approved Severed Parcel Plan, as applicable. In addition, Tenant shall deliver to

Landlord legal descriptions of each of the Severed Parcel(s) and the Balance Parcel and undertake, at Tenant's sole cost and expense, all actions necessary to cause the Severed Parcel(s) and the Balance Parcel to comprise separate tax lots. Landlord, in its capacity as fee owner, shall execute all documents as shall be reasonably required in connection therewith.

(b) The Balance Parcel may be further subdivided from time to time, all in accordance with the Approved Severed Parcel Plan and the terms and conditions set forth in this Article 9. Notwithstanding anything contained herein, it shall be a condition to the Commencement of Construction of a Building that a Severed Parcel Lease be entered into with respect to the portion of the Balance Parcel (and, following the occurrence of the last Severance permitted under the Approved Severed Parcel Plan, with respect to the entirety of the Balance Parcel, provided that in lieu of entering into a Severed Parcel Lease with respect to the Balance Parcel, Tenant may elect, at its option, to amend and restate the Balance Lease on substantially the same terms as the Form of Severed Parcel Lease) on which such Building is to be constructed.

(c) Notwithstanding anything to the contrary contained in this Section 9.01, no Severance shall occur at any time during the continuance of an Event of Default or material Non-Monetary Default under this Lease or the Project Documents; provided that such clause shall apply with respect to a material Non-Monetary Default only if Landlord has delivered to Tenant notice of such Non-Monetary Default to the extent required under the applicable provision of Section 31.01 of this Lease. In addition, no Severance shall occur prior to:

(i) the approval by the Yards Parcel Owner of the Association Documents in accordance with the provisions of the WRY Declaration of Easements;

(ii) with respect to a Severance of a Non-Terra Firma Severed Parcel only, the Commencement of Construction of the Associated Portion of the LIRR Roof and Facilities associated with such Non-Terra Firma Severed Parcel (including the delivery by Developer of the Roof Segment Completion Guaranty in connection with such Associated Portion of the LIRR Roof and Facilities in accordance with the provisions of the WRY Construction Agreement).

(iii) except as otherwise provided in Section 9.04, if the WRY Roof Component has not been Substantially Completed as of the date of such Severance:

(1) delivery to Landlord of reasonably satisfactory evidence of the simultaneous closing by such Severed Parcel Tenant of financing sources (which sources may consist of any combination of debt and/or equity facilities) sufficient to complete the initial construction of the Building(s) (other than improvements to be made by occupants at their expense) together with the Associated FASP Improvements to be constructed on such Severed Parcel, proximately after the Severance (or, if

the debt and/or equity facilities intended to be used for construction of the Building(s), together with the Associated FASP Improvements, have not closed, the delivery to Landlord of binding commitments therefor); and

(2) the delivery to Landlord of a Buildings Completion Guaranty by a Buildings Completion Guarantor with respect to each Building and the Associated FASP Improvements to be constructed proximately after the Severance on such Severed Parcel.

(d) Notwithstanding anything to the contrary contained in this Section 9.01, at least twenty (20) days prior to the anticipated Severance of any Severed Parcel Lease, Landlord may deliver a notice to Tenant of any and all Facility Airspace Parcel Environmental Obligations (if any) as of the date of such Severance (the Environmental Obligations Notice"), provided that Landlord retains the right to amend such Environmental Obligations Notice at any time prior to a Severance with respect to any new Facility Airspace Parcel Environmental Obligations arising after the date of the original Environmental Obligations Notice. Such Environmental Obligations Notice will be incorporated in Exhibit Q to be attached to the Severed Parcel Lease. The Severed Parcel Lease shall provide that the Severed Parcel Tenant shall be liable for its Environmental Obligations Allocable Share of the cost of (i) Required Remediation Activities (as such term is defined in the WRY Declaration of Easements) of the Facility Airspace Parcel Environmental Obligations described in the Environmental Obligations Notice, and (ii) the indemnification of Landlord for any Environmental Claims in connection therewith. Any disputes with respect to the content of the Environmental Obligations Notice shall be subject to resolution in accordance with Sections 40.01(a) and (b).

(e) Within thirty (30) days after receipt of an invoice from Landlord (together with reasonably substantiating evidence of costs), Tenant or the applicable Severed Parcel Tenant shall pay any and all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by Landlord in connection with reviewing and implementing any request for a Severance or subdivision in accordance with this Section 9.01, including, without limitation, its review of the Proposed Severed Parcel Plan and any proposed modifications to the Approved Severed Parcel Plan. The provisions of this Section 9.01(e) shall survive any termination of this Lease.

Section 9.02. Intentionally omitted.

Section 9.03. Intentionally omitted.

Section 9.04. Severance Prior to Commencement of Construction of the LIRR Roof and Facilities. In the event that, prior to the Commencement of Construction of the LIRR Roof and Facilities, Tenant requests a Severance of the Premises with respect to a Terra Firma Severed Parcel and the execution of a Terra Firma Severed Parcel Lease with respect thereto, then each such Terra Firma Severed Parcel Lease shall include the following provisions:

(a) "Section 8.14 GLV Rent Adjustment. If the Balance Lease is terminated as a result of an "Event of Default" of the tenant thereunder prior to Commencement

of Construction of the LIRR Roof and Facilities, then Landlord shall promptly deliver to Tenant a notice thereof (such notice, the "Adjusted GLV Rent Notice") and a statement of the aggregate projected construction cost of the LIRR Roof and Facilities as of the date of such Adjusted GLV Rent Notice (taking in account and crediting any work performed in furtherance thereof prior to such date) (the "Estimated WRY Roof Costs"). In the event that as of the date of the Adjusted GLV Rent Notice there are Budgeted Roof Costs for the LIRR Roof and Facilities, the Budgeted Roof Costs shall constitute the Estimated WRY Roof Costs. If there are no Budgeted Roof Costs as of the date of the Adjusted GLV Rent Notice, the Adjusted GLV Rent Notice shall include (i) an independent construction cost estimate, which shall be based on the then most recent submission of LIRR Work Project Plans and Specifications (as defined in the WRY Construction Agreement) theretofore approved by the MTA Parties (if any), prepared by a reputable cost estimator, setting forth Landlord's determination of the Estimated WRY Roof Costs and (ii) a letter making express reference to this Section 8.14 stating that Tenant has thirty (30) days to respond to such notice and providing Landlord with Tenant's estimate of the Estimated WRY Roof Costs (if there are no Budgeted Roof Costs).

(b) If Tenant shall dispute Landlord's determination of the Estimated WRY Roof Costs by notice (the "Roof Cost Dispute Notice") given by Tenant to Landlord not later than thirty (30) days after the delivery to Tenant of the Adjusted GLV Rent Notice (TIME BEING OF THE ESSENCE as to the giving of the Roof Cost Dispute Notice), then Tenant shall deliver to Landlord its own independent construction cost estimate of Estimated WRY Roof Costs prepared by a reputable cost estimator no later than thirty (30) days following the delivery of the Roof Cost Dispute Notice. Landlord and Tenant shall attempt to resolve any disagreement in the Estimated WRY Roof Costs in good faith, and if such disagreement is not resolved within thirty (30) days, then such dispute shall be resolved in accordance with Sections 40.01(a) and (b). Until the Estimated WRY Roof Costs are finally determined, Tenant shall pay Annual Base Rent based on Adjusted Gross Land Value using Landlord's determination of the Estimated WRY Roof Costs.

(c) Following the receipt by Tenant of the Adjusted GLV Rent Notice, (x) Annual Base Rent due under this Lease shall be recalculated to be based upon the Adjusted Gross Land Value (and not the Adjusted Initial Land Value), such recalculation to be effective from and after the date of termination of the Balance Lease, subject to any applicable rent abatements, and (y) Landlord's Reversionary Interest Value shall be recalculated to equal the Adjusted Gross Land Value, escalated to the Landlord's Reversionary Interest Value on the ninety-ninth (99^{th}) anniversary of the Abatement Commencement Date, by the same escalation formula that applies to "Annual Base Rent", with "FMV Base Rent Resets" assumed to be at one hundred twenty percent (120%) of the "Annual Base Rent" payable immediately prior to each "Reset Date" and the "Fixed Expiration Date" (as each of such capitalized terms are defined in the Balance Lease). Any underpayment of Annual Base Rent under this Lease shall be due and payable within thirty (30) days of the Adjusted GLV Rent Notice. As used herein, the "Adjusted Gross Land Value" shall equal the sum of (i) the Adjusted Initial Land Value; and (ii) the Severed Parcel Allocable Share of the Estimated WRY Roof Costs.

(d) In the event that Estimated WRY Roof Costs as finally determined shall result in a lesser Annual Base Rent than that theretofore paid by Tenant based on Adjusted Gross Land Value, Landlord shall credit the amount of such overpayment against the next

monthly installments of Annual Base Rent thereafter due and owing, without interest. Notwithstanding the foregoing, in no event shall any such credit against Annual Base Rent pursuant to this Section 8.14(d) ever reduce the payment of any monthly installment of Annual Base Rent below the amount set forth in Section 3.03 hereof calculated based on the Adjusted Initial Land Value."

(e) "Section 8.15 LIRR Work Cost Allocable Share. If following the Commencement of Construction of the LIRR Roof and Facilities, either (i) a default under the WRY Construction Agreement shall occur and remain outstanding as of the Non-Severed Parcel Cure Termination Date (as defined in the WRY Construction Agreement) or (ii) the Balance Lease is terminated as a result of an "Event of Default" of the tenant thereunder, then Landlord shall promptly deliver to Tenant a notice thereof (such notice, the "LIRR Work Cost Allocable Share Notice", which shall set forth the Budgeted Roof Costs for the LIRR Roof and Facilities. Within thirty (30) days of the giving of the LIRR Work Cost Allocable Share Notice, Tenant shall pay to Landlord an amount equal to its Severed Parcel Allocable Share of the Budgeted Roof Costs (the "LIRR Work Cost Allocable Share"). Tenant acknowledges and agrees that the LIRR Work Cost Allocable Share shall be deemed Additional Rent, and Tenant's obligation to pay the same shall be in addition to, and not in lieu of, Tenant's obligation to pay Annual Base Rent and all other Additional Rent due under this Lease. The LIRR Work Cost Allocable Share shall be retained by Landlord. Following the payment by Tenant of the LIRR Work Cost Allocable Share, no default under the WRY Construction Agreement shall constitute a default under this Lease. "

(f) "Section 10.04(b). In the event that (i) a Fee Conversion Closing occurs prior to the Commencement of Construction of the LIRR Roof and Facilities, (ii) Annual Base Rent has not been adjusted based on Adjusted Gross Land Value as set forth in Section 8.14, and (iii) Tenant has not paid a LIRR Work Cost Allocable Share as set forth in Section 8.15, then, in addition to the Option Price, Tenant shall be required to fund the LIRR Work Fund (as such term is defined in the WRY Construction Agreement) in an amount equal to the LIRR Work Cost Allocable Share as of such date, which LIRR Work Fund shall be distributed in accordance with the WRY Construction Agreement."

(g) "Section 10.04(c). If the provisions of Section 10.04(b) apply, Tenant shall be required to include in the Election Notice with respect to such Fee Conversion Closing an independent construction cost estimate, which shall be based on the then most recent submission of LIRR Work Project Plans and Specifications (as defined in the WRY Construction Agreement) theretofore approved by the MTA Parties (if any), prepared by a reputable cost estimator, setting forth Tenant's determination of the Estimated WRY Roof Costs. Landlord and Tenant shall attempt to resolve any disagreement with respect to the calculation of the Estimated WRY Roof Costs in good faith, and if such disagreement is not resolved within thirty (30) days, then such dispute shall be resolved in accordance with Sections 40.01(a) and (b). In the event that as of the Fee Conversion Closing the Estimated WRY Roof Costs have not yet been finally determined, Tenant shall pay the LIRR Work Cost Allocable Share using Landlord's good-faith estimate of the Estimated WRY Roof Costs. In the event that the Estimated WRY Roof Costs as finally determined shall result in a lesser LIRR Work Cost Allocable Share than that theretofore paid by Tenant, Landlord and Tenant shall jointly issue instructions to the depository holding the LIRR Work Fund to release promptly the amount of such overpayment as Tenant shall direct."

(h) "Section 31.05 Default Payments. Notwithstanding the foregoing provisions of this Article 31, in the event that this Lease terminates in accordance with Section 31.02 by reason of an Event of Default by Tenant that occurs prior to the Commencement of Construction of the LIRR Roof and Facilities and delivery to Landlord of the Rent/Financial Payment Guaranty (such default, a "Pre-Construction Event of Default"), then:

(i) Landlord shall be entitled to regain possession of the Premises and cause the Premises to be restored to its pre-existing condition (or such altered condition as shall be acceptable to the Yards Parcel Operator, if restoration to such altered condition would be less costly than restoration to the pre-existing condition of the Premises) at the sole cost and expense of Tenant;

(ii) Landlord shall be entitled to retain all amounts theretofore paid by Tenant to Landlord pursuant to the terms of this Lease and/or any other Project Document; and

(iii) Tenant shall pay to Landlord an amount equal to the sum of (i) any unpaid installments of the First Post-Closing Payment, the Second Post-Closing Payment, and all installments of Annual Base Rent due under this Lease (but not the Balance Lease or any other Severed Parcel Lease) from the Commencement Date through the date on which Tenant surrenders possession to Landlord of the Premises; and (ii) the Severed Parcel Allocable Share of the amount, if any, set forth on the Default Payments Schedule attached to the Balance Lease as Exhibit E corresponding to the Lease Year (as defined in the Balance Lease) in which the Pre-Construction Event of Default resulting in the termination of this Lease occurred, (the amounts set forth in clauses (i) and (ii), collectively, the "Guaranteed Default Payments"); and Landlord and Tenant hereby irrevocably agree that the Guaranteed Default Payments shall constitute liquidated damages to Landlord for loss of a bargain, and not a penalty. The Guaranteed Default Payments shall be guaranteed to Landlord by the guarantor under the Default Payments Guaranty. Notwithstanding anything to the contrary in this Article 31, the Guaranteed Default Payments shall be the sole monetary remedies of Landlord (along with any remedies under any Guaranty then in effect) for any Pre-Construction Event of Default and shall constitute liquidated damages to Landlord for such Pre-Construction Event of Default; provided, however, that Landlord shall be entitled, in addition to the receipt of the Guaranteed Default Payments, to recovery for any and all other liabilities and obligations of Tenant under any of the other Project Documents binding on Tenant incurred prior to the termination of this Lease (including, without limitation, environmental and indemnification obligations, but excluding liabilities and obligations arising solely as a result of the termination of this Lease (such as any payments under Section 31.03), and excluding any consequential damages), and the payment of such Guaranteed Default Payments shall not relieve Tenant of such liabilities and obligations. Tenant hereby waives all rights to contest the legal sufficiency or adequacy of consideration for the Guaranteed Default Payments as liquidated damages. For the avoidance of doubt, the provisions of this Section 31.05 shall be of no force or effect, and the remedies of Landlord set forth in Section 31.03 and the Rent/Financial Payment Guaranty shall apply, in the event that the Commencement of Construction of the LIRR Roof and Facilities and delivery to Landlord of the Rent/Financial Payment Guaranty occurs prior to a termination

of this Lease in accordance with Section 31.02."

Section 9.05. Severed Parcel Plan Modifications.

(a) As a condition to the first Severance of this Lease, and in the event that Tenant shall desire from time to time to modify any Approved Severed Parcel Plan, Tenant shall first submit to Landlord a proposed modification of the same (the "Proposed Severed Parcel Plan"). Each Proposed Severed Parcel Plan shall contain the following:

(i) the maximum Floor Area and zoning uses allocated to each Severed Parcel; provided, that (A) each Severed Parcel must include one or more Buildings, (B) each Severed Parcel must include such Associated FASP Improvements as shall be required for the Building(s) planned to be constructed thereon to satisfy the requirements, if any, of the Zoning Resolution and WRY Restrictive Declaration to obtain a Certificate of Occupancy for such Building(s), and (C) the allocation of Floor Area to the Balance Parcel shall at no time exceed a Floor Area Ratio of twenty (20.0);

(ii) the revised Severed Parcel Allocable Share attributable to each Severed Parcel, which shall be based on a pro rata allocation of Floor Area for such Severed Parcels, as adjusted to reflect relative market valuations for different zoning uses in a manner to be agreed upon by Landlord and Tenant, each acting commercially reasonably (provided, that, if Landlord and Tenant are unable, despite commercially reasonable efforts, to agree upon such adjustment, then the revised Severed Parcel Allocable Share attributable to such Severed Parcels shall be based on a pro rata allocation of Floor Area for such Severed Parcels without any adjustment (except that there shall be allocated a reduced valuation to any Severed Parcels that include affordable housing units), and any disputes with respect to revised Severed Parcel Allocable Shares (including with respect to the reduced valuation associated with affordable housing units) shall be subject to resolution in accordance with Sections 40.1(a) and (b));

(iii) a schematic illustration of the location of each Severed Parcel, and the general location (for illustrative purposes only) of each Building to be located within the Facility Airspace Parcel, the WRY Open Space Component, the High Line Component, the Parking Component and any affordable housing units to be constructed (to the extent determined); and

(iv) a schematic illustration, detailed description, and list of Approved LIRR Work Plans and Specifications of the Associated Portion of the LIRR Roof and Facilities with respect to any Severed Parcel (other than a Terra Firma Severed Parcel), which Associated Portion of the LIRR Roof and Facilities may either (A) exclude portions of the LIRR Roof and Facilities located within such Severed Parcel or (B) include portions of the LIRR Roof and Facilities located within other portions of the WRY, it being understood and agreed that (I) the Associated Portion of the LIRR Roof and Facilities with respect to a Severed Parcel shall be generally those portions of the LIRR Roof and Facilities located in, on, or under such Severed Parcel, with such inclusions thereto and exclusions therefrom as may be reasonably approved by Landlord; and (II)

there shall be no Associated Portion of the LIRR Roof and Facilities in connection with Terra Firma Severed Parcel; and

(v) a Proposed Severed Parcel Plan may amend a prior Approved Severed Parcel Plan so as to adjust the maximum Floor Area and zoning uses allocated to an existing Severed Parcel, provided that if any such upward or downward adjustment in Floor Area on such Severed Parcel does not exceed, when taken together with all prior adjustments for such Severed Parcel, twenty thousand (20,000) square feet of Floor Area more or twenty thousand (20,000) square feet of Floor Area less than the original allocation to such Severed Parcel at the time of Severance, then such amendment shall not (x) result in a change to the Severed Parcel Allocable Shares under this Lease or any Severed Parcel Lease, or (y) result in a change to the amount of Rental due and payable under this Lease or any Severed Parcel Lease.

(b) Landlord shall have the right to review and approve the Proposed Severed Parcel Plan within the time periods set forth in Section 9.05(c); provided, that such review and approval shall be limited to the determination of whether (i) the Proposed Severed Parcel Plan complies with the provisions of clause (i) of Section 9.05(a), (ii) the proposed Severed Parcel Allocable Shares comply with the provisions of clause (ii) of Section 9.05(a), and (iii) the proposed Associated Portions of the LIRR Roof and Facilities comply with the provisions of clause (iv) of Section 9.05(a). If Landlord reasonably disapproves of the Proposed Severed Parcel Plan as set forth herein, Landlord shall notify Tenant of same, specifying in reasonable detail the reasons for such disapproval. Upon receipt of such notice from Landlord, Tenant shall then either (I) cause such Proposed Severed Parcel Plan to be revised and resubmitted to Landlord for review and approval as aforesaid, or (II) dispute the disapproval of the Proposed Severed Parcel Plan under Sections 40.01(a) and (b) (or, in the case of a dispute under clause (iv) of Section 9.05(a), Section 40.01(a)). Notwithstanding anything contained herein, in the event Tenant seeks to propose an amendment to the Approved Severed Parcel Plan with respect to any Severed Parcel heretofore created (or in the case such Proposed Severed Parcel Plan is submitted by a Severed Parcel Tenant, the Balance Parcel), no Proposed Severed Parcel Plan shall be effective or deemed received by Landlord for its review unless each Severed Parcel Tenant and/or the Balance Tenant that is affected by such Proposed Severed Parcel Plan executes a written consent to such Proposed Severed Parcel Plan.

(c) If Landlord shall fail to approve or disapprove a Proposed Severed Parcel Plan within twenty-one (21) days of Tenant's submission thereof to Landlord, Tenant may provide to Landlord a written notice, which notice shall include in capital letters on the first page thereof: "THIS NOTICE IS BEING GIVEN UNDER SECTION 9.05 OF THE LEASE FOR THE WESTERN RAIL YARD SECTION OF THE JOHN D. CAEMMERER WEST SIDE YARD. YOUR FAILURE TO RESPOND WITHIN TEN (10) DAYS WILL RESULT IN YOUR DEEMED APPROVAL OF THE PENDING PROPOSED SEVERED PARCEL PLAN" (such notice, a "Proposed Severed Parcel Plan Notice"). In the event that Landlord does not approve or disapprove such Proposed Severed Parcel Plan within ten (10) days after Tenant provides Landlord with a Proposed Severed Parcel Plan Notice, Landlord shall be deemed to have approved such Proposed Severed Parcel Plan. As used herein, the term "Approved Severed Parcel Plan" shall mean the final Proposed Severed Parcel Plan that has been approved (or has otherwise been deemed approved) by Landlord, from time to time; provided that until the first

such Proposed Severed Parcel Plan has been approved (or has otherwise been deemed approved) by Landlord, the Approved Severed Parcel Plan shall mean the Preliminary Severed Parcel Plan.

(d) In the event that Tenant shall desire from time to time to modify the Approved Severed Parcel Plan, Tenant shall first submit such proposed modifications to Landlord. The submittal, review and approval of any such proposed modifications shall be upon the same terms and conditions as apply to the submittal, review and approval of the Proposed Severed Parcel Plan pursuant to Sections 9.05(a) and (b).

(e) All reasonable costs and expenses incurred by Landlord in reviewing the Proposed Severed Parcel Plan and any modifications thereto shall be paid by Tenant to Landlord within thirty (30) days following delivery of an invoice by Landlord, together with evidence reasonably substantiating such costs.

ARTICLE 10

OPEN SPACE FEE CONVERSION OPTION

Section 10.01. Fee Conversion Option. Tenant shall have the option to purchase fee title to any portion of the Premises consisting entirely of Facility Airspace Parcel Terra Firma upon which a portion of the WRY Open Space Component has been constructed which consists solely of open space and Facility Airspace Improvements other than Buildings and which does not include any portion of the Premises on which a Building has been, or, pursuant to the Approved Severed Parcel Plan, is anticipated (at the time of such Open Space Fee Conversion Option) to be, constructed thereon (an "WRY Open Space Parcel"), together with any Facility Airspace Improvements located thereon (such purchase option, an "Open Space Fee Conversion Option"), at any time after: (i) the portion of the WRY Open Space Component located within the WRY Open Space Parcel has been Substantially Completed; and (ii) the Association Documents have been approved or deemed approved in accordance with the WRY Declaration of Easements. In addition, each Severed Parcel Tenant shall have the option to purchase fee title to its Severed Parcel, together with any Buildings and other Facility Airspace Improvements located thereon, in accordance with the terms of the applicable Severed Parcel Lease.

Section 10.02. Conditions Precedent. Tenant shall exercise the Open Space Fee Conversion Option by delivery of written notice to Landlord (an "Election Notice"), which notice shall specify a closing date (an "Initial Open Space Fee Conversion Closing Date") for the closing of the sale and purchase of the applicable WRY Open Space Parcel, which Initial Open Space Fee Conversion Closing Date shall be not less than thirty (30) days and not more than ninety (90) days after the date of delivery of the Election Notice (an "Election Notice Date"). An Election Notice shall be valid only if, on the Open Space Fee Conversion Closing Date, all of the following conditions have been satisfied:

(a) Tenant shall have paid to Landlord all PILOST due and owing, and shall have delivered any letter of credit required to be delivered, pursuant to the PILOST Agreement;

(b) Tenant shall have paid to Landlord all Annual Base Rent, Additional Rent and other Rental then due and payable, as well as all other amounts due and owing by Tenant to Landlord under any other Project Document;

(c) Intentionally Omitted.

(d) Tenant shall have paid to Landlord all PILOT then due and owing under Section 4.01, if any, and to HYIC, or any other applicable party, all PILOT then due and owing pursuant to the PILOT Agreement (if any); and

(e) Tenant shall have cured any Event of Default existing under this Lease.

Section 10.03. Sale and Purchase Agreement.

(a) If Tenant exercises the Open Space Fee Conversion Option, the closing of the sale and purchase of the applicable WRY Open Space Parcel (such sale and purchase, an "Open Space Fee Conversion" and such closing, an "Open Space Fee Conversion Closing") shall be held at the offices of Landlord's attorneys in the City of New York (or such other location as may be mutually agreed to by Landlord and Tenant), at 10:00 a.m., on the Open Space Fee Conversion Closing Date. The Initial Open Space Fee Conversion Closing Date shall be subject to adjournment by Tenant upon reasonable advance notice from Tenant to Landlord at any time and from time to time; provided, that no adjournment shall excuse or delay Tenant's obligations under this Lease (the actual date on which an Open Space Fee Conversion Closing occurs, an "Open Space Fee Conversion Closing Date")

(b) Landlord shall cause the applicable WRY Open Space Parcel to be free and clear of any liens or encumbrances created by an act or omission of Landlord following the Commencement Date of this Lease, except to the extent requested or consented to by Tenant. Landlord shall, at its sole cost and expense, terminate, remove or discharge any such liens or encumbrances no later than the Open Space Fee Conversion Closing Date, but shall have no responsibility or liability for any other liens or encumbrances. Landlord shall have no obligation to cause the WRY Open Space Parcel to be free and clear of any liens or encumbrances created by an act or omission of Tenant, including encumbrances on this Lease ("Tenant Encumbrances"), to enable this Lease to be terminated with respect to the WRY Open Space Parcel to be conveyed. Tenant shall be responsible for any costs and expenses to terminate, remove or discharge any such liens or encumbrances.

(c) Landlord, at the Open Space Fee Conversion Closing, shall convey title to the applicable WRY Open Space Parcel to Tenant or its designee, subject to Permitted Encumbrances and Tenant Encumbrances, and free and clear of any liens or encumbrances which are Landlord's obligation to remove pursuant to Section 10.03(b) above, by delivery of a fully executed and acknowledged Bargain and Sale Deed without Covenant, in the form of Exhibit O attached hereto. Simultaneously with the Open Space Fee Conversion Closing, Landlord and Tenant shall (at the sole cost and expense of Tenant) execute an amendment to this Lease in recordable form, together with any affidavits, tax returns and/or other instruments customarily executed in connection with the same, amending the description of the Premises to

exclude the WRY Open Space Parcel so conveyed (but not otherwise amending the terms of this Lease, including, without limitation, the amount of Annual Base Rent).

(d) Tenant, at the Open Space Fee Conversion Closing, shall pay Ten Dollars ($10.00) to Landlord.

(e) Tenant shall pay all New York City and New York State real property transfer taxes and recording charges which may be due and payable in connection with the Fee Conversion and the recording of the deed thereto. Tenant shall be solely responsible for any title search and survey charges and any title insurance premiums in respect of title insurance obtained by Tenant, as well as any and all costs associated with any loan obtained by Tenant, in connection with the Open Space Fee Conversion Option and the Open Space Fee Conversion Closing. Tenant shall be solely responsible for any reasonable legal fees and administrative costs incurred by Landlord in connection with the Open Space Fee Conversion Option and the Open Space Fee Conversion Closing.

(f) Tenant's obligation to close title under the Open Space Fee Conversion Option shall be expressly conditioned upon the truth and accuracy in all material respects of each of the following representations and warranties of Landlord to be made as of the Open Space Fee Conversion Closing Date with respect to the Premises, as applicable, any or all of which Tenant may waive in the exercise of its sole discretion:

(i) Landlord has not received any written notice of any actual or threatened condemnation proceeding with regard to all or any part of the applicable WRY Open Space Parcel; and

(ii) all consents, authorizations and other actions on the part of Landlord which are necessary in order to permit Landlord to consummate the sale of the applicable WRY Open Space Parcel have been obtained and taken.

(g) Except as otherwise set forth in this Article 10, Tenant, upon an Open Space Fee Conversion Closing, shall be deemed to have accepted the WRY Open Space Parcel so conveyed in its then "as is" and "where is" condition, without any representations, warranties or agreements in respect thereof; provided that nothing herein shall reduce or otherwise limit any obligations of the Yards Parcel Owner under the WRY Declaration of Easements. Notwithstanding the foregoing, if the whole of the Premises or any material portion thereof shall be taken under eminent domain or condemnation proceedings, or if suit or other action shall be instituted for the taking or condemnation of the whole or any material portion thereof, Tenant shall nonetheless have the right to exercise the Open Space Fee Conversion Option, in which event Landlord shall pay and/or assign to Tenant on the Open Space Fee Conversion Closing Date all condemnation awards paid and all of Landlord's right, title and interest in and to all such awards payable by reason of such damage, loss or taking.

ARTICLE 11

GUARANTIES

Section 11.01. Default Payments Guaranty. Concurrently with the execution of this Lease, Tenant has caused the Default Payments Guarantor to enter into and deliver to Landlord a guaranty of the Guaranteed Default Payments (such Guaranty delivered in connection with this Lease, the "Default Payments Guaranty") in the form attached hereto as Exhibit G attached hereto. Notwithstanding anything in Section 9.01 to the contrary, in the event that Tenant shall request a Severance of a Terra Firma Parcel and the execution of a Terra Firma Severed Parcel Lease prior to the Commencement of Construction of the LIRR Roof and Facilities, then, as a condition of such Severance, Landlord shall have received the Default Payments Guaranty (together with any deliveries required to be delivered by the Guarantor thereunder prior to the effective date of such Guaranty) by one or more creditworthy entities satisfying the requirements set forth therein for a Default Payments Guarantor guaranteeing the "Guaranteed Default Payments" as set forth in Section 9.04(d)(iii) of the Terra Firma Severed Parcel Lease.

Section 11.02. Rent/Financial Payment Guaranty. Concurrently with the delivery by Developer of the first Roof Segment Completion Guaranty in accordance with the WRY Construction Agreement, Tenant shall cause a guaranty for the payment of Rental (subject to the Rent Guaranty Cap (as defined in the Rent/Financial Payment Guaranty)) in the form attached hereto as Exhibit L-1 (such Guaranty delivered in connection with this Lease, the "Rent/Financial Payment Guaranty") to be delivered to Landlord (together with any deliveries required to be delivered by the Guarantor thereunder prior to the effective date of such Guaranty) by one or more creditworthy entities satisfying the requirements set forth therein (any such entity or entities, collectively, the "Rent/Financial Payment Guarantor"). Notwithstanding the foregoing, in the event that the first Roof Segment Completion Guaranty delivered by Developer in accordance with the WRY Construction Agreement is a Roof Segment Completion Guaranty for the entirety of the WRY Roof Component, then Tenant shall not be required to deliver the Rent/Financial Payment Guaranty.

Section 11.03. Intentionally omitted.

Section 11.04. Buildings Completion Guaranty. The Form of Severed Parcel Lease shall provide that prior to the Commencement of Construction of each Building, the applicable Severed Parcel Tenant shall cause a completion guaranty for such Building and Related Improvements (as defined in the Buildings Completion Guaranty) in the form attached hereto as Exhibit L-2 (any such guaranty delivered in connection with the execution of any Severed Parcel Lease, a "Buildings Completion Guaranty") to be delivered to Landlord (together with any deliveries required to be delivered by the Guarantor thereunder prior to the effective date of such Guaranty) by one or more creditworthy entities satisfying the requirements set forth therein (any such entity or entities, collectively, a "Buildings Completion Guarantor").

Section 11.05. Administration of Guarantees. Tenant shall pay or reimburse Landlord for all reasonable out-of-pocket costs and expenses incurred by Landlord in connection with its administration of any Guaranty delivered or proposed to be delivered pursuant to this

Lease or in connection with the execution of any Severed Parcel Lease, including, without limitation, Landlord's reasonable attorneys' and accountants' fees and expenses incurred in evaluating requests for the Landlord's consent thereunder.

ARTICLE 12

TAX-EXEMPT FINANCING OF WRY ROOF COMPONENT CONSTRUCTION

Landlord shall cooperate with Tenant and Tenant's tax and bond counsel in order to determine the legal and financial feasibility of financing portions of the WRY Roof Component and/or the Open Space Component construction costs with tax-exempt financing ("Roof Tax-Exempt Financing"). In the event that Roof Tax-Exempt Financing is legally and financially feasible and practicable, and would result in a net financing cost savings (after all fees and expenses) over conventional debt to finance all or any portion of the WRY Roof Component and/or the Open Space Component, as applicable, and would not otherwise adversely impact the economics of Tenant's ownership and operation of the Premises, Landlord and Tenant shall use diligent efforts to close one or more Roof Tax-Exempt Financing to finance all or any portion of the WRY Roof Component and/or the Open Space Component, as applicable, and shall modify the terms and provisions of this Lease and the other Project Documents to the extent reasonably necessary to accommodate such Roof Tax-Exempt Financing. It is understood and agreed that any Roof Tax-Exempt Financing shall be without cost, expense or recourse to Landlord or any of its Affiliates. All costs and expenses associated with Roof Tax-Exempt Financing, including the costs of all credit instruments or enhancements necessary to support an issuance of Roof Tax-Exempt Financing, will be capitalized and paid out of the proceeds thereof. Landlord shall have no obligation to make any payments of debt service on the Roof Tax Exempt Financing. The WRY Roof Component Financing Cost Savings (if any) will be added to the Initial Land Value from and after the closing of such construction loan in accordance with Section 3.03(b).

ARTICLE 13

BONDABLE NET LEASE

At Landlord's request, and at its sole cost and expense, and subject to Tenant's review and approval of all information relevant to the Bond Lease Financing, Tenant shall reasonably cooperate with Landlord and Landlord's tax and bond counsel in order to determine the legal and financial feasibility of the issuance of tax-exempt bonds based on this Lease to enable Landlord to receive the net proceeds of bonds where the principal, premium (if any) and interest on such bonds are entirely serviced by installments of Annual Base Rent (the "Bond Lease Financing"). In the event that Bond Lease Financing is legally and financially feasible, and Landlord desires to undertake such Bond Lease Financing, this Lease and the Project Documents shall be modified as shall be reasonably necessary to accommodate the Bond Lease Financing; provided, that such modifications do not adversely impact the schedule or the development of the WRY Project or Tenant's (or its successors', assigns' or designees') financing thereof, or alter Tenant's right to exercise any Severance or Open Space Fee Conversion Option provided for herein (and any Bondable Lease Financing shall be expressly subordinate thereto). All costs and expenses associated with the Bond Lease Financing,

including the costs of all credit instruments or enhancements necessary to support an issuance of the Bond Lease Financing, as well as all debt service and other payments or penalties on the Bond Lease Financing (including, without limitation, any pre-payment obligations in connection with a Severance or Open Space Fee Conversion), shall be the sole responsibility of Landlord. The components of Adjusted Initial Land Value shall be adjusted as necessary such that the Annual Base Rent calculated pursuant to Section 3.03 shall be equal to the total annual cost to Tenant of the debt service necessary to service the Bond Lease Financing; provided, however, that in the event Landlord obtains Bond Lease Financing, the total annual cost to Tenant shall not exceed the Annual Base Rent specified in Section 3.03; provided, further, that no Bond Lease Financing shall accelerate any payments of Annual Base Rent. Tenant understands and acknowledges that the use of a Bond Lease Financing may result in net proceeds to Landlord which exceed the Initial Land Value.

ARTICLE 14

INSURANCE

Section 14.01. Required Insurance.

(a) Tenant shall at all times maintain, or cause to be maintained, at its sole cost and expense, the insurance required to be maintained by the Facility Airspace Parcel Owner under Article VIII of the WRY Declaration of Easements with respect to the Premises (subject to the provisions of Article XVI of the WRY Declaration of Easements), and shall comply with all of the provisions of Article VIII of the WRY Declaration of Easements in connection therewith.

(b) Intentionally omitted.

(c) In addition to the foregoing, Tenant shall maintain, or cause to be maintained, at its sole cost and expense, such other insurance in such amounts as may from time to time be reasonably required by Landlord against such other insurable hazards as at the time are commonly or customarily insured against in the case of premises similarly situated and/or with similar uses to the Premises.

Section 14.02. Additional Insurance Requirements.

(a) All insurance policies required to be maintained by Tenant hereunder shall be issued (i) by responsible companies authorized to do business in the State of New York, each having an AM Best rating of not less than A-VII (or its equivalent) and (ii) under insurance policies in form and content required by this Lease and otherwise reasonably satisfactory to Landlord.

(b) Tenant and Landlord shall cooperate in connection with the adjustment and collection of any insurance recoveries that may be due in the event of loss, and Tenant shall execute and deliver to Landlord such proofs of loss and other instruments which may reasonably be required for the purpose of obtaining the recovery of any such insurance monies.

(c) Tenant shall not carry separate liability or property insurance concurrent in form or contributing in the event of loss with that required by this Lease to be furnished by Tenant, unless Landlord, LIRR and any other parties designated by Landlord with a bona fide insurable interest are included therein as additional insureds with respect to liability or loss payees with respect to property, as their interests may appear, with loss payable as provided in this Lease. Tenant shall immediately notify Landlord of the carrying of any such separate insurance and shall cause a certified copy of such insurance policy, bearing notations evidencing the payment of the Insurance Premiums therefor or accompanied by other evidence reasonably satisfactory to Landlord of such payment, to be promptly delivered to Landlord as required pursuant to Section 14.03.

(d) Tenant shall not violate or permit to be violated any of the conditions or provisions of any insurance policy required to be maintained hereunder, and Tenant shall so perform and satisfy or cause to be performed and satisfied the requirements of the companies writing such policies so that at all times companies of good standing reasonably satisfactory to Landlord and meeting the requirements of this Lease shall be willing to write and/or continue such insurance. Tenant shall provide written notice to Landlord promptly after Tenant becomes aware that any claim or proceeding has been filed against Tenant with respect to matters occurring in or around the Premises whether or not alleging negligence on the part of Landlord which involves any actual or alleged serious personal injury or death, or any other claim that presents an unusual exposure to the coverage, including, without limitation, (i) cord injury (including, without limitation, paraplegia or quadriplegia), (ii) amputations requiring a prosthesis, (iii) brain damage affecting mentality or the central nervous system (including, without limitation, permanent disorientation, behavior disorder, personality change, seizures, motor deficit, inability to speak, hemiplegia or unconsciousness), (iv) blindness, (v) third-degree burns involving over ten percent (10%) of the body or second-degree burns involving over thirty percent (30%) of the body, (vi) multiple fractures (involving more than one member or non-union), (vii) fracture of both heel bones, (viii) nerve damage causing paralysis and loss of sensation in an arm and hand, (ix) massive internal injuries affecting body organs, (x) injury to a nerve at the base of the spinal canal or any other back injury resulting in incontinence of bowel and/or bladder, or (xi) fatalities.

(e) Tenant shall procure and maintain policies for all insurance required by the provisions of this Lease for periods of not less than one (1) year (if such policy term is customary and available) and shall procure renewals thereof from time to time and deliver evidence of the same to Landlord as promptly as reasonably practicable but in all events within five (5) days after renewal. If Tenant shall fail to procure any such policies or renewals thereof in accordance herewith within five (5) days after receiving notice of such failure, Landlord may procure the same, and Tenant shall be obligated to reimburse Landlord as Additional Rent hereunder for all costs and expenses incurred by Landlord in connection therewith.

(f) Each policy of insurance required to be obtained by Tenant hereunder shall contain, to the extent generally obtainable, and whether or not an additional premium shall be required in connection therewith, (i) a provision that no unintentional act or omission of any named insured or unintentional violation of warranties, declarations or conditions by any named insured shall prejudice the coverage afforded by such policy, (ii) an

agreement by the insurer that such policy shall not be canceled (or not renewed) without at least thirty (30) days' (or in the case of nonpayment of premiums, ten (10) days') prior written notice to Landlord, all Fee Mortgagees, LIRR and any other parties designated by Landlord with a bona fide insurable interest, (iii) no exclusion for Yards Parcel Permitted Uses (as such term is defined in the WRY Declaration of Easements), and (iv) a waiver by the insurer of any claim for insurance premiums against any named insured other than Tenant.

Section 14.03. Delivery of Policies and Certificates. Upon the execution and delivery of this Lease and thereafter as promptly as reasonably practicable but in all events within five (5) days after the renewal of policies theretofore furnished pursuant to this Article 14, Tenant shall, upon the written request of Landlord, obtain and deliver to Landlord, within fifteen (15) days after the date of any such request, a certificate from Tenant's insurer or independent insurance agent certifying to Landlord, as certificate holder, in reasonable detail the insurance policies then being maintained by Tenant in accordance with the requirements of this Article 14. However, if requested by Landlord, Tenant shall deliver to Landlord, within forty-five (45) days after a request therefor or ninety (90) days after the binding of coverage, whichever is later, a copy of such policies. If Landlord exercises its option to request copies of original policies in the case of discovery or to resolve a legal matter, Developer shall deliver to Landlord, as the case may be, within thirty (30) days of the request, or within ninety (90) days after the binding of coverage, whichever is later, a copy of such policies.

Section 14.04. CPI Increase. All dollar amounts referenced in this Article 14 shall be subject to CPI Adjustment, and shall be reasonable and customary for similar exposures.

ARTICLE 15

CASUALTY AND USE OF INSURANCE PROCEEDS

Section 15.01. Tenant's Obligation to Restore.

(a) If all or any portion of the WRY Roof Component shall be destroyed or damaged in whole or in part by fire or other casualty (including, without limitation, any casualty for which insurance was not obtained or obtainable) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen (a "Casualty"), the rights and obligations of Landlord and Tenant with respect thereto shall be governed by the provisions of Article X of the WRY Declaration of Easements.

(b) If all or any portion of the Facility Airspace Improvements located on the Premises (including any portions thereof encroaching on adjacent property) shall be destroyed or damaged in whole or in part by a Casualty, Tenant shall give to Landlord prompt notice thereof, and shall promptly undertake and pursue with reasonable diligence to completion (subject to Force Majeure), at its sole cost and expense (unless such Casualty was caused by the gross negligence or willful misconduct of Landlord or its agents, in which event such Restoration shall be at the sole cost and expense of Landlord) and in accordance with the terms and conditions set forth herein, and regardless of whether or not insurance proceeds, if any, shall be sufficient therefor, to repair, alter, restore, replace and/or rebuild (collectively, "Restore"; and any such repair, alteration, restoration, replacement and/or rebuilding, a "Restoration") such

portions of the Facility Airspace Improvements as shall have been so damaged or destroyed. Any Restoration of such Facility Airspace Improvements (a "Facility Airspace Improvements Restoration") shall be as nearly as possible to the condition thereof existing immediately prior to such occurrence (the "Pre-Casualty Condition"), or, with respect to any Building, the lesser of the Pre-Casualty Condition of such Building or the then-standard for a first-class quality building for a like use.

Section 15.02. Restoration Plans and Specifications.

(a) Tenant shall submit to Landlord, not later than sixty (60) days prior to the commencement of any Facility Airspace Improvements Restoration, complete plans and specifications therefor (the "Proposed Restoration Plans and Specifications"), prepared by a licensed professional engineer or registered architect selected by Tenant for the performance of the Restoration and approved by Landlord therefor, which approval shall not be unreasonably withheld (provided that nothing herein shall prevent Tenant from making any immediately necessary repairs in the event of an emergency situation, to comply with Legal Requirements (to the extent so required) or minor repairs immediately required to comply with the requirements of any sublease). Such Proposed Restoration Plans and Specifications shall be subject to the review and approval of Landlord, which review and approval shall not be unreasonably withheld or delayed and shall be limited to determining whether such Proposed Restoration Plans and Specifications are consistent with the requirements of Section 15.01. If Landlord reasonably determines that such Proposed Restoration Plans and Specifications do not conform to the requirements of Section 15.01, and such deviations are not reasonably acceptable to Landlord, then Landlord shall notify Tenant of same, specifying in reasonable detail those respects in which such Proposed Restoration Plans and Specifications do not so conform and are not otherwise acceptable to Landlord. Upon receipt of notice from Landlord that the Proposed Restoration Plans and Specifications are not in conformance with the requirements of Section 15.01 and have not been approved, Tenant shall then either (i) cause such Proposed Restoration Plans and Specifications to be revised and resubmitted to Landlord for review and approval as aforesaid, or (ii) dispute the disapproval of such Proposed Restoration Plans and Specifications under Section 40.01(a) and (b).

(b) If Landlord shall fail to approve or disapprove such Proposed Restoration Plans and Specifications within twenty-one (21) days after Tenant's submission thereof to Landlord, Tenant may provide to Landlord a written notice, which notice shall include in capital letters on the first page thereof: "THIS NOTICE IS BEING GIVEN UNDER SECTION 15.02 OF THE AGREEMENT OF LEASE (WESTERN RAIL YARD SECTION OF THE JOHN D. CAEMMERER WEST SIDE YARD). YOUR FAILURE TO RESPOND WITHIN THIRTY (30) DAYS WILL RESULT IN YOUR DEEMED APPROVAL OF THE RESTORATION PLANS" (such notice, the "Restoration Notice"). In the event Landlord does not approve or disapprove such Proposed Restoration Plans and Specifications within ten (10) days after Tenant provides Landlord with the Restoration Notice, Landlord shall be deemed to have approved such Proposed Restoration Plans and Specifications. As used herein, the term "Approved Restoration Plans and Specifications" shall mean the final Proposed Restoration Plans and Specifications that have been approved (or have otherwise been deemed approved) by Landlord.

(c) In the event Tenant shall desire to modify the Approved Restoration Plans and Specifications which Landlord theretofore approved pursuant to Sections 15.02(a) and (b), Tenant shall submit the proposed modifications to Landlord and Landlord shall review the proposed changes to determine whether or not they (i) conform to the requirements of Section 15.01 and (ii) provide for design, equipment, engineering and materials which are comparable in quality to those provided for in the previously-approved Approved Restoration Plans and Specifications. If Landlord determines that the proposed changes do not satisfy the criteria set forth in clauses (i) and (ii) of the immediately preceding sentence, Landlord shall so advise Tenant, specifying in reasonable detail the aspects of such proposed modifications that do not conform to the above requirements. Within twenty (20) Business Days after Landlord shall have so notified Tenant, Tenant shall submit revised plans and specifications for the Restoration to Landlord for review. Each review by Landlord of Tenant's submissions shall be carried out within twenty (20) Business Days of the date of delivery thereof, and if Landlord shall not have notified Tenant of its determination within such twenty (20) Business Day period, it shall be deemed to have determined that the proposed changes are satisfactory.

(d) The Approved Restoration Plans and Specifications shall comply with all Legal Requirements, including but not limited to the Building Code, as well as the same requirements of the WRY Declaration of Easements and the WRY Construction Agreement as are applicable to the Initial Construction of the Improvements, to the extent applicable. The responsibility to assure such compliance shall be that of Tenant and not of Landlord. Landlord's determination that the Approved Restoration Plans and Specifications conform to the requirements of Section 15.01 shall not be, nor shall it be construed to be, or relied upon as, a determination that the Approved Restoration Plans and Specifications comply with any Legal Requirements or with any of the requirements of the WRY Declaration of Easements and the WRY Construction Agreement as are applicable to the Initial Construction of the Improvements.

(e) All reasonable costs and expenses incurred by Landlord in reviewing the Proposed Restoration Plans and Specifications and any modifications thereto shall be paid by Tenant to Landlord (unless such Casualty was caused by the negligence or willful misconduct of Landlord or its agents, in which event such costs and expenses shall be borne exclusively by Landlord).

Section 15.03. No Obligation of Landlord. Except in the event a Casualty was caused by the negligence or willful misconduct of Landlord or its agents, Landlord shall not be obligated to undertake any Restoration of any Facility Airspace Improvements or to pay any of the costs or expenses thereof; provided, however, that if (a) Tenant shall fail or neglect to perform any Restoration required hereunder with reasonable diligence (subject to Force Majeure), or having so commenced such Restoration, shall fail or neglect to complete the same with reasonable diligence (subject to Force Majeure) in accordance with the terms of this Lease, and (b) except in the event of a failure which adversely affects Public Safety, Service Reliability or Legal Compliance in any respect or an emergency (in which event Landlord shall endeavor if practicable to give written notice of such failure to Tenant), Landlord shall give written notice of such failure to Tenant, and such failure shall continue for fifteen (15) days after the giving of such notice, then (subject to the cure rights of any Leasehold Mortgagee hereunder, except in the event of an emergency) Landlord may, but shall not be required to, complete such Restoration at Tenant's expense, which Restoration shall (except to the extent that the same would interfere

with Public Safety, Service Reliability or Legal Compliance in any respect) be conducted by Landlord in a prompt and efficient manner so as to minimize interference with the operation and business activities on the Premises and upon the terms and conditions applicable to entry by Landlord upon the Premises in accordance with the WRY Declaration of Easements. In any case where this Lease shall expire or be terminated prior to the completion of Restoration, Landlord may elect, but shall not be required, to complete such Restoration, and (unless such Casualty was caused by the negligence or willful misconduct of Landlord or its agents) Tenant shall pay, or reimburse Landlord for, all amounts spent in connection with any Restoration so undertaken by Landlord within fifteen (15) days after demand therefor. Tenant's obligations under this Section 15.03 shall survive the expiration or termination of this Lease.

Section 15.04. Restoration in Accordance with Project Documents. Any Facility Airspace Improvements Restoration that utilizes the easements set forth in the WRY Declaration of Easements shall be conducted in accordance with the same terms and conditions of the WRY Declaration of Easements and the WRY Construction Agreement as are applicable to the Initial Construction of the Improvements.

Section 15.05. Progress Payments for Restoration.

(a) Prior to commencing any Facility Airspace Improvements Restoration that is reasonably likely to cost more than Three Million Dollars ($3,000,000), subject to CPI Adjustment, Tenant shall furnish Landlord with an estimate of the costs thereof, prepared by the licensed professional engineer or registered architect selected by Tenant and approved by Landlord pursuant to Section 15.02. Landlord, at its option and (subject to the last sentence of this Section 15.05(a)) expense, may engage a licensed professional engineer or registered architect to prepare its own estimate of the cost of such Facility Airspace Improvements Restoration (but only if such Restoration is estimated by the Tenant to cost more than Three Million Dollars ($3,000,000), subject to CPI Adjustment). In the event of any dispute between the two estimates, such dispute shall be resolved in accordance with Sections 40.01(a) and (b). If Landlord engages an engineer or architect to prepare its own estimate as aforesaid and the estimate thereafter agreed upon by Landlord and Tenant or determined by a court or arbitrator, as the case may be, exceeds the estimate previously furnished by Tenant by not less than five percent (5%), then Tenant shall reimburse Landlord for the reasonable costs and expenses incurred by Landlord in connection with the preparation of its own estimate.

(b) In the event that the cost of any Facility Airspace Improvements Restoration as determined based on the estimate obtained pursuant to Section 15.05(a) is greater than Five Million Dollars ($5,000,000), subject to CPI Adjustment, all proceeds of insurance payable in respect of damage to such Facility Airspace Improvements, and any additional funds as may be needed from Tenant to complete any Restoration (the "Shortfall Amount") as determined based on such estimate (such insurance proceeds and Shortfall Amount, collectively, the "Restoration Funds") shall be deposited with the Restoration Fund Depository prior to the commencement of any Facility Airspace Improvements Restoration; provided, however, that in lieu of depositing the Shortfall Amount, Tenant may deliver to Landlord a guaranty for such Shortfall Amount from a creditworthy guarantor subject to the reasonable approval of Landlord; provided, further, that if Tenant's Institutional Lender shall have requirements for payment of the proceeds of casualty insurance other than those set forth herein, then Tenant shall comply with

such requirements insofar as they relate to Restoration of the Facility Airspace Improvements to the extent they conflict with the provisions of this Article 15.

(c) Subject to the further provisions of this Article 15, the Restoration Fund Depository shall pay over to Tenant from time to time, upon the following terms, the Restoration Funds, for the purpose of the performance by Tenant of any Facility Airspace Improvements Restoration; provided, however, that the Restoration Fund Depository, before paying such monies over to Tenant, shall reimburse Landlord (and shall be entitled to reimburse itself) therefrom to the extent, if any, of the necessary, reasonable and proper expenses (including reasonable attorneys' fees) paid or incurred by the Restoration Fund Depository and Landlord, respectively, in the collection of such Restoration Funds:

(i) Subject to the provisions of Sections 15.06 and 15.07, the Restoration Funds shall be paid to Tenant in installments as the Facility Airspace Improvements Restoration progresses, upon application by Tenant to both the Restoration Fund Depository and Landlord showing the cost of labor and materials purchased and delivered to the Premises for incorporation into such Restoration, or incorporated therein since the last previous application, and due and payable or paid by Tenant;

(ii) If any vendor's, mechanic's, laborer's, or materialman's lien is filed against the Premises or any part thereof, or if any public improvement lien relating to the Restoration is created or permitted to be created by Tenant and is filed against Landlord (or any assets of, or funds appropriated to Landlord), Tenant shall not be entitled to receive any further installment until all such liens are satisfied or discharged (by bonding or otherwise);

(iii) The amount of any installment to be paid to Tenant shall be (x) the product of (A) the total Restoration Funds and (B) a fraction, the numerator of which is the cost of labor and materials theretofore incorporated (or delivered to the Premises to be incorporated) by Tenant in the Restoration and the denominator of which is the total estimated cost of the Restoration, such estimated cost determined in accordance with Section 15.05(a), less (y) (A) all payments theretofore made to Tenant out of the Restoration Funds and (B) ten percent (10%) of the amount so determined until the Restoration is fifty percent (50%) complete, with no additional retention after the Restoration is fifty percent (50%) complete (it being understood that the retention from the period prior to fifty percent (50%) completion may be reduced to a final retention of twice the estimated cost of punch list items upon substantial completion before a full payment upon final completion); and

(iv) Upon completion of and payment in full for the Restoration by Tenant, the balance of the Restoration Funds net of any Rental then due and owing shall be paid over to Tenant, subject to the rights of any Leasehold Mortgagee or Mezzanine Lenders to such balance of funds.

(d) Notwithstanding the foregoing, if Landlord shall perform or continue any Facility Airspace Improvements Restoration, pursuant to the provisions of

Section 15.03, then the Restoration Fund Depository shall, upon request therefor by Landlord, pay over the Restoration Funds to Landlord to the extent not previously paid to Tenant pursuant to this Section 15.05, and Tenant shall pay to Landlord, within ten (10) days after demand therefor, any sums in excess of the portion of the Restoration Funds received by Landlord necessary to complete the Restoration. Upon request therefor by Tenant, Landlord shall deliver to Tenant from time to time, but no more frequently than monthly, a certificate setting forth, in reasonable detail, the expenditures made by Landlord for such Restoration.

Section 15.06. Conditions Precedent to Disbursements. The following shall be conditions precedent to each payment made by the Restoration Fund Depository to Tenant as provided in Section 15.05 above:

(a) Tenant shall have submitted to the Restoration Fund Depository and to Landlord a certificate from the aforesaid engineer or architect approved by Landlord pursuant to Section 15.02, which certificate shall (i) certify that the sum then requested to be withdrawn either has been paid by Tenant (or is due and payable) to contractors, subcontractors, materialmen, engineers, architects or other Persons (whose names and addresses shall be stated) who have rendered or furnished services or materials for the Restoration, (ii) give a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of said Persons in respect thereof, (iii) state in reasonable detail the progress of the work up to the date of said certificate, (iv) certify that no part of such expenditures has been or is being made the basis, in any previous or then pending requisition, for the withdrawal of the Restoration Funds or has been made out of the Restoration Funds previously received by Tenant, (v) certify that the sum then requested does not exceed the value of the services and materials described in the certificate, and (vi) certify that the balance of the Restoration Funds held by the Restoration Fund Depository (whether from the proceeds of insurance or by deposit of Tenant's own funds) will be sufficient upon completion of the Restoration to pay for the same in full, and include a reasonably detailed estimate of the cost of such completion;

(b) Tenant shall have furnished to Landlord an official search, or a certificate of a title insurance company reasonably satisfactory to Landlord, or other evidence reasonably satisfactory to Landlord, showing that there has not been filed any vendor's, mechanic's, laborer's or materialman's statutory or other similar lien affecting the Premises or any portion thereof, or any public improvement lien with respect to the Premises or the Restoration affecting Landlord, or the assets of, or funds appropriated to, Landlord, which has not been discharged of record (by bonding or otherwise), except such as will be discharged upon payment of the requisite amount out of the sum then requested to be withdrawn; and

(c) at the time of making such payment, there shall be no existing and unremedied Event of Default on the part of Tenant; provided, however, that in the event that a Monetary Default shall then exist of which Landlord has provided Tenant notice to the extent required under this Lease, the Restoration Fund Depository shall be obligated to pay over to Landlord, prior to any payment to Tenant, the amount required to cure such Monetary Default, together with all other sums to which Landlord is then entitled pursuant to this Lease as a result of such Monetary Default.

Section 15.07. Additional Requirements for Restoration. Tenant shall deliver to Landlord:

(a) at least thirty (30) Business Days prior to commencement of any Facility Airspace Improvements Restoration, (i) any permits required by any Governmental Authority with respect to such Restoration and (ii) at the request of Landlord, any drawings, information or samples (in addition to the Approved Restoration Plans and Specifications) to which the Yards Parcel Operator would be entitled to under the WRY Declaration of Easements. All such materials for the Restoration (together with the Approved Restoration Plans and Specifications therefor) shall become the sole and absolute property of Landlord, subject to the rights of any architects and engineers who prepared the same, if for any reason this Lease shall be terminated;

(b) at least ten (10) Business Days prior to commencement of such Restoration:

(i) a contract or construction management agreement reasonably satisfactory to Landlord in form collaterally assignable to Landlord (subject to any prior assignment to any Leasehold Mortgagee), made with a reputable and responsible contractor or construction manager approved by Landlord, which approval shall not be unreasonably withheld, providing for the completion of the Restoration in accordance with the Approved Restoration Plans and Specifications, free and clear of all liens, encumbrances, security agreements, interests and financing statements relating thereto;

(ii) (x) a collateral assignment to Landlord in a form reasonably acceptable to Tenant, Landlord and any Leasehold Mortgagee (subject to any prior assignment to any Leasehold Mortgagee) of all agreements, plans, permits and licenses relating to such Restoration and the bonds, if any, provided thereunder, and (y) a consent and acknowledgment to such collateral assignment in a form reasonably acceptable to Tenant, Landlord and Leasehold Mortgagee, executed by the counterparty under any such agreement (and, to the extent that there are major subcontracts to which such counterparty is a party, by the counterparty to such major subcontracts); provided, however, that if a Leasehold Mortgage is then in existence or is being entered into in connection with such Restoration, Tenant shall not be obligated to deliver any such consent and acknowledgement from any such counterparty unless such counterparty is also providing its consent and acknowledgement to a collateral assignment being given by Tenant in favor of the Leasehold Mortgagee;

(iii) for any Restoration costing in excess of Five Million Dollars ($5,000,000), subject to CPI Adjustment, payment and performance bonds in forms and by sureties satisfactory to Landlord, naming the contractor performing the Restoration as obligor and Landlord and Tenant and any Leasehold Mortgagees, if applicable, as obligees, each in a penal sum equal to the Shortfall Amount or, in lieu thereof, such other security as shall be reasonably satisfactory to Landlord; and

(iv) evidence of the insurance policies required pursuant to Article 14 issued by responsible insurers, bearing notations evidencing the payment of premiums or accompanied by other evidence satisfactory to Landlord of such payments.

Section 15.08. As-Built Plans. Tenant shall deliver to Landlord, within thirty (30) days after the completion of any Restoration, a complete set of "as-built" plans therefor, together with a statement in writing from a registered architect or licensed professional engineer that such plans are complete and correct.

Section 15.09. Option to Terminate. Notwithstanding the foregoing, if, within five (5) years prior to the Fixed Expiration Date, all or substantially all of the Premises shall be destroyed or damaged, Tenant shall have the option to terminate this Lease, and upon the surrender thereof (a) Tenant shall be relieved from the Restoration requirements for the Facility Airspace Improvements set forth in this Lease, and (b) Tenant shall assign and/or deliver all insurance proceeds to Landlord.

Section 15.10. No Abatement. Tenant hereby acknowledges and agrees that it shall have no right of reduction, abatement, setoff, refund or deduction of Rental, by reason of damage to or total, substantial or partial destruction of the WRY Roof Component or the Facility Airspace Improvements or any part thereof, due to any reason or cause whatsoever, and Tenant, notwithstanding any present or future law or statute, shall have no right to terminate this Lease or to quit or surrender the Premises or any part thereof except as set forth in Section 15.09. Tenant expressly agrees that its obligations hereunder, including, without limitation, the payment of Rental, shall continue as though the Improvements had not been damaged or destroyed and without abatement, suspension, diminution or reduction of any kind. It is the intention of Landlord and Tenant that the foregoing is an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York. Subject to the foregoing, nothing herein shall be deemed to limit or restrict any remedies available to Tenant at law or otherwise with respect to any Restorations that are the obligation of Landlord hereunder.

ARTICLE 16

CONDEMNATION

Section 16.01. Taking of All or Substantially All of Premises.

(a) If the whole or substantially all of the Premises shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among Landlord, Tenant and those authorized to exercise such right, this Lease and the Term shall terminate and expire on the date of such taking and the Rental payable by Tenant hereunder shall be equitably apportioned as of the date of such taking. The term "substantially all of the Premises" shall mean such portion of the Premises as when so taken would leave remaining a balance of the Premises which, due either to the area so taken or the location of the part so taken in relation to the part not so taken, would not, under economic conditions, applicable zoning laws and/or building regulations then existing or prevailing, permit the economic operations of the Improvements located on such remaining portions of the Premises for their permitted uses hereunder.

(b) If the whole or substantially all of the Premises shall be taken or condemned as provided in Section 16.01(a), the award or damages received with respect to the Premises (the "Condemnation Proceeds") shall be apportioned as follows: (i) there shall first be paid to Landlord the sum of (x) all future Annual Base Rent payments due under this Lease through the Fixed Expiration Date (taking into account all rent escalations and FMV Base Rent Resets, and assuming that the Annual Base Rent for the Lease Year following each FMV Base Rent Reset shall be equal to one hundred twenty percent (120%) of the Annual Base Rent for the Lease Year expiring on the day immediately prior to the applicable Initial Reset Date or Reset Date), with each such payment discounted to the date of payment of the Condemnation Proceeds using a discount rate of six and one-half percent (6.5%) per annum, as more particularly set forth on the Pro Forma Rent Schedule, plus (y) Landlord's Reversionary Interest Value valued as of the date of taking; and (ii) subject to the rights of any Leasehold Mortgagees and Mezzanine Lenders, Tenant shall receive the balance, if any, of such Condemnation Proceeds. Each of Landlord and Tenant shall execute any and all documents that may be reasonably required in order to facilitate collection by the other of its respective portion of the Condemnation Proceeds.

Section 16.02. Date of Taking. For purposes of this Article 16, the "date of taking" shall be deemed to be the earlier of (a) the date on which actual possession of the whole or substantially all, or a partial portion of the Premises, or a part thereof, as the case may be, is acquired by any lawful power or authority pursuant to the provisions of the applicable federal or New York State law or (b) the date on which title to the Premises or a portion thereof shall have vested in any lawful power or authority pursuant to the provisions of the applicable federal or New York State law.

Section 16.03. Partial Taking; Tenant's Obligation to Restore. If less than substantially all of the Premises shall be taken as provided in Section 16.01(a), this Lease and the Term shall continue as to the portion of the Premises remaining, and the rate of Annual Base Rent to be paid by Tenant to Landlord for each Lease Year thereafter shall be calculated as the product of (a) the Annual Base Rent and (b) a fraction, (i) the numerator of which is the number of square feet of Floor Area remaining in the Premises after the taking and (ii) the denominator of which is the maximum Floor Area square footage available to the Premises prior to such taking. Tenant, whether or not the Condemnation Proceeds, if any, shall be sufficient for the purpose shall (subject to Force Majeure) undertake diligent Restoration of any remaining portion of the Improvements not so taken, such that the remaining part of the Improvements shall be complete, operable and in good condition and repair in conformity with the requirements of Section 15.01. In the event of any partial taking pursuant to this Section 16.03, the entirety of the Condemnation Proceeds for or attributable to the portion of the Premises so taken shall be apportioned as follows: (x) there shall first be paid to the Condemnation Proceeds Depository such sums as shall be necessary to pay the costs of Restoration of the portion of the Premises remaining; (y) after deducting the sums specified in (x), there shall next be paid to Landlord the product of (A) the sum of (I) all future Annual Base Rent payments due under this Lease through the Fixed Expiration Date (taking into account all rent escalations and FMV Base Rent Resets, and assuming that the Annual Base Rent for the Lease Year following each FMV Base Rent Reset shall be equal to one hundred twenty percent (120%) of the Annual Base Rent for the Lease Year expiring on the day immediately prior to the applicable Initial Reset Date or Reset Date), with each such payment discounted to the date of payment of the Condemnation Proceeds

using a discount rate of six and one-half percent (6.5%) per annum, as more particularly set forth on the Pro Forma Rent Schedule, plus (II) Landlord's Reversionary Interest Value valued as of the date of taking; and (B) a fraction, the numerator of which is the number of square feet of Floor Area available to the portion of the Premises so taken, and the denominator of which is the Floor Area square footage available to the Premises prior to such taking; and (z) the balance remaining, if any, of such Condemnation Proceeds shall be paid to Tenant, subject to any rights of Leasehold Mortgagees or Mezzanine Lenders. Subject to the provisions and limitations in this Article 16, the Condemnation Proceeds Depository shall make available to Tenant as much of that portion of the Condemnation Proceeds actually received and held by the Condemnation Proceeds Depository, if any (less all necessary and proper expenses paid or incurred by the Condemnation Proceeds Depository, the Leasehold Mortgagee most senior in lien and Landlord in the condemnation proceedings), as may be necessary to pay the costs of Restoration of the portion of the Premises remaining. Payments to Tenant as aforesaid shall be disbursed in the manner and subject to the conditions set forth in Article 15 as are applicable to the disbursement of Restoration Funds. Any balance of the award held by the Condemnation Proceeds Depository and any cash and the proceeds of any security deposited with the Condemnation Proceeds Depository pursuant to Section 16.04 remaining after completion of the Restoration, net of any Rental then due and owing, shall be paid to Tenant (subject to the rights of any Leasehold Mortgagees and Mezzanine Lenders). Each of Landlord and Tenant shall execute any and all documents that may be reasonably required in order to facilitate collection by the other of its respective portion of the Condemnation Proceeds.

Section 16.04. Deficiency in Proceeds. If the cost of any Restoration required by the terms of Section 16.03, as determined in the manner set forth in Section 15.05(a), exceeds both (a) Five Million Dollars ($5,000,000), subject to CPI Adjustment and (b) the balance of the Condemnation Proceeds after payment of the expenses set forth in the fourth sentence of Section 16.03, then, prior to the commencement of such Restoration, Tenant shall deposit with the Condemnation Proceeds Depository a bond, cash or other security reasonably satisfactory to Landlord in the amount of such excess, to be held and applied by the Condemnation Proceeds Depository in accordance with the provisions of Section 16.03, as security for the completion of the Restoration.

Section 16.05. Temporary Taking. If the temporary use of the whole or any part of the Premises shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement between Tenant and those authorized to exercise such right, Tenant shall give prompt notice thereof to Landlord and the Term shall not be reduced or affected in any way and Tenant shall continue to pay in full the Rental payable by Tenant hereunder without reduction or abatement, and Tenant, provided that no Event of Default shall then exist, shall be entitled to receive for itself any and all Condemnation Proceeds received in connection with such temporary taking; provided, however, that:

(a) if the taking is for a period not extending beyond the Term and if the Condemnation Proceeds therefor shall be paid less frequently than in monthly installments, the same shall be paid to and held by the Condemnation Proceeds Depository as a fund which the Condemnation Proceeds Depository shall apply from time to time, at the direction of Landlord,

to the payment of Rental; provided, that in the event such taking results in changes or alterations in any of the Improvements which would necessitate an expenditure for Restoration of such Improvements to their former condition, then a portion of such Condemnation Proceeds considered by Landlord, in its reasonable opinion, as appropriate to cover the expenses of such Restoration shall be retained by the Condemnation Proceeds Depository and applied and paid over toward the Restoration of such Improvements to their former condition, substantially in the same manner and subject to the same conditions as provided in Section 15.05; and any portion of such Condemnation Proceeds which shall not be required pursuant to this Section 16.05(a) to be applied to the Restoration of the Improvements or to the payment of Rental, shall be paid to Tenant; or

(b) if the taking is for a period extending beyond the Term, the Condemnation Proceeds with respect thereto shall be apportioned between Landlord and Tenant as of the Expiration Date, and Landlord's and Tenant's share thereof, if paid less frequently than in monthly installments, shall be paid to the Condemnation Proceeds Depository and applied in accordance with the provisions of Section 16.05(a); provided, however, that the amount of any Condemnation Proceeds allowed or retained for the Restoration of the Improvements and not previously applied for such purpose shall remain the property of Landlord if this Lease shall expire prior to the completion of such Restoration.

Section 16.06. Sale in Lieu of Condemnation. In the event of a negotiated sale of all or a portion of the Premises in lieu of condemnation, the proceeds of such sale shall be distributed as provided in this Article 16 as if such sale were a condemnation and such proceeds were Condemnation Proceeds, and all other provisions of this Article 16 shall apply as if such sale were a condemnation. Neither party shall agree to such a sale without the prior written consent of the other party (which may be withheld in such party's sole discretion).

Section 16.07. Participation in Proceedings. Landlord, Tenant and any Leasehold Mortgagee shall be entitled to file a claim and otherwise participate in any condemnation or similar proceeding and all hearings, trials and appeals in respect thereof.

Section 16.08. Claims for Personal Property. Notwithstanding anything to the contrary contained in this Article 16, in the event of any permanent or temporary taking of all or any part of the Premises, Tenant, its Leasehold Mortgagees and its subtenants (to the extent permitted under a sublease) shall have the exclusive right to assert claims for any trade fixtures and personal property so taken which were the property of Tenant or its subtenants (but not including any Equipment) and for relocation expenses of Tenant or its subtenants, and all awards and damages in respect thereof shall belong to Tenant and its subtenants, and Landlord hereby waives any and all claims to any part thereof; provided, however, that if there shall be no separate award or allocation for such trade fixtures or personal property, then such claims of Tenant and its subtenants, or awards and damages, shall be subject and subordinate to Landlord's claims under this Article 16, and in no event shall any such claim of Tenant or any subtenant in any way reduce the amount of any award otherwise payable to Landlord with respect to the taking of its fee interest in the Premises or the Yards Parcel or the amount of any award otherwise payable with respect to the taking of Tenant's leasehold interest hereunder.

Section 16.09. Taking of Yards Parcel and Facility Airspace Parcel. If all or portions of both the Yards Parcel and the Facility Airspace Parcel shall be taken or condemned as provided in Section 16.01(a), separate awards or damages in respect thereof shall be made as between the Yards Parcel and the Facility Airspace Parcel. If such taking constitutes the whole or substantially all of the Premises, the award or damages payable with respect to the Premises shall be apportioned as provided in Section 16.01(b), and the Condemnation Proceeds payable with respect to the Yards Parcel shall be paid to the Yards Parcel Owner. If such taking affects less than substantially all of the Premises, the provisions of Section 16.03 shall apply with respect to the Condemnation Proceeds payable with respect to the Premises, and the Condemnation Proceeds payable with respect to Yards Parcel shall be paid to the Yards Parcel Owner. If there shall be any dispute as to that portion of the Condemnation Proceeds which is attributable to the Yards Parcel or the Premises, such dispute shall be resolved in accordance with Sections 40.01(a) and (b).

ARTICLE 17

ASSIGNMENT, SUBLETTING, MORTGAGES, ETC.

Section 17.01. No Transfers without Landlord Consent; Permitted Transfers. Except as otherwise specifically provided in this Article 17,

(a) Tenant shall not sell, assign, transfer, pledge, mortgage or otherwise encumber, in whole or in part (any such action, an "Assignment") either this Lease or any interest of Tenant in this Lease, whether by operation of law or otherwise, nor shall any Assignment be effected of the issued or outstanding capital stock of a corporation that is Tenant or of a corporation owning a controlling interest in Tenant, whether held directly or indirectly, and whether made voluntarily, involuntarily by operation of law or otherwise, if such Assignment will result in a change of the Controlling Ownership of Tenant as of the Commencement Date, nor shall any voting trust or similar agreement be entered into with respect to such stock, nor any reclassification or modification of the terms of such stock take place, nor shall there be any merger or consolidation of such corporation into or with another corporation, nor shall additional stock (or any warrants, options or debt securities convertible, directly or indirectly, into such stock) in any such corporation be issued if the issuance of such additional stock (or such other securities, when exercised or converted into stock), will result in a change of the Controlling Ownership of such corporation as held by the shareholders thereof as of the Commencement Date, nor shall any Assignment be effected with respect to any general partner's interest in a partnership which is Tenant or in a partnership owning a controlling interest in Tenant, whether directly or indirectly, and whether made voluntarily, involuntarily by operation of law or otherwise, if such Assignment will result in a change of the Controlling Ownership of Tenant as of the Commencement Date, nor shall any Assignment be effected with respect to any managing member's interest in a limited liability company which is Tenant or in a limited liability company owning a controlling interest in Tenant, whether directly or indirectly, and whether made voluntarily, involuntarily, by operation of law or otherwise, if such Assignment will result in a change of the Controlling Ownership of Tenant as of the Commencement Date, nor shall Tenant sublet the Premises (or, if the Improvements shall consist of, or are intended to consist of, multiple Buildings, any Building or portion of the Premises on which a Building is to be constructed) as an entirety or substantially as an entirety (any such

subletting, a "Subletting", and such subtenant, a "Major Subtenant"), without the prior written consent of Landlord in each case, which consent may be granted or withheld in Landlord's sole discretion (each of the foregoing transactions is herein referred to as a "Transfer"). Nothing contained in this Section 17.01(a) shall restrict or prohibit or be deemed to restrict or prohibit (a) any Assignment or Transfer in the equity interests in any Person whose common stock is quoted on a recognized securities exchange such as the New York Stock Exchange or NASDAQ or (b) an Assignment or Transfer in the equity interests in Tenant or any other Person that does not, directly or indirectly, result in a change in the Controlling Ownership of Tenant.

(b) Notwithstanding anything to the contrary in Section 17.01(a), the following "Permitted Transfers" shall be permitted upon the terms set forth in this Section 17.01(b) and Section 17.02 without any consent or approval of Landlord:

(i) at any time, Tenant may Transfer all of its right, title, interest and obligations under this Lease (or otherwise effectuate a change in the Controlling Ownership of Tenant) to a Related Affiliate; and

(ii) Tenant may effectuate a change in the Controlling Ownership of Tenant to Oxford Hudson Yards LLC (or any other Affiliate of OMERS Administration Corporation) and replace WRY Developer and any other Affiliate of The Related Companies, L.P. under the balance of the Project Documents insofar as they relate to the Premises (excluding any Roof Segment Completion Guaranty, and Rent/Financial Payment Guaranty, any Buildings Completion Guaranty and/or any other guaranty given by The Related Companies, L.P., and/or OP USA Debt Holdings Limited Partnership to the MTA Parties, all of which shall remain in full force and effect and Guarantors named therein shall remain fully liable thereunder), at any time following (x) the election of Oxford Hudson Yards LLC to remove Related Hudson Yards, LLC as the Administrative Member of Hudson Yards Gen-Par, LLC (the "GP") and exercise its right to direct the day-to-day business and affairs of the GP and Tenant pursuant to that certain Limited Liability Company Agreement of the GP, dated as of May 26, 2010, by and between Related Hudson Yards, LLC and Oxford Hudson Yards LLC, as amended by that certain Amendment No. 1 to Limited Liability Company Agreement of Hudson Yards Gen-Par, LLC, dated as of October 10, 2012 (as the same may be further amended from time to time, the "GP LLC Agreement"), or (y) consummation of the purchase by Oxford Hudson Yards LLC of one hundred percent (100%) of Related Hudson Yards, LLC's membership interests in the GP pursuant to the GP LLC Agreement, in each case provided that (A) Tenant shall notify Landlord of such change in Controlling Ownership and (B) if such a change in Controlling Ownership occurs prior to the Substantial Completion of the LIRR Work, Tenant is or retains as construction manager a Qualified Replacement Developer to perform the obligations of Developer under the WRY Construction Agreement; it being understood and agreed that Oxford Properties Group or any wholly-owned subsidiary thereof shall be a Qualified Replacement Developer so long as it (x) employs or, promptly following such change in Controlling Ownership, retains, New York-based personnel with reasonably sufficient construction experience in New York City to oversee the performance of the LIRR Work, (y) is not, at the applicable time, disqualified or disbarred from performing work on projects for the MTA Parties or their Affiliates or any other City of New York or New York State agency, and (z) is not a

Prohibited Person. For the avoidance of doubt, following such a change in Controlling Ownership, any Roof Segment Completion Guaranty, any Buildings Completion Guaranty, and Rent/Financial Payments Guaranty and/or any other guaranty given by The Related Companies, L.P., and/or OP USA Debt Holdings Limited Partnership to the MTA Parties shall remain in full force and effect and nothing contained in this Section 17.01(b)(ii) shall derogate from (1) the obligations of The Related Companies, L.P. or OP USA Debt Holdings Limited Partnership thereunder or (2) any obligations of any other Affiliate of The Related Companies, L.P. under any other Project Document to which it is a party to the extent accruing prior to the effective date of such change in Controlling Ownership.

Section 17.02. Conditions and Procedures for Permitted Transfers.

(a) All Permitted Transfers shall be subject to the following terms:

(i) at the time of making such Transfer there is no existing and continuing Event of Default or Default under this Lease or the Project Documents; provided that this clause shall apply with respect to a Non-Monetary Default only if Landlord has delivered to Tenant notice of such Non-Monetary Default to the extent required under the applicable provisions of Section 31.01 of this Lease;

(ii) if such Transfer is an Assignment of this Lease (but not including transfers in the equity interests of a Person that results in a change in the Controlling Ownership of Tenant), such Assignment shall be in writing, duly executed, acknowledged and in proper form (or a memorandum thereof is in proper form) for recording;

(iii) Tenant shall give written notice to Landlord of the making of such Transfer, which notice shall include the proposed effective date thereof, not less than twenty (20) days prior to the proposed effective date, together with (x) in the event of an Assignment of this Lease, the proposed form of the Assignment agreement and (y) relevant background information about the proposed transferee and its principals, including, without limitation, all information reasonably necessary to confirm that the proposed transferee complies with the provisions of Section 17.01(b) (as applicable) and is not a Prohibited Person;

(iv) upon the effective date of such Transfer, the proposed transferee shall not be a Prohibited Person; it being agreed that Landlord shall notify Tenant within fifteen (15) days after Tenant's delivery of the notice referenced in subsection (iii) above as to whether the proposed transferee is a Prohibited Person;

(v) the assignee, Major Subtenant or successor entity is not entitled, directly or indirectly, to diplomatic or sovereign immunity and shall be subject to the service of process in the jurisdiction of the federal, state and local courts sitting in New York State (unless such sovereign immunity is waivable and waived by such Person in connection with its obligations under this Lease);

(vi) in the event of an Assignment of this Lease (but not including transfers in the equity interests of a Person that results in a change in the Controlling Ownership of Tenant, if the then-existing Tenant entity remains the Tenant hereunder), not later than ten (10) Business Days after the effective date of any such Assignment, Tenant shall deliver to Landlord a duplicate original or certified copy of such Assignment instrument; and

(vii) anything contained in Section 17.01(a) to the contrary notwithstanding, the exercise by a Mezzanine Lender of (y) any rights it may have under its Mezzanine Loan with respect to obtaining title to the direct or indirect equity interests of Tenant which may have been pledged to such Mezzanine Lender pursuant to such Mezzanine Loan or (z) any foreclosure remedies it may have, shall not be a Transfer or Assignment requiring the consent of Landlord hereunder; provided that such Mezzanine Loan shall have been made for a valid business purpose and not principally for the purpose of transferring such equity interests and/or the leasehold estate created hereby.

(b) Any Assignment of this Lease (but not including transfers in the equity interests of a Person that results in a change in the Controlling Ownership of Tenant, if the then-existing Tenant entity remains the Tenant hereunder), shall not be effective for purposes of this Lease unless and until the transferee shall execute, acknowledge and deliver to Landlord an agreement or certificate, in form and substance reasonably satisfactory to Landlord, whereby the transferee shall (i) assume the obligations and performance of this Lease and agree to be bound by all of the covenants, agreements, terms, provisions and conditions hereof on the part of Tenant to be performed or observed on and after the effective date of any such Transfer, and (ii) agree no further Transfer shall be made except in accordance with this Article 17. Tenant acknowledges that, if Tenant engages in a Transfer in violation of the provisions of this Lease, and notwithstanding the acceptance of Rental by Landlord from an assignee or transferee or any other party, then Tenant shall remain fully and primarily and jointly and severally liable for the payment of the Rental due and to become due under this Lease and for the performance and observance of all of the covenants, agreements, terms, provisions and conditions of this Lease on the part of Tenant to be performed or observed. If, as and when Tenant Transfers this Lease as permitted hereunder, and an assignee assumes all of Tenant's obligations under this Lease, then from and after the date of such Transfer, the Tenant who has so assigned this Lease shall be released from and shall have no further obligations under this Lease other than any obligations that arose before the effective date of such Transfer (unless assumed in writing, in recordable form, by assignee). Promptly after request by Tenant, Landlord shall confirm the foregoing by a writing in form and substance reasonably satisfactory to Landlord and Tenant.

Section 17.03. Leasehold Mortgages.

(a) Notwithstanding anything to the contrary in Section 17.01(a), Tenant shall have the right to mortgage or pledge its interest in this Lease to one or more Leasehold Mortgagees and/or to pledge the direct or indirect interest in Tenant to a Mezzanine Lender, in each case without Landlord's consent, at any time and from time to time during the Term, provided that no holder of any Leasehold Mortgage or Mezzanine Loan, nor anyone claiming by, through or under any such Leasehold Mortgage or Mezzanine Loan, shall by virtue thereof acquire any greater rights hereunder than Tenant has, except the right to cure or remedy

Tenant's defaults or to become entitled to a new lease as more fully set forth in this Section 17.03 and Section 17.04 and such other rights as are expressly granted to Leasehold Mortgagees or Mezzanine Lenders hereunder. A permitted subtenant shall have the right to mortgage or pledge its interest in a permitted sublease to one or more Leasehold Mortgagees and/or pledge the direct or indirect interests in subtenant to Mezzanine Lenders without Landlord's consent, at any time and from time to time during the Term. Notwithstanding the foregoing, however, no Leasehold Mortgage or Mezzanine Loan shall be effective, unless:

(i) at the time of making such Leasehold Mortgage or Mezzanine Loan there is no existing and unremedied Default or Event of Default on the part of Tenant under this Lease; provided, that this clause shall apply with respect to a Non-Monetary Default only if the Landlord has delivered to Tenant notice of such Non-Monetary Default to the extent required under the applicable provisions of Section 31.01 of this Lease; and further provided that if an Event of Default exists, but this Lease has not been terminated and such Event of Default will be cured simultaneously with the granting of such Leasehold Mortgage or Mezzanine Loan or with the proceeds from such Leasehold Mortgage or Mezzanine Loan, Tenant may mortgage its interest in this Lease and/or pledge the direct or indirect interests in Tenant subject to such cure;

(ii) such Leasehold Mortgage shall be subject to all the agreements, terms, covenants and conditions of this Lease;

(iii) such Leasehold Mortgage shall contain in substance each of the following provisions (and no provisions inconsistent therewith in any material respect):

(u) "This instrument is executed upon condition that (unless this condition be released or waived by Landlord under said Lease or its successors in interest by an instrument in writing) no purchaser or transferee of said Lease at any foreclosure sale hereunder, or other transfer authorized by law by reason of a default hereunder where no foreclosure sale is required, shall, as a result of such sale or transfer, acquire any right, title or interest in or to said Lease or the leasehold estate hereby mortgaged or pledged, unless (A) Landlord shall be given written notice of such sale or transfer of said Lease and the effective date thereof within ten (10) days after the effective date of such sale or transfer, and (B) such purchaser or transferee shall agree that a duplicate original or certified copy of the instrument of sale or transfer, together with the recording data therefor (to the extent then available), shall be delivered to Landlord within twenty (20) days after the date of recordation thereof."

(v) "The purchaser or transferee of said Lease shall, effective from and after the effective date of the foreclosure or transfer in lieu of foreclosure, assume and agree to perform all of the terms, covenants and conditions of the Lease to be observed or performed on the part of Tenant and agree that no further or additional mortgage or

assignment of the Lease hereby mortgaged shall be made except in accordance with the provisions contained in Article 17 of that Lease."

(w) "This mortgage is not a security interest in or lien on the fee interest in the Premises covered by the Lease hereby mortgaged or on Landlord's interest in the Yards Parcel or the WRY".

(x) "The mortgagee hereunder waives all right and option to retain and apply the proceeds of any insurance or the proceeds of any condemnation award toward payment of the sum secured by this mortgage to the extent such proceeds are required for and applied to the demolition, repair or restoration of the mortgaged premises in accordance with the provisions of the Lease hereby mortgaged."

(y) "This mortgage and all rights of the mortgagee hereunder are, without the necessity for the execution of any further documents, subject and subordinate to the rights of Landlord under the Lease hereby mortgaged, as said Lease may have been previously modified, amended or renewed, or may hereafter be modified, amended or renewed with the consent of the mortgagee. Nevertheless, the holder of this mortgage agrees from time to time upon request and without charge to execute, acknowledge and deliver any instruments reasonably requested by Landlord to evidence the foregoing subordination."

(b) Tenant or the Leasehold Mortgagee or Mezzanine Lender shall give to Landlord written notice of the making of any Leasehold Mortgage or Mezzanine Loan (which notice shall contain the name and office address of the Leasehold Mortgagee or Mezzanine Lender) within ten (10) days after the execution and delivery of such Leasehold Mortgage or Mezzanine Loan and a duplicate original or certified copy thereof; provided that Landlord shall recognize the rights of a Leasehold Mortgagee or Mezzanine Lender hereunder upon the receipt of the foregoing information from and after the date so delivered even if such date is after such ten (10) day period.

(c) Landlord shall give to each Leasehold Mortgagee or Mezzanine Lender, at the address of such Leasehold Mortgagee or Mezzanine Lender set forth in the notice from such Leasehold Mortgagee or Mezzanine Lender or from Tenant delivered in the manner provided by Article 32, a copy of each notice given by Landlord to Tenant hereunder (including Default and Event of Default notices) at the same time as and whenever any such notice shall thereafter be given by Landlord to Tenant, and no such notice by Landlord shall be deemed to have been duly given to Tenant (and no grace or cure period shall be deemed to have commenced) unless and until a copy thereof shall have been given to each such Leasehold Mortgagee or Mezzanine Lender. Each Leasehold Mortgagee and Mezzanine Lender (i) shall thereupon have a period of ten (10) days more in the case of a Default in the payment of Annual Base Rent or other Rental and thirty (30) days more in the case of any other Default (or in the case of a non-Monetary Default which shall require more than thirty (30) days to cure using due diligence, then such longer period of time as shall be necessary so long as such Leasehold Mortgagee or Mezzanine Lender shall have commenced to cure (or caused to be commenced

such cure) within such thirty (30) day period and continuously prosecutes or causes to be prosecuted the same to completion with reasonable diligence), after the applicable period afforded Tenant for remedying the Default or causing the same to be remedied has expired and (ii) shall, within such period and otherwise as herein provided, have the right (but not the obligation) to remedy such Default or cause the same to be remedied. Landlord shall accept performance by or on behalf of a Leasehold Mortgagee or Mezzanine Lender of any covenant, condition or agreement on Tenant's part to be performed hereunder with the same force and effect as though performed by Tenant, so long as such performance is made in accordance with the terms and provisions of this Lease. Landlord shall not object to any entry onto the Premises by or on behalf of a Leasehold Mortgagee or a Mezzanine Lender to the extent necessary to effect such Leasehold Mortgagee's or Mezzanine Lender's cure rights, provided such entry is in compliance with applicable law.

(d) No Non-Monetary Default by Tenant shall be deemed to exist as long as a Leasehold Mortgagee or Mezzanine Lender, in good faith, (i) shall have commenced to cure (or caused to be commenced such cure) such Default within thirty (30) days after the expiration of the applicable period afforded to Tenant for remedying such Default, and continuously prosecutes or causes to be prosecuted the same to completion with reasonable diligence (subject to Force Majeure) or (ii) if possession of the Premises or any part thereof is required in order to cure such Default, and Leasehold Mortgagee or Mezzanine Lender shall have notified Landlord within thirty (30) days after the expiration of the applicable period afforded to Tenant for remedying the Default of its intention to institute foreclosure proceedings to obtain possession directly or through a receiver, and thereafter commences such foreclosure proceedings, prosecutes such proceedings with all reasonable diligence and continuity (subject to Force Majeure) and, upon obtaining such possession, commences promptly to cure the Default and prosecutes the same to completion with all reasonable diligence and continuity (subject to Force Majeure); provided that the Leasehold Mortgagee or Mezzanine Lender shall have delivered to Landlord, in writing, within the time periods set forth in subclause (i) or (ii) herein, its agreement to take the action described in subclause (i) or (ii) herein (the "Leasehold Mortgagee Agreement"), and shall have assumed the obligation to cure the Default; and provided, further, that during the period in which such action is being taken (and any foreclosure proceedings are pending), all of the other obligations of Tenant under this Lease are being duly performed (including, without limitation, payment of all Rental due hereunder) within any applicable grace periods. In the event that at any time after the delivery of the Leasehold Mortgagee Agreement, the Leasehold Mortgagee or Mezzanine Lender notifies Landlord, in writing, that it has relinquished possession of the Premises or that it will not institute foreclosure proceedings or, if such proceedings have been commenced, that it has discontinued them, the Leasehold Mortgagee or Mezzanine Lender shall have no further liability under such Leasehold Mortgagee Agreement from and after the date it delivers such notice to Landlord (except for any obligations assumed by the Leasehold Mortgagee and accruing prior to the date it delivers such notice), and, thereupon, Landlord shall have the unrestricted right to terminate this Lease by reason of any Event of Default (and to take any other action it deems appropriate by reason of any Default by Tenant), and upon any such termination the provisions of Section 17.04 shall apply.

(e) A Leasehold Mortgagee, Mezzanine Lender, successor leasehold owner, assignee or transferee gaining possession of the Premises pursuant to a foreclosure or

transfer in lieu of foreclosure shall not be bound by any deadline for completion of any construction or alterations required of Tenant under this Lease; provided, however, that such Leasehold Mortgagee, Mezzanine Lender, successor leasehold owner, assignee or transferee shall with all reasonable diligence and continuity prosecute completion of same; and provided, further, that it shall be an obligation under this Lease to cure any default under the WRY Construction Agreement (after the expiration of any applicable notice and cure period contained therein) and such Leasehold Mortgagee, Mezzanine Lender, successor leasehold owner, assignee or transferee shall be obligated, with respect to the Premises, to cure such default in accordance with the WRY Construction Agreement. Notwithstanding anything in this Section 17.03 to the contrary, a Leasehold Mortgagee, Mezzanine Lender, successor leasehold owner, assignee or transferee shall not be required to cure any non-Monetary Defaults of Tenant that are not capable of being cured by such Leasehold Mortgagee, and if any Leasehold Mortgagee, Mezzanine Lender, successor leasehold owner, assignee or transferee shall acquire the Premises pursuant to a foreclosure or transfer in lieu of foreclosure, then any such non-Monetary Default by Tenant that is not capable of being cured shall no longer be deemed a Default.

(f) With respect to any non-Monetary Default, so long as a Leasehold Mortgagee or Mezzanine Lender shall be diligently exercising its cure rights under this Section 17.03, Landlord shall not (i) re-enter the Premises, (ii) serve a termination notice, or (iii) bring a proceeding on account of such Default to (x) dispossess Tenant and/or other occupants of the Premises, (y) re-enter the Premises, or (z) terminate this Lease or the leasehold estate (such rights described in clauses (i), (ii) and (iii)) "Landlord's Termination Rights"). In addition, with respect to any Monetary Default, Landlord shall not exercise any of Landlord's Termination Rights so long as a Leasehold Mortgagee or a Mezzanine Lender shall be diligently exercising its cure rights under this Section 17.03 within the time periods set forth above; provided, however, that (A) nothing contained in this Section 17.03(f) shall in any way affect, diminish or impair the right of Landlord to exercise any of Landlord's Termination Rights or to enforce any other remedy in the event of any other Event of Default or Default, as applicable, by Tenant in the performance of its obligations hereunder, and (B) upon any cessation of a Leasehold Mortgagee or Mezzanine Lender so exercising such rights and undertaking such activities, Landlord may exercise any of Landlord's Termination Rights hereunder. Nothing in the protections to Leasehold Mortgagees or Mezzanine Lenders provided in this Lease shall be construed to either (I) extend the Term beyond the Fixed Expiration Date provided for in this Lease that would have applied if no Default had occurred, or (II) require such Leasehold Mortgagee or Mezzanine Lender to cure any non-Monetary Default by Tenant that is not capable of being cured as a condition to preserving this Lease or to such Leasehold Mortgagee obtaining a New Lease as provided in Section 17.03(a).

(g) Notwithstanding anything to the contrary herein, the exercise of any rights or remedies of a Leasehold Mortgagee under a Leasehold Mortgage or a Mezzanine Lender under a Mezzanine Loan, including the consummation of any foreclosure or Transfer in lieu of foreclosure, shall not constitute a Default under this Lease or require the consent of Landlord; provided, however, that any Transfer of this Lease resulting from any such foreclosure or transfer in lieu of foreclosure to an entity other than a Leasehold Mortgagee, Mezzanine Lender or their Affiliates shall be a Default under this Lease unless (x) such Transfer meets the requirements of Section 17.02 (excluding the requirement that the transferee be a Related Affiliate, which shall be inapplicable to any Transfer resulting from or following any such

foreclosure or transfer in lieu of foreclosure), and (y) the transferee is a Qualified Replacement Developer.

(h) Except as provided in Section 17.03(d), no Leasehold Mortgagee or Mezzanine Lender shall become liable under the provisions of this Lease unless and until such time as it becomes, and then only for so long as it remains, the owner of the leasehold estate created hereby and no performance by or on behalf of a Leasehold Mortgagee or Mezzanine Lender of Tenant's obligations hereunder shall cause such Leasehold Mortgagee or Mezzanine Lender to be deemed to be a "mortgagee in possession" unless and until such Leasehold Mortgagee or Mezzanine Lender shall take control or possession of the Premises.

(i) If there is more than one Leasehold Mortgagee, the rights and obligations afforded by this Section 17.03 to a Leasehold Mortgagee shall be exercisable only by the party whose collateral interest in the Premises is senior in lien (or which has obtained the consent of any Leasehold Mortgagees that are senior to such Leasehold Mortgagee).

Section 17.04. New Lease.

(a) In the event of a termination of this Lease, prior to the Fixed Expiration Date, whether by summary proceedings to dispossess, service of notice to terminate, or otherwise, due to an event specified in Article 31, Landlord shall serve upon each Leasehold Mortgagee who is entitled to notice, written notice of such termination promptly following the same, 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. Subject to clause (e) of this Section 17.04, the Leasehold Mortgagee entitled to the rights afforded by this Section 17.04 shall thereupon have the option to obtain a new lease in accordance with and upon the following terms and conditions (a "New Lease"):

(i) Upon the written request of such Leasehold Mortgagee, served upon Landlord in accordance with Article 32, within forty-five (45) days after service upon the Leasehold Mortgagee of notice of termination by Landlord, Landlord shall enter into a New Lease of the Premises with such Leasehold Mortgagee, a special-purpose Affiliate thereof or any designee of such Leasehold Mortgagee that is an Institutional Lender (such Leasehold Mortgagee, Affiliate thereof or designee, the "New Tenant"), as provided in clause (ii) of this Section 17.04(a).

(ii) The New Lease shall be effective as of the date of termination of this Lease and shall be for the remainder of the Term and at the Rental and upon all the agreements, terms, covenants and conditions hereof. Upon the execution of such New Lease, the New Tenant shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for its termination, and shall otherwise with reasonable diligence commence to remedy any non-Monetary Defaults under this Lease and shall pay all costs and expenses, including, without limitation, reasonable attorneys' fees, court costs and disbursements incurred by Landlord in connection with such Defaults and termination, the recovery of possession of the Premises and the preparation, execution and delivery of such New Lease, less any net monies received by Landlord from the date of termination of this Lease for rent or for use and occupancy of

the Premises. Landlord shall have no obligation to deliver physical possession of the Premises in connection with the giving of any such New Lease to the extent that Landlord shall not previously have recovered possession of same. Nothing herein contained shall release Tenant from any of its obligations under this Lease which shall not have been discharged or fully performed by Tenant or by such Leasehold Mortgagee or New Tenant.

(b) As between Landlord and New Tenant, any New Lease, and the leasehold estate created thereby, subject to the same conditions contained in this Lease, shall continue to maintain the same priority as this Lease with regard to any Leasehold Mortgage or Fee Mortgage or any other lien, charge or encumbrance whether or not the same shall then be in existence.

(c) Upon the execution and delivery of a New Lease under this Section 17.04, all subleases which theretofore may have been assigned to Landlord shall be assigned and transferred, without recourse, by Landlord to the New Tenant. Between the date of termination of this Lease and the date of execution and delivery of the New Lease, if a Leasehold Mortgagee shall have requested such New Lease as provided in Section 17.04(a), Landlord shall not enter into any new subleases, cancel or modify in any material respect any then-existing subleases or accept any cancellation, termination or surrender thereof (unless such termination shall be effected as a matter of law on the termination of this Lease) without the written consent of the Leasehold Mortgagee, not to be unreasonably withheld or delayed, except as permitted in the subleases.

(d) If there is more than one Leasehold Mortgagee, Landlord shall enter into a New Lease with the Leasehold Mortgagee whose Leasehold Mortgage is senior in lien (or which has obtained the consent of any Leasehold Mortgagees that are senior to such Leasehold Mortgagee) as the Leasehold Mortgagee entitled to the rights afforded by this Section 17.04.

(e) Any rejection of this Lease by any trustee of Tenant in any bankruptcy, reorganization, arrangement or similar proceeding which would otherwise cause this Lease to terminate, shall, without any action or consent by Landlord, Tenant or any Mortgagee, effect the transfer of Tenant's interest hereunder to the most senior Leasehold Mortgagee or its nominee or designee. Upon any such transfer to a Leasehold Mortgagee, such Leasehold Mortgagee may (i) reject the transfer of this Lease upon giving notice thereof to Landlord no later than forty-five (45) days after notice from Landlord of such transfer, in which case such Leasehold Mortgagee shall have no further obligations hereunder, or (ii) may request a new lease in accordance with the provisions of this Section 17.04. In the event that the most senior Leasehold Mortgagee shall fail either to effect the transfer of this Lease or request a new lease, then Landlord shall notify all remaining Leasehold Mortgagees that the most senior Leasehold Mortgagee has failed to exercise such right whereupon each other Leasehold Mortgagee may, within twenty (20) days of receiving such notice have the same alternative rights, exercisable within the same period after receipt of such notice. If more than one Leasehold Mortgagee shall have elected to either effect such transfer or request such new lease (subject to the liens of all Leasehold Mortgagees senior in lien in each case) the Leasehold Mortgagee with the most senior lien priority shall be deemed to have exercised such right.

Section 17.05. Additional Mortgagee Protective Clauses. In addition to the other rights, notices and cure periods afforded to Leasehold Mortgagees, Landlord further agrees that:

(a) without the prior written consent of each Leasehold Mortgagee, Landlord will neither agree to any modification or amendment of this Lease which would have an adverse effect on such holder, nor accept a surrender or cancellation of this Lease;

(b) Landlord shall consider in good faith any modification to this Lease requested by a Leasehold Mortgagee as a condition or term of granting financing to Tenant, provided that the same does not materially increase Landlord's obligations or diminish Landlord's rights and immunities hereunder;

(c) the Leasehold Mortgagee most senior in lien priority (or as otherwise agreed by the Leasehold Mortgagees) shall have the right to participate in any arbitration proceedings under Section 40.01(b), provided that only one (1) Leasehold Mortgagee shall have such participation rights at any given time;

(d) the Leasehold Mortgagee most senior in lien priority (or as otherwise agreed by the Leasehold Mortgagees) shall have the right to participate in the adjustments of any insurance claims of the nature set forth in Articles 14 and 15 and condemnation awards of the nature set forth in Article 16 and to serve as the Condemnation Proceeds Depository; provided, however, that only one (1) Leasehold Mortgagee shall have such participation rights at any given time; and provided, further, that any such Leasehold Mortgagee (i) shall irrevocably agree that all insurance proceeds shall be paid directly to the Condemnation Proceeds Depository for distribution in accordance with the terms of this Lease and (ii) shall give to the Condemnation Proceeds Depository, in the Condemnation Proceeds Depository's favor, a direction to execute and/or endorse any claims or checks necessary for the payment of, or representing the payment of, insurance proceeds, to be distributed by the Condemnation Proceeds Depository, in accordance with the terms of this Lease; and

(e) at the request of Tenant from time to time, Landlord shall execute and deliver an instrument addressed to the holder of any Leasehold Mortgage or Mezzanine Loan confirming that such holder is a Leasehold Mortgagee or Mezzanine Lender and entitled to the benefit of all provisions contained in the Lease which are expressly stated to be for the benefit of Leasehold Mortgagees or Mezzanine Lenders.

Section 17.06. Subleases.

(a) Without limiting the provisions of Sections 17.01, Tenant may grant a sublease or license to any Person or Persons to use or occupy less than substantially all of the Premises without the necessity of obtaining the consent of Landlord.

(b) Each sublease or license of any portion of the Premises shall provide that: (i) such sublease or license is subject to this Lease; (ii) such sublease shall expire on or prior to the Fixed Expiration Date or upon the earlier termination of this Lease pursuant to Article 31; (iii) Landlord shall have no obligation to the subtenant or licensee with respect to any

right or obligation of the landlord under such sublease or the licensor under such license, as the case may be; and (iv) the subtenant or licensee shall not be a Prohibited Person.

ARTICLE 18

REPAIRS AND MAINTENANCE

Section 18.01. Repairs. Tenant shall take good care of the Premises, including, without limitation, the Facility Airspace Improvements and the roofs, foundations and appurtenances thereto, water, sewer, gas and other utility connections, pipes and mains which are located on or service the Premises (unless the same is within the sole legal and operational control of the City, a public utility company or any other third party) and all Equipment, and shall put, keep and maintain the Facility Airspace Improvements in good and safe order and condition, and make all repairs therein and thereon, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary or appropriate to keep the same in good and safe order and condition, and whether or not necessitated by wear, tear, obsolescence or defects, latent or otherwise; provided, however, that Tenant's obligations with respect to Restoration resulting from a casualty or condemnation shall be as provided in Articles 15 and 16. Tenant shall not commit or suffer, and shall use all reasonable precaution to prevent, waste, damage or injury to the Premises. When used in this Section 18.01, the term "repairs" shall include all necessary replacements, alterations and additions. All repairs made by Tenant shall be at least equal in quality and class to the original work and shall be made in compliance with (a) all Legal Requirements, (b) the New York Board of Fire Underwriters or any successor thereto, and (c) any other applicable rules, regulations and requirements governing means and methods of construction over the Yards Parcel set forth in the WRY Declaration of Easements.

Section 18.02. No Obligation on Landlord. Landlord shall not be required to furnish any services, utilities or facilities whatsoever to the Premises, nor shall Landlord have any duty or obligation to make any alteration, change, improvement, replacement, Restoration or repair to, nor to demolish, any Improvements, except as otherwise expressly set forth herein or the WRY Declaration of Easements. Except as expressly provided herein or in the WRY Declaration of Easements, Tenant assumes the full and sole responsibility for the condition, operation, repair, alteration, improvement, replacement, maintenance and management of the Premises and the Facility Airspace Improvements.

ARTICLE 19

CHANGES, ALTERATIONS AND ADDITIONS

Section 19.01. Capital Improvements. From and after Substantial Completion of the Facility Airspace Improvements on the Premises, Tenant shall not demolish, replace or materially alter the Facility Airspace Improvements, or any part thereof (except as provided with respect to Equipment in Article 21), or make any material addition thereto, whether voluntarily or in connection with repairs required by this Lease (any such demolition, replacement, alteration or addition of improvements, a "Capital Improvement"), unless Tenant shall comply with the following requirements:

(a) No Capital Improvement shall be undertaken unless and until Tenant shall have procured from all Governmental Authorities all Improvement Approvals for the proposed Capital Improvement which are required to be obtained prior to the commencement of the proposed Capital Improvement and paid for the same. Landlord, at the sole cost and expense of Tenant, shall promptly execute and deliver any applications for Improvement Approvals that require the execution by the fee owner of the Premises, and otherwise cooperate with Tenant as reasonably required or requested by Tenant in order for Tenant to obtain all Improvement Approvals, provided such documents or instruments do not impose any liability or obligation on Landlord (unless paid by Tenant or against which Landlord is indemnified by Tenant in a manner reasonably satisfactory to Landlord) or reduce any of the rights of Landlord under this Lease or the Project Documents in more than a *de minimis* manner. True copies of all such Improvement Approvals shall be delivered by Tenant to Landlord prior to commencement of any proposed Capital Improvement.

(b) All Capital Improvements, when completed, shall be of such a character as not to reduce the value and quality of the Premises below its value immediately prior to the commencement of such Capital Improvement. Landlord shall have the right to review plans and specifications for any proposed Capital Improvement to determine whether such standards have been met. Any disputes with respect to such standards shall be resolved in accordance with Section 40.01(a) and (b). The WRY Roof Component, the LIRR Relocations and New LIRR Facilities shall not be altered except pursuant to the provisions of the WRY Declaration of Easements.

(c) All Capital Improvements shall be made with reasonable diligence and continuity (subject to Force Majeure) and in a good and workmanlike manner and in compliance with (i) all Improvement Approvals, (ii) if required pursuant to Section 19.01(b), the plans and specifications for such Capital Improvements as approved by Landlord, (iii) the orders, rules, regulations and requirements of any Board of Fire Underwriters or any similar body having jurisdiction, (iv) the provisions of the WRY Declaration of Easements and (v) all other Legal Requirements.

(d) No construction of any Capital Improvement shall be commenced until Tenant shall have delivered to Landlord original insurance policies, or certificates of insurance with respect to such policies together with copies of such policies, issued by responsible insurers and bearing notations evidencing the payment of premiums or installments thereof then due or accompanied by other evidence satisfactory to Landlord of such payments, for the insurance required by Article 14 (or, if applicable, the WRY Declaration of Easements). If, under the provisions of any casualty, liability or other insurance policy or policies then covering the Premises or any part thereof, any consent to such Capital Improvement by the insurance company or companies issuing such policy or policies shall be required to continue and keep such policy or policies in full force and effect, Tenant, prior to the commencement of construction of such Capital Improvement, shall obtain such consent and pay any additional premiums or charges therefor that may be imposed by said insurance company or companies.

Section 19.02. As-Built Plans. All Capital Improvements shall be carried out under the supervision of an architect selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld. Upon completion of any Capital Improvement,

Tenant shall furnish to Landlord a complete set of "as-built" plans for such Capital Improvement together with a copy of the Certificate of Occupancy issued therefor, to the extent a modification thereof was required.

Section 19.03. Title. Title to all additions, alterations, improvements and replacements made to the Improvements, including, without limitation, the Capital Improvements, shall forthwith vest in Landlord as provided in Section 8.07, without any obligation by Landlord to pay any compensation therefor to Tenant.

ARTICLE 20

REQUIREMENTS OF PUBLIC AUTHORITIES AND OF INSURANCE UNDERWRITERS AND POLICIES

Section 20.01. Compliance with Legal Requirements. Tenant promptly shall comply with all Legal Requirements without regard to the nature or cost of the work required to be done, extraordinary, as well as ordinary, of all Governmental Authorities now existing or hereafter created, and of any and all of their departments and bureaus, of any applicable fire rating bureau or other body exercising similar functions, affecting the Premises, or affecting the construction, maintenance, use, operation, management or occupancy of the Premises, whether or not the same involve or require any structural changes or additions in or to the Premises, without regard to whether or not such changes or additions are required on account of any particular use to which the Premises, or any part thereof, may be put, and without regard to the fact that Tenant is not the fee owner of the Premises. Tenant also shall comply with any and all provisions and requirements of any casualty, liability or other insurance policy required to be carried by Tenant under the provisions of this Lease.

Section 20.02. Right to Contest. Tenant, at its sole cost and expense, after notice to Landlord, may contest, by appropriate proceedings prosecuted diligently and in good faith, the validity or applicability of any Legal Requirement; provided, that (a) Landlord shall not be subject to civil liability or criminal penalty or to prosecution for a crime, nor shall the Premises or any part thereof be subject to being condemned or vacated, by reason of non-compliance or otherwise, by reason of such contest; (b) if an adverse decision in such proceeding or the failure to pay any judgment resulting from such adverse decision could result in the imposition of any lien against the Premises, then before the commencement of such contest, Tenant shall furnish to Landlord the bond of a surety company reasonably satisfactory to Landlord, or other deposit or security in each case in form, substance and amount reasonably satisfactory to Landlord, and shall indemnify Landlord against the cost of such compliance and liability resulting from or incurred in connection with such contest or non-compliance (including the costs and expenses in connection with such contest); (c) Tenant shall keep Landlord regularly advised as to the status of such proceedings; (d) such contest shall be prosecuted with diligence and in good faith to final adjudication, settlement, compliance or other disposition of the Legal Requirement so contested; (e) such contest, and any disposition thereof (including, without limitation, the cost of complying therewith and paying all interest, penalties, fines, liabilities, fees and expenses in connection therewith), shall be at the sole cost of and shall be paid by Tenant; (f) promptly after disposition of the contest, Tenant shall comply with such Legal

Requirement to the extent determined by such contest; and (g) notwithstanding any bond, deposit or other security furnished to Landlord, Tenant shall comply with any Legal Requirement in accordance with the applicable provisions of this Lease if the Premises, or part thereof, shall be in danger of being forfeited or if Landlord is in danger of being subject to criminal liability or penalty, or civil liability, in connection with such contest. Landlord shall be deemed subject to prosecution for a crime if Landlord or any of its respective officers, directors, partners, shareholders, agents or employees is charged with a crime of any kind whatever unless such charge is withdrawn ten (10) days before such party is required to plead or answer thereto.

Section 20.03. Environmental Requirements. Without limiting anything contained in the WRY Declaration of Easements, Landlord and Tenant shall not undertake, permit or suffer any Environmental Activity other than (a) in compliance with all applicable Legal Requirements and all of the terms and conditions of all insurance policies covering, related to or applicable to the Premises (including the WRY Declaration of Easements), and (b) in such a manner as shall keep the Premises free from any lien imposed in respect of or as a consequence of such Environmental Activity. Landlord shall take all necessary steps to ensure that any Environmental Activity undertaken by it or on its behalf is undertaken, and Tenant shall take all necessary steps to ensure that any other Environmental Activity undertaken or permitted at the Premises is undertaken, in each case in such a manner as to provide prudent safeguards against potential risks to human health or the environment or to the Premises. Each party shall notify the other within twenty-four (24) hours of the Release of any Hazardous Substance from or at the Premises. If Tenant shall breach the covenants provided in this Section 20.03, then in addition to any other rights and remedies which may be available to Landlord under this Lease or otherwise at law or in equity, Landlord may require Tenant to take all actions, or to reimburse Landlord for the costs of any and all actions taken by Landlord upon Tenant's failure to act promptly, as are necessary or reasonably appropriate to cure such breach. Landlord shall have the right from time to time and at Landlord's expense to conduct an environmental audit of the Premises during regular business hours, and Tenant shall cooperate in the conduct of such environmental audit. Landlord shall provide a copy of any such audit to Tenant; provided, however, that in the event such environmental audit concludes that there has been a material breach by Tenant of the terms and conditions set forth in this Section 20.03, Tenant shall reimburse Landlord for the reasonable costs of such environmental audit. Landlord shall use its reasonable efforts to minimize interference with Tenant's use and occupancy of the Premises in performing such environmental audit, and shall repair any damage to the Premises caused by the same, except that Landlord shall have no such repair obligation to the extent the damage was due to any Environmental Activity.

ARTICLE 21

EQUIPMENT

Section 21.01. Property of Landlord. Subject to the exercise by Tenant of an Open Space Fee Conversion Option with respect to an WRY Open Space Parcel, all Equipment on the Premises shall be and shall remain the property of Landlord; provided, that Tenant (or its designee) shall be deemed the owner of Equipment for federal income tax purposes. Tenant shall not have the right, power or authority to, and shall not, remove any Equipment from the Premises without the consent of Landlord, which consent shall not be unreasonably withheld;

provided, however, that any such consent shall not be required in connection with repairs, cleaning or other servicing, or if the same is promptly replaced (subject to Force Majeure) by Equipment which is at least equal in utility and value to the Equipment being removed, and such removal and replacement does not materially reduce the value of the Premises or materially increase the risk to life or safety of the occupants or users of the Improvements. Notwithstanding the foregoing, Tenant shall not be required to replace any Equipment which performed a function which has become obsolete or otherwise is no longer necessary or desirable in connection with the use or operation of the Premises, unless such failure to replace would reduce the value of the Premises or would result in a reduced level of maintenance of the Premises, in which case Tenant shall be required to install such Equipment as may be necessary to prevent such reduction in the value of the Premises or in the level of maintenance.

Section 21.02. Replacement. Tenant shall keep all Equipment in good order and repair and shall replace the same when necessary with items at least equal in utility and value to the Equipment being replaced.

ARTICLE 22

DISCHARGE OF LIENS; BONDS

Section 22.01. Creation of Liens. Subject to the provisions of Section 22.02, and except as otherwise expressly provided herein, Tenant shall not create or permit to be created any lien, encumbrance or charge upon the Premises or any part thereof, the income therefrom or any assets of, or funds appropriated to, Landlord, and Tenant shall not suffer any other matter or thing whereby the estate, right and interest of Landlord in the Premises or any part thereof might be impaired.

Section 22.02. Discharge of Liens. If any mechanic's, laborer's or materialman's lien (other than a lien arising out of any work performed by or on behalf of Landlord) at any time shall be filed in violation of the obligations of Tenant pursuant to Section 22.01 against the Premises or any part thereof, the Yards Parcel or any part thereof, or, if any public improvement lien created or permitted to be created by Tenant shall be filed against any assets of, or funds appropriated to, Landlord, Tenant shall (a) within forty-five (45) days after notice of the filing thereof shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise, and (b) indemnify, defend, protect and hold the MTA Parties harmless from and against any and all loss, cost, injury, damage or expense (including reasonable attorneys' fees and charges) arising out of such lien and/or the sums claimed to be due which give rise to such lien. If Tenant shall fail to cause such lien to be discharged of record within such forty-five (45) day period, and if such lien shall continue for an additional ten (10) days following the last day of such forty-five (45) day period, then, in addition to any other rights or remedies, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event, Landlord shall be entitled, if Landlord so elects, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances. Any amount so paid by Landlord, including all reasonable costs and expenses

incurred by Landlord in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements, together with interest thereon at the Involuntary Rate from the respective dates of Landlord's making of the payment or incurring of the costs and expenses until the date of actual repayment to Landlord of such amounts, shall constitute Rental and shall be paid by Tenant to Landlord within ten (10) days after demand therefor. Notwithstanding the foregoing provisions of this Section 22.02, Tenant shall not be required to discharge any such lien if Tenant is in good faith contesting the same and has furnished a cash deposit or a security bond or other such security satisfactory to Landlord in an amount sufficient to pay such lien with interest and penalties.

Section 22.03. No Authority to Contract in Name of Landlord. Nothing contained in this Lease shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to or repair of the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of materials that would give rise to the filing of any lien against Landlord's interest in the Premises or any part thereof, the WSY or any part thereof, or any assets of, or funds appropriated to, Landlord. Notice is hereby given, and Tenant shall cause all Construction Contracts to provide, that Landlord shall not be liable for any work performed or to be performed at the Premises for Tenant or any subtenant, for any materials furnished or to be furnished at the Premises for any of the foregoing, and that no mechanic's or other lien for such work or materials shall attach to or affect the estate or interest of Landlord in and to the Premises or any part thereof, the Yards Parcel or any part thereof, the WSY or any part thereof, or any assets of, or funds appropriated to, Landlord. Tenant shall have no power to do any act or make any contract which may create or be the foundation for any lien, mortgage or other encumbrance upon the estate or assets of, or funds appropriated to, Landlord or of any interest of Landlord in the Premises.

ARTICLE 23

DELIVERY OF POSSESSION AND PERMITTED EXCEPTIONS TO TITLE

Section 23.01. As-Is Condition; No Representations. Tenant acknowledges that Tenant is fully familiar with the Premises and the zoning status, physical condition and environmental condition thereof, and the Permitted Exceptions. Tenant accepts the Premises in its existing legal and physical condition and state of repair, and, except as otherwise expressly set forth in this Lease or the other Project Documents, no representations or warranties, express or implied, have been made by or on behalf of Landlord in respect of the Premises or the status of title or the physical condition thereof, including, without limitation, the environmental condition thereof and the zoning or other laws, regulations, rules and orders applicable thereto, the amount of Taxes or other Impositions that may be assessed against the Premises or the use that may be made of the Premises. Tenant hereby acknowledges and represents that Tenant has not relied on any such representations or warranties, and that Landlord shall in no event whatsoever be liable for any latent or patent defects in the Premises. Nothing herein shall limit the obligations of the

Yards Parcel Owner under the WRY Declaration of Easements or any rights Tenant may have as a Facility Airspace Parcel Owner thereunder.

Section 23.02. Delivery of Possession. Landlord shall deliver possession of the Premises on the Commencement Date vacant and free of occupants and tenancies, subject only to the Permitted Exceptions; provided, that Tenant acknowledges and agrees that the use and occupancy of the Yards Parcel (and, by way of easement, portions of the Premises to the extent permitted by the WRY Declaration of Easements) by LIRR and/or any other Yards Parcel Operator subject to and in accordance with the WRY Declaration of Easements shall at all times be permitted and shall in no event constitute a default of Landlord under this Lease.

Section 23.03. Tenant's Representations. Tenant hereby represents, warrants and covenants to Landlord that:

(a) Tenant is a limited liability company duly organized and existing in good standing under the laws of the State of Delaware, and qualified to do business in the State of New York;

(b) Tenant has the full, right, power, authority and legal capacity to execute and deliver this Lease, to execute and deliver the instruments referred to herein, and to enter into and fully perform the transactions contemplated hereby, or thereby;

(c) all actions and consents required by Tenant to authorize the transactions contemplated by this Lease have been duly performed and obtained;

(d) all Persons who execute this Lease and the instruments contemplated by this Lease on behalf of Tenant will be duly authorized and empowered on behalf of Tenant to do so and to enter into all transactions contemplated by this Lease, and by such instruments;

(e) the execution, delivery and consummation of the transactions contemplated hereby and performance of this Lease have not and will not conflict with any provisions of any federal, state laws or regulations to which Tenant is subject, or conflict with, result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or credit agreement, corporate charter, bylaws or other instrument to which Tenant is a party or by which Tenant or its assets may be bound or affected;

(f) this Lease is a legal, valid and binding obligation of Tenant, enforceable against Tenant in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally;

(g) Tenant is not, as of the Commencement Date (and Tenant covenants that Tenant shall not, at any time during the Term, be) a Prohibited Person;

(h) Tenant is as of the Commencement Date (i) in compliance with the Patriot Act, as applicable; (ii) in compliance with the Office of Foreign Assets Control sanctions and regulations promulgated under the authority granted by the Trading with the Enemy Act,

12 U.S.C. § 95 (a) et seq., and the International Emergency Economic Powers Act, 50 U.S.C. § 1701, et seq., in each case as applicable and as amended or replaced from time to time; and (iii) a Person which (w) is not, and has never been, under investigation by any Governmental Authority for, and has not been charged with or convicted of a crime under, 18 U.S.C. §§ 1956 or 1957 (as amended or replaced from time to time) or any predicate offense thereunder; (x) has never been assessed a civil penalty under, or had any of its funds seized, frozen or forfeited in any action relating to, any anti-money laundering laws or predicate offenses thereunder; (y) has taken such steps and implemented such policies as are reasonably necessary to ensure that it is not promoting, facilitating or otherwise furthering, intentionally or unintentionally, the transfer, deposit or withdrawal of criminally-derived property, or of money or monetary instruments which are (or which Tenant suspects or has reason to believe are) the proceeds of any illegal activity or which are intended to be used to promote or further any illegal activity; and (z) has taken such steps and implemented such policies as are reasonably necessary to ensure that it is in compliance with all laws and regulations applicable to its business for the prevention of money laundering and with anti-terrorism laws and regulations, with respect both to the source of funds from its investors and from its operations, which steps include the development and implementation of an anti-money laundering compliance program within the meaning of Section 352 of the Patriot Act, to the extent Tenant is required to develop such a program under the rules and regulations promulgated pursuant to Section 352 of the Patriot Act; and

(i) Tenant has not dealt with any broker in connection with this Lease or the transactions contemplated hereby, and Tenant shall indemnify, defend and hold Landlord harmless from and against any claim for commission or other compensation that is asserted by any broker, finder or other agent which claims to have dealt with Tenant in connection with this Lease and/or the WRY Project, together with the cost of defending any such claim.

Section 23.04. Landlord's Representations. Landlord hereby represents, warrants and covenants to Tenant that:

(a) Landlord is duly organized and validly existing under the laws of the State of New York and has the full right, power, authority and legal capacity to execute and deliver this Lease, to execute and deliver the instruments referred to herein, and to enter into and fully perform the transactions contemplated hereby, or thereby;

(b) all actions and consents required by Landlord to authorize the transactions contemplated by this Lease have been duly performed and obtained;

(c) all Persons who execute this Lease and the instruments contemplated by this Lease on behalf of Landlord will be duly authorized and empowered on behalf of Landlord to do so and to enter into all transactions contemplated by this Lease, and by such instruments;

(d) the execution, delivery and consummation of the transactions contemplated hereby and performance of this Lease have not and will not conflict with any provisions of any federal, state laws or regulations to which Landlord is subject, or conflict with, result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank

loan or credit agreement, corporate charter, bylaws or other instrument to which Landlord is a party or by which Landlord or its assets may be bound or affected;

(e) this Lease is a legal, valid and binding obligation of Landlord, enforceable against Landlord in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally; and

(f) Landlord has not dealt with any broker in connection with this Lease or the transactions contemplated hereby, and Landlord shall indemnify, defend and hold Tenant harmless from and against any claim for commission or other compensation that is asserted by any broker, finder or other agent which claims to have dealt with Landlord in connection with this Lease and/or the WRY Project, together with the cost of defending any such claim.

ARTICLE 24

NUMBER 7 LINE RISK

If the Actual No. 7 Line Date has not occurred on or prior to Outside No. 7 Line Date, then the parties shall, at Tenant's option, by notice given by Tenant to Landlord no later than the first (1st) anniversary of the Outside No. 7 Line Date, TIME BEING OF THE ESSENCE as to the giving of notice by such date, unwind the Transaction, which unwind shall include the termination of this Lease, the vacating by Tenant of the Premises, and the refund to Tenant of the Closing Payment, the Post-Closing Payments and all Annual Base Rent theretofore paid by Tenant to Landlord. Notwithstanding the foregoing, with respect to any Severed Parcel on which Commencement of Construction of a Building has occurred and a Buildings Completion Guaranty shall have been delivered to Landlord, such Severed Parcel Tenant shall have the right to continue to lease such Severed Parcel pursuant to the applicable Severed Parcel Lease and exercise the applicable Fee Conversion Option (as such term is defined in the Form of Severed Parcel Lease) on the terms provided in such Severed Parcel Lease, and if such Severed Parcel Tenant so elects, Landlord shall not refund to such Severed Parcel Tenant any Annual Base Rent (and allocable portions of the Closing Payment and the Post-Closing Payments) paid with respect to any such Severed Parcel.

ARTICLE 25

LANDLORD NOT LIABLE FOR INJURY OR DAMAGE, ETC.

Section 25.01. No Liability for Injury. Without limiting Section 7.01, Landlord shall not in any event whatsoever be liable to Tenant or to any other Person for any injury or damage happening on, in or about the Premises and its appurtenances to Tenant or any other Person, nor for any injury or damage to the Premises or to any property belonging to Tenant or to any other Person, which may be caused by any fire or breakage, or by the use, misuse or abuse of the WRY Roof Component or any of the Facility Airspace Improvements (including, but not limited to, any of the common areas within the Facility Airspace Improvements, Equipment, elevators, hatches, openings, installations, stairways, hallways, or other common facilities), or

the streets or sidewalk area within the Premises or which may arise from any other cause whatsoever, except to the extent any of the foregoing shall have resulted from the negligence or intentional misconduct of Landlord, its officers, agents, employees or licensees; nor shall Landlord in any event be liable for the acts or failure to act of any other tenant of any premises within the WSY other than the Premises, or of any agent, representative, employee, contractor or servant of such other tenant.

Section 25.02. No Liability for Utility Failure. Without limiting Section 7.01, Landlord shall not be liable to Tenant or to any other Person for any failure of water supply, gas or electric current, nor for any injury or damage to any property of Tenant or of any other Person or to the Premises caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storms or disturbances, or water, rain or snow which may leak or flow from the street, sewer, gas mains or subsurface area or from any part of the Premises, or leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein, or from any other place, nor for interference with light or other incorporeal hereditaments by anybody, or caused by any public or quasi-public work, except to the extent any of the foregoing shall have resulted from the negligence or intentional misconduct of Landlord or its officers, agents, employees or licensees.

Section 25.03. No Liability for Soil Conditions. Without limiting Section 7.01, in no event shall Landlord be liable to Tenant or to any other Person for any injury or damage to any property of Tenant or of any other Person or to the Premises, arising out of any sinking, shifting, movement, subsidence, failure in load-bearing capacity of, or other matter or difficulty related to, the soil, or other surface or subsurface materials, on the Premises or in the WSY, it being agreed that Tenant shall assume and bear all risk of loss with respect thereto.

ARTICLE 26

INDEMNIFICATION OF LANDLORD AND OTHERS

Section 26.01. Indemnification. Tenant shall not do, or knowingly permit any subtenant, or sublessee of a subtenant or any employee, agent or contractor of Tenant or of any subtenant, or sublessee of a subtenant to do, any act or thing upon the Premises which may reasonably be likely to subject Landlord to any liability or responsibility for injury or damage to persons or property, or to any liability by reason of any violation of law or any other Legal Requirement, and shall use its best efforts to exercise such control over the Premises so as to fully protect Landlord against any such liability. Tenant, to the fullest extent permitted by law, shall indemnify, defend and save Landlord, LIRR, any former Landlord which held its interest herein at any time from and after the Commencement Date, the State of New York and their respective agents, directors, officers and employees (collectively, the "Indemnitees"), harmless from and against any and all loss, cost, liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses (including, without limitation, engineers', architects' and attorneys' fees and charges), which may be suffered by, imposed upon or incurred by or asserted against any of the Indemnitees, by reason of any of the following occurring during the Term, except to the extent that the same shall have been caused in whole or in part by the negligence or intentional misconduct of any of the Indemnitees:

(a) construction of the Facility Airspace Improvements or any other work or thing done in or on the Premises or any part thereof;

(b) any use, non-use, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises or any part thereof;

(c) any negligent or tortious act or failure to act (or act or failure to act which is alleged to be negligent or tortious) within the Premises or any part thereof;

(d) any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in or on the Premises or any part thereof or in, or about any sidewalk or vault located thereon or adjacent thereto (unless such sidewalk or vault is solely within the control of a utility company);

(e) any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in or on the WSY or the Yards Parcel or any part thereof, but only to the extent caused by or suffered or incurred by any negligent or tortious act or failure to act (or act which is alleged to be negligent or tortious) within the Premises or any part thereof;

(f) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with;

(g) any lien or claim which may have arisen out of any act of Tenant, any subtenant, any sublessee of a subtenant, or any of their respective agents, contractors, servants or employees against or on the Premises, or any lien or claim created or permitted to be created by Tenant, any subtenant, any sublessee of a subtenant, or any of their respective agents, contractors, servants or employees, in respect of the Premises against any assets of, or funds appropriated to, any of the Indemnitees under the laws of the State of New York or of any other Governmental Authority, or any liability which may be asserted against any of the Indemnitees with respect thereto;

(h) any failure on the part of Tenant to keep, observe and perform any of the terms, covenants, agreements, provisions, conditions or limitations on Tenant's part to be kept, observed or performed contained in the WRY Declaration of Easements, the Design and Construction Requirements, the WRY Construction Agreement, any subleases, or any other contracts and agreements affecting the Premises;

(i) any default by the Default Payments Guarantor under the Default Payments Guaranty;

(j) any tax attributable to the execution, delivery or recording of this Lease other than any real property transfer gains tax or other transfer tax which may be imposed on Landlord; or

(k) any contest by Tenant permitted pursuant to the provisions of this Lease, including, without limitation, Article 4 and Article 20.

Section 26.02. Landlord Indemnification Obligations. Nothing herein shall reduce or otherwise limit the indemnification obligations of Landlord as Yards Parcel Owner to Tenant as Facility Airspace Parcel Owner pursuant to the WRY Declaration of Easements.

Section 26.03. Obligations Not Affected by Insurance. The obligations of Tenant under this Article 26 shall not be affected in any way by the absence in any case of insurance coverage or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises.

Section 26.04. Notice and Defense Process. If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event for which Tenant has agreed to indemnify the Indemnitees in Section 26.01, then, upon demand by such Indemnitee, Tenant shall resist or defend such claim, action or proceeding (in such Indemnitee's name, if necessary) by the attorneys for Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance maintained by Tenant) or (in all other instances) by such attorneys as Tenant shall select and such Indemnitee shall approve, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, and except with respect to personal injury or other liability claims within the coverage limits afforded by Tenant's liability insurance and being defended by attorneys for, or approved by, Tenant's insurance carrier, an Indemnitee may, in the event that there exists a dispute, an actual or potential conflict of interest or a divergence of interest that (in each case) would make it inadvisable in the good-faith judgment of such Indemnitee to be (or continue to be) represented by such attorneys, engage its own attorneys to defend or to assist in its defense of such claim, action or proceeding, and the Indemnitee shall pay the reasonable fees and disbursements of such attorneys; provided, that the Indemnitee shall be entitled to recover the reasonable fees and disbursements of such attorneys as part of any judgment in favor of the Indemnitee with respect to such claim, action or proceeding. No Indemnitee will unreasonably withhold its consent to any proposed settlement by Tenant of a matter which is fully covered by Tenant's indemnification hereunder; provided, that such settlement provides solely for the payment of money and does not impose any other liability on any Indemnitee.

Section 26.05. No Consequential Damages. Notwithstanding anything to the contrary herein, in no event shall Tenant be liable for any consequential damages to Landlord, any other Indemnitee or any other Person and in no event shall Landlord or any other Indemnitee be liable for any consequential damages to Tenant or any other Person.

Section 26.06. Survival. The provisions of this Article 26 shall survive the Expiration Date with respect to actions or the failure to take any actions or any other matter arising prior to the Expiration Date.

ARTICLE 27

RIGHT OF INSPECTION, ETC.

Section 27.01. Landlord Right of Inspection. Tenant shall permit Landlord and its agents or representatives to enter the Premises at all reasonable times and upon reasonable notice (except in cases of emergency) for the purpose of (a) inspecting the Premises,

(b) determining whether or not Tenant is in compliance with its obligations under this Lease or any other Project Document, and (c) making any necessary repairs to the Premises and performing any work therein (i) that Landlord may elect to perform pursuant to Section 18.03, or (ii) that may be necessary by reason of Tenant's failure to make any such repairs or perform any such work or perform any other obligations of Tenant under this Lease; provided, that, except in the event of an emergency and except as otherwise provided in this Lease, Landlord shall have delivered to Tenant written notice specifying such repairs or work and Tenant shall have failed to make such repairs or to do such work within thirty (30) days after the giving of such notice (subject to Force Majeure), or if such repairs or such work cannot reasonably be completed during such thirty (30) day period, to have commenced and be diligently pursuing the same (subject to Force Majeure). Notwithstanding the foregoing, Landlord's right to inspect the interior of any completed Buildings shall be further limited to the extent that Tenant has only limited rights to enter same in accordance with any agreements with subtenants and other occupants, except in case of an emergency.

Section 27.02. No Duty on Landlord. Nothing in this Article 27 or elsewhere in this Lease shall imply any duty upon the part of Landlord to do any work required to be performed by Tenant hereunder and performance of any such work by Landlord shall not constitute a waiver of Tenant's Default in failing to perform the same; provided, however, that nothing contained in this Section 27.02 shall derogate from the obligations of the Yards Parcel Owner under the WRY Declaration of Easements. Landlord, during the progress of any such work, may keep and store at the Premises all necessary materials, tools, supplies and equipment. Except in the event of gross negligence or willful misconduct, Landlord shall not be liable for any damage to Tenant or any subtenant by reason of the making of such repairs or the performance of any such work, or on account of bringing or storing materials, tools, supplies and equipment onto the Premises during the course thereof; provided that Landlord shall use reasonable efforts to minimize damage or any interference to Tenant's operations resulting from Landlord's exercise of its rights under this Article 27, and the obligations of Tenant under this Lease shall not be affected thereby. To the extent that Landlord undertakes such work or repairs, such work or repairs shall be commenced and completed in a good and workmanlike manner, and with reasonable diligence, subject to Force Majeure.

ARTICLE 28

LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

Section 28.01. Landlord Right to Cure. If Tenant at any time shall be in Default after notice thereof and after the expiration of any applicable grace periods provided under this Lease for Tenant or a Leasehold Mortgagee, to cure or commence to cure same, Landlord, without waiving or releasing Tenant from any obligation of Tenant contained in this Lease, may (but shall be under no obligation to) perform such obligation on Tenant's behalf.

Section 28.02. Reimbursement of Landlord. All reasonable sums paid by Landlord and all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by Landlord in connection with its performance of any obligation pursuant to Section 28.01, together with interest thereon at the Involuntary Rate

from the date of Landlord's making of each such payment or incurring of each such sum, cost, expense, charge, payment or deposit until the date of actual repayment to Landlord, shall be paid by Tenant to Landlord within ten (10) days after Landlord shall have submitted to Tenant a statement substantiating, in reasonable detail, the amount demanded by Landlord. No payment or performance by Landlord pursuant to Section 28.01 shall be or be deemed to be a waiver or release of any breach or Default of Tenant with respect thereto or of the right of Landlord to terminate this Lease, institute summary proceedings or take any such other action as may be permissible hereunder if an Event of Default by Tenant shall have occurred. Landlord shall not be limited in the scope of any damages (other than consequential damages) which Landlord may claim against Tenant arising out of or by reason of Tenant's failure to provide and keep insurance in force to the amount of the insurance premium or premiums not paid, but Landlord also shall be entitled to recover, as damages for such breach, the uninsured amount of any loss and damage and the reasonable costs and expenses of suit (including, without limitation, reasonable attorneys' fees and disbursements) suffered or incurred by reason of damage to or destruction of the Premises.

ARTICLE 29

NO ABATEMENT OF RENTAL

Except as may be otherwise expressly provided herein, Tenant shall have no right of abatement, diminution, reduction, setoff or refund of Rental payable by Tenant hereunder or of the other obligations of Tenant hereunder under any circumstances. The parties intend that Tenant's obligation to pay Rental hereunder is absolute except where expressly provided otherwise in this Lease, and the obligations of Tenant hereunder shall be separate and independent covenants and agreements and shall continue unaffected unless such obligations shall have been modified or terminated pursuant to an express provision of this Lease.

ARTICLE 30

PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 30.01. Permitted Use. Subject to the provisions of law, this Lease and the other Project Documents binding on Tenant, Tenant shall occupy the Premises for the purpose of constructing, maintaining and operating the Facility Airspace Improvements for the WRY Project (as may be modified from time to time in accordance with the provisions hereof), any other incidental uses thereto or in furtherance thereof and any other purposes approved by Landlord in its sole discretion (collectively, the "Permitted Uses"), and for no other use or purpose.

Section 30.02. No Unlawful Use. Tenant shall not use or occupy the Premises, nor permit or suffer the Premises or any part thereof to be used or occupied, for any unlawful, illegal or extra-hazardous business, use or purpose, or in such manner as to constitute a nuisance of any kind (public or private) or that unreasonably interferes with the beneficial use of other property, or for any purpose or in any way in violation of any Certificate of Occupancy or of any Legal Requirements, or which may make void or voidable any insurance then in force with respect to the Premises. Immediately upon the discovery of any such unpermitted, unlawful,

illegal or extra-hazardous use, Tenant shall take all necessary actions, legal and equitable, to compel the discontinuance of such use. If for any reason Tenant shall fail to take such actions in a timely fashion, and such failure shall continue for thirty (30) days after notice from Landlord to Tenant specifying such failure, Landlord is hereby irrevocably authorized (but not obligated) to take all such actions in Tenant's name and on Tenant's behalf, Tenant hereby appointing Landlord as Tenant's attorney-in-fact coupled with an interest for all such purposes. Tenant shall, within ten (10) days after demand therefor by Landlord, reimburse Landlord for all reasonable sums paid by Landlord and all reasonable costs and expenses incurred by Landlord acting pursuant to the immediately preceding sentence (including, without limitation, reasonable attorneys' fees and disbursements), together with interest thereon at the Involuntary Rate from the respective dates of Landlord's making of each such payment or incurring of each such cost, expense or charge until the date of actual repayment of such amounts to Landlord.

Section 30.03. No Adverse Possession. Tenant shall not knowingly suffer or permit the Premises or any portion thereof to be used by the public in such manner as might reasonably tend to impair title to the Premises or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse usage, prescriptive rights or adverse possession by the public, as such, or of implied dedication of the Premises or any portion thereof.

ARTICLE 31

EVENTS OF DEFAULT; CONDITIONAL LIMITATIONS, REMEDIES, ETC.

Section 31.01. Events of Default. Each of the following events shall be an "Event of Default" hereunder (provided that, any written notice of Default required to be given by Landlord to Tenant as set forth in this Section 31.01 shall contain a clear and conspicuous statement that Landlord intends to exercise its rights hereunder in the event that such Default becomes an Event of Default) and any such notice shall also be sent to the Persons listed on Exhibit P hereto:

(a) if Tenant shall fail to pay any item of Rental, or any part thereof, when the same shall become due and payable and such failure shall continue for five (5) Business Days after written notice from Landlord to Tenant;

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

(c) if Tenant shall admit, in writing, that it is unable to pay its debts as such become due;

(d) if Tenant shall make an assignment for the benefit of creditors;

(e) if Tenant shall file a voluntary petition under Title 11 of the United States Code or if such petition is filed against it, and an order for relief is entered, or if Tenant shall file any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other statute or law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, or of all or any substantial part of its properties or of the Premises or any interest therein of Tenant, or if Tenant shall take any corporate action in furtherance of any action described in Section 31.01(c), (d) or (e);

(f) if within ninety (90) days after the commencement of any proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other statute or law, such proceeding shall not have been dismissed, or if, within ninety (90) days after the appointment, without the consent or acquiescence of Tenant, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant or of all or any substantial part of its properties or of the Premises or any interest therein of Tenant, such appointment shall not have been vacated or stayed on appeal or otherwise, or if, within thirty (30) days after the expiration of any such stay, such appointment shall not have been vacated;

(g) if Tenant shall abandon the Premises, and such abandonment shall continue for thirty (30) days after written notice thereof from Landlord;

(h) if this Lease or the estate of Tenant hereunder or any portion thereof (whether by operation of law or otherwise) shall be assigned, subleased, transferred, mortgaged or encumbered, or there shall be a Transfer, in each case without Landlord's approval to the extent required hereunder or without compliance with the provisions of this Lease applicable thereto and such transaction shall not be made to comply or voided ab initio within thirty (30) days after written notice thereof from Landlord to Tenant;

(i) if a levy under execution or attachment shall be made against the Premises and such execution or attachment shall not be vacated or removed by court order, bonding or otherwise within a period of thirty (30) days;

(j) if Tenant shall at any time fail to maintain its corporate existence in good standing, or to pay any corporate franchise tax when and as the same shall become due and payable, and such failure shall continue for thirty (30) days after written notice thereof from Landlord to Tenant;

(k) if, solely with respect to the Premises, a default by Tenant under the WRY Restrictive Declaration, and such default shall be unremedied for thirty (30) days after written notice thereof from Landlord to Tenant;

(l) if a default by Tenant under any of the WRY Declaration of Easements (solely to the extent applicable to the Premises as set forth in Section 7.01 hereof), the PILOT Agreement or the PILOST Agreement, or a default by the guarantor under any of the Roof Segment Completion Guaranties, the LIRR Facilities Guaranty (if any) the Default Payments Guaranty, or the Rent/Financial Payment Guaranty, shall occur and remain outstanding after the expiration of any applicable notice and cure period therefor; provided, that if there is no notice and cure period under such declaration, agreement or guaranty, Tenant shall be entitled to the notice and cure period set forth in Section 31.01(b) hereof as if such default were a failure by Tenant to observe or perform one or more of the other terms, conditions, covenants or agreements contained in this Lease; provided further that it shall not be deemed a default under any Roof Segment Completion Guaranty, the LIRR Facilities Guaranty, the Default Payments Guaranty or the Rent/Financial Payment Guaranty if a replacement guaranty is delivered to MTA and/or the LIRR within the cure period set forth in such guaranty, and/or

(m) if a default under the WRY Construction Agreement shall occur and remain outstanding after the expiration of any applicable notice and cure period contained therein and after the expiration of any right of cure or performance that the WRY Construction Agreement grants to an Affected Party (as such term is defined in the WRY Construction Agreement) or the guarantor under any Roof Segment Completion Guaranty.

Section 31.02. Primary Remedies; Expiration and Termination of Lease.

(a) If any Event of Default described in Sections 31.01(b) through (k), shall occur and Landlord, at any time thereafter (unless such Event of Default has been remedied), at its option, gives notice to Tenant stating that this Lease and the Term shall expire and terminate on the date specified in such notice, which date shall be not less than twenty (20) days after the giving of such notice, then this Lease and the Term and all rights of Tenant under this Lease shall expire and terminate as if the date specified in the notice given pursuant to this Section 31.02(a) were the Fixed Expiration Date, and Tenant immediately shall quit and surrender the Premises and the provisions of Article 37 shall apply. Notwithstanding anything to the contrary contained herein, if such termination shall be stayed by order of any court having jurisdiction over any proceeding described in Sections 31.01(e) or (f), or by federal or state statute and such stay expires, or if the trustee appointed in any such proceeding (the "Trustee"), Tenant or Tenant as debtor-in-possession shall fail to assume Tenant's obligations under this Lease within the period prescribed therefor by law or within one hundred twenty (120) days after entry of the order for relief or as may be allowed by the court, or if Tenant, Tenant as debtor-in-possession or the Trustee shall fail to provide adequate protection of Landlord's right, title and interest in and to the Premises or adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease as provided in Section 31.15, Landlord, to the extent permitted by law or by leave of the court having jurisdiction over such proceeding, shall have the right, at its election, to terminate this Lease on ten (10) days notice to Tenant, Tenant as debtor-in-possession or the Trustee and upon the expiration of said ten (10) day period this Lease shall cease and expire as aforesaid and Tenant, Tenant as debtor-in-possession and/or the Trustee, as the case may be, shall immediately quit and surrender the Premises as aforesaid.

(b) If an Event of Default described in Section 31.01(a), (l) or (m) shall occur, or this Lease shall be terminated as provided in Section 31.03(a), Landlord, without

notice, may re-enter and repossess the Premises by summary proceedings or other lawful process.

Section 31.03. Effect of Termination. If this Lease shall be terminated as provided in Section 31.02(a), or Tenant shall be dispossessed by summary proceedings or otherwise as provided in Section 31.02(b):

(a) Tenant shall pay to Landlord all Rental payable by Tenant under this Lease through the date upon which this Lease and the Term shall have expired or through the date of re-entry upon the Premises by Landlord, as the case may be;

(b) Landlord may complete all construction required to be performed by Tenant hereunder and may repair and alter the Premises in such manner as Landlord may deem necessary or advisable (and may apply to the foregoing all funds, if any, then held by any Depository pursuant to the terms of this Lease) without relieving Tenant of any liability under this Lease or otherwise affecting any such liability, and/or let or relet the Premises or any portion thereof for the whole or any part of the remainder of the Term or for a longer period, in Landlord's name or as agent of Tenant, and out of any rent and other sums collected or received as a result of such reletting Landlord shall: (i) first, pay to itself the reasonable cost and expense of terminating this Lease, re-entering, retaking, repossessing, completing construction and repairing or altering the Premises, or any part thereof, and the cost and expense of removing all persons and property therefrom, including in such costs brokerage commissions, legal expenses and reasonable attorneys' fees and disbursements, (ii) second, pay to itself the reasonable cost and expense sustained in securing any new tenant or other occupant, including in such costs brokerage commissions, legal expenses and reasonable attorneys' fees and disbursements and other expenses of preparing the Premises for reletting, and, if Landlord shall maintain and operate the Premises, the reasonable cost and expense of operating and maintaining the Premises, and (iii) third, pay to itself any balance remaining on account of the liability of Tenant to Landlord. Landlord shall, within a reasonable period of time following the repossession of the Premises, undertake a request for proposals or other process in accordance with Landlord's official policy for real property dispositions to seek a replacement tenant for the Premises, it being understood and agreed that (x) Landlord shall have discretion as to whether or not to enter into a new lease for the Premises with a replacement tenant, and as to the terms of any such new lease, (y) no prospective lease shall diminish the amount of any Deficiency owed to Landlord pursuant to the terms of Section 31.03(c) unless and until such new lease is actually executed and delivered between Landlord and a replacement tenant, and (z) except as aforesaid, Landlord in no way shall be responsible or liable for any failure to relet the Premises or any part thereof, or for any failure to collect any rent due on any such reletting, and no such failure to relet or to collect rent under any new lease shall operate to relieve Tenant of any liability under this Lease or to otherwise affect any such liability;

(c) Tenant shall be liable for and shall pay to Landlord, as damages, any deficiency (referred to as a "Deficiency") between the Rental reserved in this Lease for the period which otherwise would have constituted the unexpired portion of the Term through the Fixed Expiration Date and the net amount, if any, of rents collected under any reletting effected pursuant to the provisions of Section 31.03(b) for any part of such period (first deducting from the rents collected under any such reletting all of the payments to Landlord described in

Section 31.03(b)); any such Deficiency shall be paid in installments by Tenant on the days specified in this Lease for the payment of installments of Rental, and Landlord shall be entitled to recover from Tenant each Deficiency installment as the same shall arise, and no suit to collect the amount of the Deficiency for any installment period shall prejudice Landlord's right to collect the Deficiency for any subsequent installment period by a similar proceeding; and

(d) whether or not Landlord shall have collected any Deficiency installments as aforesaid, Landlord shall be entitled to recover from Tenant, and Tenant shall pay to Landlord, on demand, in lieu of any Deficiency, as and for liquidated and agreed final damages (it being agreed that it would be impracticable or extremely difficult to fix the actual damage), a sum equal to the amount by which the Rental reserved in this Lease for the period which otherwise would have constituted the unexpired portion of the Term through the Fixed Expiration Date exceeds the then fair and reasonable rental value of the Premises for the same period, both discounted to present worth at the rate of six and one-half percent (6.5%) per annum, less the aggregate amount of any Deficiencies theretofore collected by Landlord pursuant to the provisions of Section 31.03(c) for the same period; it being agreed that before presentation of proof of such liquidated damages to any court, commission or tribunal, if the Premises, or any part thereof, shall have been relet by Landlord on an arm's-length basis for the period which otherwise would have constituted the unexpired portion of the Term through the Fixed Expiration Date, or any part thereof, the amount of rent reserved upon such reletting shall be deemed, prima facie, to be the fair and reasonable rental value for the part or the whole of the Premises so relet during the term of the reletting. Upon payment of such sum by Tenant, Tenant shall no longer be liable to make payments for a Deficiency.

Section 31.04. Survival of Obligations. No termination of this Lease pursuant to Section 31.02(a) or taking possession of or reletting the Premises, or any part thereof, pursuant to Sections 31.02(b) and 31.03(b), shall relieve Tenant of its liabilities and obligations hereunder, all of which shall survive such expiration, termination, repossession or reletting.

Section 31.05. Default Payments and Rent/Financial Payments. Notwithstanding the foregoing provisions of this Article 31,

(a) in the event that this Lease terminates in accordance with Section 31.02 by reason of an Event of Default by Tenant that occurs prior to the Commencement of Construction of the LIRR Roof and Facilities (including the execution and delivery to the MTA Parties of a Roof Segment Completion Guaranty for the initial Associated Portion of the LIRR Roof and Facilities for which construction has commenced and the Rent/Financial Payments Guaranty) (such default, a "Pre-Construction Event of Default"), then:

(i) Landlord shall be entitled to regain possession of the Premises and cause the Premises to be restored to its pre-existing condition (or such altered condition as shall be acceptable to the Yards Parcel Operator, if restoration to such altered condition would be less costly than restoration to the pre-existing condition of the WRY) at the sole cost and expense of Tenant;

(ii) Landlord shall be entitled to retain all amounts theretofore paid by Tenant to Landlord pursuant to the terms of this Lease and/or any other Project Document;

(iii) Tenant shall pay to Landlord an amount equal to the sum of (i) any unpaid installments of the First Post-Closing Payment, the Second Post-Closing Payment, and all installments of Annual Base Rent due under this Lease (but not any Severed Parcel Lease) from the Abatement Commencement Date through the date on which Tenant surrenders possession to Landlord of the Premises (which is all unpaid installments owed under this Lease as listed in the column of the Default Payment Schedule named "WRY Ground Lease Payment Amount Due" from the Abatement Commencement Date through the Lease Year in which the Pre-Construction Event of Default, if any, occurs (other than such payments owed by a Severed Parcel Tenant)); and (ii) the amount, if any, set forth on the Default Payments Schedule under the column "Guaranteed Additional Amounts Due" corresponding to the Lease Year in which the Pre-Construction Event of Default resulting in the termination of this Lease occurred (provided that from and after the date of any Severance of a Terra Firma Severed Parcel as set forth in Section 9.04(d), such amount in clause (ii) shall be reduced to the Severed Parcel Allocable Share (of the Balance Lease) of any "Guaranteed Additional Amounts Due") (the amounts set forth in clauses (i) and (ii), collectively, the "Guaranteed Default Payments"); and Landlord and Tenant hereby irrevocably agree that the Guaranteed Default Payments shall constitute liquidated damages to Landlord for loss of a bargain, and not a penalty. The Guaranteed Default Payments shall be guaranteed to Landlord by the Default Payments Guarantor under the Default Payments Guaranty. Notwithstanding anything to the contrary in this Article 31, the Guaranteed Default Payments shall be the sole monetary remedies of Landlord for any Pre-Construction Event of Default and shall constitute liquidated damages to Landlord for such Pre-Construction Event of Default; provided, however, that Landlord shall be entitled, in addition to the receipt of the Guaranteed Default Payments, to recovery for any and all liabilities of any guarantor under any guaranty, subject to and in accordance with the terms thereof, and any and all other liabilities and obligations of Tenant under any of the other Project Documents binding on Tenant incurred prior to the termination of this Lease (including, without limitation, environmental and indemnification obligations, but excluding liabilities and obligations arising solely as a result of the termination of this Lease (such as any payments under Section 31.03), and excluding any consequential damages), and the payment of such Guaranteed Default Payments shall not relieve Tenant of such liabilities and obligations. Tenant hereby waives all rights to contest the legal sufficiency or adequacy of consideration for the Guaranteed Default Payments as liquidated damages; and

(iv) Landlord shall be entitled to deliver to the Severed Parcel Tenant under each Terra Firma Severed Parcel Lease an Adjusted GLV Rent Notice and enforce its rights under Section 8.14 thereof.

(b) in the event that this Lease terminates in accordance with Section 31.02 by reason of an Event of Default by Tenant that occurs following the Commencement of Construction of the LIRR Roof and Facilities but prior to the Commencement of Construction of the LIRR Roof and Facilities with respect to the entire WRY

Roof Component (including the delivery of one or more Roof Segment Completion Guarantees with respect to the entirety of the WRY Roof Component) Substantial Completion of the LIRR Roof and Facilities, then:

(i) Landlord shall be entitled to regain possession of the Premises;

(ii) Landlord shall be entitled to retain all amounts theretofore paid by Tenant to Landlord pursuant to the terms of this Lease and/or any other Project Document; and

(iii) Tenant shall pay to Landlord an amount equal to the sum of any unpaid installments of the First Post-Closing Payment, the Second Post-Closing Payment, and all installments of Annual Base Rent due under this Lease (but not any Severed Parcel Lease) from the Commencement Date through the date on which Tenant surrenders possession to Landlord of the Premises and Landlord shall be entitled to enforce the Rent/Financial Payment Guaranty in accordance with the terms thereof. Notwithstanding anything to the contrary in this Article 31, Landlord shall be entitled to recovery for any and all liabilities of any Guarantor under any Guaranty, subject to and in accordance with the terms thereof, and any and all other liabilities and obligations of Tenant under any of the other Project Documents binding on Tenant incurred prior to the termination of this Lease (including, without limitation, environmental and indemnification obligations, but excluding liabilities and obligations arising solely as a result of the termination of this Lease (such as any payments under Section 31.03), and excluding any consequential damages), and the payment of any amount pursuant to this Section 31.05(b) shall not relieve Tenant of such liabilities and obligations.

Section 31.06. Tenant's Waiver. To the extent not prohibited by law, Tenant hereby waives and releases all rights now or hereafter conferred by statute or otherwise which would have the effect of limiting or modifying any of the provisions of this Article 31. Tenant shall execute, acknowledge and deliver any instruments which Landlord may request, whether before or after the occurrence of an Event of Default, evidencing such waiver or release.

Section 31.07. Successive Suits. Suit or suits for the recovery of damages, or for a sum equal to any installment or installments of Rental payable hereunder or any Deficiencies or Guaranteed Default Payments or other sums payable by Tenant to Landlord pursuant to this Article 31, may be brought by Landlord from time to time at Landlord's election, and nothing herein contained shall be deemed to require Landlord to await the date whereon this Lease or the Term would have expired had there been no termination by reason of an Event of Default.

Section 31.08. Bankruptcy Damages. Nothing contained in this Article 31 shall limit or prejudice the right of Landlord to prove and obtain as liquidated damages in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding an amount equal to the maximum allowed by statute or rule of law governing such proceeding and in effect at the time when such damages are to be proved, whether or not such amount shall be greater than,

equal to or less than the amount of the damages referred to in any of the preceding Sections of this Article 31.

Section 31.09. No Reinstatement. No receipt of monies by Landlord from Tenant after the termination of this Lease, or after the giving of any notice of the termination of this Lease, shall reinstate, continue or extend the Term or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Landlord to enforce the payment of Rental payable by Tenant hereunder or thereafter falling due, or operate as a waiver of the right of Landlord to recover possession of the Premises by proper remedy, except as herein otherwise expressly provided, it being agreed that after the service of notice to terminate this Lease or the commencement of any suit or summary proceedings, or after a final order or judgment for the possession of the Premises, Landlord may demand, receive and collect any monies due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such monies collected being deemed payments on account of the use and operation of the Premises or, at the election of Landlord, on account of Tenant's liability hereunder.

Section 31.10. Waiver of Notice of Re-Entry. Except as otherwise expressly provided herein or as prohibited by applicable law, Tenant hereby expressly waives the service of any notice of intention to re-enter provided for in any statute, or of the institution of legal proceedings to that end, and Tenant, for and on behalf of itself and all persons claiming through or under Tenant, also waives any and all right of redemption provided by any law or statute now in force or hereafter enacted or otherwise, or re-entry or repossession or to restore the operation of this Lease in case Tenant shall be dispossessed by a judgment or by warrant of any court or judge or in case of re-entry or repossession by Landlord or in case of any expiration or termination of this Lease, and Landlord and Tenant waive and shall waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any claim of injury or damage. The terms "enter", "re-enter", "entry" or "re-entry" as used in this Lease are not restricted to their technical legal meanings.

Section 31.11. No Waiver by Landlord. No failure by Landlord (or its predecessor as interest as Landlord) to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial Rental during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by a party, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the non-breaching party. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof.

Section 31.12. Injunction. In the event of any breach or threatened breach by a party of any of the covenants, agreements, terms or conditions contained in this Lease, the non-breaching party shall be entitled to seek to enjoin such breach or threatened breach and shall

have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Lease. To the extent permitted by law, each party hereby waives any requirement for the posting of bonds or other security in any such action.

Section 31.13. Rights Cumulative. Except with respect to the limitation of financial damages set forth in Section 31.05 with respect to a termination of this Lease in connection with a Pre-Construction Event of Default, each right and remedy of Landlord provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise. Notwithstanding the foregoing, in no event shall Landlord be entitled, directly or indirectly, to recover more than once from Tenant, any tenant under the Balance Lease or a Severed Parcel Lease, or Developer for the same element of Landlord's damage.

Section 31.14. Enforcement Costs. Tenant shall pay to Landlord all costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Landlord in any action or proceeding to which Landlord may be made a party by reason of any act or omission of Tenant. In the event Landlord is the prevailing party, Tenant also shall pay to Landlord all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by Landlord in enforcing any of the covenants and provisions of this Lease and incurred in any action brought by Landlord against Tenant on account of the provisions hereof, and all such costs and expenses may be included in and form a part of any judgment entered in any proceeding brought by Landlord against Tenant on or under this Lease. All of the sums paid or obligations incurred by Landlord as aforesaid, with interest at the Involuntary Rate, shall be paid by Tenant to Landlord within thirty (30) days after demand by Landlord.

Section 31.15. Adequate Assurance. If an order for relief is entered or if a stay of proceeding or other act becomes effective in favor of Tenant or Tenant's interest in this Lease in any proceeding which is commenced by or against Tenant under the present or any future federal Bankruptcy Code or any other present or future applicable federal, state or other statute or law, Landlord shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy code, statute, law or this Lease, including, without limitation, such rights and remedies as may be necessary to adequately assure the complete and continuous future performance of Tenant's obligations under this Lease. Adequate protection of Landlord's right, title and interest in and to the Premises, and adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease, shall include, without limitation, the following requirements:

(a) that Tenant shall comply with all of its obligations under this Lease;

(b) that Tenant shall pay to Landlord, on the first day of each month occurring subsequent to the entry of such order, or on the effective date of such stay, a sum equal to the amount by which the Premises diminished in value during the immediately preceding monthly period, but, in no event, an amount which is less than the aggregate Rental payable for such monthly period;

(c) that Tenant shall continue to use the Premises in the manner required by this Lease;

(d) that Landlord shall be permitted to supervise the performance of Tenant's obligations under this Lease;

(e) that Tenant shall hire, at its sole cost and expense, such security personnel as may be necessary to insure the adequate protection and security of the Premises;

(f) that Tenant shall pay to Landlord within thirty (30) days after entry of such order or the effective date of such stay, as partial adequate protection against future diminution in value of the Premises and adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease, a security deposit as may be required by law or ordered by the court;

(g) that Tenant has and will continue to have unencumbered assets after the payment of all secured obligations and administrative expenses to assure Landlord that sufficient funds will be available to fulfill the obligations of Tenant under this Lease;

(h) that Landlord be granted a security interest acceptable to Landlord in property of Tenant, other than property of any of Tenant's officers, directors, shareholders, employees or partners, to secure the performance of Tenant's obligations under this Lease; and

(i) that if Tenant, Tenant as debtor-in-possession or the Trustee assumes this Lease and proposes to assign the same (pursuant to Title 11 U.S.C. Section 365, as the same may be amended) to any Person who shall have made a bona fide offer to accept an assignment of this Lease on terms acceptable to the Trustee, Tenant or Tenant as debtor-in-possession, then notice of such proposed assignment, setting forth (i) the name and address of such Person, (ii) all of the terms and conditions of such offer, and (iii) the adequate assurance to be provided Landlord to assure such Person's future performance under the Lease, including, without limitation, the assurances referred to in Title 11 U.S.C. Section 365(b)(3) (as the same may be amended), shall be given to Landlord by the Trustee, Tenant or Tenant as debtor-in-possession no later than twenty (20) days after receipt by the Trustee, Tenant or Tenant as debtor-in-possession of such offer, but in any event no later than ten (10) days prior to the date that the Trustee, Tenant or Tenant as debtor-in-possession shall make application to a court of competent jurisdiction for authority and approval to enter into such assignment and assumption, and Landlord shall thereupon have the prior right and option, to be exercised by notice to the trustee given at any time prior to the effective date of such proposed assignment, to accept an assignment of this Lease upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such Person, less any brokerage commissions which may be payable out of the consideration to be paid by such Person for the assignment of this Lease.

Section 31.16. Leasehold Mortgagee Protections. Nothing contained in this Article 31 shall be deemed to modify the provisions of Sections 17.03, 17.04 or 17.05.

Section 31.17. Severed Parcel Event of Default. Notwithstanding anything to the contrary contained herein, upon the Severance of any Severed Parcel from this Lease, in no event shall any Default or Event of Default arising under any Severed Parcel Lease or the Severed Parcel demised thereby constitute or be deemed a Default or Event of Default under this Lease. Each Severed Parcel Lease shall provide that notwithstanding anything to the contrary contained under such Severed Parcel Lease, in no event shall any Default or Event of Default arising under the Balance Lease, any other Severed Parcel Lease, or the premises demised thereby constitute or be deemed to constitute a Default or Event of Default under such Severed Parcel Lease.

ARTICLE 32

NOTICES

Section 32.01. Notice Addresses. Whenever it is provided in this Lease that a notice, demand, request, consent, approval or other communication (each, a "Notice") shall or may be given to or served upon either of the parties by the other, and whenever either of the parties shall desire to give or serve upon the other any Notice with respect hereto or the Premises, each such Notice shall be in writing and, any law or statute to the contrary notwithstanding, shall not be effective for any purpose unless given or served as follows: (a) by personal delivery (with receipt acknowledged), (b) delivered by reputable, national overnight delivery service (with its confirmatory receipt therefor), next Business Day delivery specified, (c) sent by registered or certified United States mail, postage prepaid, or (d) sent by a telephonic facsimile transmitting machine (with the receipt of such transmittal acknowledged in writing or by telephone), with a confirmatory copy to be delivered thereafter by duplicate notice in accordance with any of clauses (a), (b) or (c) of this Section 32.01, in each case to the parties as follows:

if to Landlord to its address first set forth above, attention: Director of Real Estate,
with a copy at the same time to the address set forth above, attention: General Counsel,

and to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019
Attention: Meredith J. Kane, Esq.

if to Tenant, to its address first set forth above, attention: Mr. Jeff T. Blau;

with copies at the same time to the address set forth above, attention: Mr. L. Jay Cross and Richard O'Toole, Esq.,

and to:

Fried Frank Harris Shriver & Jacobson LLP
One New York Plaza
New York, New York 10004
Attention: Stephen Lefkowitz, Esq.

Either party may change the address(es) to which any such Notice is to be delivered by furnishing ten (10) days written notice of such change(s) to the other party in accordance with the provisions of this Section 32.01. The attorney for any party may send Notices on that party's behalf.

Section 32.02. When Notices Deemed Given. Every Notice shall be deemed to have been given or served (a) if given by hand or overnight delivery service, upon delivery thereof, (b) if given by telephonic facsimile transmitting machine, upon delivery by such means to the addressee, regardless of the timing of receipt of any confirmatory copy, and (c) if given by certified or registered mail, on the third (3rd) Business Day after the posting of the same, postage prepaid; in each case with failure to accept delivery to constitute delivery for such purpose.

Section 32.03. Notices to Mortgagees. If requested in writing by any Leasehold Mortgagee or Mezzanine Lender (which request shall be made in the manner provided in Section 32.01 and shall specify an address to which Notices shall be given), any Notice of Default to a Tenant shall also be given contemporaneously to such Leasehold Mortgagee or Mezzanine Lender with a copy thereof, if requested, to such Leasehold Mortgagee's or Mezzanine Lender's attorneys, in the manner herein specified.

ARTICLE 33

SUBORDINATION; FEE MORTGAGES

Section 33.01. Lease Not Subordinate. Landlord's interest in this Lease (as this Lease may be modified, amended or supplemented) and in the Premises shall not be subject or subordinate to (a) any mortgage now or hereafter placed upon Tenant's interest in this Lease or (b) any other liens, security interests or encumbrances now or hereafter affecting Tenant's interest in this Lease (other than the Permitted Exceptions and the WRY Declaration of Easements).

Section 33.02. Fee Mortgage. This Lease and Tenant's interest in this Lease, as the same may be modified, amended or renewed, and any New Lease or the interest of Tenant under a New Lease as provided for in Section 17.04 shall not be subject or subordinate to (a) any Fee Mortgage or (b) to any other liens or encumbrances on Landlord's fee estate, except for the Permitted Exceptions and any other liens or encumbrances created or consented to by Tenant or as a consequence of Tenant's acts or omissions or the construction of the Improvements. Each Fee Mortgage shall contain an express statement confirming its subordination to this Lease (and any Severed Parcel Leases) as set forth in the immediately preceding sentence.

Section 33.03. Successor Landlord. If any Fee Mortgagee or any of its successors or assigns, or any designee of any Fee Mortgagee, shall succeed to the rights of Landlord under this Lease, whether through possession or foreclosure action or delivery of a deed, then, at the request of such party so succeeding to Landlord's rights (such party, a "Successor Landlord"), Tenant shall automatically attorn to and recognize such Successor Landlord as Tenant's landlord under this Lease. Upon such attornment this Lease shall continue in full force and effect as a direct lease between the Successor Landlord and Tenant upon and subject to all of the terms, conditions and covenants as are set forth in this Lease, except that the Successor Landlord shall not (a) be liable for any previous act or omission of Landlord under this Lease which shall not be continuing; (b) be subject to any offset, not expressly provided for in this Lease, which theretofore shall have accrued to Tenant against Landlord; (c) be bound by any modification of this Lease entered into subsequent to the date of the applicable Fee Mortgage, or by any previous prepayment of more than one month's Rental, unless such modification or prepayment shall have been expressly approved in writing by the Fee Mortgagee; or (d) be obligated to make any improvements to, or perform any work at, or furnish any services to, the Premises (it being understood that Landlord has no such obligations under this Lease; provided, however, that nothing contained in this Section 33.03 shall derogate from the obligations of the Yards Parcel Owner under the WRY Declaration of Easements). The provisions of this Section 33.03 shall be self-operative, and no instrument of any such attornment shall be required or needed by the holders of any such Fee Mortgage. In confirmation of any such attornment Tenant shall, at Landlord's request or at the request of any such Fee Mortgagee, promptly execute and deliver such further instruments as may be reasonably required by any such Fee Mortgagee. Notwithstanding anything to the contrary herein, in the event that any such transfer causes the Premises no longer to be exempt from sales and use taxes, then Tenant shall have no obligation to pay Successor Landlord PILOST hereunder, the PILOST Agreement shall be deemed void and of no further force and effect and any obligation of Tenant contingent on paying PILOST (including Section 10.02(a)) shall be deemed to be stricken from this Lease and of no further force and effect.

Section 33.04. Notices and Cure Rights of Fee Mortgagee. If Landlord or a Fee Mortgagee gives Tenant Notice of the name and address of a Fee Mortgagee, then Tenant hereby agrees to give to any such Fee Mortgagee copies of all Notices sent by Tenant to Landlord under this Lease at the same time and in the same manner as and whenever Tenant shall give any such Notice to Landlord, and no such Notice shall be deemed given to Landlord hereunder unless and until a copy of such Notice shall have been so delivered to such Fee Mortgagee. Such Fee Mortgagee shall have the right to remedy any default of Landlord under this Lease, or to cause any default of Landlord under this Lease to be remedied, and, for such purpose, Tenant hereby grants such Fee Mortgagee such additional period of time as may be reasonable to enable such Fee Mortgagee to remedy, or cause to be remedied, any such default in addition to the period given to Landlord for remedying, or causing to be remedied, any such default. Tenant shall accept performance by such Fee Mortgagee of any term, covenant, condition or agreement to be performed by Landlord under this Lease with the same force and effect as though performed by Landlord. No default under this Lease shall exist or shall be deemed to exist (a) as long as such Fee Mortgagee, in good faith, shall have commenced to cure such default and shall be prosecuting the same to completion with reasonable diligence, subject to Force Majeure, (b) if such default is not susceptible of being cured by such Fee Mortgagee, or (c) as long as such Fee

Mortgagee, in good faith, shall have notified Tenant that such Fee Mortgagee intends to institute proceedings under the Fee Mortgage to acquire possession of the Premises, and, thereafter, as long as such proceedings shall have been instituted and shall be prosecuted with reasonable diligence. In the event of the termination of this Lease by reason of Landlord's default hereunder, upon such Fee Mortgagee's written request, given within thirty (30) days after any such termination, Tenant, within fifteen (15) days after receipt of such request, shall execute and deliver to such Fee Mortgagee or its designee or nominee a new lease of the Premises for the remainder of the Term of this Lease upon all of the terms, covenants and conditions of this Lease. Neither such Fee Mortgagee nor its designee or nominee shall become liable under this Lease unless and until such Fee Mortgagee or its designee or nominee becomes, and then only for so long as such Fee Mortgagee or its designee or nominee remains, the fee owner of the Premises. Such Fee Mortgagee shall have the right, without Tenant's consent, to foreclose the Fee Mortgage or to accept a deed in lieu of foreclosure of such Fee Mortgage.

Section 33.05. No Impairment of Title.

(a) Nothing contained in this Lease or any action or inaction by Landlord shall be deemed or construed to mean that Landlord has granted to Tenant any right, power or permission to do any act or make any agreement which may create, give rise to, or be the foundation for, any right, title, interest, lien, charge or other encumbrance other than this Lease upon the estate of Landlord in the Premises. In amplification and not in limitation of the foregoing, Tenant shall not permit any portion of the Premises to be used by any person or persons or by the public, as such, at any time or times during the term of this Lease, in such manner as might impair Landlord's title to or interest in the Premises or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse use, adverse possession, prescription, dedication, or other similar claims of, in, to or with respect to the Premises or any part thereof.

(b) Notwithstanding the provisions of this Section 33.05 to the contrary, Tenant shall have the right to create customary and ordinary utility easements which are reasonably required in connection with the construction of the Improvements, any Restoration or Capital Improvement or the operation of the Premises for the Permitted Uses; provided, that Tenant provides each such utility easement to Landlord for its prior written approval, which approval shall not be unreasonably withheld or delayed; and provided, further, that in no event shall Landlord be subject to any liability whatsoever under such utility easements, and Tenant shall indemnify, protect and hold harmless Landlord from any such liability. In addition, Landlord shall agree to cooperate with Tenant in the execution, acknowledgment and recordation of any restrictive declarations or easement agreements required by Governmental Authorities (including, without limitation, the New York City Planning Commission), including any documents subordinating this Lease to such restrictive declarations or easement agreements, provided, however, that (i) such restrictive declarations or easement agreements shall be in form and substance reasonably acceptable to Landlord, (ii) Landlord shall have no personal liability with respect to such restrictive declarations or easement agreements, (iii) no such restrictive declarations or easement agreements shall impair the value or operation of the Yards Parcel or any rights of the Yards Parcel Owner, and (iv) all costs (including reasonable attorneys' fees) for reviewing and/or executing and recording same shall be at Tenant's sole cost and expense.

ARTICLE 34

EXCAVATIONS AND SHORING; STREET WIDENING; COORDINATION OF ROOF MECHANICAL EQUIPMENT

Section 34.01. Excavations and Shoring. If any excavation shall be made or contemplated to be made for construction or other purposes upon property adjacent to the Premises, Tenant shall either:

(a) afford to Landlord, or, at Landlord's option, to the person or persons causing or authorized to cause such excavation, the right to enter upon the Premises in a reasonable manner (and subject to the reasonable security requirements of Tenant and the occupants of the Premises) for the purpose of doing such work as may be necessary, without expense to Landlord, to preserve any of the walls or structures of the Facility Airspace Improvements or WRY Roof Component from injury or damage and to support the same by proper foundations; provided, that (i) such work shall be done promptly, in a good and workmanlike manner and subject to all applicable Legal Requirements, (ii) Tenant shall have an opportunity to have its representatives present during all such work and (iii) Tenant shall be indemnified by such Person performing such excavation, as the case may be, against any injury or damage to the Improvements or persons or property therein which may result from any such work, but shall not have any claim against Landlord for suspension, diminution, abatement, offset or reduction of Rental payable by Tenant hereunder, or in connection with any injury or damage to the Improvements or persons or property therein; or

(b) do or cause to be done all such work, without expense to Landlord, as may be necessary to preserve any of the walls or structures of the Improvements from injury or damage and to support the same by proper foundations; provided, that Tenant shall not, by reason of any such excavation or work, have any claim against Landlord for damages or for indemnity or for suspension, diminution, abatement, offset or reduction of Rental payable by Tenant hereunder, or in connection with any injury or damage to the Improvements or persons or property therein.

Section 34.02. Street Widening. If at any time during the term of this Lease any proceedings are instituted or orders made for the widening or other enlargement of any street contiguous to the Premises, which requires removal of any projection or encroachment on, under or above any such street, or any changes or alterations upon the Premises or in the sidewalks, grounds, parking facilities, plazas, areas, vaults, gutters, alleys, exit ways, curbs or appurtenances, Tenant, at Tenant's sole cost and expense, shall promptly comply with such requirements. In the event that Tenant shall fail to comply with any such proceedings or orders within thirty (30) days after Tenant's receipt of notice thereof, Landlord may perform the work necessary to cause compliance with the same, and the amount expended therefor, together with any interest, fines, penalties, reasonable architect's and attorneys' fees, or other expenses incurred by Landlord in effecting such compliance or by reason of the failure of Tenant so to comply, shall be payable by Tenant to Landlord on demand as Additional Rent. Tenant shall be permitted to contest in good faith any proceeding or order for street widening in accordance with Section 20.02.

ARTICLE 35

CERTIFICATES BY LANDLORD AND TENANT

Section 35.01. Tenant Estoppels. At any time, and from time to time, upon not less than twenty-one (21) days notice by Landlord, Tenant shall execute, acknowledge and deliver to Landlord and to any other party specified by Landlord a statement certifying: (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications), (b) the date to which each obligation constituting Rental (and, to the extent required to be paid to Landlord, PILOT) has been paid, (c) stating whether or not any other amounts due and owing by Tenant to Landlord under any other Project Documents have been paid, (d) stating whether or not, to the best knowledge of Tenant, Landlord is in default in performance of any covenant, agreement or condition contained in this Lease or other Project Document, and, if so, specifying each such default of which Tenant may have knowledge, (e) stating whether Substantial Completion of any Building or portion thereof has occurred, whether Substantial Completion and/or Final Completion of the WRY Roof Component (or an applicable Associated Portion of the LIRR Roof and Facilities) has occurred, and whether Substantial Completion of any other Facility Airspace Improvements has occurred, and (f) certifying as to any other matter with respect to this Lease as Landlord or such other addressee may reasonably request.

Section 35.02. Landlord Estoppels. At any time, and from time to time, upon not less than twenty-one (21) days' notice by Tenant, Landlord shall execute, acknowledge and deliver to Tenant and to any other party specified by Tenant a statement certifying: (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications), (b) the date to which each obligation constituting Rental (and, to the extent required to be paid to Landlord, PILOT) has been paid, (c) stating whether or not any other amounts due and owing by Tenant to Landlord under any other Project Documents have been paid, (d) stating whether or not, to the best knowledge of Landlord, Tenant is in default in performance of any covenant, agreement or condition contained in this Lease or other Project Document, and, if so, specifying each such default of which Landlord may have knowledge, (e) stating whether Substantial Completion of any Building or portion thereof has occurred, whether Substantial Completion and/or Final Completion of the WRY Roof Component (or an applicable Associated Portion of the LIRR Roof and Facilities) has occurred, and whether Substantial Completion of any other Facility Airspace Improvements has occurred, and (f) certifying as to any other matter with respect to this Lease as Tenant or such other addressee may reasonably request.

ARTICLE 36

CONSENTS AND APPROVALS

Section 36.01. Consents To Be In Writing. All consents and approvals which may be given under this Lease shall, as a condition of their effectiveness, be in writing.

Section 36.02. Consent Not a Waiver. It is understood and agreed that the granting of any consent or approval by Landlord to Tenant to perform any act of Tenant

requiring Landlord's consent or approval under the terms of this Lease, or the failure on the part of Landlord to object to any such action taken by Tenant without Landlord's consent or approval, shall not be deemed a waiver by Landlord of its right to require such consent or approval for any further similar act by Tenant, and Tenant hereby expressly covenants and warrants that as to all matters requiring Landlord's consent or approval under the terms of this Lease Tenant shall secure such consent or approval for each and every happening of the event requiring such consent or approval, and shall not claim any waiver on the part of Landlord of the requirement to secure such consent or approval.

Section 36.03. Consent Not To Be Unreasonably Delayed. Anywhere in this Lease where Landlord has agreed not unreasonably to withhold its consent, Landlord also agrees that its consent shall not be unreasonably delayed or conditioned.

Section 36.04. Landlord Not Liable for Money Damages. Whenever in this Lease Landlord's consent or approval is required and this Lease provides that Landlord's consent or approval shall not be unreasonably withheld and Landlord shall refuse such consent or approval, or in any instance in which Landlord shall delay its consent or approval, Tenant shall in no event be entitled to make, nor shall Tenant make, any claim, and Tenant hereby waives any claim, for money damages (nor shall Tenant claim any money damages by way of set-off, counterclaim or defense) based upon any claim or assertion by Tenant that Landlord unreasonably withheld or unreasonably delayed its consent or approval. Tenant's sole remedy shall be an action or proceeding to enforce any such provision, for specific performance, injunction or declaratory judgment or for a determination in accordance with Section 40.01(a) and (b) as to whether Landlord reasonably withheld its consent.

Section 36.05. Landlord's Discretionary Consents. Notwithstanding anything to the contrary contained in this Lease, whenever in this Lease Landlord's consent or approval is required and this Lease does not provide that Landlord's consent or approval shall not be unreasonably withheld (or such consent or approval is subject to Landlord's reasonable discretion or words of like meaning), Landlord shall have the right to withhold such consent or approval in its sole and absolute discretion.

ARTICLE 37

SURRENDER AT END OF TERM

Section 37.01. Surrender at End of Term. On the Expiration Date of this Lease, or upon a re-entry by Landlord upon the Premises pursuant to the terms of Article 31, Tenant shall well and truly surrender and deliver up to Landlord the Premises in good order, condition and repair, reasonable wear and tear excepted, free and clear of all lettings, occupancies, liens and encumbrances other than those, if any, (a) existing as of the date hereof, (b) created, or consented to, by Landlord or (c) which lettings and occupancies by their express terms and conditions extend beyond the Expiration Date and which Landlord shall have consented and agreed, in writing, may extend beyond the Expiration Date without any payment or allowance whatever by Landlord. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises on any such Expiration Date or date of re-entry.

Section 37.02. Delivery of Premises Agreements. On the Expiration Date, or upon a re-entry by Landlord upon the Premises pursuant to Article 31, Tenant shall deliver to Landlord (a) fully-executed counterparts of all subleases in effect with respect to the Premises, and of any service and maintenance contracts then affecting the Premises, (b) true and complete maintenance records for the Premises in Tenant's possession or control, (c) all original licenses and permits then pertaining to the Premises, (d) permanent or temporary Certificates of Occupancy then in effect for each of the Improvements, (e) all warranties and guarantees then in effect which Tenant has received in connection with any work or services performed or Equipment installed at the Premises or in the Improvements and (f) all financial records, reports and books pertaining to the Premises, and any and all other documents of every kind and nature whatsoever relating to the Premises in Tenant's possession or control, together with duly executed assignments thereof to Landlord, where applicable.

Section 37.03. Abandonment of Property. Any personal property of Tenant or of any subtenant or other occupant of the Premises which shall remain on the Premises for thirty (30) days after the termination of this Lease and after the removal of Tenant or such subtenant or other occupant from the Premises, may, at the option of Landlord, be deemed to have been abandoned by Tenant or such subtenant or other occupant and either may be retained by Landlord as its property or be disposed of, without accountability, in such manner as Landlord may see fit. Landlord shall not be responsible for any loss or damage occurring to any such property owned by Tenant or any subtenant or other occupant of the Premises.

Section 37.04. Survival. The provisions of this Article 37 shall survive any termination of this Lease.

ARTICLE 38

ENTIRE AGREEMENT

This Lease, together with the Exhibits hereto and with the other Project Documents, contains all the promises, agreements, conditions, inducements and understandings between Landlord and Tenant relative to the Premises and there are no promises, agreements, conditions, understandings, inducements, warranties, or representations, oral or written, expressed or implied, between them other than as herein or therein set forth and other than as may be expressly contained in any written agreement between the parties executed simultaneously herewith.

ARTICLE 39

QUIET ENJOYMENT

Landlord covenants that so long as this Lease is in full force and effect and Tenant is not in default beyond any applicable notice and grace period hereunder, Tenant shall and may (subject, however, to the exceptions, reservations, terms and conditions of this Lease) peaceably and quietly have, hold and enjoy the Premises for the term hereby granted without molestation or disturbance by or from Landlord or any Person claiming through Landlord and free of any encumbrance created or suffered by Landlord, except for (a) those encumbrances,

liens or defects of title, created or suffered by Tenant and (b) the Permitted Exceptions. This covenant shall be construed as running with the WRY to and against subsequent owners and successors in interest and is not, nor shall it operate or be construed as, a personal covenant of Landlord, except to the extent of Landlord's interest in the Premises and only so long as such interest shall continue, and thereafter this covenant shall be binding upon such subsequent owners and successors in interest of Landlord's interest under this Lease, to the extent of their respective interests, as and when they shall acquire the same, and only so long as they shall retain such interest.

ARTICLE 40

DISPUTE RESOLUTION

Section 40.01. Dispute Resolution Procedures.

(a) In any cases where this Lease expressly provides for the settlement of a dispute in accordance with this Section 40.01(a), the parties shall attempt in good faith for a period of not less than thirty (30) days to resolve any dispute, and if such dispute remains unresolved despite such efforts, Tenant shall have the right to refer such dispute to the President (or a similar official) of Landlord. If such dispute remains unresolved for an additional period of not less than twenty-one (21) days, despite good-faith efforts by Tenant to resolve the same through discussions with the President (or a similar official) of Landlord, then the parties shall have the right to pursue all available legal and equitable remedies (unless such dispute is an Arbitrable Claim, in which case the same shall be resolved in accordance with Section 40.01(b)).

(b) In any cases concerning a dispute of a Financial Matter or where this Lease expressly provides for the settlement of any other dispute in accordance with Section 40.01(a) and this Section 40.01(b) ("Arbitrable Claims"), and Landlord and Tenant are unable to negotiate a resolution to such Arbitrable Claim as set forth in Section 40.01(a), either party may submit such Arbitrable Claim to binding arbitration by giving written notice thereof to the other party and to the Arbitrator. The following provisions shall apply to any such arbitration:

(i) The arbitration shall be administered and conducted by a neutral Person in New York, New York, mutually agreed to by Landlord and Tenant from time to time (the "Arbitrator"). The Arbitrator shall have not less than ten (10) years' experience in the subject area of the Arbitrable Claim, and shall not have been employed by, or engaged in a professional capacity (other than as an arbitrator) for either of Landlord or Tenant. In the event that Landlord and Tenant cannot agree within fifteen (15) days on the identity of the Arbitrator, either party may apply to the Supreme Court, New York County, for the appointment of an Arbitrator, provided however, that if an arbitrator has been appointed and is still serving in such capacity under any WRY Project Document for the resolution of a dispute between Landlord and Tenant concerning the same or any similar issue, such arbitrator shall serve as Arbitrator hereunder. The Arbitrator shall, once so selected, serve as Arbitrator for all disputes hereunder in the subject matter of the Arbitrable Claim until the earlier of (x) the fifth (5^{th}) anniversary of the date hereof and (y) any death, incapacity, resignation or removal (by mutual agreement of Landlord and Tenant) of the Arbitrator. Landlord and Tenant (acting reasonably and in

good faith) shall from time to time thereafter select a successor Arbitrator, who may or may not have previously served as the Arbitrator, through the procedures set forth above. The fees and expenses of the Arbitrator in connection with the arbitration shall be borne fifty percent (50%) by Landlord and fifty percent (50%) by Tenant.

(ii) Within fifteen (15) Business Days after the delivery of an arbitration notice in accordance with the foregoing provisions of this Section 40.01(b), each party shall submit to the Arbitrator a single proposed settlement of the dispute (which settlement shall not be inconsistent with this Lease), together with such written explanation or evidence relating thereto as such party deems appropriate. After making its submission, a party may not make any additions to or deletions from, or otherwise change, the same. If either party fails to make a submission within such fifteen (15) Business Day period, TIME BEING OF THE ESSENCE WITH RESPECT THERETO, such party shall be deemed to have irrevocably waived its right to make any submission.

(iii) Within five (5) Business Days after the earlier of (x) the receipt by the Arbitrator of submissions from both parties in accordance with clause (ii) of this Section 40.01(b) or (y) the end of the fifteen (15) Business Day period described in such clause, the Arbitrator shall select the settlement proposed in one of such submissions, in its entirety and without any modification thereto, and shall render a determination to such effect in a signed and acknowledged written instrument, originals of which shall be sent simultaneously to the parties. Such determination shall be conclusive, final and binding on the parties, shall constitute an "award" by the Arbitrator for the purposes of applicable law, and judgment may be entered thereon in any court of competent jurisdiction.

(iv) It is expressly understood and agreed that the pendency of a dispute hereunder shall at no time and in no respect constitute a basis for either party not to comply, or otherwise fully perform in accordance with, this Lease.

(v) If either party protests the determination of the Arbitrator, such party may commence a lawsuit in the New York Supreme Court for New York County under Article 75 or Article 78 of the New York Civil Practice Law and Rules, as applicable, it being understood that the review of the Court shall be limited to the question of whether or not the Arbitrator's determination is arbitrary, capricious or without a rational basis. No evidence or information about the matter in dispute shall be introduced or relied upon in any such actions or proceedings that has not been submitted to the Arbitrator in accordance with clause (ii) of this Section 40.01(b).

ARTICLE 41

INVALIDITY OF CERTAIN PROVISIONS

If any term or provision of this Lease or the application thereof to any Person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to

which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

ARTICLE 42

RECORDING OF MEMORANDUM

The parties hereto agree that this Lease shall not be recorded. Notwithstanding the foregoing, simultaneously with the execution of this Lease, the parties have executed: (a) a memorandum of this Lease substantially in the form of Exhibit M attached hereto which may be recorded by either party, and (b) to be held in escrow by Landlord, a recordable memorandum of termination of this Lease in the form of Exhibit N attached hereto and all transfer tax forms required to be filed in connection with a termination of this Lease. In the event of a termination of this Lease, Landlord shall have the right, without prior notice to or the consent of Tenant, (i) to cause to be recorded such memorandum of termination and (ii) to file any such transfer tax forms as are required in connection therewith. Tenant hereby appoints Landlord as its attorney-in-fact to execute such a termination statement on its behalf. This appointment shall be deemed to be coupled with an interest and irrevocable. Notwithstanding the foregoing, in the event Tenant brings a legal action against Landlord in a court of competent jurisdiction seeking to enjoin Landlord's termination of this Lease, Landlord shall not record such memorandum of termination until a final non-appealable judgment upholding such termination has been entered in such legal action. Supplementing the other liabilities and indemnities of Tenant to Landlord under this Lease, and notwithstanding any other provision of this Lease (including, without limitation, any provision purporting to create a sole and exclusive remedy for the benefit of Landlord), agrees to indemnify and hold Landlord harmless from and against any and all losses, costs, damages, liens, claims, counterclaims, liabilities or expenses (including, but not limited to, attorneys' fees, court costs and disbursements) incurred by Landlord arising from or by reason of the recording of this Lease, or any notice of pendency (unless Tenant prevails in a final non-appealable order against Landlord in the action underlying such notice of pendency). The provisions of this Article 42 shall survive any Open Space Fee Conversion Closing or any early termination of this Lease.

ARTICLE 43

MISCELLANEOUS

Section 43.01. Captions. The captions of this Lease are for convenience of reference only and in no way define, limit or describe the scope or intent of this Lease or in any way affect this Lease.

Section 43.02. Table of Contents. The Table of Contents is for the purpose of convenience of reference only and is not to be deemed or construed in any way as part of this Lease or as supplemental thereto or amendatory thereof.

Section 43.03. Pronouns. The use herein of the neuter pronoun in any reference to Landlord or Tenant shall be deemed to include any individual Landlord or Tenant, and the use herein of the words "successors and assigns" or "successors or assigns" of Landlord or Tenant

shall be deemed to include the heirs, legal representatives and assigns of any individual Landlord or Tenant.

Section 43.04. Depository Charges. Any Depository may pay to itself out of the monies held by such Depository pursuant to this Lease its reasonable charges for services rendered hereunder. Tenant shall pay to such Depository any additional charges for such Depository's services.

Section 43.05. More than One Person. If more than one Person is named as or becomes Tenant hereunder, Landlord may require the signatures of all such Persons in connection with any notice to be given or action to be taken by Tenant hereunder except to the extent that any such Person shall designate another such Person as its attorney-in-fact to act on its behalf, which designation shall be effective until receipt by Landlord of notice of its revocation. Subject to Section 43.06, each Person named as Tenant shall be fully, and jointly and severally, liable for all of Tenant's obligations hereunder. Any notice by Landlord to any Person named as Tenant shall be sufficient and shall have the same force and effect as though given to all parties named as Tenant. If all such parties designate in writing one Person to receive copies of all notices, Landlord agrees to send copies of all notices to that Person.

Section 43.06. Limitation of Liability.

(a) The liability of Landlord or of any other Person who has at any time acted as Landlord hereunder for damages or otherwise shall be limited to Landlord's interest in the Premises, including, without limitation, the rents and profits therefrom, the proceeds of any insurance policies covering or relating to the Premises, any awards payable in connection with any condemnation of the Premises or any part thereof, and any other rights, privileges, licenses, franchises, claims, causes of action or other interests, sums or receivables appurtenant to the Premises. Neither Landlord nor any such Person nor any of the members, managers, trustees, directors, officers, employees, agents or servants of Landlord or any such Person shall have any liability (personal or otherwise) hereunder beyond Landlord's interest in the Premises, and no other property or assets of Landlord or any such Person or any of the members, managers, trustees, directors, officers, employees, agents or servants of either shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies hereunder.

(b) The liability of Tenant, or of any Person who has at any time acted as Tenant hereunder, for damages or otherwise shall be limited to Tenant's interest in the Premises, including, without limitation, the rents and profits therefrom, the proceeds of any insurance policies covering or relating to the Premises, any awards payable in connection with any condemnation of the Premises or any part thereof, any funds held by a Depository pursuant to any of the provisions of this Lease, and any other rights, privileges, licenses, franchises, claims, causes of action or other interests, sums or receivables appurtenant to the Premises. Neither Tenant nor any such Person nor any of the members, managers, trustees, directors, officers, employees, agents or servants or either shall have any liability (personal or otherwise) hereunder beyond Tenant's interest in the Premises, and no other property or assets of Tenant or any such Person or any of the members, managers, trustees, directors, officers, employees, agents or servants of either shall be subject to levy, execution or other enforcement procedure for

the satisfaction of Tenant's remedies hereunder. Nothing herein shall be construed as limiting or affecting the liability or obligation of a Guarantor under a Guaranty; such liability and obligations being governed in all respects by the terms of the applicable Guaranty.

Section 43.07. No Merger. Except as otherwise expressly provided in this Lease, there shall be no merger of this Lease or the leasehold estate created hereby with the fee estate in the Premises or any part thereof by reason of the same Person acquiring or holding, directly or indirectly, this Lease or the leasehold estate created hereby or any interest in this Lease or in such leasehold estate as well as the fee estate in the Premises.

Section 43.08. No Brokers. Each of the parties warrants and represents to the other party that neither it nor any affiliate has dealt with any broker, finder or like entity or agent in connection with this Lease transaction or the transactions contemplated hereby, or on account of introducing the parties, the preparation or submission of brochures, the negotiation or execution of this Lease or the execution of the transactions contemplated hereby. If any claim is made by any Person who shall claim to have acted or dealt with Tenant or Landlord in connection with this transaction, the party through which such broker is claiming such entitlement shall pay the brokerage commission, fee or other compensation to which such Person is entitled, shall indemnify and hold harmless the other party against any claim asserted by such Person for any such brokerage commission, fee or other compensation and shall reimburse such other party for any costs or expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred in defending itself against claims made against it for any such brokerage commission, fee or other compensation.

Section 43.09. Amendments in Writing. This Lease may not be changed, modified, or terminated orally, but only by a written instrument of change, modification or termination executed by the party against whom enforcement of any change, modification, or termination is sought.

Section 43.10. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of New York.

Section 43.11. Successors and Assigns. The agreements, terms, covenants and conditions herein shall be binding upon, and shall inure to the benefit of, Landlord and Tenant and their respective successors and (except as otherwise provided herein) assigns.

Section 43.12. Sections. Except as otherwise specified herein, all references in this Lease to "Articles" or "Sections" shall refer to the designated Article(s) or Section(s), as the case may be, of this Lease.

Section 43.13. Plans and Specifications. All of Tenant's right, title and interest in all plans and drawings required to be furnished by Tenant to Landlord under this Lease and in any and all other plans, drawings, specifications or models prepared in connection with the construction of the Improvements, any Restoration or Capital Improvement, or any other construction at the Premises shall become the sole and absolute property of Landlord upon the Expiration Date, subject to the rights of the architects and engineers that prepared the same. Tenant shall deliver all such documents to Landlord promptly upon the Expiration Date.

Tenant's obligation under this Section 43.13 shall survive the expiration or termination of this Lease.

Section 43.14. Licensed Professionals. All references in this Lease to "licensed professional engineer," "licensed surveyor" or "registered architect" shall mean a professional engineer, surveyor or architect who is licensed or registered, as the case may be, by the State of New York.

Section 43.15. Amendments to WRY Declaration of Easements. Landlord shall not enter into or cause to be entered into any amendment or supplement to the WRY Declaration of Easements, which (a) increases, materially alters or otherwise materially affects Tenant's rights or obligations under this Lease or the WRY Declaration of Easements, (b) further limits the permitted uses of the Premises, (c) limits Tenant's rights under this Lease to dispose of, or assign its interest in, the Premises or (d) decreases or alters the rights of a Leasehold Mortgagee, unless the same is consented to by Tenant (and, in the case of (d), by such Leasehold Mortgagee) or is made subject and subordinate to this Lease and to the rights of such Leasehold Mortgagee. In the event Landlord shall enter into or cause to be entered into an amendment or supplement to the WRY Declaration of Easements which is not in conformity with this Section 43.15, Tenant shall not be obligated to comply with the provisions of such amendment or supplement which do not so conform and the same shall have no force or effect with respect to Tenant or any Leasehold Mortgagee.

Section 43.16. No Joint Venture. Nothing herein is intended nor shall be deemed to create a joint venture or partnership between Landlord and Tenant, nor to make Landlord in any way responsible for the debts or losses of Tenant.

Section 43.17. Tax Benefits. To the extent permitted by law, notwithstanding that Landlord shall own the Premises and the Improvements, Tenant shall have the right to all depreciation deductions, investment tax credits and other similar tax benefits attributable to any construction, demolition and Restoration performed by Tenant or attributable to the ownership of the Improvements. Landlord, from time to time, shall execute and deliver such instruments as Tenant shall reasonably request in order to effect the provisions of this Section 43.17, and Tenant shall pay Landlord's reasonable costs and expenses thereof. Landlord makes no representations as to the availability of any such deductions, credits or tax benefits.

Section 43.18. Submission Not an Offer. Submission of this Lease by Landlord to Tenant does not constitute an offer by Landlord to lease the Premises upon the terms hereof, and in no event will Landlord be bound hereunder except until the closing occurs under the WRY Agreement to Enter Into Lease.

Section 43.19. Construction. This Lease shall be construed without regard to any presumption or other rule requiring construction against the party causing this Lease to be drafted. In the event of any action, suit, arbitration, dispute or proceeding affecting the terms of this Lease, no weight shall be given to any deletions or striking out of any of the terms of this Lease contained in any draft of this Lease and no such deletion or strike out shall be entered into evidence in any such action, suit, arbitration, dispute or proceeding nor given any weight therein.

Section 43.20. Separate Obligations. Except solely with respect to Tenant's obligation to cause the construction of the WRY Roof Component in accordance with the WRY Construction Agreement, whenever it is provided in this Lease that Tenant shall take certain actions, fulfill certain obligations or incur certain liabilities, Landlord acknowledges and agrees that, without limiting Section 7.01, (a) Tenant's obligations and liabilities shall be limited to those obligations and liabilities arising on the Premises and shall not extend to any Severed Parcel or the ERY; and (b) each Severed Parcel Tenant's obligations and liabilities shall be limited to those obligations and liabilities arising on the Severed Parcel demised thereby and shall not extend to any other portion of the ERY or WRY. Tenant shall have no liability for any acts or omissions by any Severed Parcel Tenant or the tenant under the ERY Lease (or any lease demising a portion of the ERY) with respect to any portion of the WSY that is not demised by this Lease. Conversely, neither the tenant under the ERY Lease (nor any lease demising a portion of the ERY) nor any Severed Parcel Tenant shall be liable for any acts or omissions by Tenant or arising from the Premises (as adjusted following a Severance). Accordingly, the obligation of Tenant hereunder is several and not joint with any other tenant.

Section 43.21. Further Assurances. Each party shall execute and deliver such further documents, and perform such further acts, as may be reasonably necessary to achieve the parties' intent in entering into this Lease.

ARTICLE 44

CONFIDENTIALITY; PUBLICITY

Section 44.01. Tenant's Confidentiality Obligations. This Lease and all terms set forth herein (and the other Project Documents and all terms set forth therein) and all information relating to the WRY and the WRY Project supplied by Landlord or LIRR (pursuant to the RFP or otherwise) shall be kept strictly confidential by Tenant except to the extent such information is available in the public domain (unless Tenant has caused confidential information to enter the public domain in breach of this Section 44.01) or as otherwise required by law or agreed to by Landlord, provided that Tenant may share such information as it deems pertinent with prospective lenders, investors, counsel, consultants, accountants and employees but shall require that they shall maintain similar confidentiality and shall be responsible for any breach of the terms of this confidentiality requirement by such parties.

Section 44.02. Landlord's Confidentiality Obligations. Landlord acknowledges that Tenant has provided and will be hereafter providing confidential information, including trade secrets and proprietary information, the disclosure of which may be harmful to Tenant's competitive position. Accordingly, Landlord agrees that, if disclosure requests are received by Landlord pursuant to the Freedom of Information Law or any judicial or legislative subpoena, requesting any financial information concerning Tenant or its principals, or any trade secret or proprietary information provided to Landlord or the Yards Parcel Operator by Tenant, Landlord shall give Tenant prior notice and the opportunity to object to such Freedom of Information Law request or subpoena (it being understood and agreed that Landlord and the Yards Parcel Operator shall have the right to make disclosures believed in good faith to be required under the Freedom of Information Law or other applicable law notwithstanding any objection of Tenant). Tenant

understands and acknowledges that Landlord is a public authority of the State of New York and is subject to review and oversight by legislative and other regulatory bodies, and that Landlord and the Yards Parcel Operator are required by law and may be compelled or requested by such oversight bodies to make public disclosure of information regarding the WRY Project and the terms of the disposition of the Premises, and shall be fully entitled to do so without objection from Tenant, except in the limited circumstances described in this Section 44.02.

Section 44.03. Press Releases. Except as may be required by applicable Legal Requirements, no press release, publicity notice or announcement, regarding or in any way directly or indirectly referring to, any of the terms or provisions of this Lease or any other Project Document, or the transactions contemplated hereby or thereby, shall be made or caused to be made by Tenant or any Affiliate of Tenant without the prior consent of Landlord, which consent may be granted or denied in Landlord's sole and absolute discretion. Tenant shall furnish to Landlord advance copies of any press release, publicity notice or announcement which it desires to make public with respect to this Lease and/or the transactions contemplated hereby. Notwithstanding the foregoing, Landlord may, in response to inquiries from the press, confirm the fact that Tenant has entered into a ground lease of the WRY; provided, however, whether or not in response to any such inquiry, Tenant shall not disclose or confirm any of the terms or provisions of this Lease or any other Project Document.

ARTICLE 45

MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES

Tenant acknowledges that it is the policy of Landlord that minority and women-owned business enterprises ("M/WBEs") shall have significant opportunity to participate in the performance of the WRY Project. Tenant hereby agrees to undertake to achieve meaningful participation of M/WBEs in the development and construction of the WRY Project on the Premises to the maximum extent practicable.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

LANDLORD:

METROPOLITAN TRANSPORTATION AUTHORITY

By: _____
Name: **Jeffrey B. Rosen**
Title: **Director, Real Estate**

TENANT:

WRY TENANT LLC, a Delaware limited liability company

By: _____

Name: L. Jay Cross

Title: President

Signature page to Agreement of Lease (WRY)

EXHIBIT A-1
LEGAL DESCRIPTION OF THE WRY

Yards Parcel

All of the lands below an upper limiting plane of 40.55 feet (Manhattan Borough Datum) within the following horizontal boundary:

Beginning at a point formed by the intersection of the southerly line of West 33rd Street (60' R.O.W.) and the easterly line of Twelfth Avenue (R.O.W. varies); running thence

1. Along said southerly line of West 33rd Street, South 89°56'53" East, a distance of 800.00 feet to a point formed by the intersection of said southerly line of West 33rd Street and the westerly line of Eleventh Avenue (100' R.O.W.); thence

2. Along said westerly line of Eleventh Avenue, South 00°03'07" West, a distance of 538.26 feet to a point; thence

3. Leaving said westerly line of Eleventh Avenue, North 89°49'42" West, a distance of 439.40 feet to a point; thence

4. North 69°32'56" West, a distance of 61.90 feet to a point; thence

5. North 89°57'45" West, a distance of 302.58 feet to a point on the said easterly line of Twelfth Avenue; thence

6. Along said easterly line of Twelfth Avenue, North 00°03'07" East, a distance of 515.85 feet to the Point of Beginning.

Encompassing an area of 422,936 S.F./9.709 acres, more or less.

Facility Airspace Parcel: Airspace Above Lower Limiting Plane

All of the airspace above a lower limiting plane of 40.55 feet (Manhattan Borough Datum) within the following horizontal boundary:

Beginning at a point formed by the intersection of the southerly line of West 33rd Street (60' R.O.W.) and the easterly line of Twelfth Avenue (R.O.W. varies); running thence

1. Along said southerly line of West 33rd Street, South 89°56'53" East, a distance of 800.00 feet to a point formed by the intersection of said southerly line of West 33" Street and the westerly line of Eleventh Avenue (100' R.O.W.); thence

2. Along said westerly line of Eleventh Avenue, South 00°03'07" West, a distance of 538.26 feet to a point; thence

3. Leaving Eleventh Avenue, North 89°49'42" West, a distance of 439.40 feet to a point; thence

4. North 69°32'56" West, a distance of 61.90 feet to a point; thence

5. North 89°57'45" West, a distance of 302.58 feet to a point on the said easterly line of Twelfth Avenue; thence

6. Along said easterly line of Twelfth Avenue, North 00°03'07" East, a distance of 515.85 feet to the Point of Beginning.

Encompassing an area of 422,936 S.F./9.709 acres, more or less.

Terra Firma Parcel

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

Beginning at a point formed by the intersection of the northerly line of West 30th Street (60' R.O.W.) and the easterly line of Twelfth Avenue (R.O.W. varies); running thence

1. Along said easterly line of Twelfth Avenue, North 00°03'07" East, a distance of 196.65 feet to a point; thence

2. Leaving Twelfth Avenue, South 89°57'45" East, a distance of 302.58 feet to a point; thence

3. South 69°32'56" East, a distance of 61.90 feet to a point; thence

4. South 89°49'42" East, a distance of 439.40 feet to a point on the westerly line of Eleventh Avenue (100' R.O.W.); thence

5. Along said westerly line of Eleventh Avenue, South 00°03'07" West, a distance of 174.24 feet to a point formed by the intersection of said westerly line of Eleventh Avenue and the aforementioned northerly line of West 30th Street; thence

6. Along said northerly line of west 30th Street, North 89°56'53" West, a distance of 800.00 feet to the Point of Beginning.

Encompassing an area of 147,064 S.F./3.376 acres, more or less.

EXHIBIT A-2
LEGAL DESCRIPTION OF THE PREMISES

Airspace Above Lower Limiting Plane Parcel

All of the airspace above a lower limiting plane of 40.55 feet (Manhattan Borough Datum) within the following horizontal boundary:

Beginning at a point formed by the intersection of the southerly line of West 33rd Street (60' R.O.W.) and the easterly line of Twelfth Avenue (R.O.W. varies); running thence

1. Along said southerly line of West 33rd Street, South 89°56'53" East, a distance of 800.00 feet to a point formed by the intersection of said southerly line of West 33" Street and the westerly line of Eleventh Avenue (100' R.O.W.); thence

2. Along said westerly line of Eleventh Avenue, South 00°03'07" West, a distance of 538.26 feet to a point; thence

3. Leaving Eleventh Avenue, North 89°49'42" West, a distance of 439.40 feet to a point; thence

4. North 69°32'56" West, a distance of 61.90 feet to a point; thence

5. North 89°57'45" West, a distance of 302.58 feet to a point on the said easterly line of Twelfth Avenue; thence

6. Along said easterly line of Twelfth Avenue, North 00°03'07" East, a distance of 515.85 feet to the Point of Beginning.

Encompassing an area of 422,936 S.F./9.709 acres, more or less.

Terra Firma Parcel

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

Beginning at a point formed by the intersection of the northerly line of West 30th Street (60' R.O.W.) and the easterly line of Twelfth Avenue (R.O.W. varies); running thence

1. Along said easterly line of Twelfth Avenue, North 00°03'07" East, a distance of 196.65 feet to a point; thence

2. Leaving Twelfth Avenue, South 89°57'45" East, a distance of 302.58 feet to a point; thence

3. South 69°32'56" East, a distance of 61.90 feet to a point; thence

4. South 89°49'42" East, a distance of 439.40 feet to a point on the westerly line of Eleventh Avenue (100' R.O.W.); thence

5. Along said westerly line of Eleventh Avenue, South 00°03'07" West, a distance of 174.24 feet to a point formed by the intersection of said westerly line of Eleventh Avenue and the aforementioned northerly line of West 30th Street; thence

6. Along said northerly line of west 30th Street, North 89°56'53" West, a distance of 800.00 feet to the Point of Beginning.

Encompassing an area of 147,064 S.F./3.376 acres, more or less.

EXHIBIT A-3
LEGAL DESCRIPTION OF THE YARDS PARCEL

All of the lands below an upper limiting plane of 40.55 feet (Manhattan Borough Datum) within the following horizontal boundary:

Beginning at a point formed by the intersection of the southerly line of West 33rd Street (60' R.O.W.) and the easterly line of Twelfth Avenue (R.O.W. varies); running thence

1. Along said southerly line of West 33rd Street, South 89°56'53" East, a distance of 800.00 feet to a point formed by the intersection of said southerly line of West 33rd Street and the westerly line of Eleventh Avenue (100' R.O.W.); thence

2. Along said westerly line of Eleventh Avenue, South 00°03'07" West, a distance of 538.26 feet to a point; thence

3. Leaving said westerly line of Eleventh Avenue, North 89°49'42" West, a distance of 439.40 feet to a point; thence

4. North 69°32'56" West, a distance of 61.90 feet to a point; thence

5. North 89°57'45" West, a distance of 302.58 feet to a point on the said easterly line of Twelfth Avenue; thence

6. Along said easterly line of Twelfth Avenue, North 00°03'07" East, a distance of 515.85 feet to the Point of Beginning.

Encompassing an area of 422,936 S.F./9.709 acres, more or less.

EXHIBIT A-4
LEGAL DESCRIPTION OF FACILITY AIRSPACE PARCEL TERRA FIRMA

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

Beginning at a point formed by the intersection of the northerly line of West 30th Street (60' R.O.W.) and the easterly line of Twelfth Avenue (R.O.W. varies); running thence

1. Along said easterly line of Twelfth Avenue, North 00°03'07" East, a distance of 196.65 feet to a point; thence

2. Leaving Twelfth Avenue, South 89°57'45" East, a distance of 302.58 feet to a point; thence

3. South 69°32'56" East, a distance of 61.90 feet to a point; thence

4. South 89°49'42" East, a distance of 439.40 feet to a point on the westerly line of Eleventh Avenue (100' R.O.W.); thence

5. Along said westerly line of Eleventh Avenue, South 00°03'07" West, a distance of 174.24 feet to a point formed by the intersection of said westerly line of Eleventh Avenue and the aforementioned northerly line of West 30th Street; thence

6. Along said northerly line of west 30th Street, North 89°56'53" West, a distance of 800.00 feet to the Point of Beginning.

Encompassing an area of 147,064 S.F./3.376 acres, more or less.

EXHIBIT B
PRELIMINARY SEVERED PARCEL PLAN

(Follows Immediately)

Parcel	Zoning Square Footage	Allocable Share
Site 1	1,275,000 zsf residential and community facility	22.37%
Site 2	1,550,000 zsf commercial	27.19%
Site 3	525,000 zsf residential	9.21%
Site 4	670,000 zsf commercial and residential	11.75%
Site 5	450,000 zsf residential	7.90%
Site 6	1,230,000 zsf commercial and residential 120,000 sf community facility (public school)*	21.58%
Total	**5,700,000 zsf**	**100%**

*Pursuant to Zoning Resolution Section 93-225(b), any space for public school purposes on Special Hudson Yards Subdistrict F (Site 6) is exempt from the definition of floor area.

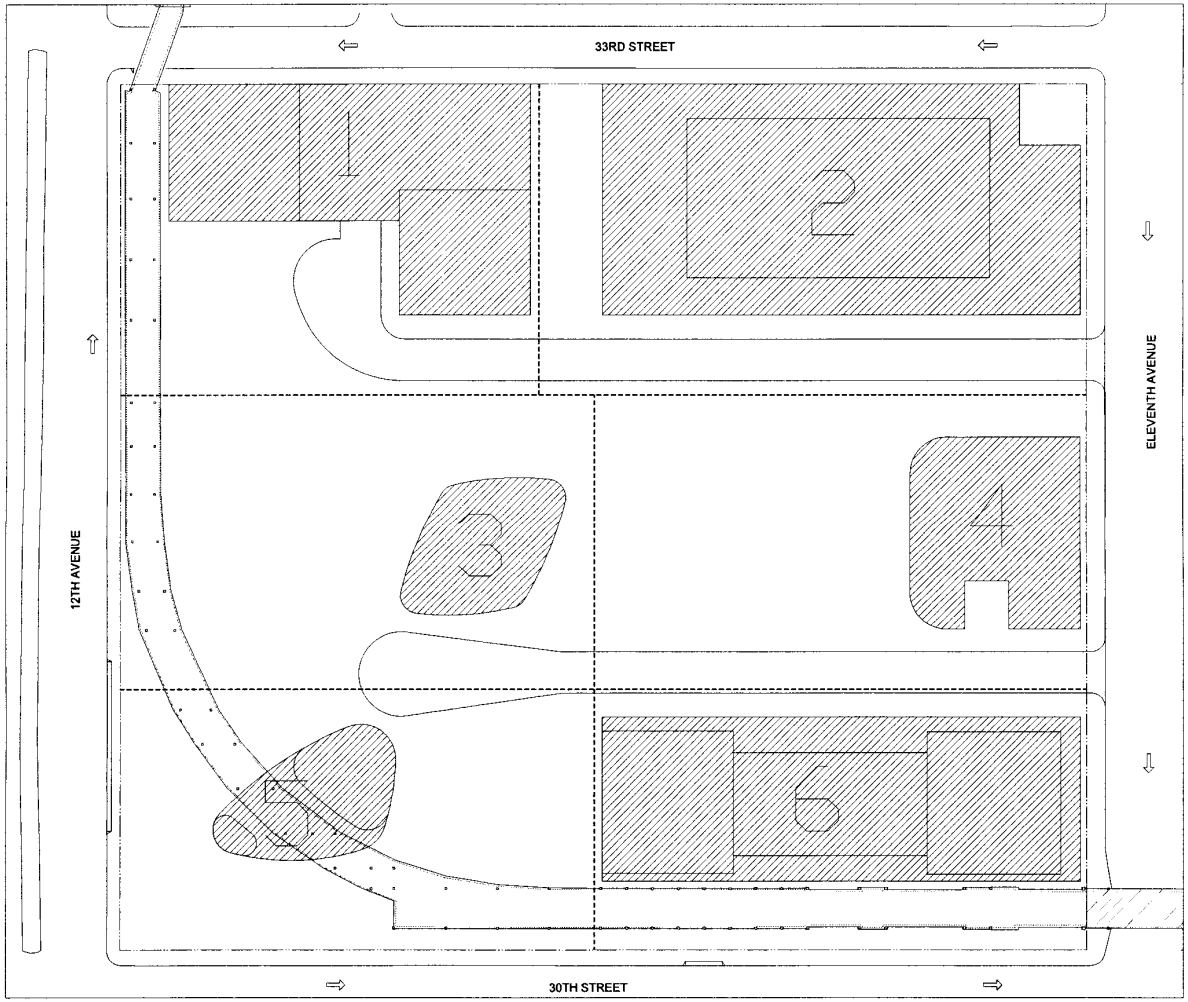
TOTAL ZONING LOT AREA: **570,000 SF**

KEY

ZONING LOT BOUNDARY AND PROPERTY LINE

BUILDING FOOTPRINT

BUILDING PARCEL LIMIT LINE



1 WRY SEVERED PARCEL PLAN

HUDSON YARDS - WRY - SEVERED PARCEL PLAN – TBD

HUDSON YARDS - WESTERN RAILYARDS

Address: NEW YORK, NY

HYW - Z1-01

WRY SEVERED PARCEL PLAN

Z1-10

ATTACHMENT 4-339

EXHIBIT C-1
PRO FORMA RENT SCHEDULE (WITHOUT ABATEMENT EXTENSION ADJUSTMENT AMOUNT)

(Follows immediately)

EXHIBIT C-2
PRO FORMA RENT SCHEDULE (WITH ABATEMENT EXTENSION ADJUSTMENT AMOUNT)

EXHIBIT D
INTENTIONALLY OMITTED

EXHIBIT E
DEFAULT PAYMENTS SCHEDULE

(ILV = $494,000,000)

Period During Which Notice of Default Occurs	WRY Ground Lease Payment Amount Due (Only to the extent such payments are due and payable and have not heretofore been paid by Tenant:)	Guaranteed Additional Amounts Due
Lease Year 1	No Annual Base Rent Closing Payment: $25,222,816.67	First Post-Closing Payment and Second Post-Closing Payment: $25,222,816.67
Lease Year 2	No Annual Base Rent First Post-Closing Payment: $12,611,408.33	Second Post-Closing Payment: $12,611,408.33
Lease Year 3	50% Annual Base Rent: $14,449,500 Second Post-Closing Payment: $12,611,408.33	18 months full Annual Base Rent: $43,348,500
Lease Year 4	50% Annual Base Rent: $14,449,500	12 months full Annual Base Rent: $28,900,000
Lease Year 5	50% Annual Base Rent: $14,449,500	6 months full Annual Base Rent: $14,449,500
Lease Year 6	100% Annual Base Rent: $31,788,900	0

EXHIBIT F
INTENTIONALLY OMITTED

EXHIBIT G
DEFAULT PAYMENTS GUARANTY

(Follows immediately)

EXECUTION VERSION

DEFAULT PAYMENTS GUARANTY
(WESTERN RAIL YARD SECTION OF THE JOHN D. CAEMMERER WEST SIDE YARD)

THE RELATED COMPANIES, L.P. and OP USA DEBT HOLDINGS LIMITED PARTNERSHIP, jointly and severally, as Guarantors

Dated: April 10, 2014

DEFAULT PAYMENTS GUARANTY
(WESTERN RAIL YARD SECTION OF THE
JOHN D. CAEMMERER WEST SIDE YARD)

THIS DEFAULT PAYMENTS GUARANTY (WESTERN RAIL YARD SECTION OF THE JOHN D. CAEMMERER WEST SIDE YARD) (this "Guaranty") is made as of April 10, 2014, by THE RELATED COMPANIES, L.P., a New York limited partnership, having an office at 60 Columbus Circle, New York, New York 10023 ("Related"), and OP USA DEBT HOLDINGS LIMITED PARTNERSHIP, an Ontario limited partnership having an office at 200 Bay Street, Royal Bank Tower, Suite 900, Toronto, Ontario, M5J 2J2 Canada ("OPUSA"; OPUSA and Related each individually a "Guarantor" and collectively, "Guarantors") to and for the benefit of METROPOLITAN TRANSPORTATION AUTHORITY, a body corporate and politic constituting a public benefit corporation of the State of New York, having an office at 347 Madison Avenue, New York, NY 10017 ("MTA" or "Landlord").

W I T N E S S E T H:

WHEREAS, the MTA owns the land situated between West 30th Street, West 33rd Street, 10th Avenue and 11th Avenue and between West 30th Street, West 33rd Street, 11th Avenue and 12th Avenue in Manhattan, also known as Block 702, Lots 4, 10, 110, 9110 and 9111 and Block 676, [Lot 3] (collectively, the "WSY Parcel"); and MTA owns, and LIRR operates, the John D. Caemmerer West Side Yard, a railroad storage and maintenance yard, on a portion of the WSY Parcel;

WHEREAS, simultaneous with the delivery of this Guaranty, Landlord and WRY TENANT LLC ("Tenant"), are entering into that certain Agreement of Lease (Western Rail Yard Section of the John D. Caemmerer West Side Yard) dated as of the date hereof, initially demising certain premises described on Exhibit A-2 attached thereto (such premises, the "Premises"; and such Agreement of Lease, as the same may be amended so as to become the "Balance Lease" or otherwise modified from time to time in accordance with the provisions thereof, the "WRY Ground Lease"). All capitalized terms not otherwise defined herein shall have the respective meanings specified in the WRY Ground Lease;

WHEREAS, Tenant is obligated under the WRY Ground Lease in the event of a Pre-Construction Event of Default to make certain timely payments referred to in the WRY Ground Lease as the "Guaranteed Default Payments";

WHEREAS, it is a condition precedent to the execution of the WRY Ground Lease that the Guarantors enter into this Guaranty; and

WHEREAS, the Guarantors will derive substantial benefits, directly or indirectly, from the execution by Tenant of the WRY Ground Lease.

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

SECTION 1. Guaranteed Obligations.

(a) Subject to and in accordance with the succeeding provisions of this Guaranty (including, without limitation, Section 1(b) hereof), the Guarantors, jointly and severally, do hereby unconditionally, absolutely and irrevocably, as primary obligor and not merely as surety, guarantee, for the benefit of the MTA:

(i) the payment in full when due as a result of a Pre-Construction Event of Default of any and all unpaid Guaranteed Default Payments (the "Financial Obligations"); and

(ii) the payment of, or reimbursement to the MTA of, all reasonable costs and expenses incurred by the MTA in connection with its enforcement of the Financial Obligations (such costs and expenses, "Enforcement Costs"), including enforcement undertaken directly against Tenant pursuant to the WRY Ground Lease, where such enforcement is brought either against the Guarantors or in a combined action against both Guarantors and Tenant and the MTA is the substantially prevailing party with respect thereto (the "Enforcement Costs Obligation").

The obligations which are set forth in clauses (i) and (ii) above are hereinafter collectively referred to as the "Guaranteed Obligations".

(b) Subject to the provisions of Section 1(c) hereof, if at any time there is a Pre-Construction Event of Default (whether or not any other default shall have occurred or be continuing under any Project Document) and any of the Guaranteed Obligations shall not have been duly performed after the expiration of applicable notice and cure periods, and Guarantors, after not less than ten (10) Business Days' prior written notice and demand made by the MTA, shall fail or refuse to perform such Guaranteed Obligations, then the Guarantors shall be liable to the MTA hereunder for damages in the full amount of such Guaranteed Obligations. All amounts payable hereunder, together with interest thereon (from the date due until the date paid in full with interest) at the Default Rate, within ten (10) Business Days after written notice and demand, by wire transfer of immediately available federal funds to an account designated by the MTA.

(c) Notwithstanding anything to the contrary in this Guaranty, any amounts payable to the MTA hereunder shall be without duplication of any payments made to the MTA in respect of such amounts under the WRY Ground Lease.

SECTION 2. Nature of Guaranty. The Guarantors' liability under this Guaranty is a guaranty of payment and not of collection. The MTA has the right to require each Guarantor to pay, comply with and satisfy its obligations and liabilities under this Guaranty, and shall have the right to proceed immediately against each Guarantor or both Guarantors with respect thereto, without being required to attempt

recovery first from Tenant or any other party, and without demonstrating that the MTA has exercised (to any degree) or exhausted any of the MTA's rights against Tenant under any of the Project Documents. Subject to the provisions of Sections 10, 11 and 15 hereof, this Guaranty is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future, including Guaranteed Obligations arising or accruing after any bankruptcy of Tenant or a Guarantor or any sale or other disposition of any security for this Guaranty under the Project Documents.

SECTION 3. Representations and Warranties. Each Guarantor hereby represents and warrants as to itself, as of the date hereof, as follows:

(a) (i) in the case of Related, is a limited partnership, duly organized, validly existing and in good standing under the laws of the State of New York and is an indirect owner of Tenant, and in the case of OPUSA, it is a limited partnership duly organized, validly existing and in good standing under the laws of the Province of Ontario, Canada, and all or substantially all of the partnership interests in OPUSA are held by Oxford USA Debt Holdings Trust, an Ontario trust ("Oxford USA"), and OMERS Administration Corporation, a non-share capital corporation continued pursuant to the Ontario Municipal Employees Retirement System Act, 2006 ("OAC"), as administrator of the OMERS pension plans and as trustee of the pension funds, indirectly holds substantially all of the economic interests in Oxford USA and indirectly holds substantially all of the economic interest of Oxford Hudson Yards LLC in Tenant, and (ii) it has the power, authority and legal right, (x) to own and operate its properties and assets, (y) to carry on the business now being conducted and proposed to be conducted by it, and (z) to execute, deliver and perform its obligations under, and engage in the transactions contemplated by, this Guaranty, which have been duly authorized, executed and delivered by it.

(b) There is no provision of any agreement or contract binding on it which would prohibit, conflict with or in any way prevent the execution, delivery and performance of this Guaranty.

(c) All of its financial statements and other documents and reports delivered by it to the MTA in connection herewith (the "Financial Statements") are true, correct and complete as of their respective dates and there has been no material adverse change in its financial condition since such dates.

(d) Except as set forth on the Financial Statements, its assets are unencumbered and have not been pledged to any other Person.

(c) True, correct and complete copies of (i) the organizational documents of the Guarantors and each amendment thereto entered into as of the date hereof (collectively, the "Organizational Documents") have been delivered to the MTA. The Organizational Documents are not subject to any right of rescission, set-off, counterclaim or defense by any partner, member or shareholder, and no partner, member or shareholder has asserted any right of rescission, set-off, counterclaim or defense. The

Organizational Documents are the only documents in existence among the parties thereto relating to the subject matter thereof.

(d) It has, independently and without reliance upon the MTA and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Guaranty.

(e) It is not a Prohibited Person.

(f) This Guaranty in all respects represents its valid and legally binding obligations, which are enforceable against it in accordance with the terms thereof, subject only to the effects of bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. This Guaranty is the only agreement in existence among it and the MTA relating to the subject matter hereof which remains in full force and effect after the date hereof.

SECTION 4. Financial Covenants and Statements.

(a) Each Guarantor shall maintain, at all times while this Guaranty is in force and effect, Liquid Assets not less than such Guarantor's Minimum Liquid Assets Requirement (as such terms are hereinafter defined):

(b) As used herein:

(i) "Liquid Assets" shall mean: with respect to a Guarantor, the sum of (A) cash and securities readily marketable on a securities exchange or independent publicly quoted market held from time to time by such Guarantor (either directly or indirectly through entities controlled by such Guarantor and consolidated with such Guarantor on its audited financial statements, and which such Guarantor has the unrestricted ability to cause to be dividended or distributed to it), which are not pledged or encumbered or otherwise restricted in use (other than a restriction to be used for the Guaranteed Obligations), as determined in accordance with the Reporting Methodology, (B) any letter(s) of credit drawable upon sight by such Guarantor issued by a lending institution having a long-term senior unsecured debt obligations credit rating from two or more recognized major credit ratings agencies of not less than "investment grade", and (C) any line of credit that is unconditionally drawable by the applicable Guarantor issued by a lending institution having a long-term senior unsecured debt obligations credit rating from two or more recognized major credit ratings agencies of not less than "investment grade", and (D) with respect to OPUSA, (x) all assets of OPUSA as of the date hereof and any mortgage and/or mezzanine loan asset (including, without limitation, mortgage and/or mezzanine loan assets under which OAC or any Affiliate of OAC or OPUSA is the borrower (in each case, that are not pledged or encumbered)) hereafter acquired by OPUSA that is at least of the same type and quality as the assets of OPUSA as of the date hereof, (y) any loan (other than any mortgage and/or mezzanine loan) made by OPUSA to OAC or to Oxford USA or any other Person in which OAC holds, directly or indirectly, all or substantially all of the economic interests, and (z) without duplication, including without duplication of amounts due under the Contribution Agreement, all

unfunded and unencumbered capital commitments and recallable capital of any partner of OPUSA from OAC to fund unfunded capital commitments or recallable capital of such partner to OPUSA, and with respect to which there are no conditions to funding such commitments other than the giving of notice, other administrative requirements or other conditions which have been satisfied as of such relevant date; provided, that such assets of OPUSA shall be valued in accordance with the Reporting Methodology (and not at their par value). Each of the assets described in the foregoing clauses (B), (C), and (D) shall constitute Liquid Assets whether or not the same are treated as such under the Reporting Methodology. Notwithstanding the foregoing, in no event shall any direct or indirect interest held by OPUSA in Hudson Yards Gen-Par LLC be included in Liquid Assets for any purposes of this Guaranty.

(ii) "Minimum Liquid Assets Requirement" shall mean, with respect to each Guarantor, having Liquid Assets equal to or greater than (x) at any time when there is outstanding any other guaranty given to MTA by such Guarantor in connection with the ERY Project or WRY Project (whether individually or jointly and severally), the greater of (1)Thirty-Five Million Dollars ($35,000,000.00), or (2) the Minimum Liquid Assets Requirement required to be maintained by such Guarantor pursuant to such other guaranty (excluding, for purposes of this Guaranty, with respect to OPUSA, the "DB Shortfall Contribution Amount" required pursuant to Section 4(b)(ii) of that certain Roof, Facilities And Relocations Completion Guaranty (Eastern Rail Yard Section of the John D. Caemmerer West Side Yard) dated as of March 17, 2014, made by Guarantors for the benefit of the MTA Parties) , and (y) at any time when there is not outstanding any other guaranty given to MTA by such Guarantor in connection with the ERY Project or WRY Project, Thirty-Five Million Dollars ($35,000,000.00) .

(iii) "Minimum Net Worth Requirement" shall mean, with respect to each Guarantor, having a net worth, or partners' or shareholders' equity, as determined in accordance with the Reporting Methodology and the provisions of clause (v) ("Net Worth"), equal to or greater than (x) at any time when there is outstanding any other guaranty given to MTA by such Guarantor in connection with the ERY Project or WRY Project (whether individually or jointly and severally), the greater of (1)Two Hundred Million Dollars ($200,000,000.00), or (2) the Minimum Net Worth Requirement required to be maintained by such Guarantor pursuant to such other guaranty, and (y) at any time when there is not outstanding any other guaranty given to MTA by such Guarantor in connection with the ERY Project or WRY Project, Two Hundred Million Dollars ($200,000,000.00).

(iv) "Reporting Methodology" shall mean, with respect to any Person, either generally accepted accounting principles or any other methodology for financial accounting and reporting which is commonly used by such Person and is recognized as standard in the principal industry in which such Person operates.

(v) For purposes of calculating the Net Worth of OPUSA, any guaranty or contingent liability (other than any guaranty given to the MTA or to any other Person in connection with the ERY Project or WRY Project on or prior to the date hereof), shall be, without duplication, treated as follows, notwithstanding that

such guaranty or contingent liability is not reported as a liability on OPUSA's balance sheet under the Reporting Methodology: (x) if the guaranty or contingent liability is for the payment of a sum certain, one hundred percent (100%) of the sum certain shall be treated as a liability; (y) if the guaranty or contingent liability is in the nature of a building completion guaranty, fifteen percent (15%) of the hard cost and any construction period soft costs for the building so guaranteed shall be treated as a liability, and (z) with respect to any guaranty or contingent liability other than as described in clause (x) or (y), an amount to be reasonably determined by MTA shall be treated as a liability, it being understood and agreed that any non-recourse carve out guaranty customarily given by OPUSA in connection with any mortgage or mezzanine loan shall be treated as a liability of zero unless and until any actual liability is incurred thereunder. OPUSA shall provide notice to MTA of any guaranty given or contingent liability incurred after the date hereof within thirty (30) days after the incurrence of the same (which notice may be given by inclusion of a footnote regarding the same in quarterly or financial statements, if delivered within such thirty (30) day period). If there shall be a dispute at any time between MTA and OPUSA as to the amount reasonably determined by MTA to be the maximum liability under a guaranty or contingent liability described in clause (z), then the maximum liability under such guaranty or contingent liability shall be determined by the Real Estate Business Advisory Services Group of PriceWaterhouseCoopers (or other reputable and recognized real estate advisory or accounting firm designated by MTA) ("RE Advisor"), and the determination of such RE Advisor shall be dispositive and binding upon the parties, absent manifest error. During the period that this Guaranty is in effect, no pledge, mortgage or other security interest may be granted in any assets of OPUSA, as security for guaranties or otherwise, if the exposure amount under such pledge, mortgage or other security interest would cause OPUSA to fail to meet the Minimum Net Worth Requirement or Minimum Liquid Assets Requirement.

(c) During the period that this Guaranty is in effect, neither Guarantor shall amend or modify any Organizational Documents in any respect which would cause such Guarantor to breach any of the representations, warranties or covenants of such Guarantor set forth herein.

(d) Not more than one hundred twenty (120) days after the end of each fiscal year of each Guarantor during the period that this Guaranty is in effect, each Guarantor shall deliver or cause to be delivered to the MTA: (i) such Guarantor's annual financial statement for such year, as certified by such Guarantor's independent certified public accountant prepared in accordance with the Reporting Methodology, evidencing such Guarantor's satisfaction of the Minimum Liquid Assets Requirement, and (ii) a certification of such Guarantor's Chief Financial Officer or other responsible senior officer certifying as to the same.

(e) Not more than ninety (90) days after the end of each fiscal quarter of each fiscal year of each Guarantor during the period that this Guaranty is in effect, each Guarantor shall deliver to the MTA (i) a balance sheet as of the end of such quarter and statements of income and expense and cash flow for such quarter and the fiscal year to date, in each case prepared in accordance with the Reporting Methodology, and (ii) a certification of such Guarantor's Chief Financial Officer or other responsible

senior officer that such Guarantor continues to satisfy the Minimum Liquid Assets Requirement.

(f) At any time following the giving of a notice of Default under the WRY Ground Lease, each Guarantor shall deliver to the MTA, within twenty (20) Business Days after a request therefor (or as soon thereafter as may be reasonably practicable), such additional financial information regarding such Guarantor (in hard copy and in an electronic format reasonably designated by the MTA) as the MTA may reasonably request for the purpose of determining whether such Guarantor continues to satisfy the Minimum Liquid Assets Requirement.

(g) Each Guarantor shall promptly notify the MTA of any material adverse change in its financial condition.

(h) No dividends or distributions may be made by a Guarantor to any of its partners, members or shareholders (x) subject to the last sentence of this Section 4(h), at any time at which a default under the WRY Ground Lease of which notice has been given by the MTA to the parties to such agreement and to the Persons listed on Exhibit A hereto has occurred and is continuing, or (y) if such Guarantor would, either at the time of the making of such dividend or distribution or immediately following the making of such dividend or distribution, fail to meet either the Minimum Net Worth Requirement or the Minimum Liquid Assets Requirement. Notwithstanding the provisions of clause (x), following demand made under this Guaranty and/or under any other guaranties then outstanding to the MTA, distributions by a Guarantor to its partners, members or shareholders in the ordinary course shall not be prohibited if such Guarantor is, at the time of making such distributions, diligently and continuously performing the Guaranteed Obligations hereunder or under such other guaranty, and the making of such distributions would not unreasonably impair such Guarantor's ability to complete performance of the Guaranteed Obligations or obligations under such other guaranties.

(i) MTA acknowledges receipt of:

(i) The organizational documents of each Guarantor;

(ii) The Contribution Agreement made by OAC and Oxford USA in favor of OPUSA; and

(iii) The documents or other evidence provided in Sections 4(d) and (e) hereof for the most recent fiscal year of the applicable Person, and (to the extent such documents or evidence are available therefor) any quarterly periods thereafter with respect to Guarantor.

SECTION 5. Obligations Independent. The obligations of Guarantors under this Guaranty shall be independent of, and shall not be measured or affected by, (i) the legal sufficiency or insufficiency of the WRY Ground Lease or any other Project Document, or of MTA's title to the Premises, (ii) the modification, expiration or termination of the WRY Ground Lease or any other Project Document (except as any

modifications shall modify the Guaranteed Obligations), (iii) any extension of time for performance under the WRY Ground Lease or any other Project Document (except as any extensions of time shall extend the time to perform the Guaranteed Obligations), (iv) the terms and provisions of any loans for the WRY Project, or the sufficiency of the funds advanced to Tenant pursuant to such loans, (v) any bankruptcy, insolvency or other discharge of Tenant, (vi) any offsets or defenses available to Tenant or (vii) any other offsets or defenses to liability of Guarantors, all of which are hereby waived. Notwithstanding the foregoing, the Guaranteed Obligations shall be deemed to be modified to the extent that Tenant's obligations with respect to the Financial Obligations pursuant to the WRY Ground Lease shall be modified (including, without limitation, upon the Severance of a Terra Firma Severed Parcel prior to the Commencement of Construction of the LIRR Roof and Facilities and the delivery to the MTA of a Default Payments Guaranty with respect to such Terra Firma Severed Parcel (in accordance with Section 11.01 of the WRY Ground Lease).

SECTION 6. Other Rights and Remedies. The rights of the MTA under this Guaranty shall be in addition to the other rights and remedies of the MTA against the Guarantors, if any, under any other Project Document, or at law or in equity, and shall not in any way be deemed a waiver of any such rights.

SECTION 7. Limitation on Obligations. Notwithstanding anything to the contrary contained herein or in any other Project Document to the contrary, the maximum liability of the Guarantors under this Guaranty shall be One and 00/100 Dollar ($1.00) less than the amounts which, under applicable federal and state laws, including those relating to the insolvency of debtors, and after giving effect to all applicable rights of contribution, would result in the avoidance or illegality of the obligations of the Guarantors hereunder or, if applicable, under any other Project Document. Nothing herein shall be construed to shift to the MTA the burden of proof with respect to the maximum liability of the Guarantors.

SECTION 8. Survival of Obligations. Subject to Sections 10, 11 and 15 hereof, the Guaranteed Obligations shall survive any termination, surrender, summary proceeding, foreclosure or other proceeding involving the WRY Ground Lease (including, without limitation, the severance of the WRY Ground Lease into one or more Severed Parcel Leases) or any other Project Document, the exercise by Tenant of any fee conversion option (as set forth in Section 10.01 of the WRY Ground Lease), and/or the exercise by the MTA of any of its respective remedies pursuant to the WRY Ground Lease or any other Project Document. The Guaranteed Obligations shall survive until performed in full, and shall be reinstated in the event that any payment made is rescinded.

SECTION 9. Obligations Absolute.

(a) The obligations and liability of the Guarantors hereunder shall remain in full force and effect without regard to, and shall not be impaired by, the following: (i) any express or implied amendment, modification, renewal, supplement, extension, waiver or acceleration of the WRY Ground Lease or any other Project Document or any obligations thereunder (except that the Guaranteed Obligations shall be

deemed to be modified to the extent that any such amendment, modification, renewal, supplement, extension, waiver or acceleration shall modify any obligations of Tenant that constitute Guaranteed Obligations); (ii) any exercise or non-exercise by the MTA of (or any delay in exercising) any right or privilege under the WRY Ground Lease or any other Project Document; (iii) any voluntary or involuntary bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or similar proceeding relating to Tenant or a Guarantor or any of the assets belonging to any of them, or any action taken with respect to this Guaranty by any trustee or receiver, or by any court, in any such proceeding, whether or not the Guarantors shall have had notice or knowledge of any of the foregoing; (iv) any release, waiver or discharge of Guarantor from liability under any of the Project Documents (other than liability under this Guaranty); (v) any subordination, compromise, settlement, release (by operation of law or otherwise), discharge, collection or liquidation of any of the Project Documents or any repossession or surrender of the Premises; (vi) any assignment or other transfer of any or all of the WRY Ground Lease, the WRY Construction Agreement, the WRY Declaration of Easements or the other Project Documents, in whole or in part; (vii) any acceptance of a partial performance of any of the obligations of Guarantor (except to the extent of such partial performance); (viii) any transfer of any or all of the Premises or any consent thereto; (ix) any bid or purchase at any sale of any or all of the Premises; (x) any change in the composition of Tenant or any member, partner or shareholder of Tenant, including, without limitation, the withdrawal or removal of Guarantor from any current or future position of direct or indirect ownership, management or control of Tenant or such member, partner or shareholder; (xi) any failure to file or record the WRY Ground Lease, the WRY Construction Agreement, the WRY Declaration of Easements, any other Project Document or any documents related thereto or any failure to take or perfect any security interest intended to be provided thereby; and (xii) any breach or inaccuracy of a representation, warranty or covenant made by Tenant, whether express or implied.

(b) Each Guarantor unconditionally waives: (i) any right to require the MTA to terminate the WRY Ground Lease or any other Project Document or to pursue any other remedy whatsoever under the WRY Ground Lease or any other Project Document or otherwise; (ii) any defense arising by reason of any invalidity or unenforceability of the WRY Ground Lease or any other Project Documents or any of the respective provisions thereof; (iii) any defense based upon an election of remedies by the MTA, including, without limitation, any election to proceed by termination of the WRY Ground Lease or repossession of all or any part of the Premises by surrender or otherwise, or exercise of any other remedies of the MTA under the WRY Ground Lease, the WRY Construction Agreement, the WRY Declaration of Easements or any other Project Document; (iv) any defense to the recovery by the MTA against such Guarantor of any deficiency or otherwise to the enforcement of this Guaranty (except as otherwise expressly provided herein); (v) demand, presentment for payment, notice of nonpayment or other default by Tenant, protest, notice of protest and all other notices of any kind, or the lack of any thereof, including, without limiting the generality of the foregoing, notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of the MTA, any endorser or creditor of such Guarantor or any other person whomsoever under this or any other instrument in connection with any obligation or evidence of indebtedness held by the MTA; (vi) any

right or claim of right to cause a marshaling of the assets of such Guarantor; (vii) any duty on the part of the MTA to disclose to Guarantor any facts the MTA may now or hereafter know about the Premises (or, except to the extent set forth in the WRY Declaration of Easements, the Yards Parcel), regardless of whether the MTA has reason to believe that any such facts materially increase the risk beyond that which such Guarantor intends to assume or has reason to believe that such facts are unknown to such Guarantor or has a reasonable opportunity to communicate such facts to such Guarantor, it being understood and agreed that such Guarantor is fully responsible for being and keeping informed of the condition of the Premises and of any and all circumstances bearing on the risk that liability may be incurred by such Guarantor hereunder; (viii) any lack of notice of disposition or of manner of disposition of any collateral for the WRY Ground Lease or any other Project Document or the Guaranteed Obligations; (ix) any deficiencies in the collateral for the WRY Ground Lease or any other Project Document or the Guaranteed Obligations or any deficiency in the ability of the MTA to collect or to obtain performance from any Persons now or hereafter liable for the payment and performance of any of the Guaranteed Obligations; and (x) any other circumstance which might otherwise constitute a defense available to a guaranty or surety, or a discharge of any of the Guaranteed Obligations. Without limiting the generality of the foregoing, each Guarantor hereby waives all rights and defenses arising out of an election of remedies by the MTA and all rights of subrogation or contribution, whether arising by contract or operation of law or otherwise by reason of any payment by a Guarantor pursuant to the provisions hereof for so long as the obligations under the WRY Ground Lease or any other Project Documents remain outstanding (to the extent such subrogation or contribution adversely affects the exercise of the MTA's rights hereunder). Furthermore, neither Guarantor shall have any right of recourse against the MTA or any of MTA's affiliates or subsidiaries, or any other Indemnitee, by reason of any action that any Indemnitee may take or omit to take under the provisions of this Guaranty, the WRY Ground Lease or, if applicable, any other Project Document, except as set forth in such Project Document or to the extent such action or omission constitutes gross negligence or willful misconduct.

SECTION 10. Substitution of Collateral. The Guarantors shall have the right to substitute, in lieu of its guaranty hereunder, cash collateral or a letter of credit for the Guaranteed Obligations hereunder, in an amount equal to the sum of (i) all Guaranteed Default Payments that have not theretofore been paid by Tenant, plus (ii) an amount for the Enforcement Costs reasonably acceptable to the MTA (collectively, the "Substitute Collateral"). Any Substitute Collateral provided in cash shall be deposited in escrow, with an escrow agent reasonably acceptable to the MTA and in accordance with the terms of an escrow agreement reasonably acceptable to the MTA. Any letter of credit delivered to the MTA as Substitute Collateral shall be from an issuer, and on terms and conditions, reasonably acceptable to the MTA. Upon delivery to the MTA of the Substitute Collateral in accordance with the provisions of this Section 10, the Guarantors shall be released and discharged from all liability under this Guaranty, and the MTA shall hold and look solely to the Substitute Collateral as security for the Guaranteed Obligations, all of which shall remain in full force and effect until released pursuant to Section 11 or 15 hereof. Notwithstanding the foregoing, the Guarantors shall remain

obligated to increase the amount of the Substitute Collateral upon demand of the MTA if at any time an increase in Enforcement Costs shall cause the sum described in the first sentence of this Section 10 to exceed the amount of Substitute Collateral deposited on account thereof. Upon request of Tenant or Guarantor, the Substitute Collateral deposited shall be decreased (and refunded monthly on a dollar-for-dollar basis) as Guaranteed Obligations are paid by Tenant. Promptly after the release of the Guarantors in accordance with this Section 10, the MTA shall deliver a written confirmation of such release in form and substance reasonably satisfactory to the Guarantors and the MTA.

SECTION 11. Release of Guaranty. Subject to the provisions of Section 24 hereof regarding reinstatement of Guaranteed Obligations, the Guarantors shall be released and discharged from all liability for the Guaranteed Obligations under this Guaranty, and any remaining Substitute Collateral, if any, shall be refunded or returned to the Guarantors or the applicable Guarantor, upon (i) the Commencement of Construction of LIRR Roof and Facilities (including the execution and delivery to the MTA of a Roof Segment Completion Guaranty (as defined in the WRY Construction Agreement)) for the first Associated Portion of the LIRR Roof and Facilities) and (ii) the payment in full of all reasonable costs and expenses incurred by the MTA (if any) with respect to the enforcement of the Guaranteed Obligations, including enforcement undertaken directly against Tenant pursuant to the WRY Ground Lease with respect to obligations which are the subject of this Guaranty (where such enforcement is brought either against the Guarantors or in a combined action against the Guarantors and Tenant). Upon satisfaction of the Guaranteed Obligations and the conditions set forth in this Section 11 hereof, at the request of the Guarantors, the MTA will deliver a written instrument evidencing the termination of this Guaranty and the release of the Guarantors of all obligations hereunder in form and substance reasonably satisfactory to the MTA and the Guarantors, which release shall be subject to reinstatement as provided in Section 24 hereof. It is acknowledged and agreed by the MTA that if, as and when the MTA receives a guaranty of the "Guaranteed Default Payments" (as such term is defined in any Terra Firma Severed Parcel Lease) in substantially the same form as this Guaranty, then the Financial Obligations guaranteed by this Guaranty shall be automatically reduced to the Balance Lease's Severed Parcel Allocable Share of the Guaranteed Default Payments as set forth in Section 31.05(c) of the WRY Ground Lease.

SECTION 12. Subordination.

(a) All indebtedness, liabilities and obligations of Tenant to the Guarantors (including, without limitation, any obligation of Tenant arising out of any payment or performance by the Guarantors hereunder) and all indebtedness, liabilities and obligations of any member, partner or shareholder of Tenant to the Guarantors ("Subordinated Debt"), whether secured or unsecured and whether or not evidenced by any instrument, now existing or subsequently created or incurred, are and shall be subordinate and junior in right of payment to the Guaranteed Obligations.

(b) If any payment or distribution or security, or any proceeds of any of the foregoing, (i) is collected or received by a Guarantor in respect of any Subordinated Debt of Tenant, and (ii) is not expressly permitted under the provisions of

this Guaranty, then such Guarantor shall immediately turn over such payment, distribution, security or proceeds to the MTA in the form received, and, until so turned over, the same shall be deemed to be held in trust by such Guarantor as the property of the MTA.

(c) All of the MTA's rights under this Guaranty shall be subject to the cure rights, if any, of any Leasehold Mortgagee of the WRY Ground Lease.

SECTION 13. Recourse.

(a) The Guarantors' liability hereunder shall be fully recourse and shall not be subject to, limited by or affected in any way by any non-recourse provisions contained in the WRY Ground Lease, the WRY Construction Agreement, the WRY Declaration of Easements or any other Project Document. Each Guarantor hereby acknowledges that it is the intent of the MTA to create separate obligations of the Guarantors hereunder which can be enforced against the Guarantors without regard to the existence of any other Project Document or the rights, liens or security interests created therein. Each Guarantor agrees that the agreements made and given in this Guaranty are separate from, independent of and in addition to the undertakings under any of the Other Guaranties now existing or hereafter entered into. Each Guarantor agrees that a separate action may be brought to enforce the provisions of this Guaranty which shall in no way be deemed to be an action on any of the Other Guaranties, the WRY Ground Lease or any other Project Document.

(b) Any provision of this Guaranty to the contrary notwithstanding, all obligations under this Guaranty are joint and several to each Guarantor and any other party which hereafter guarantees any portion of the Guaranteed Obligations.

(c) The MTA shall not be required (and each Guarantor hereby waives any rights that it may have to require the MTA), in order to enforce the obligations of the Guarantors hereunder, first to (i) institute any suit or exhaust any remedies against Tenant or any other Person liable under the WRY Ground Lease or any other Project Documents, (ii) enforce the MTA's rights against any other guarantors of the Guaranteed Obligations, (iii) enforce the MTA's rights against any collateral which shall ever have been given to secure the WRY Ground Lease or any other Project Document, (iv) join Tenant or any other Person liable on the Guaranteed Obligations in any action seeking to enforce this Guaranty, or (v) resort to any other means of obtaining payment of the Guaranteed Obligations. The MTA shall not be required to mitigate damages or take any other action to reduce, collect or enforce the Guaranteed Obligations.

(d) Neither Guarantor shall have any right of recourse against the MTA by reason of any enforcement action that the MTA may take or omit to take under the provisions of this Guaranty or any of the Project Documents in connection with the enforcement of the Guaranteed Obligations in compliance with law and with such Project Documents.

(e) Notwithstanding anything to the contrary contained in this Guaranty, no direct or indirect partner, member or shareholder of a Guarantor (or any officer, director, principal, agent, member, manager, personal representative, trustee or employee of any such direct or indirect partner, member or shareholder) shall be personally liable for the performance of the Guaranteed Obligations or any other obligations hereunder. Nothing in this clause shall derogate from the rights of the MTA in respect of any separate undertakings or agreements given in connection herewith.

SECTION 14. Independent Actions. Each Guarantor waives any right to require that any action be brought by the MTA against any other Person, or that any other remedy under the WRY Ground Lease or any other Project Document be exercised. The MTA may, at its option, proceed against any Guarantor in the first instance to collect monies when due or obtain performance under this Guaranty, without first resorting to the WRY Ground Lease or any other Project Document or any remedies thereunder; provided, however, that in no event shall the MTA seek to cause the Guarantors to perform its obligations hereunder during any period that any Leasehold Mortgagee may perform the corresponding obligation pursuant to the WRY Ground Lease.

SECTION 15. Assignment; Substitution of Guarantor.

(a) Neither Guarantor may assign any of its rights and obligations under this Guaranty except for an assignment of all of such rights and obligations (i) to a Guarantor which satisfies the requirements of Section 4 hereof, or (ii) with the prior written consent of the MTA, which shall not be unreasonably withheld, conditioned or delayed so long as the proposed substitute Guarantor is reasonably satisfactory to the MTA; provided, that no assignment of a Guarantor's rights and obligations under this Guaranty shall be permitted unless the MTA shall first have had the opportunity to inspect financial information with respect to such assignee evidencing such assignee's satisfaction of the Minimum Liquid Assets Requirement and the Minimum Net Worth Requirement hereunder (including, in the case of clause (i) of this sentence, the documents and information provided in Section 4(h) hereof) (an assignee described in clause (i) or (ii), a "Permitted Assignee"; and the assigning Guarantor, a "Former Guarantor"). Any Permitted Assignee shall execute such documents and instruments as shall be necessary to assume all obligations under this Guaranty and related agreements whether accruing prior to (with respect to reinstatement) or after the effective date of the assignment, and upon any such assignment and assumption by the assignee, the applicable Former Guarantor shall be released from any liability accruing under this Guaranty following the effective date of such assignment. Promptly after the release of any Former Guarantor in accordance with this Section 15(a), the MTA shall deliver a written confirmation of such release in form and substance reasonably satisfactory to Former Guarantor and the MTA.

(b) Subject to the provisions of the Project Documents, each Guarantor acknowledges and agrees that MTA shall have the right, upon notice to the Guarantors but without the Guarantors' consent, to assign, transfer, sell, negotiate, pledge, grant or otherwise hypothecate all or any portion of its or their rights in and to the Premises, the Yards Parcel, the WRY Ground Lease, this Guaranty and/or any other

Project Documents to any permitted transferee of its or their interests under the Project Documents and no such assignment, transfer, sale, negotiation, pledge, grant or hypothecation, and/or transfer of MTA's rights hereunder, shall in any way impair or affect, or constitute a defense to, Guarantors' liability under this Guaranty.

(c) In the event that a Guarantor requests confirmation from the MTA that a proposed assignment satisfies the requirements contained in Section 15(a) hereof, the MTA shall notify such Guarantor of any reasonable objection that the MTA has thereto (specifying any such objection in reasonable detail) within thirty (30) days after delivery of such request and any other documents or information reasonably requested by the MTA in connection with their review of such request. If the MTA shall fail to notify such Guarantor that such requirements are not satisfied within such thirty (30) day period, Guarantor may provide to the MTA a written notice, which notice shall include in capital letters on the first page thereof: "THIS NOTICE IS BEING GIVEN UNDER SECTION 15(c) OF THE DEFAULT PAYMENTS GUARANTY (WESTERN RAIL YARD SECTION OF THE JOHN D. CAEMMERER WEST SIDE YARD). YOUR FAILURE TO RESPOND WITHIN TEN BUSINESS DAYS WILL RESULT IN YOUR DEEMED CONFIRMATION THAT A PROPOSED ASSIGNMENT OF THE GUARANTY SATISFIES THE REQUIREMENTS OF SECTION 15(a) THEREOF" (such notice, the "Section 15(a) Confirmation Notice"). In the event that the MTA does not issue a disapproval (setting forth the reasons therefor) within ten (10) Business Days after such Guarantor provides the MTA with such Section 15(a) Confirmation Notice, the MTA shall be deemed to have confirmed that the conditions to the proposed assignment contained in Section 15(a) hereof have been satisfied.

SECTION 16. Successors and Assigns Included in Parties. Whenever in this Guaranty any Guarantor, MTA or Tenant is named or referred to, the heirs, legal representatives, successors and permitted assigns of such party shall be included and all covenants and agreements contained in this Guaranty by or on behalf of such Guarantor shall bind and inure to the benefit of their respective heirs, legal representatives, successors and permitted assigns, whether so expressed or not.

SECTION 17. Number and Gender. Whenever the singular or plural number, or the masculine, feminine or neuter gender is used herein, it shall equally include the other.

SECTION 18. Computation of Time Periods. In this Guaranty, with respect to the computation of periods of time from a specified date to a later specified date, the word "from" means both "from and including" and the words "to" and "until" both mean "to but excluding".

SECTION 19. Notices.

(a) Any request, notice, report, demand, approval or other communication permitted or required by this Guaranty to be given or furnished shall be in writing and shall be deemed given or furnished when addressed to the party intended to receive the same, at the address of such party as set forth below, (i) when delivered by

prepaid overnight nationwide commercial courier service, one (1) Business Day (determined with reference to the location of the recipient) after the date of delivery to such courier service, (ii) when personally delivered, if delivered on a Business Day in the place of receipt during normal business hours (and otherwise on the next occurring Business Day in such place of receipt), or (iii) when delivered by certified mail (postage prepaid and return receipt requested), three (3) Business Days (determined with reference to the location of the recipient) after the date of mailing.

(b) Any party may change the entity, address or the attention party to which any such request, notice, report, demand or other communication is to be given, by furnishing written notice of such change to the other parties in the manner specified above. Rejection or refusal to accept, or inability to deliver because of changed address or because no notice of changed address was given, shall be deemed to be receipt of any such notice.

(c) Notices shall be sent to the following addresses:

if to the MTA:

Metropolitan Transportation Authority
347 Madison Avenue
New York, New York 10017
Attn: Director of Real Estate

With a copy to:

Metropolitan Transportation Authority
347 Madison Avenue
New York, New York 10017
Attn: General Counsel

and to:

Paul, Weiss, Rifkind Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019
Attn: Meredith J. Kane, Esq.

if to Tenant, the address(es) set forth in the WRY Ground Lease;

if to Guarantors: to the parties listed as Guarantor Default Notice Parties listed on Exhibit A annexed hereto.

The attorney for any party may send notices on that party's behalf.

SECTION 20. Governing Law. This Guaranty shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed solely within such State.

SECTION 21. Consent to Jurisdiction; Waiver of Jury Trial. Each Guarantor hereby irrevocably and unconditionally (i) agrees that any suit, action or other legal proceeding arising out of or relating to this Guaranty may be brought in the courts of record of the State of New York in New York County or the courts of the United States, Southern District of New York; (ii) consents to, and waives any and all personal rights under the laws of any state to object to, the jurisdiction of each such court in any such suit, action or proceeding; and (iii) waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts. In furtherance of such agreement, each Guarantor hereby agrees, upon request of the MTA, to discontinue (or allow to be discontinued) any such suit, action or proceeding pending in any other jurisdiction or court. Nothing contained herein, however, shall prevent the MTA from bringing any suit, action or proceeding or exercising any rights against any security or against a Guarantor, or against any property of a Guarantor, in any other state or court. Initiating such suit, action or proceeding or taking such action in any state shall in no event constitute a waiver of the agreement contained herein that the laws of the State of New York shall govern the rights and obligations of a Guarantor, and the MTA hereunder or thereunder or the submission herein or therein by Guarantor to personal jurisdiction within the State of New York. Each Guarantor hereby irrevocably consents to the service of any and all process in any such suit, action or proceeding by service of copies of such process to such Guarantor at its address provided herein. Nothing in this Section 21, however, shall affect the right of the MTA to serve legal process in any other manner permitted by law. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH GUARANTOR HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS GUARANTY OR ANY CONDUCT, ACT OR OMISSION OF SUCH GUARANTOR, OR ANY OF ITS RESPECTIVE DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, ATTORNEYS OR AFFILIATES, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. The waivers contained in this Section 21 are given knowingly and voluntarily by each Guarantor, as the case may be, and, with respect to the waiver of jury trial, are intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue. The MTA is hereby authorized to file a copy of this Section 21 in any proceeding as conclusive evidence of these waivers by the Guarantors.

SECTION 22. Invalid Provisions to Affect No Others. If fulfillment of any provision hereof at the time performance of such provision shall be due, shall involve transcending the limit of validity presently prescribed by law, with regard to obligations of like character and amount, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or provision herein contained operates or would prospectively operate to invalidate this Guaranty in whole or in part, then such clause or provision only shall be held for naught, as though not herein contained, and the remainder of this Guaranty shall remain operative and in full force and effect to the fullest extent permitted by law.

SECTION 23. No Waiver. No failure or delay on the part of the MTA to exercise any power, right or privilege under this Guaranty shall impair or be construed to be a waiver of any such power, right or privilege, or be construed to be a waiver of any default or an acquiescence therein, nor shall any single or partial exercise of such power, right or privilege preclude any other or further exercise thereof or of any other right, power or privilege.

SECTION 24. Reinstatement of Guaranteed Obligations. If at any time all or any part of any payment made by Tenant or any Guarantor or received by the MTA from Tenant or any Guarantor under or with respect to the Guaranteed Obligations and/or this Guaranty is or may be voided in bankruptcy proceedings as a preference or for any other reason, or shall at any time be required to be restored or returned by the MTA upon the insolvency, bankruptcy or reorganization of Tenant or a Guarantor, or for any other reason, then the obligations of the Guarantors hereunder shall, to the extent of the payment voided, rescinded or returned, be deemed to be reinstated and to have continued in existence, notwithstanding such previous payment made by Tenant or any Guarantor or receipt of payment by the MTA, and the obligations of the Guarantors hereunder shall continue to be effective or be reinstated, as the case may be, as to such payment, all as though such previous payment by Tenant or a Guarantor had never been made.

SECTION 25. Time of the Essence. Time is of the essence with respect to the performance by each of the Guarantors of its obligations hereunder.

SECTION 26. Successive Actions. Separate and successive actions may be brought hereunder to enforce any of the provisions hereof at any time and from time to time. No action hereunder shall preclude any subsequent action, and each Guarantor hereby waives and covenants not to assert any defense in the nature of splitting of causes of action or merger of judgments.

SECTION 27. Headings. The headings of the Sections and subsections of this Guaranty are for the convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

SECTION 28. Waiver. Each Guarantor hereby covenants and agrees that upon the commencement of a voluntary or involuntary bankruptcy proceeding by or against Tenant, it shall not seek a supplemental stay pursuant to the United States Bankruptcy Code or any other debtor relief law (whether statutory, common law, case law, or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the ability of the MTA to enforce their rights against Guarantors by virtue of this Guaranty or otherwise.

SECTION 29. Amendments. Neither this Guaranty nor any provision hereof may be changed, waived, discharged or terminated orally, but only by instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

SECTION 30. Counterparts. This Guaranty may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed an original. Said counterparts shall constitute but one and the same instrument and shall be binding upon each party hereto as fully and completely as if all had signed but one instrument. The exchange of copies of this Guaranty, any signature pages required hereunder or any other documents required or contemplated hereunder by facsimile or via email transmission in Portable Document Format (.pdf) shall constitute effective execution and delivery of same as to the parties thereto and may be used in lieu of the original documents for all purposes.

SECTION 31. Entire Agreement. This Guaranty embodies the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings, whether oral or written, relating to the subject matter hereof, except as specifically agreed to the contrary.

SECTION 32. Remedies of Guarantor. In the event that a claim or adjudication is made that the MTA has acted unreasonably or has unreasonably delayed acting in any case where by law or under this Guaranty the MTA has an obligation to act reasonably or promptly, the MTA shall not be liable for any monetary damages, and each Guarantor's remedies shall be limited to injunctive relief or declaratory judgment.

SECTION 33. Approval Standard. In any circumstance where this Guaranty specifies that the approval or consent of the MTA must be given, or that any matter or circumstance must be satisfactory or acceptable to the MTA, then unless expressly set forth to the contrary, or unless the MTA expressly agree hereunder to be reasonable, such approval or consent or such determination of satisfaction or acceptability, shall be within the sole and absolute discretion of the MTA.

SECTION 34. Statute of Limitations. Each Guarantor hereby expressly waives and releases, to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment or performance of its obligations hereunder.

SECTION 35. Confidentiality. The MTA acknowledges that Guarantors have and will be hereafter providing confidential information, including trade secrets and proprietary information, the disclosure of which may be harmful to any or each Guarantor's competitive position. Accordingly, the MTA agrees that, if disclosure requests are received by the MTA pursuant to the Freedom of Information Law or any judicial or legislative subpoena, requesting any financial information concerning a Guarantor or its respective principals, or any trade secret or proprietary information provided to the MTA by such Guarantor, the MTA shall give such Guarantor's prior notice and the opportunity to object to such Freedom of Information Law request or subpoena (it being understood and agreed that the MTA shall have the right to make disclosures believed in good faith to be required under the Freedom of Information Law or other applicable law notwithstanding any objection of such Guarantor. Each Guarantor understands and acknowledges that the MTA is a public authority of the State of New York and is subject to review and oversight by legislative and other regulatory bodies, and that the MTA is required by law and may be compelled or requested by such oversight bodies to make public disclosure of information regarding the WRY Project

and the terms of the disposition of the Premises, and shall be fully entitled to do so without objection from Guarantors, except in the limited circumstances described in this Section 35.

SECTION 36. Default. No Guarantor shall be deemed to be in default hereunder on account of any failure to perform its obligations hereunder (other than its obligations under Section 1(b) hereof) unless the MTA delivers written notice of such failure to such Guarantor in accordance with Section 19 hereof, together with a clear and conspicuous statement that the MTA intends to exercise its rights hereunder by reason of such default and within thirty (30) days after the giving of such notice, (a) such Guarantor does not cure said default, or (b) in the case of a default by such Guarantor to satisfy the Minimum Liquid Assets Requirement and/or the Minimum Net Worth Requirement applicable to such Guarantor, either (x) such Guarantor does not satisfy the Minimum Liquid Assets Requirement and/or the Minimum Net Worth Requirement, as applicable, (ii) deliver Substitute Collateral in accordance with Section 10 hereof or (iii) assign this Guaranty in accordance with Section 15 hereof, or (y) the other Guarantor does not cure such default within such thirty (30) day period by delivering to the MTA a letter of credit, pledge of assets or other substitute collateral in the amount of the defaulting Guarantor's deficiency and otherwise in form and substance reasonably acceptable to the MTA, or increasing its Minimum Liquid Assets Requirement or Minimum Net Worth Requirement, as applicable, by the amount of the defaulting Guarantor's deficiency, subject to the reasonable satisfaction of the MTA.

SECTION 37. Estoppel.

(a) At any time, and from time to time, upon not less than ten (10) days' notice by the Guarantors, the MTA shall execute, acknowledge and deliver to the Guarantors and to any other party specified by the Guarantors a statement certifying that this Guaranty is unmodified and in full force and effect (or, if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications), and stating whether or not, to the best knowledge of the MTA, the Guarantors are in default in performance of any covenant, agreement or condition contained in this Guaranty, and, if so, specifying each such default of which the MTA may have knowledge, and certifying as to any other matter with respect to this Guaranty as the Guarantors or such other addressee may reasonably request.

(b) At any time, and from time to time, upon not less than ten (10) days' notice by the MTA, the Guarantors shall execute, acknowledge and deliver to the MTA and to any other party specified by the MTA a statement certifying that this Guaranty is unmodified and in full force and effect (or, if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications), and stating whether or not to the best knowledge of each Guarantor, any Guarantor is in default in performance of any covenant, agreement or condition contained in this Guaranty, and, if so, specifying each such default of which such Guarantor may have knowledge, and certifying as to any other matter with respect to this Guaranty as the MTA or such other addressee may reasonably request.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered as of the date first above written.

The Related Companies, L.P., a
New York limited partnership

By: The Related Realty Group, Inc.,
a Delaware corporation, its general
partner

By: _____
Name: Michael J. Brenner
Title: Executive Vice President

[*Signatures continue*]

OP USA DEBT HOLDINGS LIMITED PARTNERSHIP

By: OP USA Debt GP Inc.,
its general partner

By:_____
Name: Kieran Murray
Title: Authorized Signatory

By:_____
Name: Gawain SE Smart
Title: Authorized Signatory

[*Signatures continue*]

For purposes of agreeing to Sections 10, 11, 15(a), 35 and 37 hereof:

METROPOLITAN TRANSPORTATION AUTHORITY

By: _____
Name:
Title: Jeffrey B. Rosen
Director, Real Estate

EXHIBIT A

Guarantor Default Notice Parties

OMERS Administration Corporation
One University Avenue, Suite 400
Toronto, Ontario M5J 2P1,Canada
Attn: Chief Financial Officer

OMERS Administration Corporation
One University Avenue, Suite 400
Toronto, Ontario M5J 2P1,Canada
Attn: General Counsel

The Related Companies, L.P.
60 Columbus Circle, 19th Floor
New York, New York 10023
Attn: Jeff T. Blau

The Related Companies, L.P.
60 Columbus Circle, 19th Floor
New York, New York 10023
Attn: L. Jay Cross

The Related Companies, L.P.
60 Columbus Circle, 19th Floor
New York, New York 10023
Attn: Richard O'Toole, Esq.

Fried Frank Harris Shriver & Jacobson LLP
One New York Plaza
New York, New York 10004
Attn: Stephen Lefkowitz, Esq.

OP USA Debt Holdings Limited Partnership
c/o Oxford Properties Group
Royal Bank Plaza, North Tower
200 Bay Street, Suite 900
Toronto, Ontario M5J 2J2 Canada
Attn: Chief Legal Officer

Oxford Hudson Yards LLC
c/o Oxford Properties Group
320 Park Avenue, 7th Floor
New York, New York 10022
Attn: Dean J. Shapiro

Schulte Roth & Zabel LLP
919 Third Avenue
New York, New York 10022
Attn: Stuart D. Freedman, Esq.

EXHIBIT H
PILOST AGREEMENT

(Follows immediately)

PILOST AGREEMENT

THIS PILOST AGREEMENT (this "Agreement") is made as of the 10 day of April, 2014, by and between **METROPOLITAN TRANSPORTATION AUTHORITY**, a body corporate and politic constituting a public benefit corporation of the State of New York, having an office at 347 Madison Avenue, New York, New York 10017-3739, and any successor entities thereto ("MTA") and **WRY TENANT LLC (f/k/a RG WRY LLC)**, a Delaware limited liability company having an office c/o The Related Companies, L.P., 60 Columbus Circle, New York, NY 10023 ("Tenant").

WITNESSETH:

WHEREAS, MTA owns the land situated between West 30th Street, West 33rd Street, 10th Avenue and 11th Avenue and between West 30th Street, West 33rd Street, 11th Avenue and 12th Avenue in Manhattan, also known as Block 702, Lots 4, 10, 110, and 9110 and [Block 676], Lots [8007, 3 and 7] (collectively, the "WSY Parcel"); and MTA owns, and The Long Island Railroad Company, a body corporate and politic constituting a public benefit corporation of the State of New York, having an office at Jamaica Station, Jamaica, New York 11435 ("LIRR") operates, the John D. Caemmerer West Side Yard (the "WSY"), a railroad storage and maintenance yard, on a portion of the WSY Parcel;

WHEREAS, for purposes of facilitating development of the WSY Parcel, MTA has divided the WSY Parcel into two (2) portions. One portion consists of the portion of the WSY Parcel situated between West 30th Street, West 33rd Street, 11th Avenue and 12th Avenue in Manhattan, also known as Block 676, Lot [8007, 3 and 7] (such portion, the "Western Rail Yard" or "WRY"). The other portion consists of the portion of the WSY situated between West 30th Street, West 33rd Street, 10th Avenue and 11th Avenue in Manhattan, also known as Block 702, Lots 4, 10, 110, and 9110 (such portion, the "Eastern Rail Yard" or "ERY");

WHEREAS, simultaneously herewith, the parties have entered into that certain Agreement of Lease (Western Rail Yard Section of the John D. Caemmerer West Side Yard) (as the same may hereafter be amended, modified, supplemented, the "WRY Ground Lease") pursuant to which MTA has demised a leasehold interest in the Premises (as defined therein) to Tenant, for a term of ninety-nine (99) years, and which, inter alia, provides for (a) the future subdivision of the Premises into separate tax lots (each, a "Severed Parcel" and collectively, the "Severed Parcels"), on each of which one or more Buildings and certain other Facility Airspace Improvements (as such term is defined in the WRY Ground Lease) will be constructed, and a "Balance Parcel", comprising the balance of the Premises at any time, and (b) a corresponding severance of the WRY Ground Lease into a "Severed Parcel Lease" for each such Severed Parcel and a "Balance Lease" for the Balance Parcel.

WHEREAS, MTA and Tenant wish to enter into this Agreement regarding the payment by Tenant to MTA of PILOST (as hereinafter defined) on construction materials

and other tangible personal property to be incorporated into the Facility Airspace Improvements constructed on the Premises.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the execution by the parties hereto of the other Project Documents (as such term is defined in the WRY Ground Lease) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MTA and Tenant hereby agree as follows:

1. Definitions.

(a) Capitalized terms not defined in this Agreement shall have the meaning ascribed to such terms in the WRY Ground Lease.

(b) "Certified Public Accountant" shall mean any independent certified public accounting firm of recognized national standing consented to in advance by MTA, which consent shall not be unreasonably withheld and which consent shall be deemed given if MTA has not disapproved such firm within twenty (20) days of receipt of Tenant's request therefor, provided that MTA's consent shall be deemed given only if Tenant's notice to MTA requesting such consent shall have informed MTA, in boldface type, that failure to respond to such request within such time frame shall be deemed to be a consent by MTA.

(c) "PILOST" shall mean payments in lieu of sales and compensating use taxes on the purchase of construction materials and other tangible personal property to be incorporated into the Facility Airspace Improvements constructed on the Premises. The terms "PILOST" and "payments in respect of Sales Tax Savings" shall have the same meaning.

(d) "Qualified Certifying Party" shall mean with respect to any Person that is a partnership or limited liability company, a member or general partner thereof, or in the case of a Person or general partner that is a corporation, the President, Vice President or Chief Financial Officer or Treasurer of such Person or general partner.

(e) "Sales Tax Savings" shall mean an amount equal to the aggregate amount of savings actually realized by Tenant as a result of MTA's ownership of the Premises (or the ownership of any Person succeeding to MTA's interest in the Premises to the extent such Person is entitled to such exemption) on account of any sales and compensating use taxes in connection with the purchase of construction materials and other tangible personal property to be incorporated in the Facility Airspace Improvements constructed on the Premises (for the avoidance of doubt, excluding any FAI Preparation Work (as such term is defined in the WRY Construction Agreement) to the extent that PILOST on such FAI Preparation Work is due and payable under the WRY Construction Agreement) notwithstanding any sales and use tax abatement that may otherwise have been available with respect to such tangible personal property, including, but not limited to, any sales and use tax abatement which may be made available under the UTEP. Sales Tax Savings

shall be calculated by applying the exemption to all Facility Airspace Improvements constructed on the Premises.

(f) "Verified PILOST Statement" shall mean a statement in reasonable detail and in a reasonable form prescribed by MTA, prepared in a consistent manner and certified as being true, correct and complete by a Qualified Certifying Party or the Certified Public Accountants, unless such statement pertains to an annual (or longer) period, in which case it shall be so certified by both a Qualifying Certifying Party and the Certified Public Accountants.

2. Tenant PILOST Payments. In accordance with the terms of this Agreement, Tenant shall pay PILOST to MTA or as MTA shall direct, at the times, in the manner and in the amounts determined pursuant to this Agreement.

3. Scope of PILOST Exemption. MTA shall cooperate with, and make available to, Tenant in connection with the purchase of construction materials and other tangible personal property to be incorporated into the WRY Project in connection with the Facility Airspace Improvements to be constructed by Tenant or its contractors and their subcontractors on the Premises, the exemption from sales and compensating use taxes arising as a result of MTA's ownership of the Premises (or the ownership of any Person succeeding to MTA's interest of the Premises to the extent such Person is entitled to such exemption). In connection therewith, and as a condition to Tenant's obligations under this Agreement, MTA shall provide to Tenant, prior to commencement of construction any of the Facility Airspace Improvements on the Premises, an appropriate letter setting forth such exemption (and shall reconfirm or replace such letter upon request by Tenant from time to time). Tenant acknowledges that regardless of whether there may be other exemptions from sales, compensating use or other similar taxes available to Tenant in addition to the Sales Tax Savings, Tenant agrees that no claim shall be made by Tenant or its contractors or their subcontractors for any such additional or other exemption if, as and when the Sales Tax Savings are available to Tenant.

4. Payment of Estimated Sales Tax Savings. Tenant shall make payments in respect of Sales Tax Savings as follows: following the issuance of a Facility Airspace Improvements Release to Proceed with respect to any Facility Airspace Improvements constructed on the Premises, PILOST shall be paid by Tenant to MTA quarterly in arrears fifteen (15) days after the end of each calendar quarter (i.e., April 15, July 15, October 15 and January 15) for each such calendar year during which such Facility Airspace Improvements are being constructed, based on the projected amounts of Sales Tax Savings for each such calendar quarter, as set forth in the Estimated Sales Tax Statements (as hereinafter defined) prepared pursuant to Section 5 of this Agreement. If Tenant fails to pay any PILOST when due, such amount shall bear interest at the Involuntary Rate from the date due until the date paid in full.

5. Annual Sales Tax Savings Estimate. Concurrently with the delivery of an FAI Construction Commencement Notice, and on January 1 of each subsequent calendar year during which the construction of Facility Airspace Improvements shall continue on the Premises, Tenant shall deliver to MTA a statement in detail and form reasonably

acceptable to MTA, prepared in a consistent manner and showing the amount of such Facility Airspace Improvements projected to be constructed during each quarterly period of such calendar year and the amount of Sales Tax Savings estimated to be realized by Tenant in respect thereof (the "Estimated Sales Tax Statement"), which estimates shall be based on the hard costs for such quarterly period shown in Tenant's then-current estimate of such hard costs. The Estimated Sales Tax Statement shall be certified by a Qualified Certifying Party of Tenant as being Tenant's good faith estimate of such amounts.

6. **Verified PILOST Statements.** Tenant shall deliver to MTA a Verified PILOST Statement in respect of the Facility Airspace Improvements constructed on the Premises, no later than one hundred twenty (120) days after the expiration of each calendar year during which the construction of such Facility Airspace Improvements, unless any such work is completed (or this Agreement terminates) within such calendar year, in which case the Verified PILOST Statement in respect thereof shall be delivered to MTA within one hundred twenty (120) days after completion thereof (or the termination of this Agreement). Each such Verified PILOST Statement shall show in detail the amount of such Facility Airspace Improvements completed by or on behalf of Tenant, as the case may be, during the previous calendar year (or the same calendar year, if applicable) and the amount of any Sales Tax Savings actually realized therefrom. Each Verified PILOST Statement for such Facility Airspace Improvements shall be prepared by Tenant. Concurrently with the delivery of any Verified PILOST Statement for such Facility Airspace Improvements, Tenant shall make a payment to MTA in an amount equal to the difference between (i) the Sales Tax Savings, as computed from such Verified PILOST Statement, payable for said calendar year, and (ii) any payments of Sales Tax Savings as shall have previously been made for said calendar year pursuant to Section 4 (the "PILOST Reconciliation Payment"). In the event that such PILOST Reconciliation Payment exceeds ten percent (10%) of the total Sales Tax Savings payable in respect of such calendar year, the amount thereof in excess of ten percent (10%) of total Sales Tax Savings shall include interest at the Involuntary Rate, calculated from the date that such amounts should have been paid to MTA under Section 4 based on such actual expenditures through the date payment thereof has been received by MTA. If the total of the payments of Sales Tax Savings previously made pursuant to Section 4 shall exceed the amount of Sales Tax Savings which is payable for such calendar year, based upon the Verified PILOST Statements delivered pursuant to this Section 6, the amount of such excess shall be applied in reduction of the next ensuing installment or installments of Sales Tax Savings (or if no further Sales Tax Savings are being paid, MTA shall reimburse Tenant for any such amount within thirty (30) days).

7. **Notification of Tax Due.** Tenant shall immediately notify MTA of (i) any proceeding or other investigation to challenge any Sales Tax Savings or (ii) a determination by the appropriate taxing authority that any sales or compensating use taxes with respect to a transaction as to which amounts have been paid as Sales Tax Savings are payable by Tenant (the amount determined by such taxing authority with respect to such transaction to be payable by Tenant, but not greater than the amount of the Sales Tax Savings for such transaction, is herein referred to as the "Duplicate Tax Payment"). Within thirty (30) days after Tenant sends to MTA a written notification that any such determination by the appropriate taxing authority is final (a "Final Tax

Notification") and Tenant, in accordance therewith, has paid to such taxing authority an amount equal to the Duplicate Tax Payment (together with evidence thereof), MTA shall repay to Tenant the amount, if any, of the Duplicate Tax Payment previously paid to MTA by Tenant, together with an amount equal to any interest or penalties imposed on Tenant by the applicable taxing authority for Tenant's non payment, which payment shall be made by MTA prior to the date which is thirty (30) days after the Final Tax Notification. If MTA fails to reimburse Tenant for the Duplicate Tax Payment within the foregoing period, Tenant shall have the right to offset the amount of such Duplicate Tax Payment together with interest at the Involuntary Rate from the date Tenant made such Duplicate Tax Payment until so offset against the next installments of PILOST. If as a result of the expiration or termination of this Agreement other than by reason of Tenant's default, Tenant is unable to recoup the entire Duplicate Tax Payment with interest as aforesaid by offsetting the same against future installments of PILOST, MTA shall reimburse Tenant for any such amount not so recouped less any amounts due and owing from Tenant to MTA hereunder within thirty (30) days of the expiration or termination of this Agreement. Neither MTA nor Tenant shall be obligated to contest the decision of any such authority to deny, revoke or terminate any exemptions or other relief from the payment of such taxes. However, should either party desire to contest any such decision by bringing a lawsuit or otherwise, it may do so at its own risk and expense, and MTA shall have the right to bring such lawsuit in the name of Tenant if Tenant fails to do so within thirty (30) days following written request by MTA. In the event that the contest of such decision is successful and MTA has paid the amount of the Duplicate Tax Payment to Tenant, then Tenant shall, within thirty (30) days after written demand by MTA, reimburse MTA in an amount equal to the applicable Duplicate Tax Payment.

8. Notices. Any notice required to be given shall be in writing and shall be sent by certified mail (postage prepaid and return receipt requested), prepaid overnight courier or hand delivery to the addresses set forth below:

If to MTA, to MTA at its address first set forth above, attention: Director of Real Estate

with a copy at the same time to MTA at the address first set forth above, attention: General Counsel

and to:

Paul Weiss Rifkind Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019
Attention: Meredith J. Kane, Esq.

If to Tenant, to its address first set forth above, attention: Mr. Jeff T. Blau

with a copy at the same time to Tenant at the address first set forth above, attention: Mr. L. Jay Cross

and to:

Fried Frank Harris Shriver & Jacobson LLP
One New York Plaza
New York, New York 10004
Attention: Stephen Lefkowitz, Esq.

Any party may change its address as set forth herein by notice to the others in the manner provided for herein. Notice shall be deemed given (a) when personally delivered with signed delivery receipt obtained, (b) upon receipt when sent by prepaid reputable overnight courier, or (c) three (3) days after the date so mailed if sent postage prepaid by certified mail, return receipt requested.

9. Waiver, Modification, Etc. No covenant, agreement, term or condition of this Agreement to be performed or complied with by either party shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination executed by the other party. No default hereunder by MTA or Tenant shall be waived except by written instrument executed by the other party. No waiver of any default shall constitute a waiver of any other default, and no waiver of any default shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent default thereof.

10. Entire Agreement. This Agreement, together with the other WRY Project Documents contain all the promises, agreements, conditions, understandings, inducements, warranties and representations between the parties relative to the payment by Tenant to MTA of PILOST on construction materials incorporated into the Facility Airspace Improvements on the Premises, and there are no other promises, agreements, conditions, understandings, inducements, warranties, or representations, oral or written, expressed or implied, between them.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

12. Defaults. Tenant shall not be deemed in default of its obligations under this Agreement prior to the delivery of a written notice by MTA specifying the nature of the default and twenty (20) days' opportunity to cure, unless a shorter period is expressly provided in this Agreement, provided that any such notice shall contain a clear and conspicuous statement that MTA intends to exercise its remedies hereunder if such default is not timely cured. MTA shall deliver a copy of any notice of default to any Leasehold Mortgagee at substantially the same time as such notice is delivered to the Tenant, and no such notice shall be deemed given by MTA until a copy thereof has been given to such Leasehold Mortgagee. Each such Leasehold Mortgagee shall have a period of twenty (20) days more than given to Tenant to cure such default.

13. **Termination; Permitted Transfers.** The obligations of the parties hereunder shall continue until one hundred fifty (150) days after the termination or expiration of the WRY Ground Lease in order to cover any PILOST Reconciliation Payments for PILOST incurred prior to the expiration of the WRY Ground Lease. It shall be a condition of any Permitted Transfer that the permitted transferee shall deliver to MTA an agreement, in form and substance reasonably satisfactory to the MTA, whereby the transferee shall assume the obligations of Tenant under this Agreement. From and after the date of such Permitted Transfer, Tenant shall have no further obligations under this Agreement other than any obligations that arose prior to the effective date of such Permitted Transfer. Promptly upon request by Tenant, MTA shall confirm the foregoing by a writing in a form and substance reasonably satisfactory to MTA and Tenant.

14. **Intentionally Omitted.**

15. **Severance**. Upon any Severance of the WRY Ground Lease, the provisions of this Agreement shall only apply with respect to the Facility Airspace Improvements constructed on the Premises, as the definition of such terms has been modified pursuant to the WRY Ground Lease as amended (and further amended) by the applicable Balance Lease Amendment.

16. **Waiver, Modification, Etc.** No covenant, agreement, term or condition of this Agreement to be performed or complied with by either party shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination executed by the other party. No default hereunder by MTA or Tenant shall be waived except by written instrument executed by the other party. No waiver of any default shall constitute a waiver of any other default, and no waiver of any default shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent default thereof.

17. **Severability.** The provisions of this Agreement are severable and if any term, condition or other portion thereof is held invalid, the remaining provisions hereof shall be given full force and effect.

18. **Construction of Agreement.** This Agreement has been jointly drafted by the parties hereto, and no party shall be deemed to be the drafter of this Agreement or any provision hereof for purposes of any statute, case law, or rule of interpretation that would or might cause any provision to be construed against the drafter.

19. **Sole Benefit.** This Agreement is for the sole benefit of MTA, and Tenant, and nothing herein shall convey any rights on any other person.

20. **Unavailability of Sales Tax Savings.** In the event that MTA shall Transfer its interest as fee owner in the Premises to another party, then with respect to any period during the Term in which the Sales Tax Savings may be unavailable due to applicable Legal Requirements, Tenant's obligations under this Agreement shall be terminated.

21. **No Personal Liability**. Notwithstanding anything appearing to the contrary in this Agreement, no direct or indirect partner, member or shareholder of Tenant (or any officer, shareholder, partner, director, agent, member, manager, personal representative, trustee, attorney, consultant or employee of any such direct or indirect partner, member or shareholder) shall be personally liable for the performance of Tenant's obligations under this Agreement or any other Project Document.

22. **Estoppel Certificates.** Whenever requested upon at least twenty-one (21) days' prior written notice from another party (or its designee, including a mortgagee or potential mortgagee), the requested party shall furnish to such requesting party or its designee a written statement, setting forth: (a) whether this Agreement is in full force and effect; (b) the extent to which this Agreement has been modified; (c) the extent to which, to the best of the certifying party's knowledge, any other party is in default under this Agreement, which default remains uncured; and (d) any other information known to the certifying party and reasonably requested by the requesting party. Such statement may be relied upon by the requesting party and said designee.

23. **Counterparts.** This Agreement may be executed in any number of counterparts and by each party on a separate counterpart, each of which when so executed and delivered will be deemed an original and all of which shall together constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or electronic mail transmission shall be effective as delivery of a manually executed counterpart to this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, MTA and Tenant have executed this Agreement as of the date first above written.

METROPOLITAN TRANSPORTATION AUTHORITY

By:_____

Name: Jeffrey B. Rosen
Title: Director, Real Estate

WRY TENANT LLC, a Delaware limited liability company

By: _____

Name: L. Jay Cross
Title: President

Signature Page to PILOST Agreement (WRY)

EXHIBIT I
INTENTIONALLY OMITTED

EXHIBIT J
FORM OF SEVERED PARCEL LEASE

(Follows immediately)

"THE ORIGINAL FORM OF SEVERED PARCEL LEASE HAS BEEN REPLACED BY THE ATTACHED FORM OF SEVERED PARCEL LEASE IN ACCORDANCE WITH THE SECOND AMENDMENT TO LEASE DATED AS OF AUGUST 18, 2016 BY AND BETWEEN LANDLORD AND TENANT."

AGREEMENT OF SEVERED PARCEL LEASE
(WESTERN RAIL YARD SECTION OF THE JOHN D. CAEMMERER WEST SIDE YARD)

by and between

METROPOLITAN TRANSPORTATION AUTHORITY,

as Landlord,

and

[●]

as Tenant,

dated as of [●], 20[●]

Premises:

Portion of [Facility Airspace Parcel Terra Firma/Airspace Above a Limiting Plane]
Western Rail Yard Section of the John D. Caemmerer West Side Yard
New York, New York
(Manhattan Block [676, Lot 3])

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List of Exhibits

THIS AGREEMENT OF SEVERED PARCEL LEASE (WESTERN RAIL YARD SECTION OF THE JOHN D. CAEMMERER WEST SIDE YARD) is made as of the [●] day of [●], 20[●], by and between **METROPOLITAN TRANSPORTATION AUTHORITY**, a body corporate and politic constituting a public benefit corporation of the State of New York, having an office at 2 Broadway, New York, New York 10004, as landlord, and [●], having an address at c/o The Related Companies, L.P., 60 Columbus Circle, New York, New York 10023, as tenant..

W I T N E S S E T H:

It is hereby mutually covenanted and agreed by and between the parties hereto that this Lease is made upon the terms, covenants and conditions hereinafter set forth.

ARTICLE 1

DEFINITIONS

The terms defined in this Article 1 shall, for all purposes of this Lease, have the following meanings.

"Abatement Extension Adjustment Amount" shall mean $22,298,100.

"Act or Omission" shall have the meaning provided in the WRY Declaration of Easements.

"Additional Rent" shall have the meaning provided in Section 3.09.

["Adjusted GLV Rent Notice" shall have the meaning provided in Section 8.14.

"Adjusted Gross Land Value" shall have the meaning provided in Section 8.14.][1]

"Adjusted Initial Land Value" shall have the meaning provided in Section 3.03(a).

"Affiliate" shall mean, with respect to any specified Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the specified Person. For purposes of this definition and the definition of "Affiliated Person", the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting stock, by contract or otherwise. For the avoidance of doubt, if Tenant is a Related Affiliate, then any Person that is a party to any agreement with MTA or LIRR relating to the WRY Project, which Person is controlled by a Related Control Person, shall constitute an Affiliate of Tenant.

[1] The bracketed language (and applicable defined terms) shall only be included in a Terra Firma Severed Parcel Lease described in Section 9.04 of the WRY Ground Lease.

"Affiliated Person" shall mean, with respect to any specified Person, (a) any Affiliate of such specified Person and (b) any other Person if such other Person and/or its Affiliates collectively own, directly or indirectly, not less than twenty percent (20%) of the economic interests in an entity which controls such specified Person.

"Annual Base Rent" shall have the meaning provided in Section 3.03.

"Approved Facility Airspace Improvement Plans and Specifications" shall have the meaning provided in Section 8.02(d).

"Approved LIRR Work Project Plans and Specifications" shall have the meaning provided in the WRY Construction Agreement.

"Approved MFAI Contractor Submittal" shall have the meaning set forth in Section 2.3(c)(vi) of Exhibit D of the WRY Declaration of Easements.

"Approved Restoration Plans and Specifications" shall have the meaning provided in Section 15.02(b).

"Approved Severed Parcel Plan" shall mean that certain Severed Parcel Plan annexed as Exhibit [●] to that certain [●], dated as of [●], between [●].

"Arbitrator" shall have the meaning provided in Section 40.01(b).

"Assignment" shall have the meaning provided in Section 17.01(a).

"Associated FASP Improvements" shall have the meaning provided in the WRY Declaration of Easements.

"Associated Portion of the LIRR Roof and Facilities" shall mean those portions of the LIRR Roof and Facilities to be constructed in conjunction with the Premises, as described in the list of Approved LIRR Work Project Plans and Specifications attached hereto as Exhibit Q attached hereto.[2]

"Association Documents" shall have the meaning provided in the WRY Declaration of Easements.

"Balance Lease" shall mean the WRY Ground Lease, from and after the date of the initial Severance.

"Balance Parcel" shall mean the premises demises by the Balance Lease.

"Bond Lease Financing" shall have the meaning provided in Article 13.

[2] There will be no Associated Portion of the LIRR Roof and Facilities in connection with any Terra Firma Parcel Severed Parcel Lease (as defined in the WRY Ground Lease).

"Bond-Related Fee Mortgage" shall have the meaning provided in Section 33.02.

["Budgeted Roof Costs" shall mean the Lender-Approved Budget (as defined in the WRY Construction Agreement) for the LIRR Roof and Facilities, or in the event there is no Lender-Approved Budget, the MTA-Approved Budget (as defined in the WRY Construction Agreement) for the LIRR Roof and Facilities. The Budgeted Roof Costs shall take into account and credit any work performed in furtherance of the construction of the LIRR Roof and Facilities prior to the applicable date on which the Budgeted Roof Costs are being determined.][3]

"Building" shall mean any building to be erected within the Premises as described in Exhibit Q, excluding the footings, foundations, columns, FAI Preparation Work and the LIRR Roof and Facilities.

"Building and Related Improvements" shall have the meaning provided in Section 11.02.

"Building Code" shall mean the Building Code of the City of New York, as applicable to the Facility Airspace Improvements.

"Building Completion Guarantor" shall have the meaning provided in Section 11.02.

"Building Completion Guaranty" shall have the meaning provided in Section 11.02.

"Building Component" shall mean any portion of a Building which, subject to the provisions of Section 9.02(d), is permitted to constitute a Severed Subparcel.

"Business Day" shall mean any day which is not a Saturday, Sunday or a day observed as a holiday by either the State of New York or the federal government.

"Capital Improvement" shall have the meaning provided in Section 19.01.

"Casualty" shall have the meaning provided in Section 15.01(a).

"Certificate of Occupancy" shall mean (a) with respect to the LIRR Relocations, the New LIRR Facilities, the Roof Mechanical Equipment, the Roof Utility Facilities or any portion of any of the foregoing, as applicable, a code compliance certificate issued by LIRR acting in its capacity as a Governmental Authority pursuant to Part 1204 of Chapter XXXII of Title 19 of the New York Code, Rules and Regulations, (b) [with respect to the Roof Slab and Support Facilities, a certificate of occupancy or similar sign-off issued by the Governmental Authority responsible for review and approval of code compliance for the Roof Slab and Support

[3] The bracketed language (and applicable defined terms) shall only be included in a Terra Firma Severed Parcel Lease described in Section 9.04 of the WRY Ground Lease.

Facilities (to the extent applicable)][4], and (c) with respect to the Facility Airspace Improvements, a certificate of occupancy issued by the NYCDOB pursuant to Section 645 of the New York City Charter or any successor provision thereto (to the extent applicable).

"City" shall mean The City of New York, a municipal corporation of the State of New York.

"City Register" shall mean the Office of the City Register, New York County.

"Claim" shall have the meaning provided in Section 9.01(f)(iii).

"Closing Payment" shall have the meaning provided in Section 3.01.

"Commencement Date" shall mean the date of this Lease.

"Commencement of Construction" or "Commenced Construction" shall mean (a) with respect to each Building, the commencement of initial construction of such Building and the Associated FASP Improvements pursuant to a Severed Parcel Lease (including without limitation any excavation or other on-site preparation work on Facility Airspace Parcel Terra Firma but excluding (i) test borings, test pilings, soil testing, environmental remediation and other similar pre-construction activities, (ii) construction of any portion of the LIRR Roof and Facilities (whether or not such portion is located above the Roof Slab), (iii) performance of FAI Preparation Work, (iv) construction of the Associated FASP Improvements only, if construction of the Building within the same Severed Parcel has not yet commenced, and (v) any work performed by or on behalf of LIRR, and (b) with respect to the LIRR Roof and Facilities, the meaning ascribed to "Commencement of Construction" or "Commenced Construction" in the WRY Construction Agreement.

"Compensable MTA Party Delay" shall have the meaning provided in the WRY Construction Agreement.

"Condemnation Proceeds" shall have the meaning provided in Section 16.01(b).

"Condemnation Proceeds Depository" shall mean an Institutional Lender which is regularly engaged in the business of administering construction loans, and reasonably acceptable to both Landlord and Tenant to hold the Condemnation Proceeds in accordance with the provisions of Article 16. A Leasehold Mortgagee which is an Institutional Lender shall, upon request, be entitled to serve as Condemnation Proceeds Depository hereunder; provided that such Leasehold Mortgagee shall have agreed in writing, for the benefit of Landlord and pursuant to an instrument reasonably satisfactory to Landlord, to hold such funds in a segregated special account to be used and distributed solely as set forth in Article 16. All funds held by a Condemnation Proceeds Depository pursuant to this Lease shall be drawable in New York City.

[4] The bracketed language (and all references to the LIRR Roof and Facilities and to the Roof Slab in this Lease) will be removed in all Terra Firma Severed Parcel Leases.

"Condominium" shall mean [●].

"Condominium Board" shall mean the board of managers of the condominium created pursuant to the Condominium Documents.

"Condominium By-Laws" shall have the meaning provided in Section 9.01(a).

"Condominium Conversion Date" shall mean the date on which the Condominium Documents are recorded in the City Register.

"Condominium Declaration" shall have the meaning provided in Section 9.01(a).

"Condominium Documents" shall have the meaning provided in Section 9.01(a).

"Construction Contracts" shall mean agreements executed by or on behalf of Tenant for the construction of Facility Airspace Improvements, Restoration, Capital Improvement, rehabilitation, alteration, repair, demolition or other construction performed on the Premises pursuant to this Lease.

"Contested Imposition Deposit" shall have the meaning provided in Section 4.05(b).

"Controlling Ownership" shall mean the ownership of the right to direct the day-to-day business and affairs of a Person; provided that the ownership of the right to approve or consent to certain business or affairs of a Person only through major decision rights or similar protective provisions shall not constitute "Controlling Ownership".

"CPI" shall mean the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor or its successors, New York Northern New Jersey Long Island NY-NJ-CT-PA area, All Items (1982-84 = 100), or any successor index thereto, appropriately adjusted. If the Consumer Price Index ceases to be published and there is no successor thereto, such other index as Landlord and Tenant shall agree upon (or, if they are unable to agree, as determined in accordance with Section 40.01(a)), as appropriately adjusted, shall be substituted for the Consumer Price Index.

"CPI Adjustment" shall mean an adjustment of each specified dollar amount that is subject to CPI Adjustment under this Lease which shall occur as of each anniversary of the Commencement Date by multiplying the original dollar amount being adjusted by the sum of (a) one hundred percent (100%), plus (b) the CPI Increase. As so adjusted, such amount will be utilized until the next CPI Adjustment is calculated as of the next applicable anniversary of the Commencement Date. All CPI Adjustments shall be calculated annually.

"CPI Increase" shall mean the percentage increase, if any (but not decrease, if any) between the CPI for the calendar month which is three (3) months prior to the date hereof and the CPI for the calendar month which is three (3) months prior to the relevant anniversary of the date hereof.

"Declarant Indemnities" shall have the meaning provided in Section 9.01(g)(ii).

"Declarant Net Lessee" shall have the meaning set forth in the Condominium Documents.

"Default" shall mean any condition or event which constitutes or, after notice or lapse of time, or both, would constitute an Event of Default.

"Default Rate" shall have the meaning provided in Article 6.

"Deficiency" shall have the meaning provided in Section 31.03(c).

"Delayed Party" shall have the meaning provided in the definition of "Force Majeure".

"Depository" shall mean any of the Restoration Fund Depository, the Condemnation Proceeds Depository or the Impositions Depository.

"Design and Construction Requirements" shall have the meaning provided in the WRY Declaration of Easements.

"Developer" shall have the meaning provided in the WRY Construction Agreement.

"Due Date" shall mean, with respect to an Imposition or Insurance Premium, the last date on which such Imposition or Insurance Premium can be paid without any fine, penalty, interest or cost being added thereto or imposed by law for the non-payment thereof (but excluding any early payment discount) or, in the case of an Insurance Premium, cancellation, expiration or termination of the applicable insurance policy.

"Election Notice" shall have the meaning provided in Section 10.02.

"Election Notice Date" shall have the meaning provided in Section 10.02.

"Environmental Activity" shall mean any storage, installation, existence, release, threatened release, discharge, generation, abatement, removal, disposal, handling or transportation from, under, into or on the Premises of any Hazardous Substance.

"Equipment" shall mean all fixtures incorporated in the Premises, including, without limitation, all machinery, dynamos, boilers, heating and lighting equipment, pumps, tanks, motors, air conditioning compressors, pipes, conduits, fittings, ventilating and communications apparatus, elevators, escalators, antennas, computers and sensors.

"ERY" shall mean that certain parcel of land in the Borough of Manhattan, which is as of the Commencement Date owned by Landlord, and known as the Eastern Rail Yard Section of the John D. Caemmerer West Side Yard, located between 30th and 33rd Streets and between 10th and 11th Avenues in Manhattan (Manhattan Block 702, Lots 150, 175, 1001, 1002, 1003, 1004, 1301, 1302, 1303, 1304, 8001, 8002 and 8003).

[“Estimated WRY Roof Costs” shall have the meaning provided in Section 8.14.][5]

“Event of Default” shall have the meaning provided in Section 31.01.

“Expiration Date” shall mean the date upon which the term of this Lease shall expire or terminate, whether such date be (a) the Fixed Expiration Date or (b) such earlier date upon which the Term shall cease or be terminated pursuant to the terms hereof.

“Facility Airspace Improvements” shall mean the improvements constructed as part of the WRY Severed Parcel Project on the Premises and including without limitation the residential, commercial, community facility and accessory uses, the Open Space Component (as applicable), and High Line Component (as applicable) but excluding the LIRR Roof and Facilities and any work that is the property of the Yards Parcel Owner or the Yards Parcel Operator pursuant to their respective rights under the WRY Declaration of Easements and any Facility Airspace Improvements to be constructed outside the Premises.

“Facility Airspace Improvements Release to Proceed” shall have the meaning provided in Section 8.03(a).

“Facility Airspace Improvements Restoration” shall have the meaning provided in Section 15.01(b).

“Facility Airspace Parcel” shall have the meaning provided in the WRY Declaration of Easements.

“Facility Airspace Parcel Owner” shall have the meaning provided in the WRY Declaration of Easements.

“FAI Construction Commencement Notice” shall have the meaning provided in Section 8.03(a).

“FAI Preparation Work” shall have the meaning provided in the WRY Construction Agreement.

“FASP Owners Association” shall have the meaning provided in the WRY Declaration of Easements.

“Fee Conversion” shall have the meaning provided in Section 10.03(a).

“Fee Conversion Closing” shall have the meaning provided in Section 10.03(a).

“Fee Conversion Closing Date” shall have the meaning provided in Section 10.03(a).

[5] The bracketed language (and applicable defined terms) shall only be included in a Terra Firma Severed Parcel Lease described in Section 9.04 of the WRY Ground Lease.

"Fee Conversion Option" shall have the meaning provided in Section 10.01.

"Fee Mortgage" shall mean any mortgage, deed of trust, pledge or similar instrument, including, without limitation, any modification, amendment, spreader, consolidation or renewal thereof, which constitutes a lien on Landlord's interest in this Lease and/or the fee interest in the Premises, and includes without limitation the Bond-Related Fee Mortgage.

"Fee Mortgagee" shall mean the mortgagee under a Fee Mortgage.

"Final Completion" shall have the meaning provided in the WRY Construction Agreement.

"Financial Matter" shall mean the determination in accordance with this Lease of (a) FMV Land Value and the WRY Roof Component Financing Cost Savings (if any), [(b) the Adjusted Gross Land Value (only to the extent based on any of the items specified in clause (a) of this definition and the Estimated WRY Roof Costs)][6], (c) Annual Base Rent and the Option Price (in each case only to the extent based on any of the items specified in clause (a) of this definition), and (d) the respective portions of the Condemnation Proceeds attributable to the Facility Airspace Parcel and Improvements thereon, and the Severed Parcel Allocable Shares thereof, but shall expressly exclude (i) any matters related to Tenant's obligations under this Lease to pay any of the foregoing, and (ii) the calculation of the amount of the Closing Payment, the First Post-Closing Payment, the Second Post-Closing Payment, the Annual Base Rent and the Option Price, to the extent not adjusted or otherwise determined based on any of the items specified in clause (a) of this definition.

"Financial Obligations" shall mean the financial obligations of Tenant under this Lease.

"First Post-Closing Payment" shall have the meaning provided in Section 3.02(a).

"Fixed Expiration Date" shall mean the day immediately preceding the ninety-ninth (99th) anniversary of the WRY Ground Lease Commencement Date.

"Floor Area" shall have the meaning provided in Section 12-10 of the Zoning Resolution and shall be measured in accordance with the standards set forth in the Zoning Resolution (notwithstanding that the Premises may be exempt from the application of the Zoning Resolution under Public Authorities Law Section 1266(8)).

"Floor Plans" shall have the meaning provided in Section 9.01(a).

"FMV Base Rent Reset" shall have the meaning provided in Section 3.03(c).

"FMV Land Value" shall have the meaning provided in Section 3.03(a)(iv).

[6] The bracketed language (and applicable defined terms) shall only be included in a Terra Firma Severed Parcel Lease described in Section 9.04 of the WRY Ground Lease.

"FMV Rental Value" shall have the meaning provided in Section 3.03(a)(v).

"FMV Reset Period" shall have the meaning provided in Section 3.03(c).

"Force Majeure" shall have the meaning provided in the WRY Declaration of Easements.

"Governmental Authority" shall have the meaning provided in the WRY Declaration of Easements.

"Hazardous Substance" shall have the meaning provided in the WRY Declaration of Easements.

"High Line" shall mean that certain rail viaduct structure, together with the easements and appurtenances associated therewith, located along the west side of Manhattan, portions of which viaduct structure are located on, and portions of which easements encumber, the WRY.

"High Line Component" shall mean the portion of the High Line which is located on the Premises.

"HYIC" shall mean the Hudson Yards Infrastructure Corporation, a local development corporation incorporated under the Not-for-Profit Corporation Law of the State of New York, and its successors or assigns.

"IDA" shall mean the New York City Industrial Development Agency, and its successors or assigns.

"Impositions" shall have the meaning provided in Section 4.01.

"Impositions Depository" shall mean an Institutional Lender which is reasonably acceptable to both Landlord and Tenant to hold the Contested Imposition Deposit and the Monthly Impositions and Insurance Deposits in accordance with the provisions of Section 4.05 and Article 5. A Leasehold Mortgagee which is an Institutional Lender shall, upon request, be entitled to serve as Impositions Depository hereunder; provided that such Leasehold Mortgagee shall have agreed in writing, for the benefit of Landlord and pursuant to an instrument reasonably satisfactory to Landlord, to hold such funds in a segregated special account to be used and distributed solely as set forth in Section 4.05 or Article 5, as applicable. All funds held by the Impositions Depository pursuant to this Lease shall be drawable in New York City.

"Improvement Approvals" shall mean all permits, consents, certificates and approvals required from any Governmental Authority having jurisdiction for, as the context may require, (a) the construction of the applicable Facility Airspace Improvements in accordance with the Approved Facility Airspace Improvement Plans and Specifications or (b) any Capital Improvement.

"Improvements" shall mean, collectively, the Associated Portion of the LIRR Roof and Facilities, the Capital Improvements and Facility Airspace Improvements, and any and

all alterations and replacements thereof, additions thereto and substitutions therefor, only to the extent each of the same are located within the Premises.

"Included Floor Area" shall mean the maximum Floor Area and zoning uses that may be utilized on the Premises as set forth in Exhibit Q.[7]

"Indemnitees" shall have the meaning provided in Section 26.01.

"Initial Construction of the Improvements" shall have the meaning provided in the WRY Declaration of Easements.

"Initial Fee Conversion Closing Date" shall have the meaning provided in Section 10.02.

"Initial Land Value" shall have the meaning provided in Section 3.03(a)(i).

"Initial Rental Period" shall mean the period commencing on the Commencement Date and ending on the date that is the earlier to occur of (i) the thirtieth (30^{th}) anniversary of the Commencement Date and (ii) the fortieth (40^{th}) anniversary of the WRY Ground Lease Commencement Date.

"Initial Reset Date" shall have the meaning provided in Section 3.03(c).

"Institutional Lender" shall mean (a) a savings bank, a savings and loan association, a commercial bank or trust company (whether acting individually or in a fiduciary capacity), an investment bank, a real estate investment trust, an insurance company organized and existing under the laws of the United States or any state thereof, a not-for-profit religious, educational or eleemosynary institution, an employee welfare, benefit, pension or retirement fund, a Governmental Authority (or subsidiary thereof), a credit union, an endowment fund, or any combination of the foregoing, provided, that any Person referred to in this clause (a), other than a Governmental Authority acting as a conduit issuer of securities, satisfies the Eligibility Requirements (as hereinafter defined); (b) an investment company, a money management firm, a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional "accredited investor" within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any Person referred to in this clause (b) satisfies the Eligibility Requirements; (c) an institution substantially similar to any of the entities described in clauses (a) or (b) that satisfies the Eligibility Requirements; (d) any entity controlled by any of the entities described in clauses (a), (b) or (c) above; (e) a Qualified Trustee (as hereinafter defined) in connection with a securitization of, or the creation of collateralized debt obligations or commercial mortgage backed securities ("CDO") secured by, or financing through an "owner trust" of, a loan to finance the WRY Project or an Improvement (collectively, "Securitization Vehicles"), so long as (i) the special servicer or manager of such Securitization

[7] The maximum zoning floor area is subject to change within a range agreed to by Landlord and Tenant; provided that such changes shall not affect the Severed Parcel Allocable Share and Severed Parcel Pro Forma Rent Schedule.

Vehicle has the Required Special Servicer Rating (as hereinafter defined), (ii) in the case of a Securitization Vehicle other than a CDO Securitization Vehicle, the entire "controlling class" of such Securitization Vehicle is held by one or more entities that are otherwise Institutional Lenders under clauses (a), (b), (c) or (d) of this definition and (iii) in the case of a CDO Securitization Vehicle, the operative documents of such Securitization Vehicle require that the "equity interest" in such Securitization Vehicle is owned by one or more entities that are Institutional Lenders under clauses (a), (b), (c) or (d) of this definition (provided, that if any trustee, special servicer or manager fails to meet the requirements of this clause (e), such Person must be replaced by a Person meeting the requirements of this clause (e) within (30) days); or (f) an investment fund, limited liability company, limited partnership or general partnership (i) of which one or more Institutional Lenders under clauses (a), (b), (c) or (d) of this definition acts as the general partner, managing member or fund manager and owns, directly or indirectly, at least fifty percent (50%) or more of the equity interest or (ii) which, or the general partner, managing member or fund manager of which, has been in the business of investment banking, private investing or private equity for at least five (5) years and satisfies the Eligibility Requirements (including, for purposes of the asset test, assets of an Affiliate or unconditional capital commitments). For the purpose of this definition, (w) the "Required Threshold" means, in the case of (A) an Institutional Lender providing a construction loan, Twenty Billion and 00/100 Dollars ($20,000,000,000.00), (B) an Institutional Lender providing a permanent loan or mezzanine financing, Fifteen Billion and 00/100 Dollars ($15,000,000,000.00) and (C) an Institutional Lender acting as a depository, Five Hundred Million Dollars ($500,000,000.00), provided that if an Institutional Lender is composed of more than one Person, the Required Threshold shall be the combined assets of all such Persons; (x) the "Eligibility Requirements" means, with respect to any Person, that such Person (A) is subject to the jurisdiction of the courts of the State of New York and (B) has assets of not less than the Required Threshold, subject to CPI Adjustment; (y) "Qualified Trustee" means (A) a corporation, national bank, national banking association or trust company, organized and doing business under the laws of the United States of America or any state thereof, authorized under such laws to exercise corporate trust powers and to accept the trust conferred, subject to supervision or examination by federal or state regulatory authority, and having a combined capital and surplus of at least the Required Threshold, subject to CPI Adjustment, (B) an institution insured by the Federal Deposit Insurance Corporation and having a combined capital and surplus of at least the Required Threshold, subject to CPI Adjustment, or (C) an institution whose long-term senior unsecured debt is rated in either of the top two (2) rating categories then in effect of Standard & Poor's ("S&P"), Moody's Investors Services, Inc. ("Moody's"), Fitch, Inc. ("Fitch"), or any other nationally recognized statistical rating agency; and (z) "Required Special Servicer Rating" means (A) in the case of Fitch, a rating of "CSSI", (B) in the case of S&P, being on the list of approved special servicers and (C) in the case of Moody's, acting as special servicer in a commercial mortgage loan securitization that was rated within the twelve (12) month period prior to the date of determination, provided that Moody's has not downgraded or withdrawn the then-current rating on any class of commercial mortgage securities or placed any class of commercial mortgage securities on watch citing the continuation of such special servicer as special servicer of such commercial mortgage securities. In all of the above cases, any Person shall qualify as an Institutional Lender only if it shall (I) be subject (X) by law or by consent to service of process within the State of New York and (Y) to the supervision of (1) the Comptroller of the Currency or the Department of Labor of the United States or the Federal Home Loan Bank Board or the

Insurance Department or the Banking Department or the Comptroller of the State of New York, or the Board of Regents of the University of the State of New York, or the Comptroller of New York City or any successor to any of the foregoing agencies or officials, (2) any agency or official exercising comparable functions on behalf of any other state within the United States, or (3) in the case of a commercial credit corporation, the laws and regulations of the state of its incorporation, or (4) any federal, state or municipal agency or public benefit corporation or public authority advancing or insuring mortgage loans or making payments that, in any manner, assist in the financing, development, operation and maintenance of improvements, and (II) have individual or combined assets, as the case may be, of not less than the Required Threshold, subject to CPI Adjustment. Notwithstanding anything to the contrary in this definition, in the event that an Institutional Lender consists of more than one Person, such Institutional Lender shall designate by written notice to Landlord a single Person with full authority to act on behalf of such Institutional Lender for the purposes of this Lease, and any notice delivered to, or consent or approval obtained from, such Person shall be deemed to have been delivered to, or obtained from, such Institutional Lender for the purposes of this Lease. An amendment of such written notice may be delivered from time to time to Landlord designating a new Person with full authority to act on behalf of such Institutional Lender.

"Insurance Premiums" shall mean the aggregate annual insurance premiums to be paid in respect of any insurance required to be carried by Tenant pursuant to this Lease.

"Involuntary Rate" shall mean the Prime Rate plus two percent (2%) per annum, but in no event in excess of the maximum permissible interest rate then in effect in the State of New York.

"Landlord" shall mean MTA, or any successor to MTA's rights and interests in the Premises or any portion thereof.

"Landlord's Reversionary Interest Value" shall mean the value of Landlord's reversionary interest in any Severed Parcel, which shall be an amount equal to the Severed Parcel Allocable Share of: (i) FOUR BILLION SEVEN HUNDRED SIX MILLION EIGHT HUNDRED NINETY-NINE THOUSAND ONE HUNDRED SEVENTY-SIX AND 00/100 DOLLARS ($4,706,899,176.00) in the year commencing on the ninety-ninth (99th) anniversary of the Commencement Date and (ii) FOUR BILLION SEVEN HUNDRED SIX MILLION EIGHT HUNDRED NINETY-NINE THOUSAND ONE HUNDRED SEVENTY-SIX AND 00/100 DOLLARS ($4,706,899,176.00) discounted to the Fee Conversion Date (or, for purposes of Article 16, the "date of taking" as defined therein) using a discount rate of six and one-half percent (6.5%) per annum for each year prior to the year commencing on the ninety-ninth (99th) anniversary of the Commencement Date.

"Landlord's Termination Rights" shall have the meaning provided in Section 17.03(f).

"Lease" shall mean this Agreement of Severed Parcel Lease (Western Rail Yard Section of the John D. Caemmerer West Side Yard) and all future amendments, modifications, extensions and renewals hereof and exhibits attached hereto.

"Leasehold Mortgage" shall mean any mortgage, deed of trust, pledge or similar instrument, including, without limitation, any modification, amendment, spreader, consolidation or renewal thereof, which constitutes a lien on Tenant's interest in this Lease and the leasehold estate created hereby, provided that such mortgage is held by an Institutional Lender that is not an Affiliate of Tenant, except if such Institutional Lender is providing bona-fide and substantial secured debt financing in connection with the Premises.

"Leasehold Mortgagee" shall mean the mortgagee under a Leasehold Mortgage.

"Leasehold Mortgagee /Mezzanine Lender Notice of Cure" shall have the meaning provided in Section 17.03(d).

"Legal Compliance" shall have the meaning provided in the WRY Declaration of Easements.

"Legal Requirements" shall mean any and all applicable present and future laws, rules, orders, ordinances, regulations, statutes, requirements, directives, permits, consents, certificates, approvals, environmental statutes, codes and executive orders of all Governmental Authorities now existing or hereafter created, of all their departments and bureaus, including the zoning regulations to the extent applicable, and of any applicable fire rating bureau or other body exercising similar functions affecting the Premises, any real property upon or over which the WRY Severed Parcel Project is being constructed (excluding the Yards Parcel), or any portion thereof, or any street, avenue or sidewalk comprising a part or in front thereof or any vault in or under the same.

"LIRR" shall mean The Long Island Rail Road Company, a body corporate and politic constituting a public benefit corporation of the State of New York, having an office at Jamaica Station, Jamaica, New York 11435 and any successor entities thereto.

"LIRR Relocations" shall have the meaning provided in the WRY Declaration of Easements.

"LIRR Roof and Facilities" shall have the meaning provided in the WRY Declaration of Easements.

"LIRR Work" shall have the meaning provided in the WRY Construction Agreement.

"Lower Limiting Plane" shall have the meaning provided in the WRY Declaration of Easements (and shall be adjusted in accordance with the terms thereof).

"M/WBEs" shall have the meaning provided in Article 45.

"Major Subtenant" shall have the meaning provided in Section 17.01(a).

"Material Facility Airspace Improvements" shall have the meaning provided in the WRY Declaration of Easements.

"Memorandum of Lease" shall mean a memorandum of this Lease in the form attached hereto as Exhibit M to be executed by Landlord and Tenant on the Commencement Date and recorded in the City Register.

"Mezzanine Lender" shall mean the lender under a Mezzanine Loan.

"Mezzanine Loan" shall mean financing secured by the equity interests in Tenant (and not by a lien on Tenant's interest in this Lease), provided that such Mezzanine Loan is held by an Institutional Lender that is not an Affiliate of Tenant, except if such Institutional Lender is providing bona-fide and substantial secured debt financing in connection with the Premises.

"MFAI Schedule" shall have the meaning provided in the WRY Declaration of Easements.

"Minimum Standards" shall have the meaning provided in Section 8.04(a).

"Monetary Default" shall mean a Default by Tenant in the payment of Annual Base Rent, Insurance Premiums, Impositions or any other item of Rental or other amount payable under this Lease, whether such amount is payable to Landlord or to a third party.

"Monthly Impositions and Insurance Deposits" shall have the meaning provided in Section 5.01(a).

"MTA" shall mean the Metropolitan Transportation Authority, a body corporate and politic constituting a public benefit corporation of the State of New York, having its principal place of business at 2 Broadway, New York, New York 10004 and any successor entities thereto.

"MTA Parties" shall mean LIRR and MTA, collectively.

"New Lease" shall have the meaning provided in Section 17.04(a).

"New LIRR Facilities" shall have the meaning provided in the WRY Declaration of Easements.

"New Tenant" shall have the meaning provided in Section 17.04(a)(i).

"Non-Monetary Default" shall mean a Default by Tenant under this Lease, other than a Monetary Default.

"Notice" shall have the meaning provided in Section 32.01.

"Notice of Dispute" shall have the meaning provided in Section 3.08.

"NYCDOB" shall mean the New York City Department of Buildings (or its successor in function).

"NYS Law Department" shall have the meaning provided in Section 9.01(c).

"Open Space Component" shall have the meaning provided in the WRY Declaration of Easements.

"Option Price" shall have the meaning provided in Section 10.04(a).

"Other Projects" shall have the meaning provided in Section 8.09.

"Patriot Act" shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, and all rules and regulations promulgated thereunder from time to time, in each case as amended from time to time.

"Penn Station" shall mean New York Pennsylvania Station.

"Permitted Exceptions" shall mean all matters listed on Exhibit B annexed hereto and shall also include any and all matters created by or on behalf of, or with the consent of, Tenant, including without limitation all matters created in accordance with the Project Documents (as defined in the WRY Ground Lease).

"Permitted Transfer" shall have the meaning provided in Section 17.01(b).

"Permitted Uses" shall have the meaning provided in Section 30.01.

"Person" shall mean an individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, limited liability company, or government or any agency or subdivision thereof.

"PILOST" shall mean payments in lieu of sales and use taxes that would otherwise have been levied under the New York State Tax Law on the tangible materials and equipment incorporated into the Premises but for the exemption therefrom arising on account of the ownership of the Premises by Landlord.

"PILOST Agreement" shall mean that certain agreement between Landlord, on the one hand, and Tenant, on the other hand, executed simultaneously herewith and attached hereto as Exhibit H, as the same may be modified from time to time.

"PILOT" shall mean payments in lieu of Taxes that are payable to HYIC, the New York City Industrial Development Authority or any other applicable party on the Premises.[8]

"PILOT Agreement" shall mean any agreement(s) in effect from time to time between Tenant, on the one hand, and HYIC, the New York City Industrial Development

[8] If the Premises is not subject to UTEP, this definition will be revised to read "shall mean payments in lieu of Taxes that would otherwise have been levied on the Premises (after taking into consideration any as of right or discretionary abatements or exemptions).

Authority or any other applicable Governmental Authority, on the other hand, with respect to the payment of PILOT, as the same may be modified from time to time.[9]

"Pre-Casualty Condition" shall have the meaning provided in Section 15.01(b).

"Premises" shall mean that portion of the Facility Airspace Parcel, as more particularly described in Exhibit A-2 attached hereto.

"Prime Rate" shall mean the prime or base rate announced as such from time to time by Citibank, N.A., or its successors, at its principal office. Any interest payable under this Lease with reference to the Prime Rate shall be adjusted on a daily basis, based upon the Prime Rate in effect at the time in question, and shall be calculated on the basis of a three hundred sixty (360) day year with twelve (12) months of thirty (30) days each.

"Prohibited Person" shall mean any Person if:

(a) such Person or any of its Affiliated Persons is in monetary default or in breach of any non-monetary obligation under any written agreement with the State of New York (including without limitation Landlord or LIRR) or the City of New York after notice and beyond any applicable cure periods, unless, in each instance, such monetary default or breach either (i) has been waived in writing by the State or City of New York, (ii) is being disputed in a court of law, administrative proceeding, arbitration or other similar forum, (iii) is cured within thirty (30) days after a determination and notice to Tenant from Landlord that such Person is a Prohibited Person as a result of such default or breach, or (iv) is in connection with a payment default under a mortgage loan that is either recourse or non-recourse to a single purpose entity borrower and issued by an agency or authority of the State or City of New York other than the MTA or its subsidiaries;

(b) such Person or any of its Affiliated Persons has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude, is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure, or has had a contract terminated by any governmental agency for breach of contract or for any cause directly or indirectly related to an indictment or conviction. The determination as to whether any Person is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure for purposes of this paragraph (b) shall be within the sole discretion of Landlord, which discretion shall be exercised in good faith; provided, however, that such Person shall not be deemed a Prohibited Person if the State of New York, having actual knowledge that such Person meets the criteria set forth in this paragraph (b), entered into a contract and is then doing business with such Person;

(c) such Person or any of its Affiliated Persons is a terrorist or terrorist organization or is reputed to have substantial business or other affiliations with a terrorist or terrorist organization, including those Persons included on any relevant lists maintained by the

[9] If the Premises is not subject to UTEP, this definition and all references to "PILOT Agreement" will be deleted.

United Nations, the North Atlantic Treaty Organization, the Organization for Economic Cooperation and Development, the Financial Action Task Force, or the Office of Foreign Assets Control, Securities and Exchange Commission, Federal Bureau of Investigation, Central Intelligence Agency or Internal Revenue Service of the United States, all as may be amended from time to time. The determination as to whether any Person is a terrorist or terrorist organization or is reputed to have substantial business or other affiliations with a terrorist or terrorist organization for purposes of this paragraph (c) shall be within the sole discretion of Landlord, which discretion shall be exercised in good faith; provided, however, that such Person shall not be deemed a Prohibited Person if the State of New York, having actual knowledge that such Person meets the criteria set forth in this paragraph (c), entered into a contract and is then doing business with such Person;

(d) such Person is a government, or is directly or indirectly controlled (rather than only regulated) by a government, which is (i) finally determined, beyond right to appeal, by the Federal Government of the United States or any agency, branch or department thereof to be in violation of (including, but not limited to, any participant in an international boycott in violation of) the Export Administration Act of 1979, as amended, or any successor statute, or the regulations issued pursuant thereto, or (ii) subject to the regulations or controls thereof. Such control shall not be deemed to exist in the absence of a determination to that effect by a Federal court or by the Federal Government of the United States or any agency, branch or department thereof;

(e) such Person is a government, or is directly or indirectly controlled (rather than only regulated) by a government, the effects of the activities of which are regulated or controlled pursuant to regulations of the United States Treasury Department or executive orders of the President of the United States of America issued pursuant to the Trading with the Enemy Act of 1917, as amended; or

(f) such Person has received written notice of default in the payment to the City of New York of any real property taxes, sewer rents or water charges, in an amount greater than Ten Thousand Dollars ($10,000), unless such default is then being contested in good faith in accordance with applicable legal requirements with due diligence in proceedings in a court or other appropriate forum or unless such default is cured within thirty (30) days after a determination and notice to Tenant from Landlord that such Person is a Prohibited Person as a result of such default.

"Project Documents" shall mean, collectively, this Lease, the PILOST Agreement and PILOT Agreement (each as executed by Tenant), the WRY Declaration of Easements (only to the extent it relates to an obligation of Tenant in its capacity as a Severed Parcel Owner of the Premises as further set forth in Section 7.01 of this Lease), and any Building Completion Guaranty delivered by Tenant.

"Proposed Facility Airspace Improvement Plans and Specifications" shall have the meaning provided in Section 8.02(c).

"Proposed Facility Airspace Improvement Plans and Specifications Notice" shall have the meaning provided in Section 8.02(d).

"Proposed Restoration Plans and Specifications" shall have the meaning provided in Section 15.02.

"Public Safety" shall have the meaning provided in the WRY Declaration of Easements.

"Qualified Replacement Developer" shall mean any Person that (a) has, in the MTA Parties' reasonable judgment, substantial and satisfactory experience in constructing/developing public infrastructure of a scale and complexity (and with operational sensitivities) similar to the LIRR Work, (b) is not, at the applicable time, disqualified or disbarred from performing work on projects for the MTA Parties or their Affiliates or any other City of New York or New York State agency and (c) is not a Prohibited Person. Landlord, on behalf of the MTA Parties, hereby approves [The Related Companies, L.P., Oxford Hudson Yards LLC, Oxford Properties Corporation, Tishman Speyer Properties, Hines Interests Limited Partnership, The Durst Organization, Boston Properties, Inc., Silverstein Properties, Inc., Forest City Ratner Companies, Vornado Realty Trust, Rudin Management Company, Inc., SL Green, Brookfield,][10] and any Affiliate of any of the foregoing as Qualified Replacement Developers so long as (x) such Person is not a Prohibited Person and (y) in the MTA Parties' reasonable judgment, such Person continues, at the time of the proposed replacement, to meet the requirements for Qualified Replacement Developer set forth herein.

"Qualified Transferee" shall mean (a) a managing member or general partner of Tenant, (b) a Person that is or retains (as construction manager for the construction of the Building(s) on the Premises) a Person with no less than ten (10) years of experience in large scale development projects in an urban environment or (c) a Person that is reasonably acceptable to Landlord; provided, in each case, that the applicable Person is not a Prohibited Person. Landlord, on behalf of the MTA Parties, hereby approves [The Related Companies, L.P., Oxford Hudson Yards LLC, Oxford Properties Corporation, Tishman Speyer Properties, Hines Interests Limited Partnership, The Durst Organization, Boston Properties, Inc., Silverstein Properties, Inc., Forest City Ratner Companies, Vornado Realty Trust, Rudin Management Company, Inc., SL Green, Brookfield,][11] and any Affiliate of any of the foregoing as Qualified Transferees, so long as (x) such Person is not a Prohibited Person and (y) in the MTA Parties' reasonable judgment, such Person continues, at the time of the proposed replacement, to meet the requirements for Qualified Transferee set forth herein.

"Qualifying Sublease" shall have the meaning provided in Section 17.06(c).

"Qualifying Subtenant" shall have the meaning provided in Section 17.06(c).

[10] List of "Qualified Replacement Developers" to be confirmed when the applicable Severed Parcel Lease is entered into, subject to MTA Parties' reasonable judgment.

[11] List of Qualified Transferees to be confirmed when the applicable Severed Parcel Lease is entered into, subject to MTA Parties' reasonable judgment.

"Related Affiliate" shall mean any Person (a) over which any Related Control Person exercises day-to-day operational and managerial control as a managing member or otherwise, and (b) of which one or more Related Beneficial Owners or one or more Persons controlled by any Related Control Persons collectively own, directly or indirectly, at least two percent (2%) of the economic interests; provided, that the aggregate equity investment of such Related Control Persons with respect to both the WRY and ERY shall not be required to exceed ONE HUNDRED MILLION AND 00/100 DOLLARS ($100,000,000.00).

"Related Beneficial Owner" shall mean any of Stephen M. Ross and/or Jeff T. Blau and/or Bruce A. Beal, Jr. and their respective spouses, descendants, heirs, legatees and devisees, and any trust created for the benefit of any of such persons.

"Related Control Person" shall mean any of Stephen M. Ross and/or Jeff T. Blau and/or Bruce A. Beal, Jr.

"Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, migration, leaching, dumping or disposing of a Hazardous Substance into the environment, including the abandonment, discarding, burying or disposing of barrels, containers or other receptacles containing a Hazardous Substance.

"Rent Escalation Date" shall have the meaning provided in Section 3.03(d).

"Rental" shall have the meaning provided in Section 3.05.

"Rental Notice" shall have the meaning provided in Section 3.08.

"Rent Factor" shall have the meaning provided in Section 3.03(a)(iii).

"Replacement Cost" shall have the meaning provided in Section 14.01(b).

"Reset Date" shall mean the respective dates on which each of the FMV Base Rent Resets take effect hereunder.

"Residential Unit" and "Residential Units" shall have the meaning provided in the Condominium Declaration.

"Restoration" shall have the meaning provided in Section 15.01(b).

"Restoration Fund Depository" shall mean an Institutional Lender which is regularly engaged in the business of administering construction loans, and reasonably acceptable to both Landlord and Tenant to hold the Restoration Funds in accordance with the provisions of this Lease. A Leasehold Mortgagee which is an Institutional Lender shall, upon request, be entitled to serve as Restoration Fund Depository hereunder; provided that such Leasehold Mortgagee shall have agreed in writing, for the benefit of Landlord and pursuant to an instrument reasonably satisfactory to Landlord, to hold such funds in a segregated special account to be used and distributed solely as set forth in Article 15. All funds held by a Restoration Fund Depository pursuant to this Lease shall be drawable in New York City.

"Restoration Funds" shall have the meaning provided in Section 15.05(b).

"Restoration Notice" shall have the meaning provided in Section 15.02(b).

"Restore" shall have the meaning provided in Section 15.01(b).

"RFP" shall mean that certain Request for Proposals for Development at the Western Rail Yard Section of the LIRR West Side Yard, issued by Landlord on July 13, 2007, by which Landlord heretofore solicited proposals for the development of the WRY.

"RNDA" shall have the meaning provided in Section 17.06(d).

"Roof Mechanical Equipment" shall have the meaning provided in the WRY Declaration of Easements.

"Roof Slab" shall have the meaning provided in the WRY Declaration of Easements.

"Roof Tax-Exempt Financing" shall have the meaning provided in Article 12.

"Roof Utility Facilities" shall have the meaning provided in the WRY Declaration of Easements.

"Second Post-Closing Payment" shall have the meaning provided in Section 3.02.

"Service Reliability" shall have the meaning provided in the WRY Declaration of Easements.

"Severance" shall have the meaning provided in the WRY Declaration of Easements.

"Severed Parcel" shall have the meaning provided in the WRY Declaration of Easements.

"Severed Parcel Allocable Share" with respect to the Premises, shall mean [●] percent ([●]%), representing Tenant's share of certain financial obligations under this Lease, which Severed Parcel Allocable Share is also set forth in the Approved Severed Parcel Plan. The Severed Parcel Allocable Share shall be expressed as a percentage and based on the pro rata allocation of Floor Area for the Premises based on the WRY Ground Lease.

"Severed Parcel Lease" shall mean this Lease and any other "Severed Parcel Lease" as such term is defined in the WRY Declaration of Easements.

"Severed Parcel Owner" shall have the meaning provided in the WRY Declaration of Easements.

"Severed Parcel Pro Forma Rent Schedule" shall mean the pro forma rent schedule for this Lease (assuming that the Annual Base Rent immediately following each FMV Base Reset shall be equal to one hundred twenty percent (120%) of the Annual Base Rent for the

period immediately prior to the applicable Initial Reset Date or Reset Date) which is attached hereto as Exhibit P.

"Severed Parcel Tenant" shall mean the tenant under any Severed Parcel Lease.

"Severed Subparcel" shall have the meaning provided in Section 9.02(d).

"Severed Subparcel Lease" shall have the meaning provided in Section 9.02(d).

"Severed Subparcel Tenant" shall have the meaning provided in Section 9.02(d).

"Shortfall Amount" shall have the meaning provided in Section 15.05(b).

"Sponsor Guaranty" shall mean that certain [Sponsor Guaranty (Western Rail Yard Section of the John D. Caemmerer West Side Yard) to be executed by [●] Guarantor and delivered to Landlord contemporaneously with the filing of the offering plan (or, if earlier, any no-action application) for the Condominium with the NYS Law Department pursuant to Section 9.01(c) hereof, and in all events prior to the Condominium Conversion Date.

"Subletting" shall have the meaning provided in Section 17.01(a).

"Substantial Completion" or "Substantially Completed" shall mean (a) with respect to the LIRR Roof and Facilities or the Associated Portion of the LIRR Roof and Facilities, the respective meanings set forth in the WRY Construction Agreement; (b) with respect to a commercial Building, the condition of construction for which a temporary or permanent Certificate of Occupancy has been issued for such Building (or the core and shell of such Building); (c) with respect to a residential Building, the condition of construction for which a temporary or permanent Certificate of Occupancy has been issued for such Building; (d) with respect to a Building Component, the condition of construction for which a temporary or permanent Certificate of Occupancy has been issued for such Building Component (or the core and shell of such Building Component); and (e) with respect to any other Facility Airspace Improvements, the condition of construction for which (i) a temporary or permanent Certificate of Occupancy has been issued for such Facility Airspace Improvement, if applicable, or (ii) if not applicable, the architect for such Facility Airspace Improvement has delivered a certification that, in such architect's opinion, the construction of such Facility Airspace Improvement has been substantially completed in accordance with all applicable Legal Requirements.

"Successor Landlord" shall have the meaning provided in Section 33.03.

"Support Facilities" shall have the meaning provided in the WRY Declaration of Easements.

"Tax Year" shall mean each tax fiscal year of the City.

"Taxes" shall mean the real property taxes or any taxes or other payments substituted in lieu thereof of any kind or nature that are, or would be but for any applicable exemption or abatement, assessed, levied or imposed by any Governmental Authority against the Premises or any part thereof which may become payable during the Term.

"Tenant" shall mean the Tenant Named Herein, unless and until the Tenant Named Herein shall assign or transfer its interest hereunder in accordance with the terms of this Lease (other than with respect to a Severed Parcel), in which case the term "Tenant" shall mean only such permitted assignee or permitted transferee.

"Tenant Named Herein" shall mean [●].

"Term" shall mean the term of this Lease, which shall commence on the Commencement Date and expire on the Expiration Date.

"Transfer" shall have the meaning provided in Section 17.01(a).

"Trustee" shall have the meaning provided in Section 31.02(a).

"Unavoidable Delay" shall have the meaning provided in the WRY Declaration of Easements.

"Unit" shall mean a unit within the condominium created pursuant to the Condominium Documents.

"User" shall have the meaning provided in Section 17.01(b)(i).

"UTEP" shall mean the Second Amended and Restated Uniform Tax Exemption Policy of the IDA as approved on December 12, 2006, by the Board of Directors of the IDA, as may be further amended, modified or supplemented from time to time by the Board of Directors of the IDA.[12]

"WRY" shall mean that certain parcel of in the Borough of Manhattan, which is as of the Commencement Date owned by Landlord, and known as the Western Rail Yard Section of the John D. Caemmerer West Side Yard, located between 30th and 33rd Streets and between 11th and 12th Avenues in Manhattan, as more particularly described in Exhibit A-1 attached hereto.

"WRY Construction Agreement" shall mean that certain WRY Construction Agreement, dated as of the April 10, 2014, by and among Landlord, LIRR and Developer, as the same may have been or may hereafter be amended, modified or supplemented in accordance with the terms thereof.

"WRY Declaration of Easements" shall mean that certain Declaration of Easements (Western Rail Yard Section of the John D. Caemmerer West Side Yard) dated as of May 26, 2010 and recorded on June 10, 2010 at CRFN 2010000194077 in the City Register, made by MTA as declarant, as amended by that certain First Amendment to Declaration of Easements (Western Rail Yard Section of the John D. Caemmerer West Side Yard) dated as of April 10, 2014 and recorded on May 7, 2014 at CRFN 2014000154629 in the City Register, as

[12] If the Premises is not subject to UTEP this definition and all references to it shall be removed.

the same may have been or hereafter be amended, modified or supplemented in accordance with the terms hereof, thereof.

"WRY Ground Lease" shall mean that certain Agreement of Lease (Western Rail Yard Section of the John D. Caemmerer West Side Yard) dated as of April 10, 2014, by and between MTA, as landlord, and WRY Tenant LLC, as tenant, a memorandum of which was recorded on May 7, 2014 at CRFN 2014000154630 in the City Register, as amended by that certain First Amendment to Lease dated as of July 9, 2014 by and between MTA and WRY Tenant LLC, as the same may have been or hereafter be amended, modified or supplemented in accordance with the terms thereof.

"WRY Ground Lease Commencement Date" shall mean April 10, 2014.

"WRY Ground Lease Tenant" shall mean the tenant from time to time under the WRY Ground Lease or the Balance Lease, as applicable.

"WRY Open Space Parcel" shall have the meaning provided in Section 10.01(a).

"WRY Project" shall have the meaning provided in the WRY Declaration of Easements.

"WRY Restrictive Declaration" shall mean that certain Restrictive Declaration for the Western Railyard, dated April 10, 2014, which was recorded in the City Register on May 7, 2014 at CFRN 2014000154631, as the same may hereafter be amended, modified or supplemented in accordance with the terms thereof.

"WRY Roof Component" shall have the meaning provided in the WRY Declaration of Easements.

"WRY Roof Component Financing Cost Savings" shall mean the product of (a) fifty percent (50%) of the actual net financing cost savings (after taking into account all fees and expenses incurred by Tenant over and above those that would have been incurred in connection with conventional debt) attributable to the use of tax-exempt debt, if available, to fund some or all of the construction costs of all or any portion of the WRY Roof Component and the Open Space Component, over the cost of commercially available taxable debt for such portion of the WRY Roof Component and the Open Space Component, as well as any other costs or economic loss to Tenant of such financing, such as increased taxes or loss of depreciation deductions, if applicable, as determined at the closing of the construction loan for the Roof Component, and (b) the Severed Parcel Allocable Share. Notwithstanding the foregoing, "WRY Roof Component Financing Cost Savings" shall not include any amounts attributed to the WRY Roof Component or the Open Space Component funded out of the proceeds of tax-exempt financing provided by any Governmental Authority for the construction of affordable housing.

"WRY Severed Parcel Open Space Component" shall have the meaning provided in Section 8.13.

"WRY Severed Parcel Project" shall have the meaning provided in Section 8.01.

"WRY Severed Parcel Project Components" shall mean the Associated Portion of the LIRR Roof and Facilities[13] and the Facility Airspace Improvements (if any) described in the WRY Severed Parcel Project Requirements.

"WRY Severed Parcel Project Requirements" shall mean (a) the list of the Approved LIRR Work Project Plans and Specifications comprising the Associated Portion of the LIRR Roof and Facilities,[14] (b) a description of the Facility Airspace Improvements permitted to be constructed on the Premises (if any), and (c) the maximum Floor Area and zoning uses that may be utilized on the Premises as "Included Floor Area", each of which are attached hereto as Exhibit Q.

"WSY" shall mean that certain parcel of land known as John D. Caemmerer West Side Yard comprised of the WRY and ERY.

"Yards Parcel" shall have the meaning provided in the WRY Declaration of Easements, as more particularly described in Exhibit A-3 attached hereto.

"Yards Parcel Operator" shall have the meaning provided in the WRY Declaration of Easements.

"Yards Parcel Owner" shall have the meaning provided in the WRY Declaration of Easements.

"Zoning Resolution" shall mean the Zoning Resolution of the City of New York, as the same may be amended from time to time.

ARTICLE 2

PREMISES AND TERM OF LEASE

Landlord does hereby demise and lease to Tenant, and Tenant does hereby hire and take from Landlord, the Premises, together with all easements, appurtenances and other rights and privileges now or hereafter belonging or appertaining to the Premises, subject to the Permitted Exceptions. For the avoidance of doubt, the demise and lease of the Premises to Tenant shall include the exclusive right to utilize the Included Floor Area, subject to and as more particularly set forth in the WRY Declaration of Easements.

TO HAVE AND TO HOLD unto Tenant, its successors and assigns, for a term of years commencing on the Commencement Date and expiring on the Expiration Date.

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[13] There will be no Associated Portion of the LIRR Roof and Facilities in connection with any Terra Firma Parcel Severed Parcel Lease (as defined in the WRY Ground Lease) so this term will be removed in all Terra Firma Parcel Severed Parcel Leases.

[14] There will be no Associated Portion of the LIRR Roof and Facilities in connection with any Terra Firma Parcel Severed Parcel Lease (as defined in the WRY Ground Lease) so this term will be removed in all Terra Firma Parcel Severed Parcel Leases.

ARTICLE 3

RENT

Section 3.01. Closing Payment. On or prior to the WRY Ground Lease Commencement Date, WRY Ground Lease Tenant paid to Landlord the product of (x) TWENTY FOUR MILLION SEVEN HUNDRED THOUSAND AND 00/100 DOLLARS ($24,700,000.00) and (y) the Severed Parcel Allocable Share (the "Closing Payment") (as further adjusted or credited in accordance with Section 3.01 of the WRY Ground Lease), the amount of which Closing Payment shall be deemed to have been deducted from the Initial Land Value. Landlord hereby acknowledges receipt of the Closing Payment.

Section 3.02. Post-Closing Payments.

(a) On the first (1st) anniversary of the WRY Ground Lease Commencement Date, Tenant has paid to Landlord the product of (x) TWELVE MILLION THREE HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS ($12,350,000.00) and (y) the Severed Parcel Allocable Share (the "First Post-Closing Payment"), the amount of which First Post-Closing Payment shall, upon payment, be deducted from the Initial Land Value. Landlord hereby acknowledges receipt of the First Post-Closing Payment.

(b) On the second (2nd) anniversary of the WRY Ground Lease Commencement Date, Tenant has paid to Landlord the product of (x) TWELVE MILLION THREE HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS ($12,350,000.00) and (y) the Severed Parcel Allocable Share (the "Second Post-Closing Payment"), the amount of which Second Post-Closing Payment shall be deemed to have deducted from the Initial Land Value. Landlord hereby acknowledges receipt of the Second Post-Closing Payment.

Section 3.03. Annual Base Rent. Tenant shall pay to Landlord, for each year during the Term (prorated for any partial year), the annual sums set forth in this Section 3.03 ("Annual Base Rent"), in equal monthly installments (subject to the last sentence of Section 3.03(b)) in advance, on the first (1st) day of each calendar month of the Term (unless any such date is not a Business Day, in which case payment shall be due on the immediately preceding Business Day), for the period commencing on the Commencement Date and continuing thereafter throughout the balance of the Term.

(a) Definitions. For purposes of this Section 3.03, the following terms shall have the following definitions:

(i) "Initial Land Value" shall mean an amount equal to the product of (x) FOUR HUNDRED NINETY-FOUR MILLION AND 00/100 DOLLARS ($494,000,000.00) and (y) the Severed Parcel Allocable Share.

(ii) "Adjusted Initial Land Value" shall mean the excess of (x) the sum of (A) the Initial Land Value, (B) the WRY Roof Component Financing Cost Savings, if any, and (C) the Abatement Extension Adjustment Amount, over (y) the sum of (A) the Closing Payment, (B) the First Post-Closing Payment, and (C) the Second Post-Closing Payment.

(iii) "Rent Factor" shall mean six and one-half percent (6.5%).

(iv) "FMV Land Value" shall mean the fair market value of the Premises as of the commencement of the FMV Reset Period in question, determined pursuant to Section 3.08 and calculated as if the Premises were (x) encumbered by this Lease, (y) unimproved by the WRY Roof Component and any Facility Airspace Improvements; and (z) to be used for the actual uses in place or under development on the Premises at the time that such FMV Land Value determination is being made (or, if at the time that such FMV Land Value determination is being made, construction has not commenced on any portion of the Premises, the highest and best use permitted for the Premises in accordance with the Zoning Resolution, this Lease (including the Floor Area and use allocations as set forth in the WRY Severed Parcel Project Requirements) and the other applicable Project Documents).

(v) "FMV Rental Value" shall mean the product of (a) ninety percent (90%) of the FMV Land Value and (b) the Rent Factor.

(b) Initial Rental Period. As more particularly described on the Severed Parcel Pro Forma Rent Schedule, Annual Base Rent payable under this Lease during the Initial Rental Period shall equal the product of (x) the Rent Factor and (y) the Adjusted Initial Land Value, subject to the escalations described in Section 3.03(d). The initial Annual Base Rent payable commencing on the Commencement Date and ending on the first Rent Escalation Date is set forth on the Severed Parcel Pro Forma Rent Schedule.

(i) Notwithstanding the foregoing, if the closing of a construction loan for the WRY Roof Component occurs during any calendar month in the Initial Rental Period (after the Commencement Date) and there are WRY Roof Component Financing Cost Savings, the installment of Annual Base Rent payable for each succeeding calendar month in the Initial Rental Period shall, subject to any applicable rent abatements, be an amount equal to the amount of such installment that would have been payable if Annual Base Rent for the year in which such closing occurs (and each subsequent year during the Initial Rental Period) were increased by an amount equal to the product of (x) the WRY Roof Component Financing Cost Savings, and (y) the Rent Factor, which amount shall be increased by ten percent (10%) on every Rent Escalation Date (without duplication of the rent escalations that would otherwise be applicable to the installment of Annual Base Rent).

(c) Annual Base Rent Resets. On the date immediately following the last day of the Initial Rental Period (such date, the "Initial Reset Date"), and on each subsequent twenty-fifth (25^{th}) anniversary of the Initial Reset Date during the Term, Annual Base Rent shall be reset to equal the FMV Rental Value as of such Reset Date, provided that such FMV Rental Value shall be no less than one hundred percent (100%) and not greater than one hundred twenty percent (120%) of Annual Base Rent payable immediately prior to such Reset Date (the period between each Reset Date (if more than one) and the period between the final Reset Date and the Expiration Date, each an "FMV Reset Period"; and each adjustment to Annual Base Rent as set forth in Section 3.03(c), an "FMV Base Rent Reset").

(d) Escalations of Annual Base Rent. Notwithstanding Section 3.03(b) and (c) and as reflected in the Severed Parcel Pro Forma Rent Schedule, Annual Base Rent shall

increase by ten percent (10%) on every fifth (5th) anniversary of the WRY Ground Lease Commencement Date (each, a "Rent Escalation Date"). In the event that any Rent Escalation Date coincides within a year of a Reset Date, Annual Base Rent shall solely be reset as provided in Section 3.03(c) and not escalated as provided in this Section 3.03(d).

Section 3.04. Rent Abatements.

(a) Provided that this Lease is in full force and effect, subject to Section 3.04(g), Annual Base Rent set forth in Section 3.03 shall be abated as follows:.

(b) Intentionally omitted.

(c) Intentionally omitted.

(d) Intentionally omitted.

(e) Intentionally omitted.

(f) Abatement for Compensable MTA Party Delay. If, as of the date of the occurrence of a Compensable MTA Party Delay, either (x) Commencement of Construction with respect to a Building containing or which shall contain commercial and/or anchor retail space shall have occurred, or (y) Commencement of Construction with respect to a Building containing commercial and/or anchor retail space shall not have yet occurred, but one or more space leases with commercial and/or anchor retail tenants for occupancy in the Building to be constructed has been executed, in addition to the other abatements set forth in this Section 3.03, Tenant shall be entitled to the Direct Cost Rent Credit in accordance with Section 2.5(f) of the WRY Construction Agreement and/or Section 2.11 of Exhibit D to the WRY Declaration of Easements.

(g) Modification of Annual Base Rent Abatements. Notwithstanding the foregoing provisions of Section 3.04, or the Severed Parcel Pro Forma Rent Schedule:

(i) [In the event that Commencement of Construction of a Building shall occur during the Initial Abatement Period or the Second Abatement Period (as such terms are defined in the Severed Parcel Pro Forma Rent Schedule, then (x) from and after Commencement of Construction of such Building, Annual Base Rent shall be the greater of (A) Annual Base Rent at the then-current abatement level, and (B) fifty percent (50%) of Annual Base Rent, and (y) from and after the issuance of a temporary or permanent Certificate of Occupancy allowing for physical occupancy with respect to any portion of such Building, one hundred percent (100%) of Annual Base Rent shall become payable, without abatement; and][15]

(ii) with respect to any Severed Parcel upon which Commencement of Construction of a Building shall occur during the Initial Abatement

[15] The bracketed language (and applicable defined terms) shall only be included in a Severed Parcel Lease to the extent applicable (i.e., this Lease commences during an applicable abatement period) as set forth in Section 9.01(a)(ii) of the WRY Ground Lease.

Extension (as defined in the Severed Parcel Pro Forma Rent Schedule), (x) the length of the Initial Abatement Extension shall be reduced with respect to such Severed Parcel to end on the date of the Commencement of Construction of such Building, and (y) the Abatement Extension Adjustment Amount (as defined in the Severed Parcel Pro Forma Rent Schedule) shall be recalculated in accordance with the Severed Parcel Pro Forma Rent Schedule to reflect the change in the Initial Abatement Extension with respect to such Severed Parcel.[16]

Section 3.05. Rental. All of the amounts payable by Tenant to Landlord pursuant to this Lease (except, in all events, PILOT or PILOST payments), including, without limitation, the Closing Payment, First Post-Closing Payment, Second Post-Closing Payment, Annual Base Rent, Additional Rent, and all other sums, costs, expenses or deposits which Tenant in any of the provisions of this Lease assumes or agrees to pay to and/or deposit with Landlord (such amounts, collectively, "Rental") shall constitute rent under this Lease and, in the event of Tenant's failure to pay Rental after the expiration of any applicable notice and cure periods, Landlord (in addition to all other rights and remedies) shall have all of the rights and remedies provided for herein and by law in the case of non-payment of rent. All Rental shall be payable without any abatement, deduction, counterclaim, set-off or offset whatsoever (except as expressly set forth herein), and without notice or demand, in lawful money of the United States, by wire transfer to a bank account designated by Landlord or at such other place as Landlord shall direct from time to time by written notice to Tenant.

Section 3.06. Proration of Rental Payments. Rental of whatever kind that is due for any partial month, year or other applicable period shall be appropriately prorated.

Section 3.07. Net Lease. Except as expressly set forth herein or in any other Project Document, it is the purpose and intention of Landlord and Tenant, and Landlord and Tenant hereby agree that, all Rental shall be absolutely net to Landlord without any abatement, deduction, counterclaim, set-off or offset whatsoever, so that this Lease shall yield, net, to Landlord, the Rental in each year during the term of this Lease, and that all costs, expenses and charges of every kind and nature (including, without limitation, all public and private utilities and services and any easement or agreement maintained for the benefit of the Premises), relating to the Premises shall be paid by Tenant, such that this Lease shall be a so-called "triple net lease".

Section 3.08. FMV Land Value, FMV Rental Value and Interim Annual Base Rent. The FMV Land Value and FMV Rental Value for each FMV Reset Period shall be determined in the following manner: not more than one (1) year and six (6) months prior to the commencement of the relevant FMV Reset Period (or, in the event that the Commencement Date is less than one (1) year and six (6) months prior to the commencement of the relevant FMV Reset Period, promptly following the Commencement Date), Landlord shall submit to Tenant an appraisal, setting forth Landlord's determination of the FMV Land Value and the FMV Rental

[16] The bracketed language (and applicable defined terms) shall only be included in a Severed Parcel Lease to the extent applicable (i.e., if the commencement of construction of a Building pursuant to this Lease shall occur during the Initial Abatement Extension) as set forth in Section 9.01(a)(ii) of the WRY Ground Lease.

Value, together with a letter making express reference to this Section 3.08 and stating that Tenant has thirty (30) days to respond to such notice (the "Rental Notice"). If Tenant shall dispute Landlord's determination (the "Notice of Dispute") by notice given by Tenant to Landlord not later than thirty (30) days after delivery to Tenant of the applicable Rental Notice (TIME BEING OF THE ESSENCE as to the giving of the Notice of Dispute), then Tenant shall engage its own appraiser and deliver to Landlord its determination of the FMV Land Value (and calculation of the corresponding FMV Rental Value) no later than forty-five (45) days following the delivery of the Notice of Dispute. Landlord and Tenant shall attempt to resolve any disagreement in the FMV Land Value in good faith, and if such disagreement is not resolved within thirty (30) days, then such dispute shall be resolved in accordance with Sections 40.01(a) and (b); provided that any appraiser selected by the parties pursuant to this Section 3.08 shall be a member of the American Institute of Real Estate Appraisers (or its successor organization) and shall have been engaged in the business of real estate appraisals in the City of New York for no less than ten (10) years. If for any reason the FMV Rental Value for any FMV Reset Period has not been finally determined by the first day of such FMV Reset Period, then until such final determination, Tenant shall pay as Annual Base Rent the lesser of (a) one hundred ten percent (110%) of the Annual Base Rent payable immediately prior to such Reset Date and (b) the Annual Base Rent calculated using Landlord's determination of FMV Rental Value. Upon final determination of the FMV Land Value and corresponding FMV Rental Value for such FMV Reset Period (i) in the event that the application of such FMV Rental Value shall result in a greater Annual Base Rent than that theretofore paid in respect of such FMV Reset Period, Tenant shall pay the entire amount of any underpayment to Landlord within twenty (20) days of such final determination, without interest, or (ii) in the event that the application of such FMV Rental Value shall result in a lesser Annual Base Rent than that theretofore paid in respect of such FMV Reset Period, Landlord shall credit the amount of such overpayment against the next monthly installments of Annual Base Rent thereafter due and owing, without interest.

Section 3.09. Additional Rent. Tenant shall pay to Landlord, as additional rent ("Additional Rent") under this Lease, the following amounts (except, in all events, PILOT or PILOST payments, which shall be payable in accordance with Section 4.11 and shall not be deemed "rent"): all taxes, assessments, charges, costs, expenses and other sums of money as shall become due and payable by Tenant to or on behalf of Landlord under this Lease, or which Tenant shall assume to pay to or on behalf of Landlord under this Lease (whether or not designated as Additional Rent in this Lease). Upon any failure on the part of Tenant to pay any Additional Rent, Landlord shall have the same legal, equitable and contractual rights, powers and remedies provided in this Lease, by statute, at common law or as are otherwise available to Landlord, in the case of nonpayment of Annual Base Rent, including all interest and penalties that may accrue thereon in the event of Tenant's failure to pay such amounts when due, and all damages, costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements which Landlord may incur by reason of any Default of Tenant or failure on Tenant's part to comply with any of the terms of this Lease, or arising out of any indemnity and/or "hold harmless" agreement given or made by Tenant to Landlord in this Lease, or otherwise incurred by Landlord in connection with the enforcement of its rights and Tenant's obligations under this Lease (provided that Landlord is the prevailing party), and Tenant hereby agrees to pay any such amounts within twenty (20) days after demand by Landlord unless otherwise specifically provided in this Lease.

Section 3.10. Section 467. Upon Tenant's written request, Landlord shall cooperate with Tenant to enable Tenant to account for the appropriate treatment of Annual Base Rent under Section 467 of the Internal Revenue Code of 1986, as amended.

ARTICLE 4

IMPOSITIONS

Section 4.01. Impositions. Subject to any exemptions or abatements which may be granted by any Governmental Authority or as otherwise set forth herein, Tenant shall pay, as hereinafter provided, all of the following items imposed by any Governmental Authority with respect to the Premises (collectively, "Impositions"), all of which shall be calculated without taking into account available exemptions arising on account of the ownership of the Premises by Landlord: (a) Taxes and/or PILOT (if any), with PILOT payable in accordance with Section 4.11, (b) personal property taxes, (c) commercial rent or occupancy taxes, (d) water, water meter and sewer rents, rates and charges, (e) levies, (f) license and permit fees, (g) service charges with respect to police protection, fire protection, street and highway construction, maintenance and lighting, sanitation and water supply, if any, (h) all excise, sales, value added, use and similar taxes, (i) governmental charges for utilities, communications and other services rendered or used in or about the Premises, (j) fines, penalties and other similar or like governmental charges applicable to the foregoing and any interest or costs with respect thereto arising from the failure to make timely payment thereof and (k) any and all other governmental levies, fees, rents, assessments and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, and any interest, penalties or costs with respect thereto arising from the failure to make timely payment thereof, which at any time during (or after, but attributable to a period falling within) the Term are (or, if the Premises or any part thereof or the owner thereof were not exempt therefrom, would have been) (1) assessed, levied, confirmed, imposed upon or would have become due and payable out of or in respect of, or would have been charged with respect to, the Premises or any document to which Tenant is a party creating or transferring an interest or estate in the Premises or the use and occupancy thereof by Tenant and (2) encumbrances or liens on (i) the Premises, (ii) the sidewalks or streets in front of or adjoining the Premises, (iii) any vault, passageway or space in, over or under such sidewalk or street (other than any of the foregoing that are within the sole legal and operational control of a Person other than Tenant), (iv) any appurtenances of the Premises, (v) any personal property (except personal property which is not owned by or leased to Tenant), Equipment or other facility used in the operation thereof, or (vi) the Rental (or any portion thereof) payable by Tenant hereunder. Each such Imposition, or installment thereof, during the Term shall be paid not later than the Due Date thereof. However, if, by law, any Imposition may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the same in such installments and shall be responsible for the payment of such installments only, together with applicable interest, if any, relating to periods prior to the Expiration Date. Tenant shall promptly notify Landlord if Tenant shall have elected to pay any such Imposition in installments. Notwithstanding anything to the contrary herein, Tenant shall have no obligation to pay any Imposition levied on or payable with respect to the Yards Parcel or the High Line Component; provided that Tenant shall indemnify and hold Landlord harmless for any such Impositions. For the avoidance of doubt,

Landlord shall have no liability for any Impositions levied on or payable with respect to the Premises (without limiting its obligation, as agent, to remit any PILOT received from Tenant as provided in Section 4.11).

Section 4.02. Receipts. Tenant, from time to time upon request of Landlord, shall promptly furnish to Landlord official receipts of the appropriate taxing authority, or other evidence reasonably satisfactory to Landlord, evidencing the payment of Impositions.

Section 4.03. Landlord's Taxes. Nothing herein contained shall require Tenant to pay municipal, state or federal income, gross receipts, inheritance, estate, succession, profit or capital gains taxes of Landlord, or any corporate franchise tax imposed upon Landlord or any gains tax imposed on Landlord. Notwithstanding the foregoing, if at any time during the Term, a tax or excise on Rental or the right to receive rents or any other tax, however described, is levied or assessed against Landlord as a substitute, in whole or in part, for any Impositions that would otherwise be payable by Tenant, Tenant shall pay and discharge such tax or excise on Rental or other tax before interest or penalties accrue and the same shall be deemed an Imposition levied against the Premises.

Section 4.04. Impositions Beyond Term. Any Imposition relating to a period a part of which is included within the Term and a part of which is included in a period of time before the Commencement Date or after the Expiration Date (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon or in respect of or become a lien upon the Premises, or shall become payable, during the Term) shall be apportioned between Landlord and Tenant as of the Commencement Date or the Expiration Date, as the case may be, so that Tenant shall pay that portion of such Imposition which that part of such fiscal period included in the period of time after the Commencement Date or before the Expiration Date bears to such fiscal period. Notwithstanding the foregoing, no such apportionment of Impositions as of the Expiration Date shall be made if this Lease is terminated prior to the Fixed Expiration Date as the result of an Event of Default.

Section 4.05. Tenant's Contest. Tenant shall have the right to contest the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith, in which event, payment of such Imposition may be postponed at the election of Tenant if and only as long as:

(a) neither the Premises, nor any part thereof or interest therein or income therefrom or any other assets of or funds appropriated to Landlord would, by reason of such postponement or deferment, be, in the reasonable judgment of Landlord, in imminent danger of being forfeited or lost, and neither Landlord nor Tenant would by reason thereof be subject to any civil or criminal liability;

(b) if the contested amount (together with all interest and penalties in connection therewith) exceeds One Hundred Thousand Dollars ($100,000.00), subject to CPI Adjustment, Tenant shall have either (i) deposited with the Impositions Depository, prior to or simultaneously with such contest, an amount equal to one hundred percent (100%) of the amount so contested and unpaid, together with all interest and penalties in connection therewith and all charges that may or might be assessed against or become a charge on the Premises or any part

thereof in (or during the pendency of) such proceedings (collectively, the "Contested Imposition Deposit") or (ii) delivered to Landlord a letter of credit for the benefit of Landlord in such amount issued by an Institutional Lender or other security, in form and substance reasonably satisfactory to Landlord; and

(c) upon the termination of such proceedings, Tenant shall pay the amount of such Imposition or part thereof as finally determined in such proceedings (the payment of which may have been deferred during the prosecution of such proceedings), together with any costs, fees (including attorneys' fees and disbursements), interest, penalties or other liabilities imposed on Tenant or Landlord in connection therewith. Upon such payment, the Impositions Depository shall return, with interest, if any, any amount deposited with it in respect of such Imposition as aforesaid; provided, however, that the Impositions Depository, at Tenant's request (or, upon Tenant's failure to make such payment in a timely manner, at Landlord's request), shall disburse said monies on deposit with it directly to the taxing authority to whom such Imposition is payable and any remaining monies, with interest, if any, shall be returned promptly to Tenant. If at any time during the continuance of such proceedings any accrued and unpaid interest, penalties and/or charges in connection with such Imposition cause the amount of such Imposition (together with all interest and penalties in connection therewith and all charges that may or might be assessed against or become a charge on the Premises or any part thereof in (or during the pendency of) such proceedings) to exceed the amount of the Contested Imposition Deposit, Tenant, within fifteen (15) days after accrual of the same, shall deposit an amount equal to such excess with the Impositions Depository, and upon failure of Tenant to do so, the amount theretofore deposited may be applied, at the request of Landlord, to the payment, removal and/or discharge of such Imposition, together with the interest and penalties incurred in connection therewith and any costs, fees (including attorneys' fees and disbursements) or other liabilities accruing in any such proceedings, and the balance, if any, together with any interest earned thereon, shall be returned to Tenant or the deficiency, if any, shall be paid by Tenant to Landlord within ten (10) days after demand therefor by Landlord. Notwithstanding anything to the contrary contained in this Section 4.05, if by law an Imposition may be challenged only after payment of such Imposition, Tenant shall pay the same prior to, and as a condition to, the institution of any challenge thereof.

Section 4.06. No Postponement of Tenant's Obligation. Tenant shall have the right, at its sole cost and expense, to seek a reduction in the valuation of the Premises assessed for Taxes by appropriate proceedings diligently conducted in good faith, and to prosecute any action or proceeding in connection therewith; provided, that (a) Tenant shall notify Landlord of any such actions or proceedings, and shall deliver to Landlord copies of any applications or submissions in connection with any such proceeding, at least five (5) Business Days prior to Tenant's submission of the same to the applicable taxing authority and (b) no such action or proceeding shall postpone Tenant's obligation to pay any Imposition except in accordance with the provisions of Section 4.05.

Section 4.07. Landlord Cooperation. Landlord shall not be required to join in any proceedings referred to in Section 4.05 or 4.06 unless the provisions of any law, rule or regulation in effect at the time shall require that Landlord join such proceedings or that such proceedings be brought by or in the name of Landlord, in which event, Landlord shall join and reasonably cooperate in such proceedings, or permit the same to be brought in its name, upon

compliance by Tenant with such conditions as Landlord may reasonably require; provided, however, that Landlord shall not be liable for the payment of any costs or expenses in connection with any such proceedings and Tenant shall reimburse Landlord for, and shall indemnify and hold Landlord harmless from and against, any and all costs or expenses which Landlord may reasonably sustain or incur in connection with any such proceedings, including, without limitation, reasonable attorneys' fees and disbursements. In the event that Tenant shall institute a proceeding referred to in Section 4.05 or 4.06 and no law, rule or regulation in effect at the time requires that such proceeding be brought by and/or in the name of Landlord, Landlord, nevertheless, shall, at Tenant's sole cost and expense, and subject to the reimbursement provisions hereinabove set forth, reasonably cooperate with Tenant in any such proceeding.

Section 4.08. Tax Bills. Any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition asserting non-payment of such Imposition shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill at the time or date stated therein.

Section 4.09. Invoices for Impositions. Tenant shall make all necessary arrangements with the applicable taxing authorities to have invoices for Impositions sent directly to Tenant and, if necessary, Landlord shall, at the request of Tenant and at no cost to Landlord, reasonably cooperate in making such arrangements. In the event that Landlord shall receive after the Commencement Date any invoices for Impositions, Landlord shall promptly forward the same to Tenant.

Section 4.10. Separation of Tax Lots. Landlord agrees to cooperate reasonably with Tenant in any applications to be made by Tenant for the creation of a separate tax lot or lots for the Facility Airspace Parcel, and for any Balance Parcel or Severed Parcels within the Premises, including the execution of any documents as may be required by a Governmental Authority in connection therewith. The costs associated with any such applications for a separate tax lot, including surveying costs, shall be paid by Tenant.

Section 4.11. PILOT; PILOT Agreements; PILOST.

(a) During any period in which a PILOT Agreement is not in effect, Tenant shall pay PILOT to Landlord, as collection agent but not as a portion of Rental, not later than five (5) Business Days prior to the Due Date thereof, which PILOT shall be remitted promptly by Landlord to HYIC (or such other Governmental Authority as HYIC may designate to Landlord from time to time). In no event shall PILOT be deemed an Imposition or a payment of Rental for purposes of this Lease; provided, however that Tenant may contest any payment of PILOT in accordance with procedures set forth in Section 4.05.

(b) Landlord agrees reasonably to cooperate with Tenant (at Tenant's sole cost and expense) in any applications to be made by Tenant to any Governmental Authority for abatements or exemptions to PILOT payments, including UTEP benefits. In connection therewith, Landlord agrees to enter into any modifications of this Lease or other agreements reasonably required by the Governmental Authority conveying such benefits; provided that such modifications or agreements do not materially increase Landlord's obligations

or reduce its rights and privileges hereunder. In addition, Landlord and Tenant acknowledge that the City has committed, upon the request of Tenant, to request that IDA amend the UTEP to include the WRY. If the UTEP is so amended, in determining PILOT, Tenant will be entitled to claim an abatement under the UTEP (if Tenant is granted the UTEP abatement by IDA in accordance with IDA's application procedures). Upon request of Tenant, Landlord, at Tenant's sole cost and expense, will reasonably cooperate with the efforts of Tenant, to cause the City to amend the UTEP to include the WRY.

(c) It is the understanding of the parties that Tenant shall be liable for the payment of PILOST in accordance with the PILOST Agreement. In no event shall PILOST be deemed an Imposition or a payment of Rental for purposes of this Lease; provided, however that Tenant may contest any payment of PILOST in accordance with the procedures set forth in Section 4.05.

ARTICLE 5

DEPOSITS FOR IMPOSITIONS

Section 5.01. Monthly Deposits Following Event of Default.

(a) At Landlord's option, which may be exercised solely at any time during the pendency of an uncured Event of Default under this Lease and no other time, Tenant shall make monthly deposits for Impositions and Insurance Premiums, as set forth in this Article 5. Landlord shall provide Tenant with written notice setting forth Landlord's reasonable estimate of the annual Insurance Premiums and aggregate annual Impositions for the forthcoming twelve (12) month period, and Tenant shall deposit with the Impositions Depository on the first day of each month during the Term, an amount equal to one-twelfth ($1/12^{th}$) of such annual Impositions and one-twelfth ($1/12^{th}$) of such Insurance Premiums as reasonably estimated by Landlord (such deposits, the "Monthly Impositions and Insurance Deposits"). Notwithstanding the foregoing, in the event that a Leasehold Mortgagee shall or a Mezzanine Lender shall require Tenant to deposit funds with such Leasehold Mortgagee or Mezzanine Lender, as applicable, to insure payment of Impositions or Insurance Premiums, any amount so deposited by Tenant shall be credited against the amount, if any, which Tenant would otherwise be required to deposit with the Impositions Depository under this Article 5; provided that such Leasehold Mortgagee or Mezzanine Lender, as applicable, shall have agreed in writing, for the benefit of Landlord and pursuant to an instrument reasonably satisfactory to Landlord, to hold such funds in a segregated special account for the payment of Impositions and Insurance Premiums, and for no other use, and that the Leasehold Mortgagee or Mezzanine Lender, as applicable, shall use such funds to pay Impositions and Insurance Premiums as and when the same are required to be paid hereunder and for no other purpose.

(b) If at any time the monies so deposited by Tenant shall be insufficient to pay the next installment of Impositions or Insurance Premiums then due, Tenant shall deposit with the Impositions Depository the amount of any such insufficiency to enable the Impositions Depository to pay the next installment of Impositions or Insurance Premiums at least

thirty (30) days prior to the Due Date thereof. It is acknowledged that all or a portion of the Insurance Premiums may be payable to the FASP Owners Association in accordance with the Association Documents and/or, following the Condominium Conversion Date, the Condominium Board in accordance with the Condominium Documents.

(c) The Impositions Depository shall hold monies deposited by Tenant pursuant to this Article 5 in a segregated special account for the purpose of paying the charges for which such amounts have been deposited as they become due, and the Impositions Depository shall apply the deposited monies for such purpose not later than the Due Date for such charges.

(d) If at any time during the period that Tenant shall be required to make the deposits required by this Section 5.01 the amount of any Imposition or Insurance Premium is increased or Landlord receives information from the Persons imposing such Imposition that an Imposition will be increased and the monthly deposits then being made by Tenant under this Section 5.01 would be insufficient to pay such Imposition or Insurance Premium thirty (30) days prior to the Due Date thereof, then upon notice from Landlord to Tenant of such fact, the monthly deposits shall thereupon be increased and Tenant shall deposit with the Impositions Depository promptly (but in no event later than twenty (20) days from the applicable notice) sufficient monies for the payment of the increased Imposition or Insurance Premium. Thereafter, the monthly payments shall be adjusted such that Tenant shall deposit with the Impositions Depository an amount sufficient to pay each Imposition and Insurance Premium at least thirty (30) days prior to the Due Date thereof.

(e) For the purpose of determining whether the Impositions Depository has on hand sufficient monies to pay any particular Imposition or Insurance Premium at least thirty (30) days prior to the Due Date thereof, deposits for each category and payee of Imposition and for each Insurance Premium shall be treated separately. The Impositions Depository shall not be obligated to use monies deposited for the payment of an Imposition or Insurance Premium not yet due and payable for the payment of an Imposition or Insurance Premium that is due and payable.

(f) Notwithstanding the foregoing, Tenant expressly acknowledges and agrees that (i) monies deposited with the Impositions Depository pursuant to the provisions of this Article 5 may be held by the Impositions Depository in a single bank account, and (ii) the Impositions Depository shall, in the event Tenant fails to make any payment or perform any obligation required under this Lease, at Landlord's option and direction but subject to the rights of any Leasehold Mortgagees or Mezzanine Lenders, use any such monies for the payment of any Rental.

(g) If this Lease shall be terminated by reason of any Event of Default, or if dispossession occurs pursuant to Article 31 of this Lease, all monies deposited pursuant to this Article 5 then held by the Impositions Depository shall be paid to, and applied by, Landlord in payment of any and all sums due under this Lease and Tenant shall promptly pay the resulting deficiency.

(h) Any interest paid on monies deposited pursuant to this Article 5 shall be applied pursuant to the foregoing provisions against amounts thereafter becoming due and payable by Tenant.

(i) Notwithstanding anything to the contrary herein, if at any time after monies have been deposited with the Impositions Depository pursuant to the provisions of this Article 5 there are no pending Events of Default for a period of thirty (30) consecutive days, all monies so deposited with the Impositions Depository shall be paid over to Tenant, subject to the rights of any Leasehold Mortgagees or Mezzanine Lenders.

ARTICLE 6

LATE CHARGES

In the event that (a) any payment of Rental shall not have been paid by Tenant to Landlord within five (5) Business Days following the date due and (b) Landlord delivers written notice thereof to Tenant (provided that no such notice shall be required with respect to late payments of Annual Base Rent or Closing Payments), such unpaid amount shall bear interest at a rate equal to the sum of the Prime Rate plus two percent (2%) (such rate, the "Default Rate"), from the date on which such payment became due and payable through the date of actual payment. The amount of interest accrued pursuant to the immediately preceding sentence shall become due and payable to Landlord as liquidated damages for the administrative costs and expenses incurred by Landlord by reason of Tenant's failure to make prompt payment, and such amounts shall constitute Additional Rent hereunder. No failure by Landlord to insist upon the strict performance by Tenant of its obligations to pay any such interest shall constitute a waiver by Landlord of its right to enforce the provisions of this Article 6 in any instance thereafter occurring. The provisions of this Article 6 shall not be construed in any way to extend the grace periods or notice periods otherwise set forth in this Lease.

ARTICLE 7

LEASE SUBORDINATE TO WRY DECLARATION OF EASEMENTS; ASSUMPTION BY TENANT OF RIGHTS AND OBLIGATIONS; FASP OWNERS ASSOCIATION

Section 7.01. WRY Declaration of Easements. This Lease, and the rights and obligations of Landlord and Tenant hereunder, shall be subject and subordinate in all respects to the WRY Declaration of Easements. During the Term, Tenant shall be entitled to all rights and benefits, and shall comply with all obligations, of the Severed Parcel Owner of the Premises in accordance with and subject to the WRY Declaration of Easements which obligations shall be incorporated into this Lease as obligations of Tenant hereunder, as if fully set forth herein. For the avoidance of doubt, nothing in this Section 7.01 shall be deemed to expand Tenant's obligations as the Severed Parcel Owner of the Premises within the meaning of Article XVI of the WRY Declaration of Easements, including without limitation, the limitation of Tenant's obligations (in its capacity as a Severed Parcel Owner with respect to its Allocable Share (as such term is defined in the WRY Declaration of Easements) of the obligations of the Facility Airspace Parcel Owner (which constitute Association Matters under the WRY Declaration of Easements). In addition, notwithstanding anything to the contrary in this Lease, nothing in this

Lease shall whatsoever be deemed to (a) derogate from the rights and obligations of the Yards Parcel Owner (including Landlord in its capacity as Yards Parcel Owner) and Yards Parcel Operator as set forth in the WRY Declaration of Easements, or (b) derogate from the rights and obligations of Tenant in its capacity as the Severed Parcel Owner of the Premises in accordance with the WRY Declaration of Easements.

Section 7.02. FASP Owners Association. Landlord acknowledges and agrees that, following the approval or deemed approval of the Association Documents in accordance with the WRY Declaration of Easements, Landlord will accept the performance by the FASP Owners Association or its designee of any obligation of Tenant hereunder which constitutes an Association Matter. Notwithstanding the foregoing, nothing contained herein shall limit Landlord's recourse to Tenant with respect to any Default under this Lease. Landlord and Tenant hereby agree that this Lease shall in all respects be subject and subordinate to the terms and provisions of the Association Documents and any future amendments, modifications or supplements thereof.

ARTICLE 8

DEVELOPMENT RIGHTS AND DEVELOPMENT AND CONSTRUCTION OF THE PROJECT

Section 8.01. Agreement to Develop the WRY Severed Parcel Project. Subject to and in accordance with the terms and conditions set forth in this Lease, the WRY Declaration of Easements and the other Project Documents which are binding on Tenant, Tenant shall cause, at no cost or expense to Landlord, the design, construction and completion of a project (the "WRY Severed Parcel Project") utilizing up to the Included Floor Area, which WRY Severed Parcel Project shall consist of the Associated Portion of the LIRR Roof and Facilities[17] and other WRY Severed Parcel Project Components; provided, however, that the WRY Severed Parcel Project shall in all events be developed and maintained (i) in compliance with the Zoning Resolution and the WRY Restrictive Declaration, (ii) in accordance with the Minimum Standards, and (iii) if the WRY Severed Parcel Project contains a hotel, compliance with the provisions of Public Authorities Law § 2879-b, to the extent applicable. Nothing contained in this Section 8.01 shall be deemed to require the construction of the Associated Portion of the LIRR Roof and Facilities or any portion thereof prior to the date required by the WRY Construction Agreement.

Section 8.02. Facility Airspace Improvement Plans and Specifications.

(a) Intentionally omitted.

(b) The provisions of this Section 8.02 and Exhibit D of the WRY Declaration of Easements are intended to collectively constitute a single set of requirements for

[17] There will be no Associated Portion of the LIRR Roof and Facilities in connection with any Terra Firma Parcel Severed Parcel Lease (as defined in the WRY Ground Lease) so this term will be removed in all Terra Firma Parcel Severed Parcel Leases.

the review and approval by the Yards Parcel Owner, the Yards Parcel Operator and Landlord, collectively, of the Proposed Facility Airspace Improvement Plans and Specifications (including, if applicable, portions thereof that may relate to Material Facility Airspace Improvements on the Premises), other design and scheduling matters, and the imposition of any other requirements hereunder and under the WRY Declaration of Easements with respect to the design and construction of any Facility Airspace Improvements (including any Restoration and Capital Improvement thereto) on the Premises. Landlord hereby appoints the Yards Parcel Operator (and Tenant hereby consents thereto) for all responsibilities in coordinating in all respects the implementation of such provisions on behalf of the Yards Parcel Owner, the Yards Parcel Operator and Landlord. Landlord acknowledges and agrees that Tenant shall be entitled to rely on all consents and approvals (including deemed approvals) by the Yards Parcel Operator as binding on Landlord, Yards Parcel Owner and the Yards Parcel Operator for all such purposes hereunder and under the WRY Declaration of Easements without the requirement of any further inquiry on the part of Tenant.

(c) Prior to the initial Commencement of Construction of any portion of the Facility Airspace Improvements on the Premises (or any portion thereof) pursuant to this Lease, Tenant shall submit to Yards Parcel Operator plans and specifications in a form sufficiently detailed and progressed to enable the Yards Parcel Operator to review the same to the extent provided in this Section 8.02(c) for such portions of the Facility Airspace Improvements to be constructed (the "Proposed Facility Airspace Improvement Plans and Specifications") prepared by a licensed professional engineer or registered architect selected by Tenant, which Proposed Facility Airspace Improvement Plans and Specifications shall be in conformance with all applicable Legal Requirements, the WRY Severed Parcel Project Requirements, and all requirements of the WRY Declaration of Easements. Without limiting any additional requirements under Exhibit D of the WRY Declaration of Easements, the Yards Parcel Operator shall have the right pursuant to this Section 8.02 to review and approve such Proposed Facility Airspace Improvement Plans and Specifications; provided, that such review and approval shall be limited to (i) determining whether such Proposed Facility Airspace Improvement Plans and Specifications conform to the WRY Severed Parcel Project Requirements in all material respects (i.e., with respect to allocation of Floor Area, zoning use and the Parking Component to the extent set forth therein) and (ii) to the extent applicable, that any portion of the WRY Severed Parcel Open Space Component complies with Legal Requirements. If the Yards Parcel Operator reasonably determines that such Proposed Facility Airspace Improvement Plans and Specifications do not conform to the standards set forth (to the extent applicable) in the preceding sentence, and such deviations are not reasonably acceptable to Yards Parcel Operator (on behalf of Landlord and Yards Parcel Owner), then Yards Parcel Operator shall notify Tenant of same within twenty-one (21) days of receipt thereof, specifying in reasonable detail those respects in which such Proposed Facility Airspace Improvement Plans and Specifications do not so conform and are otherwise not reasonable to Yards Parcel Operator. Upon receipt of such notice from Yards Parcel Operator, Tenant shall then either (i) cause such Proposed Facility Airspace Improvement Plans and Specifications to be revised and resubmitted to Landlord for review and approval as aforesaid, or (ii) dispute the disapproval of the Proposed Facility Airspace Improvement Plans and Specifications in accordance with Sections 40.01(a) and (b).

(d) If Yards Parcel Operator shall fail to approve or disapprove any Proposed Facility Airspace Improvement Plans and Specifications within twenty-one (21) days of Tenant's submission thereof to Yards Parcel Operator, Tenant may provide to Yards Parcel Operator a written notice, which notice shall include in capital letters on the first page thereof: "THIS NOTICE IS BEING GIVEN UNDER SECTION 8.02 OF THE AGREEMENT OF SEVERED PARCEL LEASE FOR A PORTION OF THE WESTERN RAIL YARD SECTION OF THE JOHN D. CAEMMERER WEST SIDE YARD. YOUR FAILURE TO RESPOND WITHIN TEN (10) DAYS WILL RESULT IN YOUR DEEMED APPROVAL OF THE PENDING PROPOSED FACILITY AIRSPACE IMPROVEMENT PLANS AND SPECIFICATIONS" (such notice, the "Proposed Facility Airspace Improvement Plans and Specifications Notice"). In the event that Yards Parcel Operator does not approve or disapprove such Proposed Facility Airspace Improvement Plans and Specifications within ten (10) days after Tenant provides Yards Parcel Operator with such Proposed Facility Airspace Improvement Plans and Specifications Notice, Yards Parcel Operator shall be deemed to have approved such Proposed Facility Airspace Improvement Plans and Specifications. As used herein, the term "Approved Facility Airspace Improvement Plans and Specifications" shall mean, with respect to any Facility Airspace Improvements, the Proposed Facility Airspace Improvement Plans and Specifications that have been approved (or have otherwise been deemed approved) by Yards Parcel Operator.

(e) In the event that Tenant shall desire from time to time to modify the Approved Facility Airspace Improvement Plans and Specifications in a material manner, Tenant shall first submit such proposed modifications to Yards Parcel Operator. The submittal, review and approval of any such proposed modifications shall be upon the same terms and conditions as apply to the submittal, review and approval of the applicable Proposed Facility Airspace Improvement Plans and Specifications pursuant to Sections 8.02(c) and (d).

(f) Each Approved Facility Airspace Improvement Plans and Specifications shall comply with all Legal Requirements, including but not limited to the Building Code, as well as all requirements under the WRY Declaration of Easements, to the extent applicable. The responsibility to assure such compliance shall be that of Tenant and not of Landlord or Yards Parcel Operator. Yards Parcel Operator's determination that such Approved Facility Airspace Improvement Plans and Specifications conform to the applicable provisions of Section 8.02(c) shall not be, nor shall it be construed to be, or relied upon as, a determination that such Approved Facility Airspace Improvement Plans and Specifications comply with any Legal Requirements.

(g) All reasonable costs and expenses incurred by Landlord in reviewing the Proposed Facility Airspace Improvement Plans and Specifications and any modifications thereto shall be paid by Tenant to Landlord within thirty (30) days following delivery of an invoice by Landlord, together with evidence reasonably substantiating such costs.

Section 8.03. Facility Airspace Improvements Release to Proceed.

(a) Tenant shall provide to Yards Parcel Operator notice of the date upon which it desires to initiate the Commencement of Construction of any Facility Airspace Improvements on the Premises (the "FAI Construction Commencement Notice"), which FAI

Construction Commencement Notice shall be given not less than thirty (30) days prior to such desired commencement date (and shall be delivered concurrently with an Estimated Sales Tax Statement (as such term is defined in the PILOST Agreement)). Within twenty (20) days after receipt of such notice, Yards Parcel Operator shall provide Tenant with a written release to proceed with the commencement of construction in accordance with the applicable Approved Facility Airspace Improvement Plans and Specifications (the "Facility Airspace Improvements Release to Proceed"), upon satisfaction (or waiver in writing by Yards Parcel Operator) of each of the following conditions:

(i) The Yards Parcel Operator (on behalf of Landlord) shall have approved or shall have been deemed to have approved the Approved Facility Airspace Improvements Plans and Specifications;

(ii) If required pursuant to Exhibit D of the WRY Declaration of Easements:

(1) The Yards Parcel Operator shall have approved or shall be deemed to have approved any Approved MFAI Contractor Submittals for the initial stage of the construction work and Tenant's MFAI Schedule; and

(2) Tenant shall have provided to the Yards Parcel Operator work and safety plans, including job hazard analyses where required;

(iii) Tenant shall have procured and paid for all Improvement Approvals with respect to all of the particular elements of such Facility Airspace Improvements

(iv) If such construction involves the construction of a Building, Tenant shall have (x) delivered to Landlord reasonably satisfactory evidence of closing by Tenant of financing sources (which sources may consist of any combination of debt and/or equity facilities) sufficient to complete the initial construction of such Building, other than work anticipated to be completed by the occupants thereof at their expense (or, if the debt and/or equity facilities intended to be used for such construction, if any, have not closed, the delivery to Landlord of binding commitments therefor), (y) delivered to Landlord the Building Completion Guaranty for such Building, duly executed by the applicable Building Completion Guarantor, and (z) provided to Landlord evidence, satisfactory in the reasonable determination of Landlord, that the agreements between Tenant and the lender under any construction loan facility for such Building fulfill the requirements of Section 17.03(a)(iii);

(v) Tenant shall have complied with the insurance requirements of this Lease and the WRY Declaration of Easements applicable to such Facility Airspace Improvements and the construction thereof (it being acknowledged that the FASP Owners Association has the right to procure and maintain any such insurance on behalf of Tenant in accordance with the WRY Declaration of Easements);

(vi) Tenant's obligations set forth in Section 4.4 of the WRY Declaration of Easements with respect to Section 5 of the New York Lien Law shall have been satisfied;

(vii) Tenant shall have (x) executed and delivered to Landlord a collateral assignment in a form reasonably acceptable to Tenant, Landlord and Leasehold Mortgagee (subject to any prior assignment to any Leasehold Mortgagee) of all agreements, plans, permits and licenses relating to the construction of such Facility Airspace Improvements and the bonds, if any, provided thereunder, and (y) delivered to Landlord a consent and acknowledgement to such collateral assignment in a form reasonably acceptable to Tenant, Landlord and Leasehold Mortgagee, executed by the counterparty under any such agreement (and, to the extent that there are major subcontracts to which such counterparty is a party, by the counterparty to such major subcontracts); provided, however, that if a Leasehold Mortgage is being entered into in connection with the construction of such Facility Airspace Improvements, Tenant shall not be obligated to deliver any such consent and acknowledgement from any such counterparty unless such counterparty is also providing its consent and acknowledgement to a collateral assignment being given by Tenant in favor of the Leasehold Mortgagee; and

(viii) There shall be no outstanding Event of Default or material Non-Monetary Default under this Lease or the Project Documents; provided that such clause shall apply with respect to a material Non-Monetary Default only if Landlord has delivered to Tenant notice of such Non-Monetary Default to the extent required under the applicable provision of Section 31.01 of this Lease.

(b) [Landlord acknowledges that the Facility Airspace Improvements Release to Proceed for the Building has been issued, and all of the foregoing conditions have been either satisfied or waived.][18]

(c) Landlord acknowledges that Developer may perform FAI Preparation Work in accordance with the WRY Construction Agreement, and that such work (including the review of plans, release to proceed, etc.) shall be governed by the WRY Construction Agreement and not the provisions of this Lease.

Section 8.04. Construction Requirements for Facility Airspace Improvements.

(a) Each Facility Airspace Improvement constructed by Tenant on the Premises shall, upon the Commencement of Construction of such Facility Airspace Improvement, be constructed timely and reasonably continuously (subject to Force Majeure and Unavoidable Delay), in a good and workmanlike manner, in compliance with all applicable Legal Requirements and in accordance with all of the standards set forth in this Lease and the WRY Declaration of Easements, to the extent applicable (all of the foregoing, collectively, the "Minimum Standards"). Tenant shall use only new or first-quality material and equipment at least equal in quality and class to the standard of first-class residential, commercial and/or

[18] The bracketed language shall be included if the Facility Airspace Improvements Release to Proceed for the Building has been issued prior to the date of this Lease.

mixed-use buildings, as applicable, then being constructed in New York City. Tenant shall aim to achieve and maintain a Leadership in Energy and Environmental Design (LEED)-NC Silver rating or higher for each Building that is constructed on the Premises and a LEED-ND certification for the WRY. All Facility Airspace Improvements shall be constructed solely on the Premises and shall not depend on any access, services or foundation supports on any other land (except as may be permitted by the WRY Declaration of Easements, [the Condominium Documents][19] and valid non-terminable easements that run with the land, or other consents or rights from a Governmental Authority), except that utility services will be connected directly to the public street. Without limiting the foregoing, Landlord shall reasonably cooperate with Tenant (at Tenant's cost and expense) in obtaining such consents or rights from any Governmental Authority with respect to the utilization of space within and below 11th Avenue as may be in furtherance of the WRY Severed Parcel Project.

(b) Tenant shall obtain all necessary permits, consents, certificates and approvals for the construction of each Facility Airspace Improvement required by all applicable Legal Requirements. Landlord, at the sole cost and expense of Tenant, shall promptly execute and deliver any documents, permits, plans and other instruments that require the execution by the fee owner of the Premises, and otherwise cooperate with Tenant as reasonably required or requested by Tenant in order for Tenant to obtain all permits, consents, certificates and approvals in connection with Tenant's construction of any Facility Airspace Improvements, provided such documents or instruments do not impose any material liability or obligation on Landlord (unless paid by Tenant or against which Landlord is indemnified by Tenant in a manner reasonably satisfactory to Landlord) or materially vary or modify the rights and obligations of the parties under this Lease or the Project Documents.

Section 8.05. Completion Certificates. As and when the following are received by Tenant with respect to a Building or other Facility Airspace Improvement, Tenant shall furnish Landlord with (a) a certificate from an Architect, in customary form, certifying that the Building or other Facility Airspace Improvement has been completed substantially in accordance with the Approved Facility Airspace Improvement Plans and Specifications therefor, (b) a true copy of the temporary or permanent Certificate(s) of Occupancy for the Building or other Facility Airspace Improvement; (c) a complete set of as-built drawings and a survey of the Building or other Facility Airspace Improvement; (d) true copies of all guarantees or certifications called for under any and all construction documents or otherwise received by Tenant; (e) true copies of all certificates required by the Building Code or the NYCDOB to be filed with the NYCDOB; and (f) a true copy of the New York Board of Fire Underwriters Certificate (or the equivalent certificate, if any, of any successor organization) for the Building or other Facility Airspace Improvement, if required.

Section 8.06. No Liens. Except as otherwise provided herein or in the Project Documents, the Premises shall be free and clear of all liens arising out of or connected with the construction of the Facility Airspace Improvements, and any portion thereof, except that the foregoing shall not modify Tenant's right to grant a Leasehold Mortgage or otherwise sublease all or any portion of the Premises in accordance with the provisions of Article 17.

[19] The bracketed language shall be included if a condominium is contemplated at the Premises.

Section 8.07. Title to the Materials, Fixtures and Equipment. The Facility Airspace Improvements and all materials, fixtures and equipment to be incorporated therein (which shall not include, however, personal property and fixtures of Tenant or any subtenants that are permitted to be removed by them pursuant to this Lease and/or any subleases, as applicable, upon the expiration of the terms hereof or thereof) shall, effective upon their installation, constitute the property of Landlord and shall constitute a portion of the Premises covered by this Lease. However, Landlord shall not be liable in any manner for payment or otherwise to any contractor, subcontractor, laborer or supplier of materials in connection with the construction of the Facility Airspace Improvements or the purchase of any such materials, fixtures or equipment, nor shall Landlord have any obligation to pay any compensation to Tenant or any subtenant by reason of Landlord's acquisition of title to the Facility Airspace Improvements or the materials, fixtures or equipment located therein. Notwithstanding the foregoing or anything to the contrary elsewhere contained in this Lease, Landlord will not claim, and during the Term Tenant (or its designee) alone shall be entitled to, all of the federal tax attributes of ownership, including, without limitation, the right to claim depreciation or cost recovery deductions. Tenant hereby acknowledges that Landlord shall own the fee title to the Facility Airspace Improvements (including, without limitation, all materials, fixtures and equipment to be incorporated therein) effective as of the date the same are constructed on the Premises, subject to the terms and conditions of this Lease (including the immediately preceding sentence).

Section 8.08. Required Clauses in WRY Construction Agreements. All construction agreements for the Facility Airspace Improvements shall include the following provisions:

> "[Contractor]/[Subcontractor]/[Materialman] ("Contractor") hereby agrees that notwithstanding that Contractor performed work at and/or supplied materials to the Premises (as such term is defined in the lease pursuant to which Tenant acquired its leasehold interest (the "Lease")) or any part thereof, Landlord shall not be liable in any manner for payment or otherwise to Contractor in connection with the work performed at and/or materials supplied to the Premises. Contractor agrees that it will not file any mechanic's lien against Landlord's fee interest in the Premises or Landlord's interest as landlord under the Lease or bring any other action against Landlord's interest, and Contractor agrees to look solely to Tenant and Tenant's leasehold interest. Nothing contained herein shall prejudice any rights which Contractor may have under the Lien Law of the State of New York. The agreements made under this clause shall be deemed to be made for the benefit of Landlord under the Lease and shall be enforceable by Landlord."

Section 8.09. Coordination with Other Anticipated Development. Tenant acknowledges that significant portions of LIRR infrastructure (including the East River Tunnels, interlocking and track approaches to Penn Station, the track, platform and Level A space in Penn Station, the tracks and interlockings leading to the WSY, and the storage tracks and maintenance facilities of the WSY, all as more particularly set forth in the RFP) are located within the West

31st to 34th Street corridor between 6th Avenue and the Hudson River (the "Corridor"), and that many development projects (collectively, the "Other Projects") within the Corridor may be under construction simultaneously with the WRY Severed Parcel Project (including, but not limited to, other portions of the WRY Project, the potential development of the ERY, the redevelopment of the existing Penn Station and Madison Square Garden, the new Moynihan Station and related development between 9th and 10th Avenues, Landlord's East Side Access project, the rehabilitation of the 11th Avenue Viaduct, New Jersey Transit's, and "Access to the Region's Core" project), and each party hereby agrees to cooperate reasonably with the other in the coordination of the planning, design, preconstruction and construction activities for the WRY Severed Parcel Project with such Other Projects.

Section 8.10. [Intentionally omitted].

Section 8.11. [Intentionally omitted].

Section 8.12. High Line Component. Tenant's obligations with respect to the High Line Component are as set forth in Association Documents.

Section 8.13. WRY Severed Parcel Open Space Component. Tenant shall be responsible for the design and construction of all portions of the Open Space Component located on the Premises (the "WRY Severed Parcel Open Space Component") in accordance with all Legal Requirements (including without limitation the Zoning Resolution), and shall pay all costs and expenses in connection therewith. In furtherance of the foregoing, Tenant shall be responsible for obtaining any and all legal, administrative or other approvals that are required to be obtained, including pursuant to the Zoning Resolution, in connection with the design and construction of the WRY Severed Parcel Open Space Component. This Lease shall remain in full force and effect, and there shall be no abatement of Rental, adjustment to the Initial Land Value or any other modification to the terms of this Lease, notwithstanding any failure or inability of Tenant to obtain any necessary approvals with respect to the WRY Severed Parcel Open Space Component.

ARTICLE 9

CONDOMINIUM CONVERSION; SEVERANCE OF THE PREMISES[20]

Section 9.01. Condominium Conversion. It is acknowledged that it is the intention of the parties to submit the Premises to a condominium form of ownership as set forth in this Section 9.01.

(a) Landlord hereby approves the following documents related to the conversion of the Premises to a condominium form of ownership: (i) the form of Declaration of [●] Condominium (Pursuant to Article 9-B of the Real Property Law of the State of New York) attached hereto as Exhibit D (as same may be amended, modified or supplemented from time to time in accordance with the provisions of this Lease, the "Condominium Declaration"), (ii) the

[20] Article 9 shall be revised as necessary to reflect the intended use and structure of the Premises.

form of master by-laws attached to the Condominium Declaration as Exhibit [__] and the form of residential by laws attached to the Condominium Declaration as Exhibit [___] (as same may be amended, modified or supplemented from time to time in accordance with the provisions of this Lease, collectively, the "Condominium By-Laws"), and (iii) the form of floor plans (the "Floor Plans") attached to the Condominium Declaration as Exhibit [__] (collectively, the "Condominium Documents"). In accordance with the Condominium Documents, there will be created approximately [●] Units, each of which, together with its undivided interest in the Common Elements shall be deemed to be a separate Building Component (but not a separate Severed Subparcel) upon execution and recording of the Condominium Documents.

(b) Prior to the Condominium Conversion Date, Tenant may amend or modify the Condominium Documents, provided that any amendment or modification shall be subject to the approval of Landlord, in its reasonable discretion. Landlord shall approve or disapprove such amendments or modifications to the Condominium Documents within thirty (30) days of its receipt thereof from Tenant, and in the event of a disapproval, Landlord shall include sufficient explanation of the basis for such disapproval. If Landlord shall fail to approve or disapprove such amended or modified Condominium Documents within twenty-one (21) days of Tenant's submission thereof to Landlord, Tenant may provide to Landlord a written notice, which notice shall include in capital letters on the first page thereof: "THIS NOTICE IS BEING GIVEN UNDER SECTION 9.01(b) OF THE AGREEMENT OF SEVERED PARCEL LEASE FOR THE WESTERN RAIL YARD SECTION OF THE JOHN D. CAEMMERER WEST SIDE YARD. YOUR FAILURE TO RESPOND WITHIN TEN (10) DAYS WILL RESULT IN YOUR DEEMED APPROVAL OF THE PENDING AMENDED CONDOMINIUM DOCUMENTS". In the event that Landlord does not approve or disapprove such amended or modified Condominium Documents within ten (10) days after Tenant provides Landlord with such notice, Landlord shall be deemed to have approved such amended or modified Condominium Documents. Any dispute with respect to Landlord's approval or disapproval of the amended or modified Condominium Documents shall be subject to resolution in accordance with Sections 40.01(a) and (b).

(c) Subject to Landlord's approval or deemed approval of the Condominium Documents, Landlord hereby designates and appoints Tenant, on behalf of Landlord, at no cost, expense or liability to Landlord, to make any necessary application to the New York State Department of Law (the "NYS Law Department") in connection with Tenant's efforts to obtain approval of any offering plan for the Condominium by the State of New York and/or make an application requesting a no-action letter, a no-filing required letter, a no jurisdiction letter or letter of similar advice in order to permit the creation of a condominium without the necessity of filing an offering plan and without such sales being made pursuant to an offering plan, which cooperation shall include furnishing to the NYS Law Department such documents, affidavits and information as the NYS Law Department shall reasonably request.

(d) At Tenant's request, Landlord shall execute, in its capacity as fee owner of the Premises, the Condominium Documents as declarant and hereby agrees to record the Condominium Documents, at Tenant's sole cost and expense. Landlord's obligation to execute and record the Condominium Documents is conditioned upon the following:

(i) at the time of the proposed recordation of the Condominium Documents there is no existing and continuing Event of Default or Default under this Lease or the Project Documents; provided that this clause shall apply with respect to a Non-Monetary Default only if Landlord has delivered to Tenant notice of such Non-Monetary Default to the extent required under the applicable provisions of Section 31.01 of this Lease;

(ii) Tenant shall have delivered to Landlord all necessary approvals for the recording of the Condominium Documents, including without limitation a no-action letter, or other required approvals from the NYS Law Department, and all approvals from the New York City Department of Finance;

(iii) Tenant shall have delivered to Landlord the Sponsor Guaranty, duly executed and acknowledged by the [●] Guarantor.

(e) Landlord agrees to reasonably cooperate with Tenant's efforts to obtain separate tax lots for each Unit, including each individual residential unit, and shall execute, at no cost, expense or liability to Landlord, any documents required in connection therewith.

(f) Notwithstanding anything in this Agreement to the contrary:

(i) Landlord shall have no liability under or with respect to any offering plan, any no-action application or any no-action letter, the Condominium Documents or any other document entered into or action taken by Landlord or Tenant pursuant to this Section 9.01 and all obligations of Landlord arising under this Section 9.01 shall be performed at Tenant's sole cost and expense. Neither Landlord, nor any of its Affiliates, subsidiaries or their respective members, directors, officers, employees, agents or servants of Landlord shall have any liability (personal or otherwise) hereunder, and no property or assets of Landlord or the members, directors, officers, employees, agents or servants of Landlord shall be subject to levy, execution or other enforcement procedure under this Section 9.01. Tenant shall include in the offering plan for the Residential Units (or any other Units), and in every Unit sales contract, a waiver and release expressly exculpating and disclaiming any liability on the part of, and providing for the waiver of all claims against, the Declarant Indemnitees in connection with the offering plan or any other matters related to the Units, the Condominium, the Building or the Premises. Tenant further covenants that such waiver and release benefitting the Declarant Indemnitees shall be drafted as a separate waiver and release from any waiver or release benefitting Tenant or its Affiliates.

(ii) Tenant shall, to the fullest extent permitted by law, indemnify, defend and save Landlord and its Affiliates, subsidiaries and their respective agents, contractors, affiliates, licensees, invitees, trustees, members, directors, shareholders, partners, officers, employees and disclosed and undisclosed principals (collectively, the "Declarant Indemnitees"), harmless from and against any and all actions, liabilities, suits, judgments, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, engineers', architects' and attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against any of the Declarant Indemnitees arising out of or in connection with this Section 9.01.

(iii) If any claim, action or proceeding is made or brought against any of the Declarant Indemnitees by reason of any event (or allegation of any event) for which Tenant has agreed to indemnify the Declarant Indemnitees pursuant to clause (ii) of this Section 9.01(g) (any such event or allegation, a "Claim"), then, upon demand by Landlord, Tenant shall, at its sole cost and expense, resist or defend such claim, action or proceeding by such attorneys as Tenant shall select and such Declarant Indemnitee shall approve, which approval shall not be unreasonably withheld.

(iv) The Declarant Indemnitees will not withhold their respective consent(s) to any proposed settlement by the indemnifying party of any matter which is fully covered by such party's indemnification hereunder, provided that such settlement provides solely for the payment of money and does not impose any other liability on the respective Declarant Indemnitee.

(v) The obligations of Tenant under this Section 9.01(g) shall not be affected in any way by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises or any portion thereof.

(vi) The provisions of this Section 9.01(g) shall survive the expiration or termination of this Lease.

(g) Following the Condominium Conversion Date:

(i) the Condominium Documents shall be deemed to be and shall be superior to this Lease (and any further amendments, modifications and/or severances thereof), provided that to the extent there is any inconsistency between the terms of this Lease and the terms of the Condominium Documents then the terms of this Lease shall govern;

(ii) this Lease shall automatically be deemed amended so that all references to the "Premises" demised by this Lease shall refer to the Units, and the common interest appurtenant thereto;

(iii) Tenant shall automatically be deemed the "Declarant Net Lessee" with respect to the Units without any further action required by Landlord or Tenant, and this Lease shall be deemed a "Declarant Net Lease" with respect to such Units. In furtherance thereof, Landlord hereby assigns to Tenant, as Declarant Net Lessee, and Tenant hereby assumes, all of the rights and obligations of the Unit Owner (as such term is defined in the Condominium Documents) with respect to any such Unit that is demised by this Lease, including, without limitation (i) the voting rights appurtenant to a Unit, (ii) the right to appoint such member or members to the Condominium Board and (iii) the right to enter into subleases, in each case, subject in all respects to the terms and conditions of this Lease and the Condominium Documents. Such assignment and assumption of rights and obligations shall be automatic without any further action required by Landlord or Tenant, provided that upon the request of Landlord or Tenant, Landlord and Tenant shall execute, acknowledge and deliver an instrument in recordable form confirming (a) such assignment and assumption of rights and obligations; and (b) any amendments to this Lease necessary to reflect the conversion of the

Premises to a condominium form of ownership as contemplated herein. Notwithstanding the foregoing, in no event shall such assignment and assumption derogate, limit or otherwise restrict any obligation of Tenant to obtain the consent of Landlord for the matter in question prior to taking action under the Condominium Documents where such matter either (x) requires Landlord's consent under this Lease or (y) requires the consent of the Declarant Net Lessor under the Condominium Documents;

(iv) Landlord will accept the performance by the Condominium Board or its designee of any obligation of Tenant hereunder, which the Condominium Board may perform pursuant to the Condominium Documents. Notwithstanding the foregoing, nothing contained herein shall limit Landlord's recourse to Tenant with respect to any Default under this Lease as provided herein;

(v) If a Monetary Default or an Event of Default under this Lease has occurred and is continuing, Tenant shall not vote or direct any representative of the Condominium Board to vote or take any action with respect to the FASP Owners Association without receiving the prior written consent of Landlord to the matter in question, which consent shall be in Landlord's sole discretion. In addition to the foregoing, if a Non-Monetary Default has occurred and is continuing (which has not yet ripened into an Event of Default), Tenant shall not vote its Condominium Unit interest (or otherwise direct any representative of the Condominium Board to vote or take any action with respect to the FASP Owners Association) without receiving the prior written consent of Landlord to the matter in question, which consent shall be in Landlord's reasonable discretion. Such consent shall be deemed granted if Landlord fails to approve or disapprove Tenant's request to vote its Condominium Unit interest (or to otherwise direct any representative of the Condominium Board to vote or take any action with respect to the FASP Owner's Association) following the delivery of a second notice at least ten (10) Business Days following the first request for approval, and Landlord fails to respond to such second notice within ten (10) Business Days after the delivery thereof;

(vi) If an Event of Default has occurred and is continuing, Landlord, by written notice to Tenant and the Condominium Board, shall have the right to replace Tenant's designees on the Condominium Board with a designee of Landlord; provided that (i) such appointment shall be deemed rescinded upon the cure of such Event of Default (whether by Tenant, a Leasehold Mortgagee or Mezzanine Lender in accordance with the applicable provisions herein) without any further action required by Landlord or Tenant and (ii) in the event that a Leasehold Mortgagee or Mezzanine Lender is taking the actions described in Section 17.03 with respect to, and is curing such Event of Default, then the Leasehold Mortgagee or Mezzanine Lender shall be entitled to replace Tenant's designee on the Condominium Board, which right shall be superior to that of Landlord to replace Tenant's designee under this Section 9.01(i);

(vii) Tenant shall promptly provide copies to Landlord of any written notices of assessment or default received by Tenant under the Condominium Documents; and

(viii) In the event of any conflict between the terms of the Condominium Documents and the terms of this Lease with respect to the use and occupancy of a Unit demised by this Lease, the more restrictive terms shall govern.

Section 9.02. Severance.

(a) Intentionally Omitted.

(b) Intentionally Omitted.

(c) Intentionally Omitted.

(d) Upon Tenant's written request, at any time and from time to time, provided that the conditions set forth in this Section 9.02(d) have been satisfied, and at the sole cost and expense of Tenant, the Premises may be subdivided into two (2) or more separate parcels in accordance with the this Section 9.02(d), each of which parcels (sometimes referred to herein as a "Severed Subparcel") shall, following such severance (a "Subparcel Severance"), constitute a separate and distinct Severed Parcel and the tenants thereunder shall each be a Severed Parcel Tenant with respect to the applicable Severed Parcel (a "Severed Subparcel Tenant").

(i) In furtherance of the foregoing, Landlord and Tenant (or any other Person to whom Tenant would be permitted to Transfer its interest in this Lease at the time of such Subparcel Severance) shall (A) execute, acknowledge and deliver new Severed Parcel Leases with respect to each such Severed Subparcel (other than a single Severed Subparcel designated by Tenant for which this Lease may be amended accordingly) in substantially the same form as this Lease, together with memoranda of such leases in recordable form, and terminations of such memoranda in recordable form to be held in escrow; and (B) execute, acknowledge and deliver an amendment to this Lease including the information applicable to such Severed Subparcel as set forth in clause Section 9.02(d)(ii), together with an amendment to the memorandum of this Lease to reflect the change in the demised Premises (each of the new Severed Subparcel leases described in clause (A) and the amendment to this Lease described in clause (B), a "Severed Subparcel Lease"). For the avoidance of doubt, from and after each Subparcel Severance, wherever the Balance Lease or another a Balance Lease or Severed Parcel Lease refers to a Severed Parcel, Severed Parcel Lease or Severed Parcel Tenant, such references shall be deemed to include Severed Subparcels, Severed Subparcel Leases and Severed Subparcel Tenants.

(ii) Each Severed Subparcel Lease shall set forth: (A) the maximum Floor Area and zoning uses that may be utilized on such Severed Subparcel; (B) such Severed Subparcel Tenant's share of the Severed Parcel Allocable Share (which shall reflect the allocation set forth in the Condominium Documents or such other methodology agreed by Landlord and Tenant to reasonably reflect the economic value of the Severed Subparcel); (C) a statement of the initial Annual Base Rent for such Severed Subparcel; and (D) a revised Severed Parcel Pro Forma Rent Schedule for such Severed Subparcel. In addition, Tenant shall deliver legal descriptions of each of the Severed Subparcels and undertake, at Tenant's sole cost and expense, all actions necessary to cause the Severed Subparcels to comprise separate tax lots.

Landlord, in its capacity as fee owner, at the cost and expense of Tenant, shall execute all documents as shall be reasonably required in connection therewith.

(iii) Notwithstanding anything to the contrary in this Section 9.02(d), the Premises shall not be subdivided into Severed Subparcels, unless (A) there are no continuing Events of Default or material Non-Monetary Defaults under this Lease or the Project Documents; provided that such clause shall apply with respect to a material Non-Monetary Default only if Landlord has delivered to Tenant notice of such Non-Monetary Default to the extent required under the applicable provision of Section 31.01 of this Lease; (B) Substantial Completion of the Associated Portion of the LIRR Roof and Facilities shall have been achieved; (C) a core and shell Certificate of Occupancy for the entirety of the Building which is to be subdivided into Severed Subparcels shall have been issued, (D) the Building Component constituting a Severed Subparcel consists of a single use (i.e. office, retail, hotel, residential rental or residential condominium), and constitutes the entirety of such use within the Building that will remain subject to a Severed Subparcel Lease, (E) Landlord shall have reasonably approved any amendments to the Condominium Documents in accordance with the terms of Section 9.01(b) hereof (if applicable) and (F) the Condominium Conversion Date shall have occurred. Upon the consummation of a Subparcel Severance as provided in this Section 9.02(d), Tenant shall submit to Landlord an update to the Approved Severed Parcel Plan to reflect the creation of each Severed Subparcel and the portion of the Severed Parcel Allocable Share assigned to each such Severed Subparcel.

(iv) Landlord shall only be required to allow the creation of Severed Subparcels and enter into Severed Parcel Leases in accordance with this Section 9.02(d) to the extent that Tenant is creating the Severed Subparcels for a bona-fide commercial purpose in accordance with the financing, development and operation of several Building Components. Landlord shall not unreasonably withhold its consent to the creation of Severed Subparcels, subject to the provisions of this Section 9.02(d). Landlord and Tenant hereby acknowledge and agree that certain Severed Parcels are intended to include multiple Building Components for which Severed Subparcels are anticipated to be created, including (x) the Severed Parcel(s) located east of the planned Hudson Boulevard, which may include, in the aggregate, up to six (6) Building Components for which Severed Subparcels are anticipated to be created, and (y) the Severed Parcel(s) located west of the planned Hudson Boulevard, which may each include no more than three (3) Building Components for which Severed Subparcels are anticipated to be created. Notwithstanding the foregoing provisions of this Section 9.02(d)(iv) or clause (D) of Section 9.02(d)(ii), Tenant shall be permitted to create additional Severed Subparcels in accordance with this Section 9.02(d), provided that, simultaneously with the creation of such additional Severed Subparcel(s), Tenant shall close fee title to such Severed Subparcel(s) pursuant to the Fee Conversion Option in accordance with Article 10, such that, at any given time, there shall be no more than six (6) Severed Subparcel Leases, in the aggregate, for the Severed Parcel(s) located east of the planned Hudson Boulevard and no more than three (3) Severed Subparcel Leases for each Severed Parcel located west of the planned Hudson Boulevard.

(v) From and after the execution and delivery of a Severed Subparcel Lease, Tenant shall have no rights or obligations under this Lease with respect to such Severed Subparcel or Severed Subparcel Lease, and shall be released from all liabilities arising

from such Severed Subparcel or under the Severed Subparcel Lease from and after the date of such Subparcel Severance. Notwithstanding anything to the contrary herein, with respect to each Severed Subparcel Lease, no Default or Event of Default under such Severed Subparcel Lease shall be deemed a Default or Event of Default under any other Severed Parcel Lease, Severed Subparcel Lease, and no Default or Event of Default under other Severed Parcel Leases and other Severed Subparcel Leases shall be deemed a Default or Event of Default under each such Severed Subparcel Lease. The foregoing shall be confirmed in an amendment to this Lease and in each Severed Subparcel Lease.

(e) Within thirty (30) days after receipt of an invoice from Landlord (together with reasonably substantiating evidence of costs), Tenant or the applicable Severed Subparcel Tenant shall pay any and all reasonable costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred by Landlord in connection with the creation of the condominium or reviewing and implementing any request for a Subparcel Severance or subdivision in accordance with this Section 9.02, including without limitation its review of the Condominium Documents.

ARTICLE 10

FEE CONVERSION OPTION

Section 10.01. Fee Conversion Option. Tenant shall have the option to purchase fee title to the Premises or any portion thereof (provided that such portion must consist of the entirety of one or more Unit(s) [or a WRY Open Space Parcel (provided that there shall be no more than one WRY Open Space Parcel on the entire WRY)]) concurrently with the earlier of (a) Substantial Completion of the Building, or (b) if with respect to one or more Residential Units, the closing of the first Residential Unit in the Building, notwithstanding that such closing may occur prior to Substantial Completion of such Building; provided, however, that it shall be a precondition of any such closing that Substantial Completion of the Associated Portion of the LIRR Roof and Facilities shall have been achieved prior to such closing. In addition, Tenant shall have the option to purchase fee title to any portion of the Premises upon which a portion of the WRY Severed Parcel Open Space Component has been constructed (an "WRY Open Space Parcel"), together with any Facility Airspace Improvements located thereon, at any time after: (i) Substantial Completion of the Associated Portion of the LIRR Roof and Facilities and (ii) the portion of the WRY Severed Parcel Open Space Component located within the WRY Open Space Parcel has been Substantially Completed (each of the purchase options set forth in this Section 10.01, a "Fee Conversion Option" and the Premises, Unit(s) or WRY Open Space Parcel to be purchased, an "Option Property").

Section 10.02. Conditions Precedent. Tenant shall exercise a Fee Conversion Option by delivery of written notice to Landlord (an "Election Notice"), which notice shall specify a closing date (an "Initial Fee Conversion Closing Date") for the closing of the sale and purchase of the Option Property, which Initial Fee Conversion Closing Date shall be not less than thirty (30) days and not more than ninety (90) days after the date of delivery of the Election Notice (an "Election Notice Date"). An Election Notice shall be valid only if, on the Fee Conversion Closing Date, all of the following conditions have been satisfied:

(a) Tenant shall have paid to Landlord all PILOST due and owing, and shall have delivered any letter of credit required to be delivered, pursuant to the PILOST Agreement;

(b) Tenant shall have paid to Landlord all Annual Base Rent, Additional Rent and other Rental then due and payable (including, except for a purchase of an WRY Open Space Parcel, a pro-rated portion of any Annual Base Rent due and payable for the month in which the Fee Conversion Closing occurs), as well as all other amounts due and owing by Tenant to Landlord under any other Project Document;

(c) In the event that Final Completion of the Associated Portion of the LIRR Roof and Facilities, if any, (or, for the purchase of an WRY Open Space Parcel, the portion of the LIRR Roof and Facilities located in, on, or under the applicable WRY Open Space Parcel) has not been achieved, Tenant shall deposit with MTA cash or letter of credit in the amount of twice the estimated cost of the Punch List items remaining for such Associated Portion of the LIRR Roof and Facilities, which amount shall be returned to Tenant or its designee upon Final Completion of the Associated Portion of the LIRR Roof and Facilities (or, for the purchase of an WRY Open Space Parcel, the portion of the LIRR Roof and Facilities located in, on, or under the applicable WRY Open Space Parcel);

(d) [Tenant shall have paid to Landlord all PILOT then due and owing under Section 4.01, if any, and to HYIC, or any other applicable party, all PILOT then due and owing pursuant to the PILOT Agreement (if any);] and

(e) Tenant shall have cured any Monetary Default or Non-Monetary Default under this Lease of which Tenant has been given notice.

Section 10.03. Sale and Purchase Agreement. If Tenant exercises a Fee Conversion Option, the closing of the sale and purchase of the following procedures shall apply for Fee Conversions, except that the provisions of Section 10.05 shall apply in lieu thereof exclusively to the Fee Conversion of individual Residential Units:

(a) If Tenant exercises a Fee Conversion Option, the closing of the sale and purchase of the Option Property (such sale and purchase, a "Fee Conversion" and such closing, a "Fee Conversion Closing") shall be held at the offices of Landlord's attorneys in the City of New York (or such other location as may be mutually agreed to by Landlord and Tenant), at 10:00 a.m., on the Initial Fee Conversion Closing Date. The Initial Fee Conversion Closing Date shall be subject to adjournment by Tenant upon reasonable advance notice from Tenant to Landlord at any time and from time to time; provided, that no adjournment shall excuse or delay Tenant's obligations under this Lease (the actual date on which a Fee Conversion Closing occurs, a "Fee Conversion Closing Date").

(b) Landlord shall cause the Option Property to be free and clear of any liens or encumbrances created by an act or omission of Landlord following the Commencement Date of this Lease, except to the extent requested or consented to by Tenant. Landlord shall, at its sole cost and expense, terminate, remove or discharge any such liens or encumbrances no later than the Fee Conversion Closing Date, but shall have no responsibility or

liability for any other liens or encumbrances. Landlord shall have no obligation to cause the Option Property to be free and clear of any liens or encumbrances created by an act or omission of Tenant, including encumbrances on this Lease. Tenant shall be responsible for any costs and expenses to terminate, remove or discharge any such liens or encumbrances.

(c) Landlord, at a Fee Conversion Closing, shall convey title to the Option Property to Tenant or its designee, free and clear of liens and encumbrances, except for Permitted Exceptions, by delivery of a fully executed and acknowledged Bargain and Sale Deed without Covenant, in the form of Exhibit O-1 attached hereto in the case of the Premises or for any Severed Subparcels which constitute one or more Units, a Condominium Unit Deed in the form of Exhibit O-2 attached hereto. The obligations set forth in the preceding sentence shall include, but not be limited, to Landlord having the obligation to, at Landlord's sole cost and expense, cause the Fee Mortgage, if any, to be released from the Option Property upon payment of the Option Price on or prior to the Fee Conversion Closing of such Option Property. At the time of the Fee Conversion Closing, at Tenant's election, in its sole discretion, the Bargain and Sale Deed shall be modified from the form attached hereto to include that Tenant shall have the right to assume Landlord's right, title and interest under this Lease whereupon Tenant's interest under the fee and leasehold interests of the Premises shall not be deemed to have merged. In furtherance of the foregoing, at a Fee Conversion Closing Landlord shall also deliver to Tenant or its designee a duly executed and acknowledged certificate of non-foreign status pursuant to Section 1445 of the Internal Revenue Code in the form of Exhibit S attached hereto and duly executed counterparts to any New York City and New York State real property transfer tax returns and forms. Simultaneously with the Fee Conversion Closing of a WRY Open Space Parcel or a Severed Subparcel which constitutes one or more Units, Landlord and Tenant shall (at the sole cost and expense of Tenant) execute an amendment to this Lease in recordable form, together with any affidavits, tax returns and/or other instruments customarily executed in connection with the same, amending:

(i) in the case of the WRY Open Space Parcel, the description of the Premises to exclude such WRY Open Space Parcel (but not otherwise amending the terms of this Lease, including, without limitation, the amount of Annual Base Rent); and

(ii) in the case of one or more Unit(s), (a) the description of the Premises to exclude such Unit(s) that is/are subject to a Fee Conversion and (b) the amount of Annual Base Rent payable under this Lease to exclude the portion of rent attributable to the purchased Unit(s), such excludable amount being the product of (x) the Annual Base Rent and (y) the allocation to each such Unit of a portion of the Severed Parcel Allocable Share (which shall be the aggregate proportionate undivided interests in the common elements appurtenant to such Unit(s) pursuant to the Condominium Documents) (but not otherwise amending the terms of this Lease).

(d) Tenant shall pay to Landlord (i) at a Fee Conversion Closing of the Premises or a Severed Subparcel consisting of one or more Units, the Option Price, or to such other party as directed by Landlord, by certified check drawn on a bank which is a member of the New York Clearinghouse Association (or a successor thereto) or, at Landlord's option, by wire transfer of immediately available federal funds to an account or accounts designated by

Landlord, and (ii) at a Fee Conversion Closing of an WRY Open Space Parcel, Ten Dollars ($10.00).

(e) Tenant shall pay all New York City and New York State real property transfer taxes and recording charges which may be due and payable in connection with a Fee Conversion and the recording of the deed thereto. Tenant shall be solely responsible for any title search and survey charges and any title insurance premiums in respect of title insurance obtained by Tenant or its designee, as well as any and all costs associated with any loan obtained by Tenant or its designee, in connection with a Fee Conversion Option and a Fee Conversion Closing. Tenant shall be solely responsible for any reasonable legal fees and administrative costs incurred by Landlord in connection with a Fee Conversion Option and a Fee Conversion Closing.

(f) Tenant's obligation to close title under a Fee Conversion Option shall be expressly conditioned upon the truth and accuracy in all material respects of each of the following representations and warranties of Landlord to be made as of the applicable Fee Conversion Closing Date with respect to the Option Property, as applicable, any or all of which Tenant may waive in the exercise of its sole discretion:

(i) Landlord has not received any written notice of any actual or threatened condemnation proceeding with regard to all or any part of the Option Property; and

(ii) all consents, authorizations and other actions on the part of Landlord which are necessary in order to permit Landlord to consummate the sale of the Option Property have been obtained and taken.

(g) Except as otherwise set forth in this Article 10, Tenant, upon a Fee Conversion Closing, shall be deemed to have accepted the Option Property in its then "as is" and "where is" condition, without any representations, warranties or agreements in respect thereof; provided that nothing herein shall reduce or otherwise limit any obligations of the Yards Parcel Owner under the WRY Declaration of Easements. Notwithstanding the foregoing, if the whole of the Premises or any material portion thereof shall be taken under eminent domain or condemnation proceedings, or if suit or other action shall be instituted for the taking or condemnation of the whole or any material portion thereof, Tenant shall nonetheless have the right to exercise a Fee Conversion Option, in which event Landlord shall pay and/or assign to Tenant (or its designee) on the applicable Fee Conversion Closing Date all condemnation awards paid and all of Landlord's right, title and interest in and to all such awards payable by reason of such damage, loss or taking.

Section 10.04. Purchase Price. The purchase price (the "Option Price") for (a) the entirety of the Premises shall be equal to the sum of (x) all future Annual Base Rent payments due under this Lease through the Fixed Expiration Date (taking into account all rent escalations and FMV Base Rent Resets, and assuming that the Annual Base Rent for the period during the Term immediately following each FMV Base Rent Reset shall be equal to one hundred twenty percent (120%) of the Annual Base Rent for the period expiring on the day immediately prior to the applicable Initial Reset Date or Reset Date), with each such payment discounted to the Fee Conversion Closing Date using a discount rate of six and one-half percent

(6.5%) per annum, as more particularly set forth on the Severed Parcel Pro Forma Rent Schedule plus (y) Landlord's Reversionary Interest Value as of the Fee Conversion Closing Date. (an illustration of a calculation of the Option Price for the entirety of the Premises is attached hereto as Exhibit C-1), or (b) the entirety of any Unit shall be equal to (i) the sum of (x) all future Annual Base Rent payments due under this Lease through the Fixed Expiration Date (taking into account all rent escalations and FMV Base Rent Resets, and assuming that the Annual Base Rent for the period during the Term immediately following each FMV Base Rent Reset shall be equal to one hundred twenty percent (120%) of the Annual Base Rent for the period expiring on the day immediately prior to the applicable Initial Reset Date or Reset Date), with each such payment discounted to the Fee Conversion Closing Date using a discount rate of six and one-half percent (6.5%) per annum, as more particularly set forth on the Severed Parcel Pro Forma Rent Schedule plus (y) Landlord's Reversionary Interest Value as of the Fee Conversion Closing Date multiplied by (ii) the proportionate undivided interest in the common elements appurtenant to such Unit pursuant to the Condominium Documents (or such other methodology agreed to by Landlord and Tenant to reasonably reflect the economic value of the applicable Unit). An illustration of a calculation of the Option Price for the entirety of a Unit is attached hereto as Exhibit C-2.

Section 10.05. Special Procedures for Individual Residential Units. In lieu of purchasing the entirety of the Residential Units as contemplated under Section 10.04, Tenant shall have the right to purchase individual Residential Units (each a "Residential Unit Closing") pursuant to the following procedures:

(a) All of the conditions precedent for a Fee Conversion as set forth in Section 10.02 shall have been satisfied, except that Tenant shall provide Landlord no less than sixty (60) days prior notice as to the date it anticipates the first Residential Unit Closing to occur.

(b) The following additional conditions precedent shall have been satisfied:

(i) Tenant shall have included the waiver and release language in the offering plan for the Residential Units and in each Residential Unit sales contract as described in Section 9.01(f)(i) above.

(ii) Tenant shall have delivered to Landlord an instrument from a creditworthy entity reasonably acceptable to Landlord indemnifying the Declarant Indemnitees as set forth in Section 9.01(f)(ii) above. Tenant and Landlord acknowledge and agree that the Sponsor Guaranty, or the Substitute Collateral (as such term is defined in the Sponsor Guaranty), satisfies the requirement set forth in this Section 10.05(b)(ii).

(iii) Landlord and Tenant shall have entered into an escrow agreement in such form and with an escrow agent reasonably acceptable to Landlord and Tenant, which escrow agreement shall govern all Residential Unit Closings and shall provide, among other things, that (w) Landlord shall deposit in escrow executed (but undated) Condominium Unit Deeds for each of the Residential Units, (x) Tenant shall have the right to designate the grantee of each Condominium Unit Deed, (y) Landlord and Tenant shall each deposit in escrow executed (but undated) forms of modifications of this Lease, together with the other documents,

instruments and affidavits, as contemplated by clauses (c)(iii) and (c)(iv)) below and (z) the escrow agent shall be permitted to release a Condominium Unit Deed only upon the confirmation by Landlord that the conditions for a Residential] Unit Closing as set forth therein have been satisfied (including its approval of the applicable Residential Unit Closing Statement).

(iv) Tenant shall deliver to Landlord no less than five (5) Business Days prior to each Residential Unit Closing a statement (the "Residential Unit Closing Statement") containing:

(1) A calculation of the purchase price for such Residential Unit (each, the "Residential Unit Purchase Price"), which shall be equal to (i) the sum of (x) all future Annual Base Rent payments due under this Lease through the Fixed Expiration Date (taking into account all rent escalations and FMV Base Rent Resets, and assuming that the Annual Base Rent for the period during the Term immediately following each FMV Base Rent Reset shall be equal to one hundred twenty percent (120%) of the Annual Base Rent for the period expiring on the day immediately prior to the applicable Initial Reset Date or Reset Date), with each such payment discounted to the Fee Conversion Closing Date using a discount rate of six and one-half percent (6.5%) per annum, as more particularly set forth on the Severed Parcel Pro Forma Rent Schedule plus (y) Landlord's Reversionary Interest Value as of the Fee Conversion Closing Date; multiplied by (ii) the proportionate undivided interest in the common elements appurtenant to such Residential Unit pursuant to the Condominium Documents, calculated as if the proportionate undivided interest in the common elements appurtenant to all of the Units in the Building collectively equaled 100% of the undivided interest in the common elements of the Condominium. An illustration of a calculation of the Residential Unit Purchase Price is attached hereto as Exhibit I;

(2) A calculation of the Annual Base Rent to be payable under this Lease following the Residential Unit Closing (the "Post Closing Annual Base Rent"), which shall be equal to the Annual Base Rent, less the product of (x) the Annual Base Rent and (y) the aggregate proportionate undivided interests in the common elements appurtenant to the Residential Units pursuant to the Condominium Documents that have been subject to a Fee Conversion, calculated as provided in clause b(iv)(1)(ii) above.

(c) At each Residential Unit Closing:

(i) Landlord shall cause each Residential Unit to be free and clear of any liens or encumbrances created by an act or omission of Landlord following the Commencement Date of this Lease, except to the extent requested or consented to by Tenant. Landlord shall, at its sole cost and expense, terminate, remove or discharge any such liens or encumbrances no later than the Residential Unit Closing Date, but shall have no responsibility or liability for any other liens or encumbrances. Landlord shall have no obligation to cause the

Residential Unit to be free and clear of any liens or encumbrances created by an act or omission of Tenant, including encumbrances on this Lease. Tenant shall be responsible for any costs and expenses to terminate, remove or discharge any such liens or encumbrances.

(ii) Landlord shall convey title to the applicable Residential Unit to Tenant or its designee by delivery of a fully executed and acknowledged Condominium Unit Deed in the form of Exhibit O-2 attached hereto. In furtherance of the foregoing, at each Residential Unit Closing, Landlord shall also deliver to Tenant or its designee a duly executed and acknowledged certificate of non-foreign status pursuant to Section 1445 of the Internal Revenue Code in the form of Exhibit S attached hereto, duly executed counterparts to any New York City and New York State real property transfer tax returns and forms and such other affidavits or instruments that are customarily required in connection with such transactions.

(iii) Landlord and Tenant shall (at the sole cost and expense of Tenant) execute an amendment to this Lease in recordable form, together with any affidavits, tax returns and/or other instruments customarily executed in connection with the same, amending (x) the Annual Base Rent to equal the Post-Closing Annual Base Rent and (y) the legal description of the Premises to exclude all Residential Units that have been subject to a Fee Conversion.

(iv) Tenant or its designee shall pay all New York City and New York State real property transfer taxes and recording charges which may be due and payable in connection with a Residential Unit Closing and the recording of the deed thereto. Tenant or its designee shall be solely responsible for any title search and survey charges and any title insurance premiums in respect of title insurance obtained by Tenant or its designee, as well as any and all costs associated with any loan obtained by Tenant or its designee, in connection with a Residential Unit Closing. Tenant shall be solely responsible for any reasonable legal fees and administrative costs incurred by Landlord in connection with a Residential Unit Closing.

(v) Tenant (or its designee) shall pay to Landlord (x) the Residential Unit Purchase Price plus (y) a transaction fee ("Transaction Fee") equal to (1) the Residential Unit Purchase Price for such Residential Unit, multiplied by (2) the sum of the New York City Real Property Transfer Tax and New York State Real Estate Transfer Tax rates that would apply to a transfer of the entirety of the Residential Units (the "Commercial Rate"; under current Applicable Law, the Commercial Rate equals 3.025%). In the event that a Residential Unit is conveyed to Tenant or its designee (either as beneficial owner or nominee), in lieu of a direct conveyance by Landlord to a third party residential purchaser, then the Transaction Fee shall be reduced by the New York City Real Property Transfer Tax, New York State Real Estate Transfer Tax, and, if applicable, the tax imposed under New York Tax Law Section 1402-a (the "Mansion Tax") actually payable by Tenant or its designee to the applicable taxing authorities (all such taxes actually paid, the "Actual Taxes") in connection with such conveyance. Notwithstanding the foregoing, if Actual Taxes (such Actual Taxes, the "Additional Taxes") are imposed by New York City and/or New York State, either as a result of an audit or otherwise, on any conveyance described in the first sentence of this clause (v) on the basis that a "conveyance" by Landlord to Tenant or its designee is deemed to have occurred in addition to the actual conveyance by Landlord to the third party residential purchaser, Landlord shall promptly credit to Tenant (or an Affiliate of Tenant) an amount equal to the portion of such Additional Taxes (but not interest or penalties thereon) (which credit shall not exceed the amount of Transaction

Fee), which credit shall be applied, at Tenant's option, against the next sums due either from Tenant to Landlord under this Lease or from an Affiliate of Tenant to Landlord under the WRY Lease or any Severed Parcel Lease in effect on the WSY. The language contained in the last sentence of this Section 10.05(c)(v) shall survive the expiration or earlier termination of this Lease.

(d) Except as otherwise set forth in this Article 10, Tenant or its designee, upon a Residential Unit Closing, shall be deemed to have accepted the applicable Residential Unit in its then "as is" and "where is" condition, without any representations, warranties or agreements in respect thereof; provided that nothing herein shall reduce or otherwise limit any obligations of the Yards Parcel Owner under the WRY Declaration of Easements.

ARTICLE 11

GUARANTIES

Section 11.01. Sponsor Guaranty. Prior to the Condominium Conversion Date, Tenant shall cause the [●] Guarantor to enter into and deliver to Landlord that certain Sponsor Guaranty (Western Rail Yard Section of the John D. Caemmerer West Side Yard) in the form attached hereto as Exhibit L-1.

Section 11.02. Building Completion Guaranty. Prior to the Commencement of Construction of each Building, Tenant shall cause a completion guaranty for such Building and Related Improvements (as defined in the Building Completion Guaranty) in the form attached hereto as Exhibit L (each such guaranty delivered in connection with this Lease, a "Building Completion Guaranty") to be delivered to Landlord (together with any deliveries required to be delivered by the Building Completion Guarantor thereunder prior to the effective date of such Building Completion Guaranty) by one or more creditworthy entities satisfying the requirements set forth therein (any such entity or entities, collectively, a "Building Completion Guarantor").

Section 11.03. Administration of Guarantees. Tenant shall pay or reimburse Landlord for all reasonable out-of-pocket costs and expenses incurred by Landlord in connection with its administration of any Building Completion Guaranty delivered or proposed to be delivered pursuant to this Lease, including without limitation Landlord's reasonable attorneys' and accountants' fees and expenses incurred in evaluating requests for Landlord's consent thereunder.

ARTICLE 12

TAX-EXEMPT FINANCING OF WRY ROOF COMPONENT CONSTRUCTION

Landlord shall cooperate with Tenant and Tenant's tax and bond counsel in order to determine the legal and financial feasibility of financing portions of the WRY Roof Component and/or the Open Space Component construction costs with tax-exempt financing ("Roof Tax-Exempt Financing"). In the event that Roof Tax-Exempt Financing is legally and financially feasible and practicable, and would result in a net financing cost savings (after all fees

and expenses) over conventional debt to finance all or any portion of the WRY Roof Component and/or the Open Space Component, as applicable, and would not otherwise adversely impact the economics of Tenant's ownership and operation of the Premises, Landlord and Tenant shall use diligent efforts to close Roof Tax-Exempt Financing to finance all or any portion of the WRY Roof Component and/or the Open Space Component, as applicable, and shall modify the terms and provisions of this Lease and the other Project Documents to the extent reasonably necessary to accommodate such Roof Tax-Exempt Financing. It is understood and agreed that any Roof Tax-Exempt Financing shall be without cost, expense or recourse to Landlord or any of its Affiliates. All costs and expenses associated with Roof Tax-Exempt Financing, including the costs of all credit instruments or enhancements necessary to support an issuance of Roof Tax-Exempt Financing, will be capitalized and paid out of the proceeds thereof. Landlord shall have no obligation to make any payments of debt service on the Roof Tax Exempt Financing. The WRY Roof Component Financing Cost Savings (if any) will be added to the Initial Land Value from and after the closing of such construction loan in accordance with Section 3.03(b).

ARTICLE 13

BONDABLE NET LEASE

At Landlord's request, and at its sole cost and expense, and subject to Tenant's review and approval of all information relevant to the Bond Lease Financing, Tenant shall reasonably cooperate with Landlord and Landlord's tax and bond counsel in order to determine the legal and financial feasibility of the issuance of tax-exempt bonds based on this Lease to enable Landlord to receive the net proceeds of bonds where the principal, premium (if any) and interest on such bonds are entirely serviced by installments of Annual Base Rent (the "Bond Lease Financing"). In the event that Bond Lease Financing is legally and financially feasible, and Landlord desires to undertake such Bond Lease Financing, this Lease and the Project Documents shall be modified as shall be reasonably necessary to accommodate the Bond Lease Financing; provided, that such modifications do not adversely impact the schedule or the development of the WRY Severed Parcel Project or Tenant's (or its successors', assigns' or designees') financing thereof, or alter Tenant's right to exercise any Subparcel Severance or Fee Conversion Option provided for herein (and any Bondable Lease Financing shall be expressly subordinate thereto). All costs and expenses associated with the Bond Lease Financing, including the costs of all credit instruments or enhancements necessary to support an issuance of the Bond Lease Financing, as well as all debt service and other payments or penalties on the Bond Lease Financing (including without limitation any pre-payment obligations in connection with a Subparcel Severance or Fee Conversion), shall be the sole responsibility of Landlord. The components of Adjusted Initial Land Value shall be adjusted as necessary such that the Annual Base Rent calculated pursuant to Section 3.03 shall be equal to the total annual cost to Tenant of the debt service necessary to service the Bond Lease Financing; provided, however, that in the event Landlord obtains Bond Lease Financing, the total annual cost to Landlord shall not exceed the Annual Base Rent specified in Section 3.03; provided, further, that no Bond Lease Financing shall accelerate any payments of Annual Base Rent. Tenant understands and acknowledges that the use of a Bond Lease Financing may result in net proceeds to Landlord that exceed the Initial Land Value.

ARTICLE 14

INSURANCE

Section 14.01. Required Insurance.

(a) Tenant shall at all times maintain, or cause to be maintained, at its sole cost and expense, the insurance required to be maintained by the Facility Airspace Parcel Owner under Article VIII of the WRY Declaration of Easements with respect to the Premises (subject to the provisions of Article XVI of the WRY Declaration of Easements), and shall comply with all of the provisions of Article VIII of the WRY Declaration of Easements in connection therewith.

(b) In addition to the foregoing, at all times following Substantial Completion of any Building on the Premises, Tenant shall maintain, or cause to be maintained, at its sole cost and expense, property insurance on such Building and its contents providing coverage for loss or damage by fire and other hazards covered under the equivalent of what was formerly known as an "all risk" policy, and including coverage for loss or damage by water, subsidence (excluding, at Tenant's option, normal settling only) and, to the extent, if any, from time to time hereafter commonly insured against by prudent owners of properties comparable to such Building in New York County, flood, earthquake, war risks, and terrorism; provided, however, that in no event shall the foregoing be deemed to obligate Tenant to carry or cause to be carried any insurance with respect to any item of movable personal property located in such Building. Such insurance shall be written on an "Agreed Amount" basis, for the full replacement cost of such Building, with a sublimit for business interruption in an amount, from time to time equal to not less than the sum of one hundred percent (100%) of the then Annual Base Rent, Impositions and insurance premiums for a twelve (12) month period, and provided that additional sublimits may be imposed with approval of Landlord (the "Replacement Cost"), as reasonably determined in the manner hereinafter provided. The Replacement Cost shall include, without limitation, the cost of demolition and debris removal, excavations, grading, paving, landscaping, architects, and development fees, after taking into account increased costs of construction attributable to building code requirements, and shall not be reduced by depreciation or obsolescence of such Building. Within thirty (30) days after Substantial Completion of such Building, the substantial completion of any Restoration or the substantial completion of any material Capital Improvement, as applicable, Tenant shall cause an examination of such Building to be made by an appraiser selected by Tenant and approved by the company providing the property insurance required by this Section 14.01(b), in order to determine the Replacement Cost thereof, and, promptly after each such examination is made, the amount of insurance required under this Section 14.01(b) shall be adjusted accordingly, in accordance with such examination and the requirements of this Section 14.01(b). In the absence of any material changes to such Building requiring an examination of such Building as hereinabove provided, the Replacement Cost thereof shall be deemed to have increased or decreased, as appropriate, to reflect increases or decreases in the Marshall and Swift Cost Index or such other published index of construction costs as shall be selected by Tenant with the concurrence of its insurance carrier and Landlord (acting reasonably). Each property insurance policy hereunder shall state that the valuation of any loss to be determined thereunder shall be made on a replacement-cost basis.

(c) In addition to the foregoing, Tenant shall maintain, or cause to be maintained, at its sole cost and expense, such other insurance in such amounts as may from time to time be reasonably required by Landlord against such other insurable hazards as at the time are commonly or customarily insured against in the case of premises similarly situated and/or with similar uses to the Premises.

Section 14.02. Additional Insurance Requirements.

(a) All insurance policies required to be maintained by Tenant hereunder shall be issued (i) by responsible companies authorized to do business in the State of New York, each having an AM Best rating of not less than A-VII (or its equivalent) and (ii) under insurance policies in form and content required by this Lease and otherwise reasonably satisfactory to Landlord.

(b) Tenant and Landlord shall cooperate in connection with the adjustment and collection of any insurance recoveries that may be due in the event of loss, and Tenant shall execute and deliver to Landlord such proofs of loss and other instruments which may reasonably be required for the purpose of obtaining the recovery of any such insurance monies.

(c) Tenant shall not carry separate liability or property insurance concurrent in form or contributing in the event of loss with that required by this Lease to be furnished by Tenant, unless Landlord, LIRR and any other parties designated by Landlord with a bona fide insurable interest are included therein as additional insureds with respect to liability or loss payees with respect to property, as their interests may appear, with loss payable as provided in this Lease. Tenant shall immediately notify Landlord of the carrying of any such separate insurance and shall cause a certified copy of such insurance policy, bearing notations evidencing the payment of the Insurance Premiums therefor or accompanied by other evidence reasonably satisfactory to Landlord of such payment, to be promptly delivered to Landlord as required pursuant to Section 14.03.

(d) Tenant shall not violate or permit to be violated any of the conditions or provisions of any insurance policy required to be maintained hereunder, and Tenant shall so perform and satisfy or cause to be performed and satisfied the requirements of the companies writing such policies so that at all times companies of good standing reasonably satisfactory to Landlord and meeting the requirements of this Lease shall be willing to write and/or continue such insurance. Tenant shall provide written notice to Landlord promptly after Tenant becomes aware that any claim or proceeding has been filed against Tenant with respect to matters occurring in or around the Premises whether or not alleging negligence on the part of Landlord which involves any actual or alleged serious personal injury or death, or any other claim that presents an unusual exposure to the coverage, including without limitation (i) cord injury (including without limitation paraplegia or quadriplegia), (ii) amputations requiring a prosthesis, (iii) brain damage affecting mentality or the central nervous system (including without limitation permanent disorientation, behavior disorder, personality change, seizures, motor deficit, inability to speak, hemiplegia or unconsciousness), (iv) blindness, (v) third-degree burns involving over ten percent (10%) of the body or second-degree burns involving over thirty percent (30%) of the body, (vi) multiple fractures (involving more than one member or non-

union), (vii) fracture of both heel bones, (viii) nerve damage causing paralysis and loss of sensation in an arm and hand, (ix) massive internal injuries affecting body organs, (x) injury to a nerve at the base of the spinal canal or any other back injury resulting in incontinence of bowel and/or bladder, or (xi) fatalities.

(e) Tenant shall procure and maintain policies for all insurance required by the provisions of this Lease for periods of not less than one (1) year (if such policy term is customary and available) and shall procure renewals thereof from time to time and deliver evidence of the same to Landlord as promptly as reasonably practicable but in all events within five (5) days after renewal. If Tenant shall fail to procure any such policies or renewals thereof in accordance herewith within five (5) days after receiving notice of such failure, Landlord may procure the same, and Tenant shall be obligated to reimburse Landlord as Additional Rent hereunder for all costs and expenses incurred by Landlord in connection therewith.

(f) Each policy of insurance required to be obtained by Tenant hereunder shall contain, to the extent generally obtainable, and whether or not an additional premium shall be required in connection therewith, (i) a provision that no unintentional act or omission of any named insured or unintentional violation of warranties, declarations or conditions by any named insured shall prejudice the coverage afforded by such policy, (ii) an agreement by the insurer that such policy shall not be canceled (or not renewed) without at least thirty (30) days' (or in the case of nonpayment of premiums, ten (10) days') prior written notice to Landlord, all Fee Mortgagees, LIRR and any other parties designated by Landlord with a bona fide insurable interest, (iii) no exclusion for Yards Parcel Permitted Uses (as such term is defined in the WRY Declaration of Easements), and (iv) a waiver by the insurer of any claim for insurance premiums against any named insured other than Tenant.

Section 14.03. Delivery of Policies and Certificates. Upon the execution and delivery of this Lease and thereafter as promptly as reasonably practicable but in all events within five (5) days after the renewal of policies theretofore furnished pursuant to this Article 14, Tenant shall, upon the written request of Landlord, obtain and deliver to Landlord, within fifteen (15) days after the date of any such request, a certificate from Tenant's insurer or independent insurance agent certifying to Landlord, as certificate holder, in reasonable detail the insurance policies then being maintained by Tenant in accordance with the requirements of this Article 14. However, if requested by Landlord, Tenant shall deliver to Landlord, within forty-five (45) days after a request therefor or ninety (90) days after the binding of coverage, whichever is later, a copy of such policies. If Landlord exercises its option to request copies of original policies in the case of discovery or to resolve a legal matter, Developer shall deliver to Landlord, as the case may be, within thirty (30) days of the request, or within ninety (90) days after the binding of coverage, whichever is later, a copy of such policies.

Section 14.04. CPI Increase. All dollar amounts referenced in this Article 14 shall be subject to CPI Adjustment, and shall be reasonable and customary for similar exposures.

ARTICLE 15

CASUALTY AND USE OF INSURANCE PROCEEDS

Section 15.01. Tenant's Obligation to Restore.

(a) If all or any portion of the WRY Roof Component shall be destroyed or damaged in whole or in part by fire or other casualty (including, without limitation, any casualty for which insurance was not obtained or obtainable) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen (a "Casualty"), the rights and obligations of Landlord and Tenant with respect thereto shall be governed by the provisions of Section 3.4 and Article X of the WRY Declaration of Easements and, following the Condominium Conversion Date, the applicable provisions of the Condominium Documents.

(b) If all or any portion of the Facility Airspace Improvements located on the Premises (including any portions thereof encroaching on adjacent property) shall be destroyed or damaged in whole or in part by a Casualty, Tenant shall give to Landlord prompt notice thereof, and shall promptly undertake and pursue with reasonable diligence to completion (subject to Force Majeure), at its sole cost and expense (unless such Casualty was caused by the gross negligence or willful misconduct of Landlord or its agents, in which event such Restoration shall be at the sole cost and expense of Landlord) and in accordance with the terms and conditions set forth herein, and regardless of whether or not insurance proceeds, if any, shall be sufficient therefor, to repair, alter, restore, replace and/or rebuild (collectively, "Restore"; and any such repair, alteration, restoration, replacement and/or rebuilding, a "Restoration") such portions of the Facility Airspace Improvements as shall have been so damaged or destroyed. Any Restoration of such Facility Airspace Improvements (a "Facility Airspace Improvements Restoration") shall be as nearly as possible to the condition thereof existing immediately prior to such occurrence (the "Pre-Casualty Condition"), or, with respect to any Building, the lesser of the Pre-Casualty Condition of such Building or the then-standard for a first-class quality building for a like use.

(c) Notwithstanding the foregoing, following the Condominium Conversion Date and the Fee Conversions of one or more Unit(s), Tenant shall only be obligated hereunder to Restore the Units demised by this Lease and not any portion of the Building that is the obligation of the Condominium Board or another Unit Owner to Restore in accordance with the Condominium Documents; provided that Tenant shall use commercially reasonable efforts to cause the Condominium Board to Restore in accordance with the Condominium Documents and subject to the further provisions of this Article 15, the Condominium common elements of the Building and any other portion of the Building that materially affects the value or usefulness of the Units demised by this Lease. Tenant shall in no event vote its Condominium Unit interest in favor of demolishing, rather than the Restoring, the Building, without the prior written consent of Landlord in each instance. The Condominium Documents shall provide, and Tenant shall use commercially reasonable efforts to enforce, that the Condominium Board shall comply with the provision of this Article 15 with respect to all portions of the Building which are the Condominium Board's obligation to restore.

Section 15.02. Restoration Plans and Specifications.

(a) Tenant shall submit to Landlord, not later than sixty (60) days prior to the commencement of any Facility Airspace Improvements Restoration, complete plans and specifications therefor (the "Proposed Restoration Plans and Specifications"), prepared by a licensed professional engineer or registered architect selected by Tenant for the performance of the Restoration and approved by Landlord therefor, which approval shall not be unreasonably withheld (provided that nothing herein shall prevent Tenant from making any immediately necessary repairs in the event of an emergency situation, to comply with Legal Requirements (to the extent so required) or minor repairs immediately required to comply with the requirements of any sublease). Such Proposed Restoration Plans and Specifications shall be subject to the review and approval of Landlord, which review and approval shall not be unreasonably withheld or delayed and shall be limited to determining whether such Proposed Restoration Plans and Specifications are consistent with the requirements of Section 15.01. If Landlord reasonably determines that such Proposed Restoration Plans and Specifications do not conform to the requirements of Section 15.01, and such deviations are not reasonably acceptable to Landlord, then Landlord shall notify Tenant of same, specifying in reasonable detail those respects in which such Proposed Restoration Plans and Specifications do not so conform and are not otherwise acceptable to Landlord. Upon receipt of notice from Landlord that the Proposed Restoration Plans and Specifications are not in conformance with the requirements of Section 15.01 and have not been approved, Tenant shall then either (i) cause such Proposed Restoration Plans and Specifications to be revised and resubmitted to Landlord for review and approval as aforesaid, or (ii) dispute the disapproval of such Proposed Restoration Plans and Specifications under Section 40.01(a) and (b).

(b) If Landlord shall fail to approve or disapprove such Proposed Restoration Plans and Specifications within twenty-one (21) days after Tenant's submission thereof to Landlord, Tenant may provide to Landlord a written notice, which notice shall include in capital letters on the first page thereof: "THIS NOTICE IS BEING GIVEN UNDER SECTION 15.02 OF THE AGREEMENT OF SEVERED PARCEL LEASE FOR THE WESTERN RAIL YARD SECTION OF THE JOHN D. CAEMMERER WEST SIDE YARD. YOUR FAILURE TO RESPOND WITHIN THIRTY (30) DAYS WILL RESULT IN YOUR DEEMED APPROVAL OF THE RESTORATION PLANS" (such notice, the "Restoration Notice"). In the event Landlord does not approve or disapprove such Proposed Restoration Plans and Specifications within ten (10) days after Tenant provides Landlord with the Restoration Notice, Landlord shall be deemed to have approved such Proposed Restoration Plans and Specifications. As used herein, the term "Approved Restoration Plans and Specifications" shall mean the final Proposed Restoration Plans and Specifications that have been approved (or have otherwise been deemed approved) by Landlord.

(c) In the event Tenant shall desire to modify the Approved Restoration Plans and Specifications which Landlord theretofore approved pursuant to Sections 15.02(a) and (b), Tenant shall submit the proposed modifications to Landlord and Landlord shall review the proposed changes to determine whether or not they (i) conform to the requirements of Section 15.01 and (ii) provide for design, equipment, engineering and materials which are comparable in quality to those provided for in the previously-approved Approved Restoration Plans and Specifications. If Landlord determines that the proposed changes do not satisfy the

criteria set forth in clauses (i) and (ii) of the immediately preceding sentence, Landlord shall so advise Tenant, specifying in reasonable detail the aspects of such proposed modifications that do not conform to the above requirements. Within twenty (20) Business Days after Landlord shall have so notified Tenant, Tenant shall submit revised plans and specifications for the Restoration to Landlord for review. Each review by Landlord of Tenant's submissions shall be carried out within twenty (20) Business Days of the date of delivery thereof, and if Landlord shall not have notified Tenant of its determination within such twenty (20) Business Day period, it shall be deemed to have determined that the proposed changes are satisfactory.

(d) The Approved Restoration Plans and Specifications shall comply with all Legal Requirements, including but not limited to the Building Code, as well as the same requirements of the WRY Declaration of Easements and the WRY Construction Agreement as are applicable to the Initial Construction of the Improvements, to the extent applicable. The responsibility to assure such compliance shall be that of Tenant and not of Landlord. Landlord's determination that the Approved Restoration Plans and Specifications conform to the requirements of Section 15.01 shall not be, nor shall it be construed to be, or relied upon as, a determination that the Approved Restoration Plans and Specifications comply with any Legal Requirements or with any of the requirements of the WRY Declaration of Easements and the WRY Construction Agreement as are applicable to the Initial Construction of the Improvements.

(e) All reasonable costs and expenses incurred by Landlord in reviewing the Proposed Restoration Plans and Specifications and any modifications thereto shall be paid by Tenant to Landlord (unless such Casualty was caused by the negligence or willful misconduct of Landlord or its agents, in which event such costs and expenses shall be borne exclusively by Landlord).

Section 15.03. No Obligation of Landlord. Except in the event a Casualty was caused by the negligence or willful misconduct of Landlord or its agents, Landlord shall not be obligated to undertake any Restoration of any Facility Airspace Improvements or to pay any of the costs or expenses thereof; provided, however, that if (a) Tenant shall fail or neglect to perform any Restoration required hereunder with reasonable diligence (subject to Force Majeure), or having so commenced such Restoration, shall fail or neglect to complete the same with reasonable diligence (subject to Force Majeure) in accordance with the terms of this Lease, and (b) except in the event of a failure which adversely affects Public Safety, Service Reliability or Legal Compliance in any respect or an emergency (in which event Landlord shall endeavor if practicable to give written notice of such failure to Tenant), Landlord shall give written notice of such failure to Tenant, and such failure shall continue for fifteen (15) days after the giving of such notice, then (subject to the cure rights of any Leasehold Mortgagee hereunder, except in the event of an emergency) Landlord may, but shall not be required to, complete such Restoration at Tenant's expense, which Restoration shall (except to the extent that the same would interfere with Public Safety, Service Reliability or Legal Compliance in any respect) be conducted by Landlord in a prompt and efficient manner so as to minimize interference with the operation and business activities on the Premises and upon the terms and conditions applicable to entry by Landlord upon the Premises in accordance with the WRY Declaration of Easements. In any case where this Lease shall expire or be terminated prior to the completion of Restoration, Landlord may elect, but shall not be required, to complete such Restoration, and (unless such Casualty was caused by the negligence or willful misconduct of Landlord or its agents) Tenant shall pay, or

reimburse Landlord for, all amounts spent in connection with any Restoration so undertaken by Landlord within fifteen (15) days after demand therefor. Tenant's obligations under this Section 15.03 shall survive the expiration or termination of this Lease.

Section 15.04. Restoration in Accordance with Project Documents. Any Facility Airspace Improvements Restoration that utilizes the easements set forth in the WRY Declaration of Easements shall be conducted in accordance with the same terms and conditions of the WRY Declaration of Easements and the WRY Construction Agreement as are applicable to the Initial Construction of the Improvements.

Section 15.05. Progress Payments for Restoration.

(a) Prior to commencing any Facility Airspace Improvements Restoration that is reasonably likely to cost more than Three Million Dollars ($3,000,000), subject to CPI Adjustment, Tenant shall furnish Landlord with an estimate of the costs thereof, prepared by the licensed professional engineer or registered architect selected by Tenant and approved by Landlord pursuant to Section 15.02. Landlord, at its option and (subject to the last sentence of this Section 15.05(a)) expense, may engage a licensed professional engineer or registered architect to prepare its own estimate of the cost of such Facility Airspace Improvements Restoration (but only if such Restoration is estimated by the Tenant to cost more than Three Million Dollars ($3,000,000), subject to CPI Adjustment). In the event of any dispute between the two estimates, such dispute shall be resolved in accordance with Sections 40.01(a) and (b). If Landlord engages an engineer or architect to prepare its own estimate as aforesaid and the estimate thereafter agreed upon by Landlord and Tenant or determined by a court or arbitrator, as the case may be, exceeds the estimate previously furnished by Tenant by not less than five percent (5%), then Tenant shall reimburse Landlord for the reasonable costs and expenses incurred by Landlord in connection with the preparation of its own estimate.

(b) In the event that the cost of any Facility Airspace Improvements Restoration as determined based on the estimate obtained pursuant to Section 15.05(a) is greater than Five Million Dollars ($5,000,000), subject to CPI Adjustment, all proceeds of insurance payable in respect of damage to such Facility Airspace Improvements, upon disbursement by the insurer, and any additional funds as may be needed from Tenant to complete any Restoration (the "Shortfall Amount") as determined based on such estimate (such insurance proceeds and Shortfall Amount, collectively, the "Restoration Funds") shall be deposited with the Restoration Fund Depository prior to the commencement of any Facility Airspace Improvements Restoration; provided, however, that in lieu of depositing the Shortfall Amount, Tenant may deliver to Landlord a guaranty for such Shortfall Amount from a creditworthy guarantor subject to the reasonable approval of Landlord.

(c) Subject to the further provisions of this Article 15, the Restoration Fund Depository shall pay over to Tenant from time to time, upon the following terms, the Restoration Funds, for the purpose of the performance by Tenant of any Facility Airspace Improvements Restoration; provided, however, that the Restoration Fund Depository, before paying such monies over to Tenant, shall reimburse Landlord (and shall be entitled to reimburse itself) therefrom to the extent, if any, of the necessary, reasonable and proper expenses

(including reasonable attorneys' fees) paid or incurred by the Restoration Fund Depository and Landlord, respectively, in the collection of such Restoration Funds:

(i) Subject to the provisions of Sections 15.06 and 15.07, the Restoration Funds shall be paid to Tenant in installments as the Facility Airspace Improvements Restoration progresses, upon application by Tenant to both the Restoration Fund Depository and Landlord showing the cost of labor and materials purchased and delivered to the Premises for incorporation into such Restoration, or incorporated therein since the last previous application, and due and payable or paid by Tenant;

(ii) If any vendor's, mechanic's, laborer's, or materialman's lien is filed against the Premises or any part thereof, or if any public improvement lien relating to the Restoration is created or permitted to be created by Tenant and is filed against Landlord (or any assets of, or funds appropriated to Landlord), Tenant shall not be entitled to receive any further installment until all such liens are satisfied or discharged (by bonding or otherwise);

(iii) The amount of any installment to be paid to Tenant shall be (x) the product of (A) the total Restoration Funds and (B) a fraction, the numerator of which is the cost of labor and materials theretofore incorporated (or delivered to the Premises to be incorporated) by Tenant in the Restoration and the denominator of which is the total estimated cost of the Restoration, such estimated cost determined in accordance with Section 15.05(a), less (y) (A) all payments theretofore made to Tenant out of the Restoration Funds and (B) ten percent (10%) of the amount so determined until the Restoration is fifty percent (50%) complete, with no additional retention after the Restoration is fifty percent (50%) complete (it being understood that the retention from the period prior to fifty percent (50%) completion may be reduced to a final retention of twice the estimated cost of punch list items upon substantial completion before a full payment upon final completion); and

(iv) Upon completion of and payment in full for the Restoration by Tenant, the balance of the Restoration Funds net of any Rental then due and owing shall be paid over to Tenant, subject to the rights of any Leasehold Mortgagee or Mezzanine Lenders to such balance of funds.

(v) If a Leasehold Mortgage shall have provisions for the disbursement of Restoration Funds which differs from the disbursement provisions set forth in Sections 15.05, 15.06 or 15.07, then Tenant shall comply with the provisions of such Leasehold Mortgage in lieu of any conflicting provisions set forth herein, so long as such Leasehold Mortgage provides that Restoration Funds will be applied exclusively to complete the Facility Airspace Improvements Restoration prior to the application of excess Restoration Fund proceeds to any other purpose.

(d) Notwithstanding the foregoing, if Landlord shall perform or continue any Facility Airspace Improvements Restoration, pursuant to the provisions of Section 15.03, then the Restoration Fund Depository shall, upon request therefor by Landlord, pay over the Restoration Funds to Landlord to the extent not previously paid to Tenant pursuant to this Section 15.05, and Tenant shall pay to Landlord, within ten (10) days after demand therefor, any sums in excess of the portion of the Restoration Funds received by Landlord necessary to

complete the Restoration. Upon request therefor by Tenant, Landlord shall deliver to Tenant from time to time, but no more frequently than monthly, a certificate setting forth, in reasonable detail, the expenditures made by Landlord for such Restoration.

Section 15.06. Conditions Precedent to Disbursements. The following shall be conditions precedent to each payment made by the Restoration Fund Depository to Tenant as provided in Section 15.05 above:

(a) Tenant shall have submitted to the Restoration Fund Depository and to Landlord a certificate from the aforesaid engineer or architect approved by Landlord pursuant to Section 15.02, which certificate shall (i) certify that the sum then requested to be withdrawn either has been paid by Tenant (or is due and payable) to contractors, subcontractors, materialmen, engineers, architects or other Persons (whose names and addresses shall be stated) who have rendered or furnished services or materials for the Restoration, (ii) give a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of said Persons in respect thereof, (iii) state in reasonable detail the progress of the work up to the date of said certificate, (iv) certify that no part of such expenditures has been or is being made the basis, in any previous or then pending requisition, for the withdrawal of the Restoration Funds or has been made out of the Restoration Funds previously received by Tenant, (v) certify that the sum then requested does not exceed the value of the services and materials described in the certificate, and (vi) certify that the balance of the Restoration Funds held by the Restoration Fund Depository (whether from the proceeds of insurance or by deposit of Tenant's own funds) and any additional insurance proceeds not yet disbursed will be sufficient upon completion of the Restoration to pay for the same in full, and include a reasonably detailed estimate of the cost of such completion;

(b) Tenant shall have furnished to Landlord an official search, or a certificate of a title insurance company reasonably satisfactory to Landlord, or other evidence reasonably satisfactory to Landlord, showing that there has not been filed any vendor's, mechanic's, laborer's or materialman's statutory or other similar lien affecting the Premises or any portion thereof, or any public improvement lien with respect to the Premises or the Restoration affecting Landlord, or the assets of, or funds appropriated to, Landlord, which has not been discharged of record (by bonding or otherwise), except such as will be discharged upon payment of the requisite amount out of the sum then requested to be withdrawn; and

(c) at the time of making such payment, there shall be no existing and unremedied Event of Default on the part of Tenant; provided, however, that in the event that a Monetary Default shall then exist of which Landlord has provided Tenant notice to the extent required under this Lease, the Restoration Fund Depository shall be obligated to pay over to Landlord, prior to any payment to Tenant, the amount required to cure such Monetary Default, together with all other sums to which Landlord is then entitled pursuant to this Lease as a result of such Monetary Default.

Section 15.07. Additional Requirements for Restoration. Tenant shall deliver to Landlord:

(a) at least thirty (30) Business Days prior to commencement of any Facility Airspace Improvements Restoration, (i) any permits required by any Governmental Authority with respect to such Restoration and (ii) at the request of Landlord, any drawings, information or samples (in addition to the Approved Restoration Plans and Specifications) to which the Yards Parcel Operator would be entitled to under the WRY Declaration of Easements. All such materials for the Restoration (together with the Approved Restoration Plans and Specifications therefor) shall become the sole and absolute property of Landlord, subject to the rights of any architects and engineers who prepared the same, if for any reason this Lease shall be terminated; and

(b) at least ten (10) Business Days prior to commencement of such Restoration:

(i) a contract or construction management agreement reasonably satisfactory to Landlord in form collaterally assignable to Landlord (subject to any prior assignment to any Leasehold Mortgagee), made with a reputable and responsible contractor or construction manager approved by Landlord, which approval shall not be unreasonably withheld, providing for the completion of the Restoration in accordance with the Approved Restoration Plans and Specifications, free and clear of all liens, encumbrances, security agreements, interests and financing statements relating thereto;

(ii) (x) a collateral assignment to Landlord in a form reasonably acceptable to Tenant, Landlord and any Leasehold Mortgagee (subject to any prior assignment to any Leasehold Mortgagee) of all agreements, plans, permits and licenses relating to such Restoration and the bonds, if any, provided thereunder, and (y) a consent and acknowledgement to such collateral assignment in a form reasonably acceptable to Tenant, Landlord and Leasehold Mortgagee, executed by the counterparty under any such agreement (and, to the extent that there are major subcontracts to which such counterparty is a party, by the counterparty to such major subcontracts); provided, however, that if a Leasehold Mortgage is being entered into in connection with such Restoration, Tenant shall not be obligated to deliver any such consent and acknowledgement from any such counterparty unless such counterparty is also providing its consent and acknowledgement to a collateral assignment being given by Tenant in favor of the Leasehold Mortgagee;;

(iii) for any Restoration costing in excess of Five Million Dollars ($5,000,000), subject to CPI Adjustment, payment and performance bonds in forms and by sureties satisfactory to Landlord, naming the contractor performing the Restoration as obligor and Landlord and Tenant and any Leasehold Mortgagees, if applicable, as obligees, each in a penal sum equal to the Shortfall Amount or, in lieu thereof, such other security as shall be reasonably satisfactory to Landlord; and

(iv) evidence of the insurance policies required pursuant to Article 14 issued by responsible insurers, bearing notations evidencing the payment of premiums or accompanied by other evidence satisfactory to Landlord of such payments.

Section 15.08. As-Built Plans. Tenant shall deliver to Landlord, within thirty (30) days after the completion of any Restoration, a complete set of "as-built" plans therefor,

together with a statement in writing from a registered architect or licensed professional engineer that such plans are complete and correct.

Section 15.09. Option to Terminate. Notwithstanding the foregoing, if, within five (5) years prior to the Fixed Expiration Date, all or substantially all of the Premises shall be destroyed or damaged, Tenant shall have the option to terminate this Lease, and upon the surrender thereof (a) Tenant shall be relieved from the Restoration requirements for the Facility Airspace Improvements set forth in this Lease, and (b) Tenant shall assign and/or deliver all insurance proceeds to Landlord.

Section 15.10. No Abatement. Tenant hereby acknowledges and agrees that it shall have no right of reduction, abatement, setoff, refund or deduction of Rental, by reason of damage to or total, substantial or partial destruction of the WRY Roof Component or the Facility Airspace Improvements or any part thereof, due to any reason or cause whatsoever, and Tenant, notwithstanding any present or future law or statute, shall have no right to terminate this Lease or to quit or surrender the Premises or any part thereof except as set forth in Section 15.09. Tenant expressly agrees that its obligations hereunder, including, without limitation, the payment of Rental, shall continue as though the Improvements had not been damaged or destroyed and without abatement, suspension, diminution or reduction of any kind. It is the intention of Landlord and Tenant that the foregoing is an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York. Subject to the foregoing, nothing herein shall be deemed to limit or restrict any remedies available to Tenant at law or otherwise with respect to any Restorations that are the obligation of Landlord hereunder.

ARTICLE 16

CONDEMNATION

Section 16.01. Taking of All or Substantially All of the Premises.

(a) If the whole or substantially all of the Premises shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among Landlord, Tenant and those authorized to exercise such right, this Lease and the Term shall terminate and expire on the date of such taking and the Rental payable by Tenant hereunder shall be equitably apportioned as of the date of such taking. The term "substantially all of the Premises" shall mean such portion of the Premises as when so taken would leave remaining a balance of the Premises which, due either to the area so taken or the location of the part so taken in relation to the part not so taken, would not, under economic conditions, applicable zoning laws and/or building regulations then existing or prevailing, permit the economic operations of the Improvements located on such remaining portions of the Premises for their permitted uses hereunder.

(b) If the whole or substantially all of the Premises shall be taken or condemned as provided in Section 16.01(a), the award or damages received with respect to the Premises (the "Condemnation Proceeds") shall be apportioned as follows: (i) there shall first be paid to Landlord the sum of (x) all future Annual Base Rent payments due under this Lease through the Fixed Expiration Date (taking into account all rent escalations and FMV Base Rent

Resets, and assuming that the Annual Base Rent for the period immediately following each FMV Base Rent Reset shall be equal to one hundred twenty percent (120%) of the Annual Base Rent for the period ending on the day immediately prior to the applicable Initial Reset Date or Reset Date), with each such payment discounted to the date of payment of the Condemnation Proceeds using a discount rate of six and one-half percent (6.5%) per annum, as more particularly set forth on the Severed Parcel Pro Forma Rent Schedule, plus (y) Landlord's Reversionary Interest Value as of the date of taking; and (ii) subject to the rights of any Leasehold Mortgagees and Mezzanine Lenders, Tenant shall receive the balance, if any, of such Condemnation Proceeds. Each of Landlord and Tenant shall execute any and all documents that may be reasonably required in order to facilitate collection by the other of its respective portion of the Condemnation Proceeds.

Section 16.02. Date of Taking. For purposes of this Article 16, the "date of taking" shall be deemed to be the earlier of (a) the date on which actual possession of the whole or substantially all of the Premises, or a part thereof, as the case may be, is acquired by any lawful power or authority pursuant to the provisions of the applicable federal or New York State law or (b) the date on which title to the Premises or a portion thereof shall have vested in any lawful power or authority pursuant to the provisions of the applicable federal or New York State law.

Section 16.03. Partial Taking; Tenant's Obligation to Restore. If less than substantially all of the Premises shall be taken as provided in Section 16.01(a), this Lease and the Term shall continue as to the portion of the Premises remaining, and the rate of Annual Base Rent to be paid by Tenant to Landlord during the Term thereafter shall be calculated as the product of (a) the Annual Base Rent and (b) a fraction, (i) the numerator of which is the number of square feet of Floor Area remaining in the Premises after the taking and (ii) the denominator of which is the maximum Floor Area square footage available to the Premises prior to such taking. Tenant, whether or not the Condemnation Proceeds, if any, shall be sufficient for the purpose shall (subject to Force Majeure) undertake diligent Restoration of any remaining portion of the Improvements not so taken, such that the remaining part of the Improvements shall be complete, operable and in good condition and repair in conformity with the requirements of Section 15.01. In the event of any partial taking pursuant to this Section 16.03, the entirety of the Condemnation Proceeds for or attributable to the portion of the Premises so taken shall be apportioned as follows: (x) there shall first be paid to the Condemnation Proceeds Depository such sums as shall be necessary to pay the costs of Restoration of the portion of the Premises remaining; (y) after deducting the sums specified in (x), there shall next be paid to Landlord the product of (A) the sum of (I) all future Annual Base Rent payments due under this Lease through the Fixed Expiration Date (taking into account all rent escalations and FMV Base Rent Resets, and assuming that the Annual Base Rent for the period immediately following each FMV Base Rent Reset shall be equal to one hundred twenty percent (120%) of the Annual Base Rent for the period ending on the day immediately prior to the applicable Initial Reset Date or Reset Date), with each such payment discounted to the date of payment of the Condemnation Proceeds using a discount rate of six and one-half percent (6.5%) per annum, as more particularly set forth on the Severed Parcel Pro Forma Rent Schedule, plus (II) Landlord's Reversionary Interest Value as of the date of taking; and (B) a fraction, the numerator of which is the number of square feet of Floor Area available to the portion of the Premises so taken, and the denominator of which is the

Floor Area square footage available to the Premises prior to such taking; and (z) the balance remaining, if any, of such Condemnation Proceeds shall be paid to Tenant, subject to any rights of Leasehold Mortgagees or Mezzanine Lenders. Subject to the provisions and limitations in this Article 16, the Condemnation Proceeds Depository shall make available to Tenant as much of that portion of the Condemnation Proceeds actually received and held by the Condemnation Proceeds Depository, if any (less all necessary and proper expenses paid or incurred by the Condemnation Proceeds Depository, the Leasehold Mortgagee most senior in lien and Landlord in the condemnation proceedings), as may be necessary to pay the costs of Restoration of the portion of the Premises remaining. Payments to Tenant as aforesaid shall be disbursed in the manner and subject to the conditions set forth in Article 15 as are applicable to the disbursement of Restoration Funds. Any balance of the award held by the Condemnation Proceeds Depository and any cash and the proceeds of any security deposited with the Condemnation Proceeds Depository pursuant to Section 16.04 remaining after completion of the Restoration, net of any Rental then due and owing, shall be paid to Tenant (subject to the rights of any Leasehold Mortgagees and Mezzanine Lenders). Each of Landlord and Tenant shall execute any and all documents that may be reasonably required in order to facilitate collection by the other of its respective portion of the Condemnation Proceeds.

Section 16.04. Deficiency in Proceeds. If the cost of any Restoration required by the terms of Section 16.03, as determined in the manner set forth in Section 15.05(a), exceeds both (a) Five Million Dollars ($5,000,000), subject to CPI Adjustment and (b) the balance of the Condemnation Proceeds after payment of the expenses set forth in the fourth sentence of Section 16.03, then, prior to the commencement of such Restoration, Tenant shall deposit with the Condemnation Proceeds Depository a bond, cash or other security reasonably satisfactory to Landlord (including a guaranty, as set forth in Section 15.05(b)) in the amount of such excess, to be held and applied by the Condemnation Proceeds Depository in accordance with the provisions of Section 16.03, as security for the completion of the Restoration.

Section 16.05. Temporary Taking. If the temporary use of the whole or any part of the Premises shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement between Tenant and those authorized to exercise such right, Tenant shall give prompt notice thereof to Landlord and the Term shall not be reduced or affected in any way and Tenant shall continue to pay in full the Rental payable by Tenant hereunder without reduction or abatement, and Tenant, provided that no Event of Default shall then exist, shall be entitled to receive for itself any and all Condemnation Proceeds received in connection with such temporary taking; provided, however, that:

(a) if the taking is for a period not extending beyond the Term and if the Condemnation Proceeds therefor shall be paid less frequently than in monthly installments, the same shall be paid to and held by the Condemnation Proceeds Depository as a fund, which the Condemnation Proceeds Depository shall apply from time to time, first, to the payment of Rental, and next as set forth in the Leasehold Mortgage most senior in lien; provided, that in the event such taking results in changes or alterations in any of the Improvements, which would necessitate an expenditure for Restoration of such Improvements to their former condition, then a portion of such Condemnation Proceeds considered by Landlord, in its reasonable opinion, as

appropriate to cover the expenses of such Restoration shall be retained by the Condemnation Proceeds Depository and applied and paid over toward the Restoration of such Improvements to their former condition, substantially in the same manner and subject to the same conditions as provided in Section 15.05; and any portion of such Condemnation Proceeds, which shall not be required pursuant to this Section 16.05(a) to be applied to the Restoration of the Improvements or to the payment of Rental or as set forth in the Leasehold Mortgage most senior in lien, shall be paid to Tenant; or

(b) if the taking is for a period extending beyond the Term, the Condemnation Proceeds with respect thereto shall be apportioned between Landlord and Tenant as of the Expiration Date, and Landlord's and Tenant's share thereof, if paid less frequently than in monthly installments, shall be paid to the Condemnation Proceeds Depository and applied in accordance with the provisions of Section 16.05(a); provided, however, that the amount of any Condemnation Proceeds allowed or retained for the Restoration of the Improvements and not previously applied for such purpose shall remain the property of Landlord if this Lease shall expire prior to the completion of such Restoration.

Section 16.06. Sale in Lieu of Condemnation. In the event of a negotiated sale of all or a portion of the Premises in lieu of condemnation, the proceeds of such sale shall be distributed as provided in this Article 16 as if such sale were a condemnation and such proceeds were Condemnation Proceeds, and all other provisions of this Article 16 shall apply as if such sale were a condemnation. Neither party shall agree to such a sale without the prior written consent of the other party (which may be withheld in such party's sole discretion).

Section 16.07. Participation in Proceedings. Landlord, Tenant and any Leasehold Mortgagee shall be entitled to file a claim and otherwise participate in any condemnation or similar proceeding and all hearings, trials and appeals in respect thereof.

Section 16.08. Claims for Personal Property. Notwithstanding anything to the contrary contained in this Article 16, in the event of any permanent or temporary taking of all or any part of the Premises, Tenant, its Leasehold Mortgagees and its subtenants (to the extent permitted under a sublease) shall have the exclusive right to assert claims for any trade fixtures and personal property so taken which were the property of Tenant or its subtenants (but not including any Equipment) and for relocation expenses of Tenant or its subtenants, and all awards and damages in respect thereof shall belong to Tenant and its subtenants, and Landlord hereby waives any and all claims to any part thereof; provided, however, that if there shall be no separate award or allocation for such trade fixtures or personal property, then such claims of Tenant and its subtenants, or awards and damages, shall be subject and subordinate to Landlord's claims under this Article 16, and in no event shall any such claim of Tenant or any subtenant in any way reduce the amount of any award otherwise payable to Landlord with respect to the taking of its fee interest in the Premises or the Yards Parcel or the amount of any award otherwise payable with respect to the taking of Tenant's leasehold interest hereunder.

Section 16.09. Taking of Yards Parcel and Facility Airspace Parcel. If all or portions of both the Yards Parcel and the Facility Airspace Parcel shall be taken or condemned as provided in Section 16.01(a), separate awards or damages in respect thereof shall be made as between the Yards Parcel and the Facility Airspace Parcel. If such taking constitutes the whole

or substantially all of the Premises, the award or damages payable with respect to the Premises shall be apportioned as provided in Section 16.01(b), and the Condemnation Proceeds payable with respect to the Yards Parcel shall be paid to the Yards Parcel Owner. If such taking affects less than substantially all of the Premises, the provisions of Section 16.03 shall apply with respect to the Condemnation Proceeds payable with respect to the Premises, and the Condemnation Proceeds payable with respect to Yards Parcel shall be paid to the Yards Parcel Owner. If there shall be any dispute as to that portion of the Condemnation Proceeds which is attributable to the Yards Parcel or the Premises, such dispute shall be resolved in accordance with Section 40.01(a) and (b).

ARTICLE 17

ASSIGNMENT, SUBLETTING, MORTGAGES, ETC.

Section 17.01. No Transfers without Landlord Consent; Permitted Transfers. Except as otherwise specifically provided in this Article 17,

(a) Tenant shall not sell, assign, transfer, pledge, mortgage or otherwise encumber, in whole or in part (any such action, an "Assignment") either this Lease or any interest of Tenant in this Lease, whether by operation of law or otherwise, nor shall any Assignment be effected of the issued or outstanding capital stock of a corporation that is Tenant or of a corporation owning a controlling interest in Tenant, whether held directly or indirectly, and whether made voluntarily, involuntarily by operation of law or otherwise, if such Assignment will or may result in a change of the Controlling Ownership of Tenant as of the Commencement Date, nor shall any voting trust or similar agreement be entered into with respect to such stock, nor any reclassification or modification of the terms of such stock take place, nor shall there be any merger or consolidation of such corporation into or with another corporation, nor shall additional stock (or any warrants, options or debt securities convertible, directly or indirectly, into such stock) in any such corporation be issued if the issuance of such additional stock (or such other securities, when exercised or converted into stock), will result in a change of the Controlling Ownership of such corporation as held by the shareholders thereof as of the Commencement Date, nor shall any Assignment be effected with respect to any general partner's interest in a partnership which is Tenant or in a partnership owning a controlling interest in Tenant, whether directly or indirectly, and whether made voluntarily, involuntarily by operation of law or otherwise, if such Assignment will or may result in a change of the Controlling Ownership of Tenant as of the Commencement Date, nor shall any Assignment be effected with respect to any managing member's interest in a limited liability company which is Tenant or in a limited liability company owning a controlling interest in Tenant, whether directly or indirectly, and whether made voluntarily, involuntarily, by operation of law or otherwise, if such Assignment will result in a change of the Controlling Ownership of Tenant as of the Commencement Date, nor shall Tenant sublet the Premises (or, if the Improvements shall consist of, or are intended to consist of, multiple Buildings, any Building or portion of the Premises on which a Building is to be constructed) as an entirety or substantially as an entirety (any such subletting, a "Subletting", and such subtenant, a "Major Subtenant"), without the prior written consent of Landlord in each case, which consent may be granted or withheld in Landlord's sole discretion (each of the foregoing transactions is herein referred to as a "Transfer"). Nothing contained in this Section 17.01(a) shall restrict or prohibit or be deemed to restrict or prohibit (a)

any Assignment or Transfer in the equity interests in any Person whose common stock is quoted on a recognized securities exchange such as the New York Stock Exchange or NASDAQ or (b) an Assignment or Transfer in the equity interests in Tenant or any other Person that does not, directly or indirectly, result in a change in the Controlling Ownership of Tenant.

(b) Notwithstanding anything to the contrary in Section 17.01(a), the following "Permitted Transfers" shall be permitted upon the terms set forth in this Section 17.01(b) and Section 17.02 without any consent or approval of Landlord:

(i) at any time, Tenant may Transfer all of its right, title, interest and obligations under this Lease (or otherwise effectuate a change in the Controlling Ownership of Tenant) to a Related Affiliate;

(ii) Tenant may effectuate a change in the Controlling Ownership of Tenant to [Oxford Hudson Yards LLC (or any other Affiliate of OMERS Administration Corporation)][21] and replace WRY Developer and any other Affiliate of The Related Companies, L.P. under the balance of the Project Documents insofar as they relate to the Premises (excluding the Rent/Financial Payments Guaranty, any Buildings Completion Guaranty, any Sponsor Guaranty and any other guaranty given by The Related Companies, L.P., and/or OP USA Debt Holdings Limited Partnership to the MTA Parties, at any time following (x) the election of Oxford Hudson Yards LLC to remove Related Hudson Yards, LLC as the Administrative Member of Hudson Yards Gen-Par, LLC (the "GP") and exercise its right to direct the day-to-day business and affairs of the GP and Tenant pursuant to that certain Limited Liability Company Agreement of the GP, dated as of May 26, 2010, by and between Related Hudson Yards, LLC and Oxford Hudson Yards LLC, as amended by that certain Amendment No. 1 to Limited Liability Company Agreement of Hudson Yards Gen-Par, LLC, dated as of October 10, 2012 (as the same have been or may be further amended from time to time, the "GP LLC Agreement"), or (y) consummation of the purchase by Oxford Hudson Yards LLC of one hundred percent (100%) of Related Hudson Yards, LLC's membership interests in the GP pursuant to the GP LLC Agreement, in each case provided that (A) Tenant shall notify Landlord of such change in Controlling Ownership and (B) if such a change in Controlling Ownership occurs prior to the Substantial Completion of the LIRR Work, Tenant is or retains as construction manager a Qualified Replacement Developer to perform the obligations of Developer under the WRY Construction Agreement; it being understood and agreed that [Oxford Properties Group][22] or any wholly-owned subsidiary thereof shall be a Qualified Replacement Developer so long as it (x) employs or, promptly following such change in Controlling Ownership, retains, New York-based personnel with reasonably sufficient construction experience in New York City to oversee the performance of the LIRR Work, (y) is not, at the applicable time, disqualified or disbarred from performing work on projects for the MTA Parties or their Affiliates or any other City of New York or New York State agency, and (z) is not a Prohibited Person. For the avoidance of doubt, following such a change in Controlling Ownership, the Rent/Financial Payments Guaranty, any Buildings Completion Guaranty, any

[21] To be confirmed when the applicable Severed Parcel Lease is entered into.

[22] To be confirmed when the applicable Severed Parcel Lease is entered into.

Sponsor Guaranty and any other guaranty given by The Related Companies, L.P., and/or OP USA Debt Holdings Limited Partnership to the MTA Parties shall remain in full force and effect and nothing contained in this Section 17.01(b)(ii) shall derogate from (1) the obligations of The Related Companies, L.P. or OP USA Debt Holdings Limited Partnership thereunder or (2) any obligations of any other Affiliate of The Related Companies, L.P. under any other Project Document to which it is a party to the extent accruing prior to the date of such replacement;

(iii) upon or after the Commencement of Construction of one or more Buildings, Tenant may Transfer all of its right, title, interest and obligations under this Lease (or otherwise effectuate a change in the Controlling Ownership of Tenant) to a user (or an entity or entities beneficially owned by such user) which will acquire such Building(s) and the Premises for its own use and occupancy pursuant to a fee-based development agreement with Tenant, Developer or their respective Affiliates and such user is not a Prohibited Person ("User"). Prior to the Substantial Completion of the Associated Portion of the LIRR Roof and Facilities, each User shall agree that Developer may not be removed or replaced under the WRY Construction Agreement, without the prior written consent of Landlord (which consent may be exercised in Landlord's sole discretion). In the event that Landlord grants its consent to the substitution of another party in lieu of Developer as developer of the Associated Portion of the LIRR Roof and Facilities then (A) there shall be at all times a single point of contact reasonably satisfactory to the Yards Parcel Operator (which may be a joint venture among Developer and such Qualified Replacement Developer) which is responsible to the Yards Parcel Operator for coordinating and overseeing all work of Developer and any Qualified Replacement Developer in connection with the construction of the WRY Roof Component; (B) in the event of any dispute between Developer and the Qualified Replacement Developer over any matters related to construction sequencing, the Yards Parcel Operator shall give priority to the completion of the Associated Portion of the LIRR Roof and Facilities which is then under construction by the Qualified Replacement Developer and shall not be obligated to deliver any conflicting track outages to Developer; and (C) the Yards Parcel Operator shall be released and indemnified and held harmless by Developer, the Qualified Replacement Developer and Tenant in respect of any decisions with respect to any construction sequencing made at the request of Developer or Qualified Replacement Developer while there is more than one party working in the Yards Parcel;

(iv) upon or after the Substantial Completion of the Associated Portion of the LIRR Roof and Facilities (or at any time if the Premises is located wholly on Facility Airspace Parcel Terra Firma), Tenant may Transfer all of its right, title, interest and obligations under this Lease (or otherwise effectuate a change in the Controlling Ownership of Tenant) and the balance of the Project Documents insofar as they relate to the Premises (and/or Tenant is a party thereto) to any Qualified Transferee; provided that in the event Commencement of Construction of the Building(s) on the Premises has not occurred, then such Qualified Transferee shall be obligated to provide the Building Completion Guaranty from a Building Completion Guarantor upon Commencement of Construction of such Building (and if a Building is under construction but not yet Substantially Completed, then the Qualified Transferee shall be obligated to deliver a replacement of the Building Completion Guaranty); and

(v) from and after the Substantial Completion of a Building and Associated FASP Improvements and (unless the Premises is wholly located on Facility

Airspace Parcel Terra Firma) Substantial Completion of the Associated Portion of the LIRR Roof and Facilities, Tenant may Transfer all of its right, title, interest and obligations under this Lease (or otherwise effectuate a change in the Controlling Ownership of Tenant), together with the balance of the Project Documents insofar as they relate to the Premises (and/or the Tenant is a party thereto), to any Person who is not then a Prohibited Person.

Section 17.02. Conditions and Procedures for Permitted Transfers.

(a) All Permitted Transfers shall be subject to the following terms:

(i) at the time of making such Transfer there is no existing and continuing Event of Default or Default under this Lease or the Project Documents; provided that this clause shall apply with respect to a Non-Monetary Default only if Landlord has delivered to Tenant notice of such Non-Monetary Default to the extent required under the applicable provisions of Section 31.01 of this Lease;

(ii) if such Transfer is an Assignment of this Lease (but not including transfers in the equity interests of a Person that results in a change in the Controlling Ownership of Tenant), such Assignment shall be in writing, duly executed, acknowledged and in proper form (or a memorandum thereof that is in proper form) for recording;

(iii) Tenant shall give written notice to Landlord of the making of such Transfer, which notice shall include the proposed effective date thereof, not less than twenty (20) days prior to the proposed effective date, together with (x) in the event of an Assignment of this Lease, the proposed form of the Assignment agreement and (y) relevant background information about the proposed transferee and its principals, including, without limitation, all information reasonably necessary to confirm that the proposed transferee is in compliance with the provisions of Section 17.01(b) (as applicable) and is not a Prohibited Person;

(iv) upon the effective date of such Transfer, the proposed transferee shall not be a Prohibited Person; it being agreed that Landlord shall notify Tenant within fifteen (15) days after Tenant's delivery of the notice referenced in subsection (iii) above as to whether the proposed transferee is a Prohibited Person;

(v) the assignee, Major Subtenant or successor entity is not entitled, directly or indirectly, to diplomatic or sovereign immunity and shall be subject to the service of process in the jurisdiction of the federal, state and local courts sitting in New York State (unless such sovereign immunity is waivable and waived by such Person in connection with its obligations under this Lease);

(vi) in the event of an Assignment of this Lease (but not including transfers in the equity interests of a Person that results in a change in the Controlling Ownership of Tenant), not later than ten (10) Business Days after the effective date of any such Assignment, Tenant shall deliver to Landlord a duplicate original or certified copy of such Assignment instrument; and

(vii) anything contained in Section 17.01(a) to the contrary notwithstanding, the exercise by a Mezzanine Lender of (y) any rights it may have under its Mezzanine Loan with respect to obtaining title to the direct or indirect equity interests of Tenant, which may have been pledged to such Mezzanine Lender pursuant to such Mezzanine Loan, or (z) any foreclosure remedies it may have, shall not be a Transfer or Assignment requiring the consent of Landlord hereunder; provided that such Mezzanine Loan shall have been made for a valid business purpose and not principally for the purpose of transferring such equity interests and/or the leasehold estate created hereby.

(b) Any Assignment of this Lease (but not including transfers in the equity interests of a Person that results in a change in the Controlling Ownership of Tenant or Assignments by mortgage or pledge), shall not be effective for purposes of this Lease unless and until the transferee shall execute, acknowledge and deliver to Landlord an agreement or certificate, in form and substance reasonably satisfactory to Landlord, whereby the transferee shall (i) assume the obligations and performance of this Lease and agree to be bound by all of the covenants, agreements, terms, provisions and conditions hereof on the part of Tenant to be performed or observed on and after the effective date of any such Transfer, and (ii) agree that no further Transfer shall be made except in accordance with this Article 17. Tenant acknowledges that, if Tenant engages in a Transfer in violation of the provisions of this Lease, and notwithstanding the acceptance of Rental by Landlord from an assignee or transferee or any other party, then Tenant shall remain fully and primarily and jointly and severally liable for the payment of the Rental due and to become due under this Lease and for the performance and observance of all of the covenants, agreements, terms, provisions and conditions of this Lease on the part of Tenant to be performed or observed. If, as and when Tenant Transfers this Lease as permitted hereunder, and an assignee assumes all of Tenant's obligations under this Lease, then from and after the date of such Transfer, the Tenant who has so assigned this Lease shall be released from and shall have no further obligations under this Lease other than any obligations that arose before the effective date of such Transfer (unless assumed in writing, in recordable form, by assignee). Promptly after request by Tenant, Landlord shall confirm the foregoing by a writing in form and substance reasonably satisfactory to Landlord and Tenant.

Section 17.03. Leasehold Mortgages.

(a) Notwithstanding anything to the contrary in Section 17.01(a), Tenant shall have the right to mortgage or pledge its interest in this Lease to one or more Leasehold Mortgagees and/or to permit the direct or indirect interest in Tenant to be pledged to a Mezzanine Lender, in each case without Landlord's consent, at any time and from time to time during the Term, provided that no holder of any Leasehold Mortgage or Mezzanine Loan, nor anyone claiming by, through or under any such Leasehold Mortgage or Mezzanine Loan, shall by virtue thereof acquire any greater rights hereunder than Tenant has, except the right to cure or remedy Tenant's defaults or to become entitled to a new lease as more fully set forth in this Section 17.03 and Section 17.04 and such other rights as are expressly granted to Leasehold Mortgagees or Mezzanine Lenders hereunder. A permitted subtenant shall have the right to mortgage or permit its interest in a permitted sublease to be pledged to one or more Leasehold Mortgagees and/or permit the direct or indirect interests in subtenant to be pledged to Mezzanine Lenders without Landlord's consent, at any time and from time to time during the Term.

Notwithstanding the foregoing, however, no Leasehold Mortgage or Mezzanine Loan shall be effective, unless:

(i) at the time of making such Leasehold Mortgage or Mezzanine Loan there is no existing and unremedied Default or Event of Default on the part of Tenant under this Lease; provided that this clause shall apply with respect to a Non-Monetary Default only if Landlord has delivered to Tenant notice of such Non-Monetary Default to the extent required under the applicable provisions of Section 31.01 of this Lease; and provided, further that if an Event of Default exists, but this Lease has not been terminated and such Event of Default will be cured simultaneously with the granting of such Leasehold Mortgage or Mezzanine Loan or with the proceeds from such Leasehold Mortgage or Mezzanine Loan, Tenant may mortgage its interest in this Lease and/or pledge the direct or indirect interests in Tenant subject to such cure;

(ii) such Leasehold Mortgage shall be subject to all the agreements, terms, covenants and conditions of this Lease;

(iii) such Leasehold Mortgage shall contain in substance each of the following provisions (and no provisions inconsistent therewith in any material respect):

(u) "This instrument is executed upon condition that (unless this condition be released or waived by Landlord under said Lease or its successors in interest by an instrument in writing) no purchaser or transferee of said Lease at any foreclosure sale hereunder, or other transfer authorized by law by reason of a default hereunder where no foreclosure sale is required, shall, as a result of such sale or transfer, acquire any right, title or interest in or to said Lease or the leasehold estate hereby mortgaged or pledged, unless (A) Landlord shall be given written notice of such sale or transfer of said Lease and the effective date thereof within ten (10) days after the effective date of such sale or transfer, and (B) such purchaser or transferee shall agree that a duplicate original or certified copy of the instrument of sale or transfer, together with the recording data therefor (to the extent then available), shall be delivered to Landlord within twenty (20) days after the date of recordation thereof."

(v) "The purchaser or transferee of said Lease shall, effective from and after the effective date of the foreclosure or transfer in lieu of foreclosure, assume and agree to perform all of the terms, covenants and conditions of the Lease to be observed or performed on the part of Tenant and agree that no further or additional mortgage or assignment of the Lease hereby mortgaged shall be made except in accordance with the provisions contained in Article 17 of that Lease."

(w) "This mortgage is not a security interest in or lien on the fee interest in the Premises covered by the Lease hereby mortgaged or on Landlord's interest in the Yards Parcel or the WRY".

(x) "The mortgagee hereunder waives all right and option to retain and apply the proceeds of any insurance or the proceeds of any condemnation award toward payment of the sum secured by this mortgage to the extent such proceeds are required for and applied to the demolition, repair or restoration of the mortgaged premises in accordance with the provisions of the Lease hereby mortgaged."

(y) "This mortgage and all rights of the mortgagee hereunder are, without the necessity for the execution of any further documents, subject and subordinate to the rights of Landlord under the Lease hereby mortgaged, as said Lease may have been previously modified, amended or renewed, or may hereafter be modified, amended or renewed with the consent of the mortgagee. Nevertheless, the holder of this mortgage agrees from time to time upon request and without charge to execute, acknowledge and deliver any instruments reasonably requested by Landlord to evidence the foregoing subordination."

(b) Tenant or the Leasehold Mortgagee or Mezzanine Lender shall give to Landlord written notice of the making of any Leasehold Mortgage or Mezzanine Loan (which notice shall contain the name and office address of the Leasehold Mortgagee or Mezzanine Lender) within ten (10) days after the execution and delivery of such Leasehold Mortgage or Mezzanine Loan and a duplicate original or certified copy thereof; provided that Landlord shall recognize the rights of a Leasehold Mortgagee or Mezzanine Lender hereunder upon the receipt of the foregoing information from and after the date so delivered even if such date is after such ten (10) day period.

(c) Landlord shall give to each Leasehold Mortgagee or Mezzanine Lender, at the address of such Leasehold Mortgagee or Mezzanine Lender set forth in the notice from such Leasehold Mortgagee or Mezzanine Lender or from Tenant delivered in the manner provided by Article 32, a copy of each notice given by Landlord to Tenant hereunder (including Default and Event of Default notices) at the same time as and whenever any such notice shall thereafter be given by Landlord to Tenant, and no such notice by Landlord shall be deemed to have been duly given to Tenant (and no grace or cure period shall be deemed to have commenced) unless and until a copy thereof shall have been given to each such Leasehold Mortgagee or Mezzanine Lender. Each Leasehold Mortgagee and Mezzanine Lender (i) shall thereupon have a period of ten (10) days more in the case of a Default in the payment of Annual Base Rent or other Rental and thirty (30) days more in the case of any other Default (or in the case of a non-Monetary Default which shall require more than thirty (30) days to cure using due diligence, then such longer period of time as shall be necessary so long as such Leasehold Mortgagee or Mezzanine Lender shall have commenced to cure (or caused to be commenced such cure) within such thirty (30) day period and continuously prosecutes or causes to be prosecuted the same to completion with reasonable diligence), after the applicable period afforded Tenant for remedying the Default or causing the same to be remedied has expired and (ii) shall, within such period and otherwise as herein provided, have the right (but not the obligation) to remedy such Default or cause the same to be remedied. Landlord shall accept performance by or on behalf of a Leasehold Mortgagee or Mezzanine Lender of any covenant, condition or agreement on Tenant's part to be performed hereunder with the same force and

effect as though performed by Tenant, so long as such performance is made in accordance with the terms and provisions of this Lease. Landlord shall not object to any entry onto the Premises by or on behalf of a Leasehold Mortgagee or a Mezzanine Lender to the extent necessary to effect such Leasehold Mortgagee's or Mezzanine Lender's cure rights, provided such entry is in compliance with applicable law.

(d) No Non-Monetary Default by Tenant or Event of Default arising from a non-monetary obligation shall be deemed to exist (including, for the avoidance of doubt, for purposes of Sections 17.02(a)(i) and 17.03(a)(i)) as long as a Leasehold Mortgagee or Mezzanine Lender, in good faith, (i) shall have commenced to cure (or caused to be commenced such cure) such Default within thirty (30) days after the expiration of the applicable period afforded to Tenant for remedying such Default, and continuously prosecutes or causes to be prosecuted the same to completion with reasonable diligence (subject to Force Majeure) or (ii) if possession or control of the Premises or any part thereof is required in order to cure such Default, and Leasehold Mortgagee or Mezzanine Lender shall have notified Landlord within thirty (30) days after the expiration of the applicable period afforded to Tenant for remedying the Default of its intention to institute foreclosure proceedings to obtain possession or control directly or through a receiver, and thereafter commences such foreclosure proceedings, prosecutes such proceedings with all reasonable diligence and continuity (subject to Force Majeure) and, upon obtaining possession and ownership of Tenant's estate hereunder, commences or causes its designee to commence promptly to cure the Default (if not theretofore commenced pursuant to subclause (ii) of Section 17.03(j)) and prosecutes the same to completion with all reasonable diligence and continuity (subject to Force Majeure); provided that the Leasehold Mortgagee or Mezzanine Lender or its designee shall have delivered to Landlord, in writing, within the time periods set forth in subclause (i) or (ii) herein, its agreement, subject to the last sentence of this Section 17.03(d), to cause the party obtaining possession and ownership of Tenant's estate hereunder to agree to take the action described in subclause (i) or (ii) herein (and, if applicable, the action described in subclause (i) or (ii) of Section 17.03(j)) (the "Leasehold Mortgagee/Mezzanine Lender Notice of Cure"); and provided, further, that during the period in which the actions comprising the Leasehold Mortgagee/Mezzanine Lender Notice of Cure are being performed, all of the other obligations of Tenant under this Lease (other than those that require possession or control of the Premises in order to cure) are being duly performed (including, without limitation, payment of all Rental due hereunder) within any applicable notice and grace periods (subject, however to the notice and cure rights of Leasehold Mortgagees and Mezzanine Lenders under Section 17.03(c)). In the event that at any time after the delivery of the Leasehold Mortgagee/Mezzanine Lender Notice of Cure, the Leasehold Mortgagee or Mezzanine Lender notifies Landlord, in writing, that it has relinquished possession or control of the Premises or that it will not institute foreclosure proceedings or, if such proceedings have been commenced, that it has discontinued them, thereupon, Landlord shall have the unrestricted right to terminate this Lease by reason of any Event of Default (and to take any other action it deems appropriate by reason of any Default by Tenant), and upon any such termination the provisions of Section 17.04 shall apply.

(e) A Leasehold Mortgagee, Mezzanine Lender, successor leasehold owner, assignee or transferee gaining possession or control of the Premises pursuant to a foreclosure or transfer in lieu of foreclosure shall not be bound by any deadline for completion of any construction or alterations required of Tenant under this Lease; provided, however, that such

party gaining possession and ownership of Tenant's estate hereunder pursuant to a foreclosure or transfer in lieu of foreclosure shall with all reasonable diligence and continuity prosecute completion of same; and provided, further, that it shall be an obligation under this Lease to cure any default under the WRY Construction Agreement (after the expiration of any applicable notice and cure period contained therein) that relates solely to the Associated Portion of the LIRR Roof and Facilities, and such Leasehold Mortgagee, Mezzanine Lender, successor leasehold owner, assignee or transferee shall be obligated, with respect to the Premises, to cure such default with respect to the Associated Portion of the LIRR Roof and Facilities in accordance with the WRY Construction Agreement. Notwithstanding anything in this Section 17.03 to the contrary, a Leasehold Mortgagee, Mezzanine Lender, successor leasehold owner, assignee or transferee gaining possession or control of the Premises pursuant to a foreclosure or transfer in lieu of foreclosure shall not, be required to cure any Non-Monetary Defaults or Events of Default arising from non-monetary obligations of Tenant that are not capable of being cured by such party gaining possession or control of the Premises, and if any Leasehold Mortgagee, Mezzanine Lender, successor leasehold owner, assignee or transferee shall acquire the Premises pursuant to a foreclosure or transfer in lieu of foreclosure, then any such Non-Monetary Default or Events of Default arising from a non-monetary obligation by Tenant that is not capable of being cured shall no longer be deemed a Default or Event of Default.

(f) With respect to any Non-Monetary Default, so long as a Leasehold Mortgagee or Mezzanine Lender shall be diligently exercising its cure rights under this Section 17.03 (or the rights described in Section 17.03(d)(ii), as the case may be), Landlord shall not (i) re-enter the Premises (except as provided in Section 17.03(j)), (ii) serve a termination notice, or (iii) bring a proceeding on account of such Default to (x) dispossess Tenant and/or other occupants of the Premises, (y) re-enter the Premises, or (z) terminate this Lease or the leasehold estate (such rights described in clauses (i), (ii) and (iii)) "Landlord's Termination Rights"). In addition, with respect to any Monetary Default, Landlord shall not exercise any of Landlord's Termination Rights so long as a Leasehold Mortgagee or a Mezzanine Lender shall be diligently exercising its cure rights under this Section 17.03 within the time periods set forth above; provided, however, that (A) nothing contained in this Section 17.03(f) shall in any way affect, diminish or impair the right of Landlord to exercise any of Landlord's Termination Rights or to enforce any other remedy in the event of any other Event of Default or Default, as applicable, by Tenant in the performance of its obligations hereunder, and (B) upon any cessation of a Leasehold Mortgagee or Mezzanine Lender so exercising such rights and undertaking such activities, Landlord may exercise any of Landlord's Termination Rights hereunder. Nothing in the protections to Leasehold Mortgagees or Mezzanine Lenders provided in this Lease shall be construed to either (I) extend the Term beyond the Fixed Expiration Date provided for in this Lease that would have applied if no Default had occurred, or (II) require such Leasehold Mortgagee or Mezzanine Lender to cure any non-Monetary Default by Tenant that is not capable of being cured as a condition to preserving this Lease or to such Leasehold Mortgagee obtaining a New Lease as provided in Section 17.03(a).

(g) Notwithstanding anything to the contrary herein, the exercise of any rights or remedies of a Leasehold Mortgagee under a Leasehold Mortgage or a Mezzanine Lender under a Mezzanine Loan, including the consummation of any foreclosure or Transfer in lieu of foreclosure, shall not constitute a Default under this Lease or require the consent of Landlord; provided, however, that any Transfer of this Lease resulting from any such foreclosure

or transfer in lieu of foreclosure to an entity other than a Leasehold Mortgagee, Mezzanine Lender or their Affiliates shall be a Default under this Lease unless (x) such Transfer meets the requirements of Section 17.02 (excluding the requirement that the transferee be a Related Affiliate, which shall be inapplicable to any Transfer resulting from or following any such foreclosure or transfer in lieu of foreclosure), and (y) the transferee is a Qualified Transferee.

(h) No Leasehold Mortgagee or Mezzanine Lender shall become liable under the provisions of this Lease unless and until such time as it becomes, and then only for so long as it remains, the owner of the leasehold estate created hereby and no performance by or on behalf of a Leasehold Mortgagee or Mezzanine Lender of Tenant's obligations hereunder shall cause such Leasehold Mortgagee or Mezzanine Lender to be deemed to be a "mortgagee in possession" unless and until such Leasehold Mortgagee shall take possession or control of the Premises, or such Mezzanine Lender take possession or control of Tenant, as applicable.

(i) If there is more than one Leasehold Mortgagee, the rights and obligations afforded by this Section 17.03 to a Leasehold Mortgagee shall be exercisable only by the party whose collateral interest in the Premises is senior in lien (or which has obtained the consent of any Leasehold Mortgagees that are senior to such Leasehold Mortgagee).

Section 17.04. New Lease.

(a) In the event of a termination of this Lease, prior to the Fixed Expiration Date, whether by summary proceedings to dispossess, service of notice to terminate, or otherwise, due to an event specified in Article 31, Landlord shall serve upon each Leasehold Mortgagee who is entitled to notice, written notice of such termination promptly following the same, 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. Subject to clause (e) of this Section 17.04, the Leasehold Mortgagee entitled to the rights afforded by this Section 17.04 shall thereupon have the option to obtain a new lease in accordance with and upon the following terms and conditions (a "New Lease"):

(i) Upon the written request of such Leasehold Mortgagee, served upon Landlord in accordance with Article 32, within forty-five (45) days after service upon the Leasehold Mortgagee of notice of termination by Landlord, Landlord shall enter into a New Lease of the Premises with such Leasehold Mortgagee, a special-purpose Affiliate thereof or any designee of such Leasehold Mortgagee that is an Institutional Lender (such Leasehold Mortgagee, Affiliate thereof or designee, the "New Tenant"), as provided in clause (ii) of this Section 17.04(a).

(ii) The New Lease shall be effective as of the date of termination of this Lease and shall be for the remainder of the Term and at the Rental and upon all the agreements, terms, covenants and conditions hereof. Upon the execution of such New Lease, the New Tenant shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for its termination, and shall otherwise with reasonable diligence commence to remedy any non-Monetary Defaults under this Lease and shall pay all costs and expenses, including, without limitation, reasonable attorneys' fees, court costs and disbursements incurred by Landlord in connection with such Defaults and termination, the

recovery of possession of the Premises and the preparation, execution and delivery of such New Lease, less any net monies received by Landlord from the date of termination of this Lease for rent or for use and occupancy of the Premises. Landlord shall have no obligation to deliver physical possession of the Premises in connection with the giving of any such New Lease to the extent that Landlord shall not previously have recovered possession of same. Nothing herein contained shall release Tenant from any of its obligations under this Lease which shall not have been discharged or fully performed by Tenant or by such Leasehold Mortgagee or New Tenant.

(b) As between Landlord and New Tenant, any New Lease, and the leasehold estate created thereby, subject to the same conditions contained in this Lease, shall continue to maintain the same priority as this Lease with regard to any Leasehold Mortgage or Fee Mortgage or any other lien, charge or encumbrance whether or not the same shall then be in existence.

(c) Upon the execution and delivery of a New Lease under this Section 17.04, all subleases which theretofore may have been assigned to Landlord shall be assigned and transferred, without recourse, by Landlord to the New Tenant. Between the date of termination of this Lease and the date of execution and delivery of the New Lease, if a Leasehold Mortgagee shall have requested such New Lease as provided in Section 17.04(a), Landlord shall not enter into any new subleases, cancel or modify in any material respect any then-existing subleases or accept any cancellation, termination or surrender thereof (unless such termination shall be effected as a matter of law on the termination of this Lease) without the written consent of the Leasehold Mortgagee, not to be unreasonably withheld or delayed, except as permitted in the subleases.

(d) If there is more than one Leasehold Mortgagee, Landlord shall enter into a New Lease with the Leasehold Mortgagee whose Leasehold Mortgage is senior in lien (or which has obtained the consent of any Leasehold Mortgagees that are senior to such Leasehold Mortgagee) as the Leasehold Mortgagee entitled to the rights afforded by this Section 17.04.

(e) Any rejection of this Lease by any trustee of Tenant in any bankruptcy, reorganization, arrangement or similar proceeding which would otherwise cause this Lease to terminate, shall, without any action or consent by Landlord, Tenant or any Mortgagee, effect the transfer of Tenant's interest hereunder to the most senior Leasehold Mortgagee or its nominee or designee. Upon any such transfer to a Leasehold Mortgagee, such Leasehold Mortgagee may (i) reject the transfer of this Lease upon giving notice thereof to Landlord no later than forty-five (45) days after notice from Landlord of such transfer, in which case such Leasehold Mortgagee shall have no further obligations hereunder, or (ii) may request a new lease in accordance with the provisions of this Section 17.04. In the event that the most senior Leasehold Mortgagee shall fail either to effect the transfer of this Lease or request a new lease, then Landlord shall notify all remaining Leasehold Mortgagees that the most senior Leasehold Mortgagee has failed to exercise such right whereupon each other Leasehold Mortgagee may, within twenty (20) days of receiving such notice have the same alternative rights, exercisable within the same period after receipt of such notice. If more than one Leasehold Mortgagee shall have elected to either effect such transfer or request such new lease (subject to the liens of all

Leasehold Mortgagees senior in lien in each case) the Leasehold Mortgagee with the most senior lien priority shall be deemed to have exercised such right.

Section 17.05. Additional Mortgagee Protective Clauses. In addition to the other rights, notices and cure periods afforded to Leasehold Mortgagees, Landlord further agrees that:

(a) without the prior written consent of each Leasehold Mortgagee, Landlord will neither agree to any modification or amendment of this Lease which would have an adverse effect on such holder, nor accept a surrender or cancellation of this Lease;

(b) Landlord shall consider in good faith any modification to this Lease requested by a Leasehold Mortgagee as a condition or term of granting financing to Tenant, provided that the same does not materially increase Landlord's obligations or diminish Landlord's rights and immunities hereunder;

(c) the Leasehold Mortgagee most senior in lien priority (or as otherwise agreed by the Leasehold Mortgagees) shall have the right to participate in any arbitration proceedings under Section 40.01(b), provided that only one (1) Leasehold Mortgagee shall have such participation rights at any given time;

(d) the Leasehold Mortgagee most senior in lien priority (or as otherwise agreed by the Leasehold Mortgagees) shall have the right to participate in the adjustments of any insurance claims of the nature set forth in Articles 14 and 15 and condemnation awards of the nature set forth in Article 16 and to serve as the Condemnation Proceeds Depository; provided, however, that only one (1) Leasehold Mortgagee shall have such participation rights at any given time; and provided, further, that any such Leasehold Mortgagee (i) shall irrevocably agree that all insurance proceeds shall be paid directly to the Condemnation Proceeds Depository for distribution in accordance with the terms of this Lease and (ii) shall give to the Condemnation Proceeds Depository, in the Condemnation Proceeds Depository's favor, a direction to execute and/or endorse any claims or checks necessary for the payment of, or representing the payment of, insurance proceeds, to be distributed by the Condemnation Proceeds Depository, in accordance with the terms of this Lease; and

(e) at the request of Tenant from time to time, Landlord shall execute and deliver an instrument addressed to the holder of any Leasehold Mortgage or Mezzanine Loan confirming that such holder is a Leasehold Mortgagee or Mezzanine Lender and entitled to the benefit of all provisions contained in the Lease which are expressly stated to be for the benefit of Leasehold Mortgagees or Mezzanine Lenders.

Section 17.06. Subleases.

(a) Without limiting the provisions of Sections 17.01, Tenant may grant a sublease or license to any Person or Persons to use or occupy less than substantially all of the Premises without the necessity of obtaining the consent of Landlord, provided that if more than one Building is located on the Premises, the consent of Landlord shall be required with respect to any sublease or license of all or substantially all of any single Building.

(b) Each sublease or license of any portion of the Premises shall provide that: (i) such sublease or license is subject to this Lease; (ii) such sublease shall expire on or prior to the Fixed Expiration Date or, subject to Section 17.06(d), upon the earlier termination of this Lease pursuant to Article 31; (iii) subject to Section 17.06(d), Landlord shall have no obligation to the subtenant or licensee with respect to any right or obligation of the landlord under such sublease or the licensor under such license, as the case may be; and (iv) the subtenant or licensee shall not be a Prohibited Person as of the date of the execution of such sublease or license.

(c) At Tenant's option (or upon the request of Landlord), Tenant shall deliver to Landlord a copy of any sublease or license of any portion of the Premises (which may be unexecuted but which shall, in all other respects, be in final form), together with a summary of the material terms thereof (including without limitation a description of the subleased or licensed premises, the rent and the term of such sublease or license), prior to or promptly after execution and delivery of the same. Within thirty (30) days after receipt of the same by Landlord, Landlord shall notify Tenant whether same is a "Qualifying Sublease". Landlord shall have the right to designate any sublease or license as a Qualifying Sublease; provided, however, that Landlord shall be required to designate any sublease or license a Qualifying Sublease if (i) a Leasehold Mortgagee has executed a non-disturbance agreement with respect to such sublease or license; or (ii) the subtenant or licensee thereunder is either (x) a Major Subtenant that has acquired its interest in the Premises pursuant to a Permitted Transfer or (y) any other subtenant or licensee of a space lease consisting of (I) not less than a full floor of office space or (II) a retail or restaurant space, each made to an unrelated third party at a rental not less than the prevailing market rental (as reasonably determined by Landlord) (the subtenant or licensee under any Qualifying Sublease, a "Qualifying Subtenant"). If Landlord shall determine that any sublease or license is a Qualifying Sublease, then the provisions of Section 17.06(d) shall apply. If Landlord shall determine that any sublease or license is not a Qualifying Sublease, Landlord shall provide to Tenant written notice thereof, setting forth the reason for such determination in reasonable detail. If Tenant disputes such determination in writing within ten (10) days after its receipt of such notice from Landlord, such dispute shall be resolved in accordance with Section 40.01(a) and (b).

(d) In the event Landlord acquires or succeeds to the interest of Tenant under a Qualifying Sublease (the date upon which such event occurs hereinafter referred to as the "Succession Date"), then, provided, that on the Succession Date no event of default exists and is continuing under such Qualifying Sublease which would permit the landlord thereunder to terminate such Qualifying Sublease or exercise any dispossess remedies provided for in such Qualifying Sublease, then (i) such Qualifying Sublease shall continue as a direct lease between Landlord and the Qualifying Subtenant upon all of the terms, covenants, conditions and agreements set forth in the Qualifying Sublease and remaining to be performed, with the same force and effect as if Landlord, as landlord under the Qualifying Sublease, and the Qualifying Subtenant as tenant under the Qualifying Sublease, entered into a lease (on such terms, covenants and conditions, including any renewals thereof) as of the date of the termination of this Lease, for a term equal to the unexpired term of the Lease, (ii) at the request of either party, Landlord and the Qualifying Subtenant shall execute and exchange an instrument confirming such direct lease relationship, but the failure of either party to execute such instrument shall not affect their rights and obligations with respect to said direct lease relationship, and (iii) the Qualifying

Subtenant shall be bound by said direct lease relationship and to attorn to Landlord and recognize Landlord as its landlord and shall pay its rent, additional rent and all other sums due under the Qualifying Sublease at the address designated by Landlord by written notice to such Qualifying Subtenant from time to time. Notwithstanding the foregoing or anything else contained in this Lease, neither Landlord, nor anyone claiming by, through or under Landlord, shall be:

(i) bound by the provisions of this Section 17.06(d) until after Tenant shall have delivered to the Qualifying Subtenant possession of the portion of the Premises demised by the Qualifying Sublease;

(ii) liable for any act or omission of any prior landlord (including, without limitation, the then defaulting landlord); provided, however, that nothing herein shall be construed to relieve a successor landlord of liability in respect of any acts or omissions of the landlord under the Qualifying Sublease (i) first occurring on or after the Succession Date, or (ii) first occurring prior to the Succession Date and continuing after the Succession Date; provided, that (x) such successor landlord receives notice following the Succession Date of such continuing actions or omissions, (y) notwithstanding any shorter time limitation set forth in the Qualifying Sublease, following the later of the Succession Date or the date of notice to such successor landlord of such actions or omissions, such successor landlord shall be entitled to a period of ninety (90) days to cure such acts or omissions which constitute a breach of the Qualifying Sublease (or such longer period as may be reasonably necessary to cure such acts or omissions; provided, that such successor landlord is proceeding diligently), and (z) such successor landlord shall in no event be liable for any such acts or omissions in respect of any time period prior to the expiration of such cure period;

(iii) subject to any offsets or defenses that the Qualifying Subtenant may have against any prior landlord (including, without limitation, Tenant); provided, however, that such successor landlord will recognize offsets expressly provided in the Qualifying Sublease to the extent that they relate to recoupment of any actual overpayment by the Qualifying Subtenant for the lease year immediately preceding the Succession Date of operating expense or real estate tax escalations which were paid by the Qualifying Subtenant based on estimates, and which exceed the actual operating expense or real estate tax escalations due for such period under the Qualifying Sublease;

(iv) bound by any payment that the Qualifying Subtenant might have made to any prior landlord (including, without limitation, the then defaulting landlord), or any other Person of (x) rental, common area charges, or any other charge payable under the Qualifying Sublease for more than the current month, except to the extent such payments are actually turned over to Landlord or (y) any security deposit which shall not have been actually turned over to Landlord;

(v) bound by any covenant to undertake or complete any construction of a Building, the premises demised by the Qualifying Sublease, or any portion of either;

(vi) bound by any obligation to make any payment to such Qualifying Subtenant (except where the obligation to make such payment is expressly set forth in the Lease and such obligation first arises after the Succession Date); or

(vii) bound by any amendment to any such Qualifying Sublease or modification thereof, which is not specifically referenced in such Qualifying Sublease (by way of example, confirmation of expansion or renewal options specifically referenced in the Qualifying Sublease shall not be affected by this clause (vii)), which reduces the basic rent, additional rent, supplemental rent or other charges payable under such Qualifying Sublease (except to the extent equitably reflecting a reduction in the space covered by such Qualifying Sublease), or shortens or lengthens the term thereof, or otherwise increases the obligations of the landlord or reduces the benefits to the landlord thereunder, or results in such sublease no longer being a Qualifying Sublease, made without the prior written consent of Landlord (unless such amendment or modification has been approved by the Leasehold Mortgagee, in which event no such consent of Landlord shall be required).

The provisions of this Section 17.06(d) are self-operative and shall apply, without any further action by any party, upon a determination in accordance with Section 17.06(c) that a sublease or license is a Qualifying Sublease. Notwithstanding the foregoing, promptly upon request by Landlord, Tenant or the Qualifying Subtenant, each of Landlord and the Qualifying Subtenant shall duly execute, acknowledge and deliver one or more counterparts of an instrument confirming its rights and obligations under this Section 17.06(d) in the form of Exhibit T attached hereto (each such instrument, an "RNDA"). Landlord's recognition of any Qualifying Sublease shall be conditioned on the provisions in this Section 17.06(d)

ARTICLE 18

REPAIRS AND MAINTENANCE

Section 18.01. Repairs. Tenant shall take good care of the Premises, including, without limitation, the Facility Airspace Improvements and the roofs, foundations and appurtenances thereto, water, sewer, gas and other utility connections, pipes and mains which are located on or service the Premises (unless the same is within the sole legal and operational control of the City, a public utility company or any other third party) and all Equipment, and shall put, keep and maintain the Facility Airspace Improvements in good and safe order and condition, and make all repairs therein and thereon, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary or appropriate to keep the same in good and safe order and condition, and whether or not necessitated by wear, tear, obsolescence or defects, latent or otherwise; provided, however, that Tenant's obligations with respect to Restoration resulting from a casualty or condemnation shall be as provided in Articles 15 and 16. Tenant shall not commit or suffer, and shall use all reasonable precaution to prevent, waste, damage or injury to the Premises. When used in this Section 18.01, the term "repairs" shall include all necessary replacements, alterations and additions. All repairs made by Tenant shall be at least equal in quality and class to the original work and shall be made in compliance with (a) all Legal Requirements, (b) the New York Board of Fire Underwriters or any successor thereto, and (c) any other applicable rules, regulations and requirements governing

means and methods of construction over the Yards Parcel set forth in the WRY Declaration of Easements.

Section 18.02. No Obligation on Landlord. Landlord shall not be required to furnish any services, utilities or facilities whatsoever to the Premises, nor shall Landlord have any duty or obligation to make any alteration, change, improvement, replacement, Restoration or repair to, nor to demolish, any Improvements, except as otherwise expressly set forth herein or the WRY Declaration of Easements. Except as expressly provided herein or in the WRY Declaration of Easements, Tenant assumes the full and sole responsibility for the condition, operation, repair, alteration, improvement, replacement, maintenance and management of the Premises and the Facility Airspace Improvements located thereon.

ARTICLE 19

CHANGES, ALTERATIONS AND ADDITIONS

Section 19.01. Capital Improvements. From and after Substantial Completion of the Facility Airspace Improvements on the Premises, Tenant shall not demolish, replace or materially alter the Facility Airspace Improvements, or any part thereof (except as provided with respect to Equipment in Article 21), or make any material addition thereto, whether voluntarily or in connection with repairs required by this Lease (any such demolition, replacement, alteration, rebuilding or addition of improvements, a "Capital Improvement"), unless Tenant shall comply with the following requirements:

(a) No Capital Improvement shall be undertaken unless and until Tenant shall have procured from all Governmental Authorities all Improvement Approvals for the proposed Capital Improvement which are required to be obtained prior to the commencement of the proposed Capital Improvement and paid for the same. Landlord, at the sole cost and expense of Tenant, shall promptly execute and deliver any applications for Improvement Approvals that require the execution by the fee owner of the Premises, and otherwise cooperate with Tenant as reasonably required or requested by Tenant in order for Tenant to obtain all Improvement Approvals, provided such documents or instruments do not impose any liability or obligation on Landlord (unless paid by Tenant or against which Landlord is indemnified by Tenant in a manner reasonably satisfactory to Landlord) or reduce any of the rights of Landlord under this Lease or the Project Documents in more than a *de minimis* manner. True copies of all such Improvement Approvals shall be delivered by Tenant to Landlord prior to commencement of any proposed Capital Improvement.

(b) All Capital Improvements, when completed, shall be of such a character as not to reduce the value and quality of the Premises below its value immediately prior to the commencement of such Capital Improvement. Landlord shall have the right to review plans and specifications for any proposed Capital Improvement to determine whether such standards have been met. Any disputes with respect to such standards shall be resolved in accordance with Section 40.01(a) and (b). The WRY Roof Component, the LIRR Relocations and New LIRR Facilities shall not be altered except pursuant to the provisions of the WRY Declaration of Easements.

(c) All Capital Improvements shall be made with reasonable diligence and continuity (subject to Force Majeure) and in a good and workmanlike manner and in compliance with (i) all Improvement Approvals, (ii) if required pursuant to Section 19.01(b), the plans and specifications for such Capital Improvements as approved by Landlord, (iii) the orders, rules, regulations and requirements of any Board of Fire Underwriters or any similar body having jurisdiction, (iv) the provisions of the WRY Declaration of Easements and (v) all other Legal Requirements.

(d) No construction of any Capital Improvement shall be commenced until Tenant shall have delivered to Landlord original insurance policies, or certificates of insurance with respect to such policies together with copies of such policies, issued by responsible insurers and bearing notations evidencing the payment of premiums or installments thereof then due or accompanied by other evidence satisfactory to Landlord of such payments, for the insurance required by Article 14 (or, if applicable, the WRY Declaration of Easements). If, under the provisions of any casualty, liability or other insurance policy or policies then covering the Premises or any part thereof, any consent to such Capital Improvement by the insurance company or companies issuing such policy or policies shall be required to continue and keep such policy or policies in full force and effect, Tenant, prior to the commencement of construction of such Capital Improvement, shall obtain such consent and pay any additional premiums or charges therefor that may be imposed by said insurance company or companies.

Section 19.02. As-Built Plans. All Capital Improvements shall be carried out under the supervision of an architect selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld. Upon completion of any Capital Improvement, Tenant shall furnish to Landlord a complete set of "as-built" plans for such Capital Improvement together with a copy of the Certificate of Occupancy issued therefor, to the extent a modification thereof was required.

Section 19.03. Title. Title to all additions, alterations, improvements and replacements made to the Improvements, including, without limitation, the Capital Improvements, shall forthwith vest in Landlord as provided in Section 8.07, without any obligation by Landlord to pay any compensation therefor to Tenant.

ARTICLE 20

REQUIREMENTS OF PUBLIC AUTHORITIES AND OF INSURANCE UNDERWRITERS AND POLICIES

Section 20.01. Compliance with Legal Requirements. Tenant promptly shall comply with all Legal Requirements without regard to the nature or cost of the work required to be done, extraordinary, as well as ordinary, of all Governmental Authorities now existing or hereafter created, and of any and all of their departments and bureaus, of any applicable fire rating bureau or other body exercising similar functions, affecting the Premises, or affecting the construction, maintenance, use, operation, management or occupancy of the Premises, whether or not the same involve or require any structural changes or additions in or to the Premises, without regard to whether or not such changes or additions are required on account of any particular use to which the Premises, or any part thereof, may be put, and without regard to the

fact that Tenant is not the fee owner of the Premises. Tenant also shall comply with any and all provisions and requirements of any casualty, liability or other insurance policy required to be carried by Tenant under the provisions of this Lease.

Section 20.02. Right to Contest. Tenant, at its sole cost and expense, after notice to Landlord, may contest, by appropriate proceedings prosecuted diligently and in good faith, the validity or applicability of any Legal Requirement; provided, that (a) Landlord shall not be subject to civil liability or criminal penalty or to prosecution for a crime, nor shall the Premises or any part thereof be subject to being condemned or vacated, by reason of non-compliance or otherwise, by reason of such contest; (b) if an adverse decision in such proceeding or the failure to pay any judgment resulting from such adverse decision could result in the imposition of any lien against the Premises, then before the commencement of such contest, Tenant shall furnish to Landlord the bond of a surety company reasonably satisfactory to Landlord, or other deposit or security in each case in form, substance and amount reasonably satisfactory to Landlord, and shall indemnify Landlord against the cost of such compliance and liability resulting from or incurred in connection with such contest or non-compliance (including the costs and expenses in connection with such contest); (c) Tenant shall keep Landlord regularly advised as to the status of such proceedings; (d) such contest shall be prosecuted with diligence and in good faith to final adjudication, settlement, compliance or other disposition of the Legal Requirement so contested; (e) such contest, and any disposition thereof (including, without limitation, the cost of complying therewith and paying all interest, penalties, fines, liabilities, fees and expenses in connection therewith), shall be at the sole cost of and shall be paid by Tenant; (f) promptly after disposition of the contest, Tenant shall comply with such Legal Requirement to the extent determined by such contest; and (g) notwithstanding any bond, deposit or other security furnished to Landlord, Tenant shall comply with any Legal Requirement in accordance with the applicable provisions of this Lease if the Premises, or part thereof, shall be in danger of being forfeited or if Landlord is in danger of being subject to criminal liability or penalty, or civil liability, in connection with such contest. Landlord shall be deemed subject to prosecution for a crime if Landlord or any of its respective officers, directors, partners, shareholders, agents or employees is charged with a crime of any kind whatever unless such charge is withdrawn ten (10) days before such party is required to plead or answer thereto.

Section 20.03. Environmental Requirements. Without limiting anything contained in the WRY Declaration of Easements, Landlord and Tenant shall not undertake, permit or suffer any Environmental Activity other than (a) in compliance with all applicable Legal Requirements and all of the terms and conditions of all insurance policies covering, related to or applicable to the Premises (including the WRY Declaration of Easements), and (b) in such a manner as shall keep the Premises free from any lien imposed in respect of or as a consequence of such Environmental Activity. Landlord shall take all necessary steps to ensure that any Environmental Activity undertaken by it or on its behalf is undertaken, and Tenant shall take all necessary steps to ensure that any other Environmental Activity undertaken or permitted at the Premises is undertaken, in each case in such a manner as to provide prudent safeguards against potential risks to human health or the environment or to the Premises. Each party shall notify the other within twenty-four (24) hours of the Release of any Hazardous Substance from or at the Premises. If Tenant shall breach the covenants provided in this Section 20.03, then in addition to any other rights and remedies which may be available to Landlord under this Lease or otherwise

at law or in equity, Landlord may require Tenant to take all actions, or to reimburse Landlord for the costs of any and all actions taken by Landlord upon Tenant's failure to act promptly, as are necessary or reasonably appropriate to cure such breach. Landlord shall have the right from time to time and at Landlord's expense to conduct an environmental audit of the Premises during regular business hours, and Tenant shall cooperate in the conduct of such environmental audit. Landlord shall provide a copy of any such audit to Tenant; provided, however, that in the event such environmental audit concludes that there has been a material breach by Tenant of the terms and conditions set forth in this Section 20.03, Tenant shall reimburse Landlord for the reasonable costs of such environmental audit. Landlord shall use its reasonable efforts to minimize interference with Tenant's use and occupancy of the Premises in performing such environmental audit, and shall repair any damage to the Premises caused by the same, except that Landlord shall have no such repair obligation to the extent the damage was due to any Environmental Activity.

ARTICLE 21

EQUIPMENT

Section 21.01. Property of Landlord. Until the Fee Conversion Closing, all Equipment on the Premises shall be and shall remain the property of Landlord; provided, that Tenant (or its designee) shall be deemed the owner of Equipment for federal income tax purposes. Tenant shall not have the right, power or authority to, and shall not, remove any Equipment from the Premises without the consent of Landlord, which consent shall not be unreasonably withheld; provided, however, that any such consent shall not be required in connection with repairs, cleaning or other servicing, or if the same is promptly replaced (subject to Force Majeure) by Equipment which is at least equal in utility and value to the Equipment being removed, and such removal and replacement does not materially reduce the value of the Premises or materially increase the risk to life or safety of the occupants or users of the Improvements. Notwithstanding the foregoing, Tenant shall not be required to replace any Equipment which performed a function which has become obsolete or otherwise is no longer necessary or desirable in connection with the use or operation of the Premises, unless such failure to replace would reduce the value of the Premises or would result in a reduced level of maintenance of the Premises, in which case Tenant shall be required to install such Equipment as may be necessary to prevent such reduction in the value of the Premises or in the level of maintenance.

Section 21.02. Replacement. Tenant shall keep all Equipment in good order and repair and shall replace the same when necessary with items at least equal in utility and value to the Equipment being replaced.

ARTICLE 22

DISCHARGE OF LIENS; BONDS

Section 22.01. Creation of Liens. Subject to the provisions of Section 22.02, and except as otherwise expressly provided herein, Tenant shall not create or permit to be created any lien, encumbrance or charge upon the Premises or any part thereof, the income therefrom or any assets of, or funds appropriated to, Landlord, and Tenant shall not suffer any other matter or

thing whereby the estate, right and interest of Landlord in the Premises or any part thereof might be impaired.

Section 22.02. Discharge of Liens. If any mechanic's, laborer's or materialman's lien (other than a lien arising out of any work performed by or on behalf of Landlord) at any time shall be filed in violation of the obligations of Tenant pursuant to Section 22.01 against the Premises or any part thereof, the Yards Parcel or any part thereof, or, if any public improvement lien created or permitted to be created by Tenant shall be filed against any assets of, or funds appropriated to, Landlord, Tenant shall (a) within forty-five (45) days after notice of the filing thereof shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise, and (b) indemnify, defend, protect and hold the MTA Parties harmless from and against any and all loss, cost, injury, damage or expense (including reasonable attorneys' fees and charges) arising out of such lien and/or the sums claimed to be due which give rise to such lien. If Tenant shall fail to cause such lien to be discharged of record within such forty-five (45) day period, and if such lien shall continue for an additional ten (10) days following the last day of such forty-five (45) day period, then, in addition to any other rights or remedies, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event, Landlord shall be entitled, if Landlord so elects, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances. Any amount so paid by Landlord, including all reasonable costs and expenses incurred by Landlord in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements, together with interest thereon at the Involuntary Rate from the respective dates of Landlord's making of the payment or incurring of the costs and expenses until the date of actual repayment to Landlord of such amounts, shall constitute Rental and shall be paid by Tenant to Landlord within ten (10) days after demand therefor. Notwithstanding the foregoing provisions of this Section 22.02, Tenant shall not be required to discharge any such lien if Tenant is in good faith contesting the same and has furnished a cash deposit or a security bond or other such security satisfactory to Landlord in an amount sufficient to pay such lien with interest and penalties.

Section 22.03. No Authority to Contract in Name of Landlord. Nothing contained in this Lease shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to or repair of the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of materials that would give rise to the filing of any lien against Landlord's interest in the Premises or any part thereof, the WSY or any part thereof, or any assets of, or funds appropriated to, Landlord. Notice is hereby given, and Tenant shall cause all Construction Contracts to provide, that Landlord shall not be liable for any work performed or to be performed at the Premises for Tenant or any subtenant, for any materials furnished or to be furnished at the Premises for any of the foregoing, and that no mechanic's or other lien for such work or materials shall attach to or affect the estate or interest of Landlord in and to the Premises or any part thereof, the Yards Parcel or any part thereof, the WSY or any part thereof, or any

assets of, or funds appropriated to, Landlord. Tenant shall have no power to do any act or make any contract which may create or be the foundation for any lien, mortgage or other encumbrance upon the estate or assets of, or funds appropriated to, Landlord or of any interest of Landlord in the Premises.

ARTICLE 23

DELIVERY OF POSSESSION AND PERMITTED EXCEPTIONS TO TITLE

Section 23.01. As-Is Condition; No Representations. Tenant acknowledges that Tenant is fully familiar with the Premises and the zoning status, physical condition and environmental condition thereof, and the Permitted Exceptions. Tenant accepts the Premises in its existing legal and physical condition and state of repair, and, except as otherwise expressly set forth in this Lease, no representations or warranties, express or implied, have been made by or on behalf of Landlord in respect of the Premises or the status of title or the physical condition thereof, including, without limitation, the environmental condition thereof and the zoning or other laws, regulations, rules and orders applicable thereto, the amount of Taxes or other Impositions that may be assessed against the Premises or the use that may be made of the Premises. Tenant hereby acknowledges and represents that Tenant has not relied on any such representations or warranties, and that Landlord shall in no event whatsoever be liable for any latent or patent defects in the Premises. Nothing herein shall limit the obligations of the Yards Parcel Owner under the WRY Declaration of Easements or any rights Tenant may have as a Facility Airspace Parcel Owner thereunder.

Section 23.02. Delivery of Possession. Landlord shall deliver possession of the Premises on the Commencement Date vacant and free of occupants and tenancies, subject only to the Permitted Exceptions; provided, that Tenant acknowledges and agrees that the use and occupancy of the Yards Parcel (and, by way of easement, portions of the Premises to the extent permitted by the WRY Declaration of Easements) by LIRR and/or any other Yards Parcel Operator subject to and in accordance with the WRY Declaration of Easements shall at all times be permitted and shall in no event constitute a default of Landlord under this Lease.

Section 23.03. Tenant's Representations. Tenant hereby represents, warrants and covenants to Landlord that:

(a) Tenant is a [_____] duly organized and existing in good standing under the laws of the State of [_____], and qualified to do business in the State of New York;

(b) Tenant has the full, right, power, authority and legal capacity to execute and deliver this Lease, to execute and deliver the instruments referred to herein, and to enter into and fully perform the transactions contemplated hereby, or thereby;

(c) all actions and consents required by Tenant to authorize the transactions contemplated by this Lease have been duly performed and obtained;

(d) all Persons who execute this Lease and the instruments contemplated by this Lease on behalf of Tenant will be duly authorized and empowered on behalf of Tenant to do so and to enter into all transactions contemplated by this Lease, and by such instruments;

(e) the execution, delivery and consummation of the transactions contemplated hereby and performance of this Lease have not and will not conflict with any provisions of any federal, state laws or regulations to which Tenant is subject, or conflict with, result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or credit agreement, corporate charter, bylaws or other instrument to which Tenant is a party or by which Tenant or its assets may be bound or affected;

(f) this Lease is a legal, valid and binding obligation of Tenant, enforceable against Tenant in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally;

(g) Tenant is not, as of the Commencement Date (and Tenant covenants that Tenant shall not, at any time during the Term, be) a Prohibited Person;

(h) Tenant is as of the Commencement Date (i) in compliance with the Patriot Act, as applicable; (ii) in compliance with the Office of Foreign Assets Control sanctions and regulations promulgated under the authority granted by the Trading with the Enemy Act, 12 U.S.C. § 95 (a) et seq., and the International Emergency Economic Powers Act, 50 U.S.C. § 1701, et seq., in each case as applicable and as amended or replaced from time to time; and (iii) a Person which (w) is not, and has never been, under investigation by any Governmental Authority for, and has not been charged with or convicted of a crime under, 18 U.S.C. §§ 1956 or 1957 (as amended or replaced from time to time) or any predicate offense thereunder; (x) has never been assessed a civil penalty under, or had any of its funds seized, frozen or forfeited in any action relating to, any anti-money laundering laws or predicate offenses thereunder; (y) has taken such steps and implemented such policies as are reasonably necessary to ensure that it is not promoting, facilitating or otherwise furthering, intentionally or unintentionally, the transfer, deposit or withdrawal of criminally-derived property, or of money or monetary instruments which are (or which Tenant suspects or has reason to believe are) the proceeds of any illegal activity or which are intended to be used to promote or further any illegal activity; and (z) has taken such steps and implemented such policies as are reasonably necessary to ensure that it is in compliance with all laws and regulations applicable to its business for the prevention of money laundering and with anti-terrorism laws and regulations, with respect both to the source of funds from its investors and from its operations, which steps include the development and implementation of an anti-money laundering compliance program within the meaning of Section 352 of the Patriot Act, to the extent Tenant is required to develop such a program under the rules and regulations promulgated pursuant to Section 352 of the Patriot Act; and

(i) Tenant has not dealt with any broker in connection with this Lease or the transactions contemplated hereby, and Tenant shall indemnify, defend and hold Landlord

harmless from and against any claim for commission or other compensation that is asserted by any broker, finder or other agent which claims to have dealt with Tenant in connection with this Lease and/or the WRY Severed Parcel Project, together with the cost of defending any such claim.

Section 23.04. Landlord's Representations. Landlord hereby represents, warrants and covenants to Tenant that:

(a) Landlord is duly organized and validly existing under the laws of the State of New York and has the full right, power, authority and legal capacity to execute and deliver this Lease, to execute and deliver the instruments referred to herein, and to enter into and fully perform the transactions contemplated hereby, or thereby;

(b) all actions and consents required by Landlord to authorize the transactions contemplated by this Lease have been duly performed and obtained;

(c) all Persons who execute this Lease and the instruments contemplated by this Lease on behalf of Landlord will be duly authorized and empowered on behalf of Landlord to do so and to enter into all transactions contemplated by this Lease, and by such instruments;

(d) the execution, delivery and consummation of the transactions contemplated hereby and performance of this Lease have not and will not conflict with any provisions of any federal, state laws or regulations to which Landlord is subject, or conflict with, result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or credit agreement, corporate charter, bylaws or other instrument to which Landlord is a party or by which Landlord or its assets may be bound or affected;

(e) this Lease is a legal, valid and binding obligation of Landlord, enforceable against Landlord in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally; and

(f) Landlord has not dealt with any broker in connection with this Lease or the transactions contemplated hereby, and Landlord shall indemnify, defend and hold Tenant harmless from and against any claim for commission or other compensation that is asserted by any broker, finder or other agent which claims to have dealt with Landlord in connection with this Lease and/or the WRY Severed Parcel Project, together with the cost of defending any such claim.

ARTICLE 24

INTENTIONALLY OMITTED

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ARTICLE 25

LANDLORD NOT LIABLE FOR INJURY OR DAMAGE, ETC.

Section 25.01. No Liability for Injury. Without limiting Section 7.01, Landlord shall not in any event whatsoever be liable to Tenant or to any other Person for any injury or damage happening on, in or about the Premises and its appurtenances to Tenant or any other Person, nor for any injury or damage to the Premises or to any property belonging to Tenant or to any other Person, which may be caused by any fire or breakage, or by the use, misuse or abuse of the WRY Roof Component or any of the Facility Airspace Improvements (including, but not limited to, any of the common areas within the Facility Airspace Improvements, Equipment, elevators, hatches, openings, installations, stairways, hallways, or other common facilities), or the streets or sidewalk area within the Premises or which may arise from any other cause whatsoever, except to the extent any of the foregoing shall have resulted from the negligence or intentional misconduct of Landlord, its officers, agents, employees or licensees; nor shall Landlord in any event be liable for the acts or failure to act of any other tenant of any premises within the WSY other than the Premises, or of any agent, representative, employee, contractor or servant of such other tenant.

Section 25.02. No Liability for Utility Failure. Without limiting Section 7.01, Landlord shall not be liable to Tenant or to any other Person for any failure of water supply, gas or electric current, nor for any injury or damage to any property of Tenant or of any other Person or to the Premises caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storms or disturbances, or water, rain or snow which may leak or flow from the street, sewer, gas mains or subsurface area or from any part of the Premises, or leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein, or from any other place, nor for interference with light or other incorporeal hereditaments by anybody, or caused by any public or quasi-public work, except to the extent any of the foregoing shall have resulted from the negligence or intentional misconduct of Landlord or its officers, agents, employees or licensees.

Section 25.03. No Liability for Soil Conditions. Without limiting Section 7.01, in no event shall Landlord be liable to Tenant or to any other Person for any injury or damage to any property of Tenant or of any other Person or to the Premises, arising out of any sinking, shifting, movement, subsidence, failure in load-bearing capacity of, or other matter or difficulty related to, the soil, or other surface or subsurface materials, on the Premises or in the WSY, it being agreed that Tenant shall assume and bear all risk of loss with respect thereto.

ARTICLE 26

INDEMNIFICATION OF LANDLORD AND OTHERS

Section 26.01. Indemnification. Tenant shall not do, or knowingly permit any subtenant, or sublessee of a subtenant or any employee, agent or contractor of Tenant or of any subtenant, or sublessee of a subtenant to do, any act or thing upon the Premises which may reasonably be likely to subject Landlord to any liability or responsibility for injury or damage to persons or property, or to any liability by reason of any violation of law or any other Legal

Requirement, and shall use its best efforts to exercise such control over the Premises so as to fully protect Landlord against any such liability. Tenant, to the fullest extent permitted by law, shall indemnify, defend and save Landlord, LIRR, any former Landlord which held its interest herein at any time from and after the Commencement Date, the State of New York and their respective agents, directors, officers and employees (collectively, the "Indemnitees"), harmless from and against any and all loss, cost, liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses (including without limitation engineers', architects' and attorneys' fees and charges), which may be suffered by, imposed upon or incurred by or asserted against any of the Indemnitees, by reason of any of the following occurring during the Term, except to the extent that the same shall have been caused in whole or in part by the negligence or intentional misconduct of any of the Indemnitees:

(a) construction of the Facility Airspace Improvements or any other work or thing done in or on the Premises or any part thereof;

(b) any use, non-use, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises or any part thereof;

(c) any negligent or tortious act or failure to act (or act or failure to act which is alleged to be negligent or tortious) within the Premises or any part thereof;

(d) any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in or on the Premises or any part thereof or in, or about any sidewalk or vault located thereon or adjacent thereto (unless such sidewalk or vault is solely within the control of a utility company);

(e) any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in or on the WSY or the Yards Parcel or any part thereof, but only to the extent caused by or suffered or incurred by any negligent or tortious act or failure to act (or act which is alleged to be negligent or tortious) within the Premises or any part thereof;

(f) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with;

(g) any lien or claim which may have arisen out of any act of Tenant, any subtenant, any sublessee of a subtenant, or any of their respective agents, contractors, servants or employees against or on the Premises, or any lien or claim created or permitted to be created by Tenant, any subtenant, any sublessee of a subtenant, or any of their respective agents, contractors, servants or employees, in respect of the Premises against any assets of, or funds appropriated to, any of the Indemnitees under the laws of the State of New York or of any other Governmental Authority, or any liability which may be asserted against any of the Indemnitees with respect thereto;

(h) any failure on the part of Tenant to keep, observe and perform any of the terms, covenants, agreements, provisions, conditions or limitations on Tenant's part to be

kept, observed or performed contained in the WRY Declaration of Easements, the Design and Construction Requirements, the WRY Construction Agreement, any subleases, or any other contracts and agreements affecting the Premises;

(i) any default by a Building Completion Guarantor under a Building Completion Guaranty;

(j) any tax attributable to the execution, delivery or recording of this Lease other than any real property transfer gains tax or other transfer tax which may be imposed on Landlord; or

(k) any contest by Tenant permitted pursuant to the provisions of this Lease, including, without limitation, Article 4 and Article 20.

Section 26.02. Landlord Indemnification Obligations. Nothing herein shall reduce or otherwise limit the indemnification obligations of Landlord as Yards Parcel Owner to Tenant as Facility Airspace Parcel Owner pursuant to the WRY Declaration of Easements.

Section 26.03. Obligations Not Affected by Insurance. The obligations of Tenant under this Article 26 shall not be affected in any way by the absence in any case of insurance coverage or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises.

Section 26.04. Notice and Defense Process. If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event for which Tenant has agreed to indemnify the Indemnitees in Section 26.01, then, upon demand by such Indemnitee, Tenant shall resist or defend such claim, action or proceeding (in such Indemnitee's name, if necessary) by the attorneys for Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance maintained by Tenant) or (in all other instances) by such attorneys as Tenant shall select and such Indemnitee shall approve, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, and except with respect to personal injury or other liability claims within the coverage limits afforded by Tenant's liability insurance and being defended by attorneys for, or approved by, Tenant's insurance carrier, an Indemnitee may, in the event that there exists a dispute, an actual or potential conflict of interest or a divergence of interest that (in each case) would make it inadvisable in the good-faith judgment of such Indemnitee to be (or continue to be) represented by such attorneys, engage its own attorneys to defend or to assist in its defense of such claim, action or proceeding, and the Indemnitee shall pay the reasonable fees and disbursements of such attorneys; provided, that the Indemnitee shall be entitled to recover the reasonable fees and disbursements of such attorneys as part of any judgment in favor of the Indemnitee with respect to such claim, action or proceeding. No Indemnitee will unreasonably withhold its consent to any proposed settlement by Tenant of a matter which is fully covered by Tenant's indemnification hereunder; provided, that such settlement provides solely for the payment of money and does not impose any other liability on any Indemnitee.

Section 26.05. No Consequential Damages. Notwithstanding anything to the contrary herein, in no event shall Tenant be liable for any consequential damages to Landlord,

any other Indemnitee or any other Person and in no event shall Landlord or any other Indemnitee be liable for any consequential damages to Tenant or any other Person.

Section 26.06. Survival. The provisions of this Article 26 shall survive the Expiration Date with respect to actions or the failure to take any actions or any other matter arising prior to the Expiration Date.

ARTICLE 27

RIGHT OF INSPECTION, ETC.

Section 27.01. Landlord Right of Inspection. Tenant shall permit Landlord and its agents or representatives to enter the Premises at all reasonable times and upon reasonable notice (except in cases of emergency) for the purpose of (a) inspecting the Premises, (b) determining whether or not Tenant is in compliance with its obligations under this Lease or any other Project Document, and (c) making any necessary repairs to the Premises and performing any work therein (i) that Landlord may elect to perform pursuant to Section 18.03, or (ii) that may be necessary by reason of Tenant's failure to make any such repairs or perform any such work or perform any other obligations of Tenant under this Lease; provided, that, except in the event of an emergency and except as otherwise provided in this Lease, Landlord shall have delivered to Tenant written notice specifying such repairs or work and Tenant shall have failed to make such repairs or to do such work within thirty (30) days after the giving of such notice (subject to Force Majeure), or if such repairs or such work cannot reasonably be completed during such thirty (30) day period, to have commenced and be diligently pursuing the same (subject to Force Majeure). Notwithstanding the foregoing, Landlord's right to inspect the interior of any completed Buildings shall be further limited to the extent that Tenant has only limited rights to enter same in accordance with any agreements with subtenants and other occupants, except in case of an emergency.

Section 27.02. No Duty on Landlord. Nothing in this Article 27 or elsewhere in this Lease shall imply any duty upon the part of Landlord to do any work required to be performed by Tenant hereunder and performance of any such work by Landlord shall not constitute a waiver of Tenant's Default in failing to perform the same; provided, however, that nothing contained in this Section 27.02 shall derogate from the obligations of the Yards Parcel Owner under the WRY Declaration of Easements. Landlord, during the progress of any such work, may keep and store at the Premises all necessary materials, tools, supplies and equipment. Except in the event of gross negligence or willful misconduct, Landlord shall not be liable for any damage to Tenant or any subtenant by reason of the making of such repairs or the performance of any such work, or on account of bringing or storing materials, tools, supplies and equipment onto the Premises during the course thereof; provided that Landlord shall use reasonable efforts to minimize damage or any interference to Tenant's operations resulting from Landlord's exercise of its rights under this Article 27, and the obligations of Tenant under this Lease shall not be affected thereby. To the extent that Landlord undertakes such work or repairs, such work or repairs shall be commenced and completed in a good and workmanlike manner, and with reasonable diligence, subject to Force Majeure.

ARTICLE 28

LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

Section 28.01. Landlord Right to Cure. If Tenant at any time shall be in Default after notice thereof and after the expiration of any applicable grace periods provided under this Lease for Tenant or a Leasehold Mortgagee, to cure or commence to cure same, Landlord, without waiving or releasing Tenant from any obligation of Tenant contained in this Lease, may (but shall be under no obligation to) perform such obligation on Tenant's behalf.

Section 28.02. Reimbursement of Landlord. All reasonable sums paid by Landlord and all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by Landlord in connection with its performance of any obligation pursuant to Section 28.01, together with interest thereon at the Involuntary Rate from the date of Landlord's making of each such payment or incurring of each such sum, cost, expense, charge, payment or deposit until the date of actual repayment to Landlord, shall be paid by Tenant to Landlord within ten (10) days after Landlord shall have submitted to Tenant a statement substantiating, in reasonable detail, the amount demanded by Landlord. No payment or performance by Landlord pursuant to Section 28.01 shall be or be deemed to be a waiver or release of any breach or Default of Tenant with respect thereto or of the right of Landlord to terminate this Lease, institute summary proceedings or take any such other action as may be permissible hereunder if an Event of Default by Tenant shall have occurred. Landlord shall not be limited in the scope of any damages (other than consequential damages) which Landlord may claim against Tenant arising out of or by reason of Tenant's failure to provide and keep insurance in force to the amount of the insurance premium or premiums not paid, but Landlord also shall be entitled to recover, as damages for such breach, the uninsured amount of any loss and damage and the reasonable costs and expenses of suit (including, without limitation, reasonable attorneys' fees and disbursements) suffered or incurred by reason of damage to or destruction of the Premises.

ARTICLE 29

NO ABATEMENT OF RENTAL

Except as may be otherwise expressly provided herein, Tenant shall have no right of abatement, diminution, reduction, setoff or refund of Rental payable by Tenant hereunder or of the other obligations of Tenant hereunder under any circumstances. The parties intend that Tenant's obligation to pay Rental hereunder is absolute except where expressly provided otherwise in this Lease, and the obligations of Tenant hereunder shall be separate and independent covenants and agreements and shall continue unaffected unless such obligations shall have been modified or terminated pursuant to an express provision of this Lease.

ARTICLE 30

PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 30.01. Permitted Use. Subject to the provisions of law, this Lease and the other Project Documents binding on Tenant, Tenant shall occupy the Premises for the purpose of constructing, maintaining and operating the Facility Airspace Improvements for the WRY Severed Parcel Project (as may be modified from time to time in accordance with the provisions hereof), any other incidental uses thereto or in furtherance thereof and any other purposes approved by Landlord in its sole discretion (collectively, the "Permitted Uses"), and for no other use or purpose.

Section 30.02. No Unlawful Use. Tenant shall not use or occupy the Premises, nor permit or suffer the Premises or any part thereof to be used or occupied, for any unlawful, illegal or extra-hazardous business, use or purpose, or in such manner as to constitute a nuisance of any kind (public or private) or that unreasonably interferes with the beneficial use of other property, or for any purpose or in any way in violation of any Certificate of Occupancy or of any Legal Requirements, or which may make void or voidable any insurance then in force with respect to the Premises. Immediately upon the discovery of any such unpermitted, unlawful, illegal or extra-hazardous use, Tenant shall take all necessary actions, legal and equitable, to compel the discontinuance of such use. If for any reason Tenant shall fail to take such actions in a timely fashion, and such failure shall continue for thirty (30) days after notice from Landlord to Tenant specifying such failure, Landlord is hereby irrevocably authorized (but not obligated) to take all such actions in Tenant's name and on Tenant's behalf, Tenant hereby appointing Landlord as Tenant's attorney-in-fact coupled with an interest for all such purposes. Tenant shall, within ten (10) days after demand therefor by Landlord, reimburse Landlord for all reasonable sums paid by Landlord and all reasonable costs and expenses incurred by Landlord acting pursuant to the immediately preceding sentence (including, without limitation, reasonable attorneys' fees and disbursements), together with interest thereon at the Involuntary Rate from the respective dates of Landlord's making of each such payment or incurring of each such cost, expense or charge until the date of actual repayment of such amounts to Landlord.

Section 30.03. No Adverse Possession. Tenant shall not knowingly suffer or permit the Premises or any portion thereof to be used by the public in such manner as might reasonably tend to impair title to the Premises or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse usage, prescriptive rights or adverse possession by the public, as such, or of implied dedication of the Premises or any portion thereof.

ARTICLE 31

EVENTS OF DEFAULT; CONDITIONAL LIMITATIONS, REMEDIES, ETC.

Section 31.01. Events of Default. Each of the following events shall be an "Event of Default" hereunder (provided that, any written notice of Default required to be given by Landlord to Tenant as set forth in this Section 31.01 shall contain a clear and conspicuous statement that Landlord intends to exercise its rights hereunder in the event that such Default

becomes an Event of Default) and any such notice shall also be sent to the Persons listed on Exhibit R hereto:

(a) if Tenant shall fail to pay any item of Rental, or any part thereof, when the same shall become due and payable and such failure shall continue for five (5) Business Days after written notice from Landlord to Tenant;

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

(c) if Tenant shall admit, in writing, that it is unable to pay its debts as such become due;

(d) if Tenant shall make an assignment for the benefit of creditors;

(e) if Tenant shall file a voluntary petition under Title 11 of the United States Code or if such petition is filed against it, and an order for relief is entered, or if Tenant shall file any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other statute or law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, or of all or any substantial part of its properties or of the Premises or any interest therein of Tenant, or if Tenant shall take any corporate action in furtherance of any action described in Section 31.01(c), (d) or (e);

(f) if within ninety (90) days after the commencement of any proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other statute or law, such proceeding shall not have been dismissed, or if, within ninety (90) days after the appointment, without the consent or acquiescence of Tenant, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant or of all or any substantial part of its properties or of the Premises or any interest therein of Tenant, such appointment shall not have been vacated or stayed on appeal or otherwise, or if, within thirty (30) days after the expiration of any such stay, such appointment shall not have been vacated;

(g) if Tenant shall abandon the Premises, and such abandonment shall continue for thirty (30) days after written notice thereof from Landlord;

(h) if this Lease or the estate of Tenant hereunder or any portion thereof (whether by operation of law or otherwise) shall be assigned, subleased, transferred, mortgaged or encumbered, or there shall be a Transfer, in each case without Landlord's approval to the extent required hereunder or without compliance with the provisions of this Lease applicable thereto and such transaction shall not be made to comply or voided ab initio within thirty (30) days after written notice thereof from Landlord to Tenant;

(i) if a levy under execution or attachment shall be made against the Premises and such execution or attachment shall not be vacated or removed by court order, bonding or otherwise within a period of thirty (30) days;

(j) if Tenant shall at any time fail to maintain its corporate existence in good standing, or to pay any corporate franchise tax when and as the same shall become due and payable, and such failure shall continue for thirty (30) days after written notice thereof from Landlord to Tenant;

(k) if, solely with respect to the Premises, a default by Tenant under the WRY Restrictive Declaration, and such default shall be unremedied for thirty (30) days after written notice thereof from Landlord to Tenant;

(l) if a default by Tenant under any of the WRY Declaration of Easements (solely to the extent applicable to the Premises as set forth in Section 7.01 hereof), the PILOT Agreement or the PILOST Agreement, or a default by a Building Completion Guarantor under a Building Completion Guaranty (whenever in force and effect), shall occur and remain outstanding after the expiration of any applicable notice and cure period therefor; provided, that if there is no notice and cure period under such declaration, agreement or guaranty, Tenant shall be entitled to the notice and cure period set forth in Section 31.01(b) as if such default were a failure by Tenant to observe or perform one or more of the other terms, conditions, covenants or agreements contained in this Lease; provided further that is shall not be deemed a default under the Building Completion Guaranty if a replacement guaranty is delivered to MTA within the cure period set forth in such guaranty; and/or

(m) [if a default under the WRY Construction Agreement shall occur and remain outstanding and Tenant has not commenced the Cure Obligations (as defined in the WRY Construction Agreement) with respect solely to the Associated Portion of the LIRR Roof and Facilities within the cure period provided to Tenant in the WRY Construction Agreement.][23]

Section 31.02. Primary Remedies; Expiration and Termination of Lease.

(a) If any Event of Default described in Sections 31.01(b) through (k), shall occur and Landlord, at any time thereafter (unless such Event of Default has been remedied), at its option, gives notice to Tenant stating that this Lease and the Term shall expire and terminate on the date specified in such notice, which date shall be not less than twenty (20) days after the giving of such notice, then this Lease and the Term and all rights of Tenant under

[23] To be deleted in Terra Firma Severed Parcel Leases.

this Lease shall expire and terminate as if the date specified in the notice given pursuant to this Section 31.02(a) were the Fixed Expiration Date, and Tenant immediately shall quit and surrender the Premises and the provisions of Article 37 shall apply. Notwithstanding anything to the contrary contained herein, if such termination shall be stayed by order of any court having jurisdiction over any proceeding described in Sections 31.01(e) or (f), or by federal or state statute and such stay expires, or if the trustee appointed in any such proceeding (the "Trustee"), Tenant or Tenant as debtor-in-possession shall fail to assume Tenant's obligations under this Lease within the period prescribed therefor by law or within one hundred twenty (120) days after entry of the order for relief or as may be allowed by the court, or if Tenant, Tenant as debtor-in-possession or the Trustee shall fail to provide adequate protection of Landlord's right, title and interest in and to the Premises or adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease as provided in Section 31.15, Landlord, to the extent permitted by law or by leave of the court having jurisdiction over such proceeding, shall have the right, at its election, to terminate this Lease on ten (10) days' notice to Tenant, Tenant as debtor-in-possession or the Trustee and upon the expiration of said ten (10) day period this Lease shall cease and expire as aforesaid and Tenant, Tenant as debtor-in-possession and/or the Trustee, as the case may be, shall immediately quit and surrender the Premises as aforesaid.

(b) If an Event of Default described in Section 31.01(a), (l) or (m) shall occur, or this Lease shall be terminated as provided in Section 31.03(a), Landlord, without notice, may re-enter and repossess the Premises by summary proceedings or other lawful process.

Section 31.03. Effect of Termination. If this Lease shall be terminated as provided in Section 31.02(a), or Tenant shall be dispossessed by summary proceedings or otherwise as provided in Section 31.02(b):

(a) Tenant shall pay to Landlord all Rental payable by Tenant under this Lease through the date upon which this Lease and the Term shall have expired or through the date of re-entry upon the Premises by Landlord, as the case may be;

(b) Landlord may complete all construction required to be performed by Tenant hereunder and may repair and alter the Premises in such manner as Landlord may deem necessary or advisable (and may apply to the foregoing all funds, if any, then held by any Depository pursuant to the terms of this Lease) without relieving Tenant of any liability under this Lease or otherwise affecting any such liability, and/or let or relet the Premises or any portion thereof for the whole or any part of the remainder of the Term or for a longer period, in Landlord's name or as agent of Tenant, and out of any rent and other sums collected or received as a result of such reletting Landlord shall: (i) first, pay to itself the reasonable cost and expense of terminating this Lease, re-entering, retaking, repossessing, completing construction and repairing or altering the Premises, or any part thereof, and the cost and expense of removing all persons and property therefrom, including in such costs brokerage commissions, legal expenses and reasonable attorneys' fees and disbursements, (ii) second, pay to itself the reasonable cost and expense sustained in securing any new tenant or other occupant, including in such costs brokerage commissions, legal expenses and reasonable attorneys' fees and disbursements and other expenses of preparing the Premises for reletting, and, if Landlord shall maintain and operate the Premises, the reasonable cost and expense of operating and maintaining the Premises,

and (iii) third, pay to itself any balance remaining on account of the liability of Tenant to Landlord. Landlord shall, within a reasonable period of time following the repossession of the Premises, undertake a request for proposals or other process in accordance with Landlord's official policy for real property dispositions to seek a replacement tenant for the Premises, it being understood and agreed that (x) Landlord shall have discretion as to whether or not to enter into a new lease for the Premises with a replacement tenant, and as to the terms of any such new lease, (y) no prospective lease shall diminish the amount of any Deficiency owed to Landlord pursuant to the terms of Section 31.03(c) unless and until such new lease is actually executed and delivered between Landlord and a replacement tenant, and (z) except as aforesaid, Landlord in no way shall be responsible or liable for any failure to relet the Premises or any part thereof, or for any failure to collect any rent due on any such reletting, and no such failure to relet or to collect rent under any new lease shall operate to relieve Tenant of any liability under this Lease or to otherwise affect any such liability;

(c) Tenant shall be liable for and shall pay to Landlord, as damages, any deficiency (referred to as a "Deficiency") between the Rental reserved in this Lease for the period which otherwise would have constituted the unexpired portion of the Term and the net amount, if any, of rents collected under any reletting effected pursuant to the provisions of Section 31.03(b) for any part of such period (first deducting from the rents collected under any such reletting all of the payments to Landlord described in Section 31.03(b)); any such Deficiency shall be paid in installments by Tenant on the days specified in this Lease for the payment of installments of Rental, and Landlord shall be entitled to recover from Tenant each Deficiency installment as the same shall arise, and no suit to collect the amount of the Deficiency for any installment period shall prejudice Landlord's right to collect the Deficiency for any subsequent installment period by a similar proceeding; and

(d) whether or not Landlord shall have collected any Deficiency installments as aforesaid, Landlord shall be entitled to recover from Tenant, and Tenant shall pay to Landlord, on demand, in lieu of any Deficiency, as and for liquidated and agreed final damages (it being agreed that it would be impracticable or extremely difficult to fix the actual damage), a sum equal to the amount by which the Rental reserved in this Lease for the period which otherwise would have constituted the unexpired portion of the Term exceeds the then fair and reasonable rental value of the Premises for the same period, both discounted to present worth at the rate of six and one-half percent (6.5%) per annum, less the aggregate amount of any Deficiencies theretofore collected by Landlord pursuant to the provisions of Section 31.03(c) for the same period; it being agreed that before presentation of proof of such liquidated damages to any court, commission or tribunal, if the Premises, or any part thereof, shall have been relet by Landlord on an arm's-length basis for the period which otherwise would have constituted the unexpired portion of the Term, or any part thereof, the amount of rent reserved upon such reletting shall be deemed, prima facie, to be the fair and reasonable rental value for the part or the whole of the Premises so relet during the term of the reletting. Upon payment of such sum by Tenant, Tenant shall no longer be liable to make payments for a Deficiency.

Section 31.04. Survival of Obligations. No termination of this Lease pursuant to Section 31.02(a) or taking possession of or reletting the Premises, or any part thereof, pursuant to Sections 31.02(b) and 31.03(b), shall relieve Tenant of its liabilities and obligations hereunder, all of which shall survive such expiration, termination, repossession or reletting.

Section 31.05. [Intentionally Omitted].

Section 31.06. Tenant's Waiver. To the extent not prohibited by law, Tenant hereby waives and releases all rights now or hereafter conferred by statute or otherwise which would have the effect of limiting or modifying any of the provisions of this Article 31. Tenant shall execute, acknowledge and deliver any instruments which Landlord may request, whether before or after the occurrence of an Event of Default, evidencing such waiver or release.

Section 31.07. Successive Suits. Suit or suits for the recovery of damages, or for a sum equal to any installment or installments of Rental payable hereunder or any Deficiencies or other sums payable by Tenant to Landlord pursuant to this Article 31, may be brought by Landlord from time to time at Landlord's election, and nothing herein contained shall be deemed to require Landlord to await the date whereon this Lease or the Term would have expired had there been no termination by reason of an Event of Default.

Section 31.08. Bankruptcy Damages. Nothing contained in this Article 31 shall limit or prejudice the right of Landlord to prove and obtain as liquidated damages in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding an amount equal to the maximum allowed by statute or rule of law governing such proceeding and in effect at the time when such damages are to be proved, whether or not such amount shall be greater than, equal to or less than the amount of the damages referred to in any of the preceding Sections of this Article 31.

Section 31.09. No Reinstatement. No receipt of monies by Landlord from Tenant after the termination of this Lease, or after the giving of any notice of the termination of this Lease, shall reinstate, continue or extend the Term or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Landlord to enforce the payment of Rental payable by Tenant hereunder or thereafter falling due, or operate as a waiver of the right of Landlord to recover possession of the Premises by proper remedy, except as herein otherwise expressly provided, it being agreed that after the service of notice to terminate this Lease or the commencement of any suit or summary proceedings, or after a final order or judgment for the possession of the Premises, Landlord may demand, receive and collect any monies due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such monies collected being deemed payments on account of the use and operation of the Premises or, at the election of Landlord, on account of Tenant's liability hereunder.

Section 31.10. Waiver of Notice of Re-Entry. Except as otherwise expressly provided herein or as prohibited by applicable law, Tenant hereby expressly waives the service of any notice of intention to re-enter provided for in any statute, or of the institution of legal proceedings to that end, and Tenant, for and on behalf of itself and all persons claiming through or under Tenant, also waives any and all right of redemption provided by any law or statute now in force or hereafter enacted or otherwise, or re-entry or repossession or to restore the operation of this Lease in case Tenant shall be dispossessed by a judgment or by warrant of any court or judge or in case of re-entry or repossession by Landlord or in case of any expiration or termination of this Lease, and Landlord and Tenant waive and shall waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of

Landlord and Tenant, Tenant's use or occupancy of the Premises, or any claim of injury or damage. The terms "enter", "re-enter", "entry" or "re-entry" as used in this Lease are not restricted to their technical legal meanings.

Section 31.11. No Waiver by Landlord. No failure by Landlord (or its predecessor as interest as Landlord) to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial Rental during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by a party, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the non-breaching party. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof.

Section 31.12. Injunction. In the event of any breach or threatened breach by a party of any of the covenants, agreements, terms or conditions contained in this Lease, the non-breaching party shall be entitled to seek to enjoin such breach or threatened breach and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Lease. To the extent permitted by law, each party hereby waives any requirement for the posting of bonds or other security in any such action.

Section 31.13. Rights Cumulative. Each right and remedy of Landlord provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise. Notwithstanding the foregoing, in no event shall Landlord be entitled, directly or indirectly, to recover more than once from Tenant, any tenant under the Balance Lease or a Severed Parcel Lease, or Developer for the same element of Landlord's damage.

Section 31.14. Enforcement Costs. Tenant shall pay to Landlord all costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Landlord in any action or proceeding to which Landlord may be made a party by reason of any act or omission of Tenant. In the event Landlord is the prevailing party, Tenant also shall pay to Landlord all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by Landlord in enforcing any of the covenants and provisions of this Lease and incurred in any action brought by Landlord against Tenant on account of the provisions hereof, and all such costs and expenses may be included in and form a part of any judgment entered in any proceeding brought by Landlord against Tenant on or under this Lease. All of the sums paid or obligations incurred by Landlord as aforesaid, with interest at the

Involuntary Rate, shall be paid by Tenant to Landlord within thirty (30) days after demand by Landlord.

Section 31.15. Adequate Assurance. If an order for relief is entered or if a stay of proceeding or other act becomes effective in favor of Tenant or Tenant's interest in this Lease in any proceeding which is commenced by or against Tenant under the present or any future federal Bankruptcy Code or any other present or future applicable federal, state or other statute or law, Landlord shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy code, statute, law or this Lease, including, without limitation, such rights and remedies as may be necessary to adequately assure the complete and continuous future performance of Tenant's obligations under this Lease. Adequate protection of Landlord's right, title and interest in and to the Premises, and adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease, shall include, without limitation, the following requirements:

(a) that Tenant shall comply with all of its obligations under this Lease;

(b) that Tenant shall pay to Landlord, on the first day of each month occurring subsequent to the entry of such order, or on the effective date of such stay, a sum equal to the amount by which the Premises diminished in value during the immediately preceding monthly period, but, in no event, an amount which is less than the aggregate Rental payable for such monthly period;

(c) that Tenant shall continue to use the Premises in the manner required by this Lease;

(d) that Landlord shall be permitted to supervise the performance of Tenant's obligations under this Lease;

(e) that Tenant shall hire, at its sole cost and expense, such security personnel as may be necessary to insure the adequate protection and security of the Premises;

(f) that Tenant shall pay to Landlord within thirty (30) days after entry of such order or the effective date of such stay, as partial adequate protection against future diminution in value of the Premises and adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease, a security deposit as may be required by law or ordered by the court;

(g) that Tenant has and will continue to have unencumbered assets after the payment of all secured obligations and administrative expenses to assure Landlord that sufficient funds will be available to fulfill the obligations of Tenant under this Lease;

(h) that Landlord be granted a security interest acceptable to Landlord in property of Tenant, other than property of any of Tenant's officers, directors, shareholders, employees or partners, to secure the performance of Tenant's obligations under this Lease; and

(i) that if Tenant, Tenant as debtor-in-possession or the Trustee assumes this Lease and proposes to assign the same (pursuant to Title 11 U.S.C. Section 365, as the same may be amended) to any Person who shall have made a bona fide offer to accept an assignment of this Lease on terms acceptable to the Trustee, Tenant or Tenant as debtor-in-possession, then notice of such proposed assignment, setting forth (i) the name and address of such Person, (ii) all of the terms and conditions of such offer, and (iii) the adequate assurance to be provided Landlord to assure such Person's future performance under the Lease, including, without limitation, the assurances referred to in Title 11 U.S.C. Section 365(b)(3) (as the same may be amended), shall be given to Landlord by the Trustee, Tenant or Tenant as debtor-in-possession no later than twenty (20) days after receipt by the Trustee, Tenant or Tenant as debtor-in-possession of such offer, but in any event no later than ten (10) days prior to the date that the Trustee, Tenant or Tenant as debtor-in-possession shall make application to a court of competent jurisdiction for authority and approval to enter into such assignment and assumption, and Landlord shall thereupon have the prior right and option, to be exercised by notice to the trustee given at any time prior to the effective date of such proposed assignment, to accept an assignment of this Lease upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such Person, less any brokerage commissions which may be payable out of the consideration to be paid by such Person for the assignment of this Lease.

Section 31.16. Leasehold Mortgagee Protections. Nothing contained in this Article 31 shall be deemed to modify the provisions of Sections 17.03, 17.04 or 17.05.

Section 31.17. Severed Parcels. Notwithstanding anything to the contrary contained herein, upon the Subparcel Severance of any Severed Subparcel from this Lease, in no event shall any Default or Event of Default arising under any Severed Subparcel Lease or the Severed Subparcel demised thereby constitute or be deemed a Default or Event of Default under this Lease. In no event shall any Default or Event of Default arising under the Balance Lease, any other Severed Parcel Lease or any Severed Subparcel Lease, or the premises demised thereby, constitute or be deemed a Default or Event of Default under this Lease.

ARTICLE 32

NOTICES

Section 32.01. Notice Addresses. Whenever it is provided in this Lease that a notice, demand, request, consent, approval or other communication (each, a "Notice") shall or may be given to or served upon either of the parties by the other, and whenever either of the parties shall desire to give or serve upon the other any Notice with respect hereto or the Premises, each such Notice shall be in writing and, any law or statute to the contrary notwithstanding, shall not be effective for any purpose unless given or served as follows: (a) by personal delivery (with receipt acknowledged), (b) delivered by reputable, national overnight delivery service (with its confirmatory receipt therefor), next Business Day delivery specified, (c) sent by registered or certified United States mail, postage prepaid, or (d) sent by a telephonic facsimile transmitting machine (with the receipt of such transmittal acknowledged in writing or by telephone), with a confirmatory copy to be delivered thereafter by duplicate notice in accordance with any of clauses (a), (b) or (c) of this Section 32.01, in each case to the parties as follows:

if to Landlord to its address first set forth above, attention: Director of Real Estate,
with a copy at the same time to the address set forth above, attention: General Counsel,
and to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019
Attention: Meredith J. Kane, Esq.

if to Tenant, to its address first set forth above, attention: [_____];

with a copy at the same time to the address set forth above, attention: [_____],

and to:

Either party may change the address(es) to which any such Notice is to be delivered by furnishing ten (10) days written notice of such change(s) to the other party in accordance with the provisions of this Section 32.01. The attorney for any party may send Notices on that party's behalf.

Section 32.02. When Notices Deemed Given. Every Notice shall be deemed to have been given or served (a) if given by hand or overnight delivery service, upon delivery thereof, (b) if given by telephonic facsimile transmitting machine, upon delivery by such means to the addressee, regardless of the timing of receipt of any confirmatory copy, and (c) if given by certified or registered mail, on the third (3rd) Business Day after the posting of the same, postage prepaid; in each case with failure to accept delivery to constitute delivery for such purpose.

Section 32.03. Notices to Mortgagees. If requested in writing by any Leasehold Mortgagee or Mezzanine Lender (which request shall be made in the manner provided in Section 32.01 and shall specify an address to which Notices shall be given), any Notice of Default to a Tenant shall also be given contemporaneously to such Leasehold Mortgagee or Mezzanine Lender with a copy thereof, if requested, to such Leasehold Mortgagee's or Mezzanine Lender's attorneys, in the manner herein specified.

ARTICLE 33

SUBORDINATION; FEE MORTGAGES

Section 33.01. Lease Not Subordinate. Landlord's interest in this Lease (as this Lease may be modified, amended or supplemented) and in the Premises shall not be subject or subordinate to (a) any mortgage now or hereafter placed upon Tenant's interest in this Lease or

(b) any other liens, security interests or encumbrances now or hereafter affecting Tenant's interest in this Lease (other than the Permitted Exceptions and the WRY Declaration of Easements).

Section 33.02. Fee Mortgage. This Lease and Tenant's interest in this Lease, as the same may be modified, amended or renewed, and any New Lease or the interest of Tenant under a New Lease as provided for in Section 17.04 shall not be subject or subordinate to (a) any Fee Mortgage or (b) to any other liens or encumbrances on Landlord's fee estate, except for the Permitted Exceptions and any other liens or encumbrances created or consented to by Tenant or as a consequence of Tenant's acts or omissions or the construction of the Improvements. For so long as that certain Fee Mortgage dated as of _____, and recorded in the Office of the City Register on _____ at CRFN _____ (as the same may hereafter be modified, amended, severed, and/or restated, the "Bond-Related Fee Mortgage") is outstanding, Landlord shall not amend, modify or supplement, or cause or permit to be amended, modified or supplemented, Articles 13 or 14 of the Bond-Related Fee Mortgage without the prior written consent of Tenant, Leasehold Mortgagee and Mezzanine Lender, except that the Fee Mortgagee may, without the consent of Tenant, Leasehold Mortgagee or Mezzanine Lender, delegate to Landlord any obligations which the Fee Mortgagee is obligated to perform under such Articles.

Section 33.03. Successor Landlord. If any Fee Mortgagee or any of its successors or assigns, or any designee of any Fee Mortgagee, shall succeed to the rights of Landlord under this Lease, whether through possession or foreclosure action or delivery of a deed, then, at the request of such party so succeeding to Landlord's rights (such party, a "Successor Landlord"), Tenant shall automatically attorn to and recognize such Successor Landlord as Tenant's landlord under this Lease. Upon such attornment this Lease shall continue in full force and effect as a direct lease between the Successor Landlord and Tenant upon and subject to all of the terms, conditions and covenants as are set forth in this Lease, except that the Successor Landlord shall not (a) be liable for any previous act or omission of Landlord under this Lease which shall not be continuing; (b) be subject to any offset, not expressly provided for in this Lease, which theretofore shall have accrued to Tenant against Landlord; (c) be bound by any modification of this Lease entered into subsequent to the date of the applicable Fee Mortgage, or by any previous prepayment of more than one month's Rental, unless such modification or prepayment shall have been expressly approved in writing by the Fee Mortgagee; or (d) be obligated to make any improvements to, or perform any work at, or furnish any services to, the Premises (it being understood that Landlord has no such obligations under this Lease; provided, however, that nothing contained in this Section 33.03 shall derogate from the obligations of the Yards Parcel Owner under the WRY Declaration of Easements). The provisions of this Section 33.03 shall be self-operative, and no instrument of any such attornment shall be required or needed by the holders of any such Fee Mortgage. In confirmation of any such attornment Tenant shall, at Landlord's request or at the request of any such Fee Mortgagee, promptly execute and deliver such further instruments as may be reasonably required by any such Fee Mortgagee. Notwithstanding anything to the contrary herein, in the event that any such transfer causes the Premises no longer to be exempt from sales and use taxes, then Tenant shall have no obligation to pay Successor Landlord PILOST hereunder, the PILOST Agreement shall be deemed void and of no further force and effect and any obligation of Tenant contingent on paying PILOST

(including Section 10.02(a)) shall be deemed to be stricken from this Lease and of no further force and effect.

Section 33.04. Notices and Cure Rights of Fee Mortgagee. If Landlord or a Fee Mortgagee gives Tenant Notice of the name and address of a Fee Mortgagee, then Tenant hereby agrees to give to any such Fee Mortgagee copies of all Notices sent by Tenant to Landlord under this Lease at the same time and in the same manner as and whenever Tenant shall give any such Notice to Landlord, and no such Notice shall be deemed given to Landlord hereunder unless and until a copy of such Notice shall have been so delivered to such Fee Mortgagee. Such Fee Mortgagee shall have the right to remedy any default of Landlord under this Lease, or to cause any default of Landlord under this Lease to be remedied, and, for such purpose, Tenant hereby grants such Fee Mortgagee such additional period of time as may be reasonable to enable such Fee Mortgagee to remedy, or cause to be remedied, any such default in addition to the period given to Landlord for remedying, or causing to be remedied, any such default. Tenant shall accept performance by such Fee Mortgagee of any term, covenant, condition or agreement to be performed by Landlord under this Lease with the same force and effect as though performed by Landlord. No default under this Lease shall exist or shall be deemed to exist (a) as long as such Fee Mortgagee, in good faith, shall have commenced to cure such default and shall be prosecuting the same to completion with reasonable diligence, subject to Force Majeure, (b) if such default is not susceptible of being cured by such Fee Mortgagee, or (c) as long as such Fee Mortgagee, in good faith, shall have notified Tenant that such Fee Mortgagee intends to institute proceedings under the Fee Mortgage to acquire possession of the Premises, and, thereafter, as long as such proceedings shall have been instituted and shall be prosecuted with reasonable diligence. In the event of the termination of this Lease by reason of Landlord's default hereunder, upon such Fee Mortgagee's written request, given within thirty (30) days after any such termination, Tenant, within fifteen (15) days after receipt of such request, shall execute and deliver to such Fee Mortgagee or its designee or nominee a new lease of the Premises for the remainder of the Term of this Lease upon all of the terms, covenants and conditions of this Lease. Neither such Fee Mortgagee nor its designee or nominee shall become liable under this Lease unless and until such Fee Mortgagee or its designee or nominee becomes, and then only for so long as such Fee Mortgagee or its designee or nominee remains, the fee owner of the Premises. Such Fee Mortgagee shall have the right, without Tenant's consent, to foreclose the Fee Mortgage or to accept a deed in lieu of foreclosure of such Fee Mortgage.

Section 33.05. No Impairment of Title.

(a) Nothing contained in this Lease or any action or inaction by Landlord shall be deemed or construed to mean that Landlord has granted to Tenant any right, power or permission to do any act or make any agreement which may create, give rise to, or be the foundation for, any right, title, interest, lien, charge or other encumbrance other than this Lease upon the estate of Landlord in the Premises. In amplification and not in limitation of the foregoing, Tenant shall not permit any portion of the Premises to be used by any person or persons or by the public, as such, at any time or times during the term of this Lease, in such manner as might impair Landlord's title to or interest in the Premises or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse use, adverse

possession, prescription, dedication, or other similar claims of, in, to or with respect to the Premises or any part thereof.

(b) Notwithstanding the provisions of this Section 33.05 to the contrary, Tenant shall have the right to create customary and ordinary utility easements which are reasonably required in connection with the construction of the Improvements, any Restoration or Capital Improvement or the operation of the Premises for the Permitted Uses; provided, that Tenant provides each such utility easement to Landlord for its prior written approval, which approval shall not be unreasonably withheld or delayed; and provided, further, that in no event shall Landlord be subject to any liability whatsoever under such utility easements, and Tenant shall indemnify, protect and hold harmless Landlord from any such liability. In addition, Landlord shall agree to cooperate with Tenant in the execution, acknowledgment and recordation of any restrictive declarations or easement agreements required by Governmental Authorities (including without limitation the New York City Planning Commission), including any documents subordinating this Lease to such restrictive declarations or easement agreements, provided, however, that (i) such restrictive declarations or easement agreements shall be in form and substance reasonably acceptable to Landlord, (ii) Landlord shall have no personal liability with respect to such restrictive declarations or easement agreements, (iii) no such restrictive declarations or easement agreements shall impair the value or operation of the Yards Parcel or any rights of the Yards Parcel Owner, and (iv) all costs (including reasonable attorneys' fees) for reviewing and/or executing and recording same shall be at Tenant's sole cost and expense.

ARTICLE 34

EXCAVATIONS AND SHORING; STREET WIDENING; COORDINATION OF ROOF MECHANICAL EQUIPMENT

Section 34.01. Excavations and Shoring. If any excavation shall be made or contemplated to be made for construction or other purposes upon property adjacent to the Premises, Tenant shall either:

(a) afford to Landlord, or, at Landlord's option, to the person or persons causing or authorized to cause such excavation, the right to enter upon the Premises in a reasonable manner (and subject to the reasonable security requirements of Tenant and the occupants of the Premises) for the purpose of doing such work as may be necessary, without expense to Landlord, to preserve any of the walls or structures of the Facility Airspace Improvements or WRY Roof Component from injury or damage and to support the same by proper foundations; provided, that (i) such work shall be done promptly, in a good and workmanlike manner and subject to all applicable Legal Requirements, (ii) Tenant shall have an opportunity to have its representatives present during all such work and (iii) Tenant shall be indemnified by such Person performing such excavation, as the case may be, against any injury or damage to the Improvements or persons or property therein which may result from any such work, but shall not have any claim against Landlord for suspension, diminution, abatement, offset or reduction of Rental payable by Tenant hereunder, or in connection with any injury or damage to the Improvements or persons or property therein; or

(b) do or cause to be done all such work, without expense to Landlord, as may be necessary to preserve any of the walls or structures of the Improvements from injury or damage and to support the same by proper foundations; provided, that Tenant shall not, by reason of any such excavation or work, have any claim against Landlord for damages or for indemnity or for suspension, diminution, abatement, offset or reduction of Rental payable by Tenant hereunder, or in connection with any injury or damage to the Improvements or persons or property therein.

Section 34.02. Street Widening. If at any time during the term of this Lease any proceedings are instituted or orders made for the widening or other enlargement of any street contiguous to the Premises, which requires removal of any projection or encroachment on, under or above any such street, or any changes or alterations upon the Premises or in the sidewalks, grounds, parking facilities, plazas, areas, vaults, gutters, alleys, exit ways, curbs or appurtenances, Tenant, at Tenant's sole cost and expense, shall promptly comply with such requirements. In the event that Tenant shall fail to comply with any such proceedings or orders within thirty (30) days after Tenant's receipt of notice thereof, Landlord may perform the work necessary to cause compliance with the same, and the amount expended therefor, together with any interest, fines, penalties, reasonable architect's and attorneys' fees, or other expenses incurred by Landlord in effecting such compliance or by reason of the failure of Tenant so to comply, shall be payable by Tenant to Landlord on demand as Additional Rent. Tenant shall be permitted to contest in good faith any proceeding or order for street widening in accordance with Section 20.02.

ARTICLE 35

CERTIFICATES BY LANDLORD AND TENANT

Section 35.01. Tenant Estoppels. At any time, and from time to time, upon not less than twenty-one (21) days' notice by Landlord, Tenant shall execute, acknowledge and deliver to Landlord and to any other party specified by Landlord a statement certifying: (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications), (b) the date to which each obligation constituting Rental (and, to the extent required to be paid to Landlord, PILOT) has been paid, (c) stating whether or not any other amounts due and owing by Tenant to Landlord under any other Project Documents have been paid, (d) stating whether or not, to the best knowledge of Tenant, Landlord is in default in performance of any covenant, agreement or condition contained in this Lease or other Project Document, and, if so, specifying each such default of which Tenant may have knowledge, (e) stating whether Substantial Completion of any Building or portion thereof has occurred, whether Substantial Completion and/or Final Completion of the WRY Roof Component (or an applicable Associated Portion of the LIRR Roof and Facilities) has occurred, and whether Substantial Completion of any other Facility Airspace Improvements has occurred, and (f) certifying as to any other matter with respect to this Lease as Landlord or such other addressee may reasonably request.

Section 35.02. Landlord Estoppels. At any time, and from time to time, upon not less than twenty-one (21) days' notice by Tenant, Landlord shall execute, acknowledge and

deliver to Tenant and to any other party specified by Tenant a statement certifying: (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications), (b) the date to which each obligation constituting Rental (and, to the extent required to be paid to Landlord, PILOT) has been paid, (c) stating whether or not any other amounts due and owing by Tenant to Landlord under any other Project Documents have been paid, (d) stating whether or not, to the best knowledge of Landlord, Tenant is in default in performance of any covenant, agreement or condition contained in this Lease or other Project Document, and, if so, specifying each such default of which Landlord may have knowledge, (e) stating whether Substantial Completion of any Building or portion thereof has occurred, whether Substantial Completion and/or Final Completion of the WRY Roof Component (or an applicable Associated Portion of the LIRR Roof and Facilities) has occurred, and whether Substantial Completion of any other Facility Airspace Improvements has occurred, and (f) certifying as to any other matter with respect to this Lease as Tenant or such other addressee may reasonably request.

ARTICLE 36

CONSENTS AND APPROVALS

Section 36.01. Consents to Be in Writing. All consents and approvals which may be given under this Lease shall, as a condition of their effectiveness, be in writing.

Section 36.02. Consent Not a Waiver. It is understood and agreed that the granting of any consent or approval by Landlord to Tenant to perform any act of Tenant requiring Landlord's consent or approval under the terms of this Lease, or the failure on the part of Landlord to object to any such action taken by Tenant without Landlord's consent or approval, shall not be deemed a waiver by Landlord of its right to require such consent or approval for any further similar act by Tenant, and Tenant hereby expressly covenants and warrants that as to all matters requiring Landlord's consent or approval under the terms of this Lease Tenant shall secure such consent or approval for each and every happening of the event requiring such consent or approval, and shall not claim any waiver on the part of Landlord of the requirement to secure such consent or approval.

Section 36.03. Consent Not to Be Unreasonably Delayed. Anywhere in this Lease where Landlord has agreed not unreasonably to withhold its consent, Landlord also agrees that its consent shall not be unreasonably delayed or conditioned.

Section 36.04. Landlord Not Liable for Money Damages. Whenever in this Lease Landlord's consent or approval is required and this Lease provides that Landlord's consent or approval shall not be unreasonably withheld and Landlord shall refuse such consent or approval, or in any instance in which Landlord shall delay its consent or approval, Tenant shall in no event be entitled to make, nor shall Tenant make, any claim, and Tenant hereby waives any claim, for money damages (nor shall Tenant claim any money damages by way of set-off, counterclaim or defense) based upon any claim or assertion by Tenant that Landlord unreasonably withheld or unreasonably delayed its consent or approval. Tenant's sole remedy shall be an action or proceeding to enforce any such provision, for specific performance,

injunction or declaratory judgment or for a determination in accordance with Section 40.01(a) and (b) as to whether Landlord reasonably withheld its consent.

Section 36.05. Landlord's Discretionary Consents. Notwithstanding anything to the contrary contained in this Lease, whenever in this Lease Landlord's consent or approval is required and this Lease does not provide that Landlord's consent or approval shall not be unreasonably withheld (or such consent or approval is subject to Landlord's reasonable discretion or words of like meaning), Landlord shall have the right to withhold such consent or approval in its sole and absolute discretion.

ARTICLE 37

SURRENDER AT END OF TERM

Section 37.01. Surrender at End of Term. On the Expiration Date of this Lease, or upon a re-entry by Landlord upon the Premises pursuant to the terms of Article 31, Tenant shall well and truly surrender and deliver up to Landlord the Premises in good order, condition and repair, reasonable wear and tear excepted, free and clear of all lettings, occupancies, liens and encumbrances other than those, if any, (a) existing as of the date hereof, (b) created, or consented to, by Landlord or (c) which lettings and occupancies by their express terms and conditions extend beyond the Expiration Date and which Landlord shall have consented and agreed, in writing, may extend beyond the Expiration Date without any payment or allowance whatever by Landlord. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises on any such Expiration Date or date of re-entry.

Section 37.02. Delivery of Premises Agreements. On the Expiration Date, or upon a re-entry by Landlord upon the Premises pursuant to Article 31, Tenant shall deliver to Landlord (a) fully-executed counterparts of all subleases in effect with respect to the Premises, and of any service and maintenance contracts then affecting the Premises, (b) true and complete maintenance records for the Premises in Tenant's possession or control, (c) all original licenses and permits then pertaining to the Premises, (d) permanent or temporary Certificates of Occupancy then in effect for each of the Improvements, (e) all warranties and guarantees then in effect which Tenant has received in connection with any work or services performed or Equipment installed at the Premises or in the Improvements and (f) all financial records, reports and books pertaining to the Premises, and any and all other documents of every kind and nature whatsoever relating to the Premises in Tenant's possession or control, together with duly executed assignments thereof to Landlord, where applicable.

Section 37.03. Abandonment of Property. Any personal property of Tenant or of any subtenant or other occupant of the Premises which shall remain on the Premises for thirty (30) days after the termination of this Lease and after the removal of Tenant or such subtenant or other occupant from the Premises, may, at the option of Landlord, be deemed to have been abandoned by Tenant or such subtenant or other occupant and either may be retained by Landlord as its property or be disposed of, without accountability, in such manner as Landlord may see fit. Landlord shall not be responsible for any loss or damage occurring to any such property owned by Tenant or any subtenant or other occupant of the Premises.

Section 37.04. Survival. The provisions of this Article 37 shall survive any termination of this Lease.

ARTICLE 38

ENTIRE AGREEMENT

This Lease, together with the Exhibits hereto and with the other Project Documents, contains all the promises, agreements, conditions, inducements and understandings between Landlord and Tenant relative to the Premises and there are no promises, agreements, conditions, understandings, inducements, warranties, or representations, oral or written, expressed or implied, between them other than as herein or therein set forth and other than as may be expressly contained in any written agreement between the parties executed simultaneously herewith.

ARTICLE 39

QUIET ENJOYMENT

Landlord covenants that so long as this Lease is in full force and effect and Tenant is not in default beyond any applicable notice and grace period hereunder, Tenant shall and may (subject, however, to the exceptions, reservations, terms and conditions of this Lease) peaceably and quietly have, hold and enjoy the Premises for the term hereby granted without molestation or disturbance by or from Landlord or any Person claiming through Landlord and free of any encumbrance created or suffered by Landlord, except for (a) those encumbrances, liens or defects of title, created or suffered by Tenant and (b) the Permitted Exceptions. This covenant shall be construed as running with the WRY to and against subsequent owners and successors in interest and is not, nor shall it operate or be construed as, a personal covenant of Landlord, except to the extent of Landlord's interest in the Premises and only so long as such interest shall continue, and thereafter this covenant shall be binding upon such subsequent owners and successors in interest of Landlord's interest under this Lease, to the extent of their respective interests, as and when they shall acquire the same, and only so long as they shall retain such interest.

ARTICLE 40

DISPUTE RESOLUTION

Section 40.01. Dispute Resolution Procedures.

(a) In any cases where this Lease expressly provides for the settlement of a dispute in accordance with this Section 40.01(a), the parties shall attempt in good faith for a period of not less than thirty (30) days to resolve any dispute, and if such dispute remains unresolved despite such efforts, Tenant shall have the right to refer such dispute to the President (or a similar official) of Landlord. If such dispute remains unresolved for an additional period of not less than twenty-one (21) days, despite good-faith efforts by Tenant to resolve the same through discussions with the President (or a similar official) of Landlord, then the parties shall

have the right to pursue all available legal and equitable remedies (unless such dispute is an Arbitrable Claim, in which case the same shall be resolved in accordance with Section 40.01(b)).

(b) In any cases concerning a dispute of a Financial Matter or where this Lease expressly provides for the settlement of any other dispute in accordance with Section 40.01(a) and this Section 40.01(b) ("Arbitrable Claims"), and Landlord and Tenant are unable to negotiate a resolution to such Arbitrable Claim as set forth in Section 40.01(a), either party may submit such Arbitrable Claim to binding arbitration by giving written notice thereof to the other party and to the Arbitrator. The following provisions shall apply to any such arbitration:

(i) The arbitration shall be administered and conducted by a neutral Person in New York, New York, mutually agreed to by Landlord and Tenant from time to time (the "Arbitrator"). The Arbitrator shall have not less than ten (10) years' experience in the subject area of the Arbitrable Claim, and shall not have been employed by, or engaged in a professional capacity (other than as an arbitrator) for either of Landlord or Tenant. In the event that Landlord and Tenant cannot agree within fifteen (15) days on the identity of the Arbitrator, either party may apply to the Supreme Court, New York County, for the appointment of an Arbitrator, provided however, that if an arbitrator has been appointed and is still serving in such capacity under any Project Document for the resolution of a dispute between Landlord and Tenant concerning the same or any similar issue, such arbitrator shall serve as Arbitrator hereunder. The Arbitrator shall, once so selected, serve as Arbitrator for all disputes hereunder in the subject matter of the Arbitrable Claim until the earlier of (x) the fifth (5^{th}) anniversary of the date hereof and (y) any death, incapacity, resignation or removal (by mutual agreement of Landlord and Tenant) of the Arbitrator. Landlord and Tenant (acting reasonably and in good faith) shall from time to time thereafter select a successor Arbitrator, who may or may not have previously served as the Arbitrator, through the procedures set forth above. The fees and expenses of the Arbitrator in connection with the arbitration shall be borne fifty percent (50%) by Landlord and fifty percent (50%) by Tenant.

(ii) Within fifteen (15) Business Days after the delivery of an arbitration notice in accordance with the foregoing provisions of this Section 40.01(b), each party shall submit to the Arbitrator a single proposed settlement of the dispute (which settlement shall not be inconsistent with this Lease), together with such written explanation or evidence relating thereto as such party deems appropriate. After making its submission, a party may not make any additions to or deletions from, or otherwise change, the same. If either party fails to make a submission within such fifteen (15) Business Day period, TIME BEING OF THE ESSENCE WITH RESPECT THERETO, such party shall be deemed to have irrevocably waived its right to make any submission.

(iii) Within five (5) Business Days after the earlier of (x) the receipt by the Arbitrator of submissions from both parties in accordance with clause (ii) of this Section 40.01(b) or (y) the end of the fifteen (15) Business Day period described in such clause, the Arbitrator shall select the settlement proposed in one of such submissions, in its entirety and without any modification thereto, and shall render a determination to such effect in a signed and acknowledged written instrument, originals of which shall be sent simultaneously to the parties. Such determination shall be conclusive, final and binding on the parties, shall constitute an

"award" by the Arbitrator for the purposes of applicable law, and judgment may be entered thereon in any court of competent jurisdiction.

(iv) It is expressly understood and agreed that the pendency of a dispute hereunder shall at no time and in no respect constitute a basis for either party not to comply, or otherwise fully perform in accordance with, this Lease.

(v) If either party protests the determination of the Arbitrator, such party may commence a lawsuit in the New York Supreme Court for New York County under Article 75 or Article 78 of the New York Civil Practice Law and Rules, as applicable, it being understood that the review of the Court shall be limited to the question of whether or not the Arbitrator's determination is arbitrary, capricious or without a rational basis. No evidence or information about the matter in dispute shall be introduced or relied upon in any such actions or proceedings that has not been submitted to the Arbitrator in accordance with clause (ii) of this Section 40.01(b).

ARTICLE 41

INVALIDITY OF CERTAIN PROVISIONS

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

ARTICLE 42

RECORDING OF MEMORANDUM

The parties hereto agree that this Lease shall not be recorded. Notwithstanding the foregoing, simultaneously with the execution of this Lease, the parties have executed: (a) a memorandum of this Lease substantially in the form of Exhibit M attached hereto which may be recorded by either party, and (b) to be held in escrow by Landlord, a recordable memorandum of termination of this Lease in the form of Exhibit N attached hereto and all transfer tax forms required to be filed in connection with a termination of this Lease. In the event of a termination of this Lease, Landlord shall have the right, without prior notice to or the consent of Tenant, (i) to cause to be recorded such memorandum of termination and (ii) to file any such transfer tax forms as are required in connection therewith. Tenant hereby appoints Landlord as its attorney-in-fact to execute such a termination statement on its behalf. This appointment shall be deemed to be coupled with an interest and irrevocable. Notwithstanding the foregoing, in the event Tenant brings a legal action against Landlord in a court of competent jurisdiction seeking to enjoin Landlord's termination of this Lease, Landlord shall not record such memorandum of termination until a final non-appealable judgment upholding such termination has been entered in such legal action. Supplementing the other liabilities and indemnities of Tenant to Landlord under this Lease, and notwithstanding any other provision of this Lease (including, without limitation, any provision purporting to create a sole and exclusive remedy for the benefit of

Landlord), agrees to indemnify and hold Landlord harmless from and against any and all losses, costs, damages, liens, claims, counterclaims, liabilities or expenses (including, but not limited to, attorneys' fees, court costs and disbursements) incurred by Landlord arising from or by reason of the recording of this Lease, or any notice of pendency (unless Tenant prevails in a final non-appealable order against Landlord in the action underlying such notice of pendency). The provisions of this Article 42 shall survive any Fee Conversion Closing or any early termination of this Lease.

ARTICLE 43

MISCELLANEOUS

Section 43.01. Captions. The captions of this Lease are for convenience of reference only and in no way define, limit or describe the scope or intent of this Lease or in any way affect this Lease.

Section 43.02. Table of Contents. The Table of Contents is for the purpose of convenience of reference only and is not to be deemed or construed in any way as part of this Lease or as supplemental thereto or amendatory thereof.

Section 43.03. Pronouns. The use herein of the neuter pronoun in any reference to Landlord or Tenant shall be deemed to include any individual Landlord or Tenant, and the use herein of the words “successors and assigns” or “successors or assigns” of Landlord or Tenant shall be deemed to include the heirs, legal representatives and assigns of any individual Landlord or Tenant.

Section 43.04. Depository Charges. Any Depository may pay to itself out of the monies held by such Depository pursuant to this Lease its reasonable charges for services rendered hereunder. Tenant shall pay to such Depository any additional charges for such Depository’s services.

Section 43.05. More than One Person. If more than one Person is named as or becomes Tenant hereunder, Landlord may require the signatures of all such Persons in connection with any notice to be given or action to be taken by Tenant hereunder except to the extent that any such Person shall designate another such Person as its attorney-in-fact to act on its behalf, which designation shall be effective until receipt by Landlord of notice of its revocation. Subject to Section 43.06, each Person named as Tenant shall be fully, and jointly and severally, liable for all of Tenant’s obligations hereunder. Any notice by Landlord to any Person named as Tenant shall be sufficient and shall have the same force and effect as though given to all parties named as Tenant. If all such parties designate in writing one Person to receive copies of all notices, Landlord agrees to send copies of all notices to that Person.

Section 43.06. Limitation of Liability.

(a) The liability of Landlord or of any other Person who has at any time acted as Landlord hereunder for damages or otherwise shall be limited to Landlord’s interest in the Premises, including, without limitation, the rents and profits therefrom, the

proceeds of any insurance policies covering or relating to the Premises, any awards payable in connection with any condemnation of the Premises or any part thereof, and any other rights, privileges, licenses, franchises, claims, causes of action or other interests, sums or receivables appurtenant to the Premises. Neither Landlord nor any such Person nor any of the members, managers, trustees, directors, officers, employees, agents or servants of Landlord or any such Person shall have any liability (personal or otherwise) hereunder beyond Landlord's interest in the Premises, and no other property or assets of Landlord or any such Person or any of the members, managers, trustees, directors, officers, employees, agents or servants of either shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies hereunder.

(b) The liability of Tenant, or of any Person who has at any time acted as Tenant hereunder, for damages or otherwise shall be limited to Tenant's interest in the Premises, including, without limitation, the rents and profits therefrom, the proceeds of any insurance policies covering or relating to the Premises, any awards payable in connection with any condemnation of the Premises or any part thereof, any funds held by a Depository pursuant to any of the provisions of this Lease, and any other rights, privileges, licenses, franchises, claims, causes of action or other interests, sums or receivables appurtenant to the Premises. Neither Tenant nor any such Person nor any of the members, managers, trustees, directors, officers, employees, agents or servants or either shall have any liability (personal or otherwise) hereunder beyond Tenant's interest in the Premises, and no other property or assets of Tenant or any such Person or any of the members, managers, trustees, directors, officers, employees, agents or servants of either shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies hereunder. Nothing herein shall be construed as limiting or affecting the liability or obligation of a Building Completion Guarantor under a Building Completion Guaranty; such liability and obligations being governed in all respects by the terms of the applicable Building Completion Guaranty.

Section 43.07. No Merger. Except as otherwise expressly provided in this Lease, there shall be no merger of this Lease or the leasehold estate created hereby with the fee estate in the Premises or any part thereof by reason of the same Person acquiring or holding, directly or indirectly, this Lease or the leasehold estate created hereby or any interest in this Lease or in such leasehold estate as well as the fee estate in the Premises.

Section 43.08. No Brokers. Each of the parties warrants and represents to the other party that neither it nor any affiliate has dealt with any broker, finder or like entity or agent in connection with this Lease transaction or the transactions contemplated hereby, or on account of introducing the parties, the preparation or submission of brochures, the negotiation or execution of this Lease or the execution of the transactions contemplated hereby. If any claim is made by any Person who shall claim to have acted or dealt with Tenant or Landlord in connection with this transaction, the party through which such broker is claiming such entitlement shall pay the brokerage commission, fee or other compensation to which such Person is entitled, shall indemnify and hold harmless the other party against any claim asserted by such Person for any such brokerage commission, fee or other compensation and shall reimburse such other party for any costs or expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred in defending itself against claims made against it for any such brokerage commission, fee or other compensation.

Section 43.09. Amendments in Writing. This Lease may not be changed, modified or terminated orally, but only by a written instrument of change, modification or termination executed and delivered by each of Landlord and Tenant.

Section 43.10. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of New York.

Section 43.11. Successors and Assigns. The agreements, terms, covenants and conditions herein shall be binding upon, and shall inure to the benefit of, Landlord and Tenant and their respective successors and (except as otherwise provided herein) assigns.

Section 43.12. Sections. Except as otherwise specified herein, all references in this Lease to "Articles" or "Sections" shall refer to the designated Article(s) or Section(s), as the case may be, of this Lease.

Section 43.13. Plans and Specifications. All of Tenant's right, title and interest in all plans and drawings required to be furnished by Tenant to Landlord under this Lease and in any and all other plans, drawings, specifications or models prepared in connection with the construction of the Improvements, any Restoration or Capital Improvement, or any other construction at the Premises shall become the sole and absolute property of Landlord upon the Expiration Date, subject to the rights of the architects and engineers that prepared the same. Tenant shall deliver all such documents to Landlord promptly upon the Expiration Date. Tenant's obligation under this Section 43.13 shall survive the expiration or termination of this Lease.

Section 43.14. Licensed Professionals. All references in this Lease to "licensed professional engineer," "licensed surveyor" or "registered architect" shall mean a professional engineer, surveyor or architect who is licensed or registered, as the case may be, by the State of New York.

Section 43.15. Amendments to WRY Declaration of Easements. Landlord shall not enter into or cause to be entered into any amendment or supplement to the WRY Declaration of Easements, which (a) increases, materially alters or otherwise materially affects Tenant's rights or obligations under this Lease or the WRY Declaration of Easements, (b) further limits the permitted uses of the Premises, (c) limits Tenant's rights under this Lease to dispose of, or assign its interest in, the Premises or (d) decreases or alters the rights of a Leasehold Mortgagee, unless the same is consented to by Tenant (and, in the case of (d), by such Leasehold Mortgagee) or is made subject and subordinate to this Lease and to the rights of such Leasehold Mortgagee. In the event Landlord shall enter into or cause to be entered into an amendment or supplement to the WRY Declaration of Easements which is not in conformity with this Section 43.15, Tenant shall not be obligated to comply with the provisions of such amendment or supplement which do not so conform and the same shall have no force or effect with respect to Tenant or any Leasehold Mortgagee.

Section 43.16. No Joint Venture. Nothing herein is intended nor shall be deemed to create a joint venture or partnership between Landlord and Tenant, nor to make Landlord in any way responsible for the debts or losses of Tenant.

Section 43.17. Tax Benefits. To the extent permitted by law, notwithstanding that Landlord shall own the Premises and the Improvements, Tenant shall have the right to all depreciation deductions, investment tax credits and other similar tax benefits attributable to any construction, demolition and Restoration performed by Tenant or attributable to the ownership of the Improvements. Landlord, from time to time, shall execute and deliver such instruments as Tenant shall reasonably request in order to effect the provisions of this Section 43.17, and Tenant shall pay Landlord's reasonable costs and expenses thereof. Landlord makes no representations as to the availability of any such deductions, credits or tax benefits.

Section 43.18. Submission Not an Offer. Submission of this Lease by Landlord to Tenant does not constitute an offer by Landlord to lease the Premises upon the terms hereof, and in no event will Landlord be bound hereunder except until the closing occurs under the WRY Agreement to Enter Into Lease.

Section 43.19. Construction. This Lease shall be construed without regard to any presumption or other rule requiring construction against the party causing this Lease to be drafted. In the event of any action, suit, arbitration, dispute or proceeding affecting the terms of this Lease, no weight shall be given to any deletions or striking out of any of the terms of this Lease contained in any draft of this Lease and no such deletion or strike out shall be entered into evidence in any such action, suit, arbitration, dispute or proceeding nor given any weight therein.

Section 43.20. Separate Obligations. Whenever it is provided in this Lease that Tenant shall take certain actions, fulfill certain obligations or incur certain liabilities, Landlord acknowledges and agrees that, without limiting Section 7.01, (a) Tenant's obligations and liabilities shall be limited to those obligations and liabilities arising on the Premises and shall not extend to the Balance Parcel, any other Severed Parcel (or Severed Subparcel) or the ERY; and (b) the Balance Parcel Tenant's and each other Severed Parcel Tenant's obligations and liabilities shall be limited to those obligations and liabilities arising on the Severed Parcel demised thereby and shall not extend to any other portion of the WRY or ERY. Tenant shall have no liability for any acts or omissions by WRY Ground Lease Tenant or any other Severed Parcel Tenant or the tenant under any lease demising a portion of the WRY or ERY that is not demised by this Lease. Conversely, none of the tenant under the WRY Ground Lease (nor any lease demising a portion of the WRY), or any other Severed Parcel Tenant shall be liable for any acts or omissions by Tenant or arising from the Premises (as adjusted following a Subparcel Severance). Accordingly, the obligation of Tenant hereunder is several and not joint with any other tenant under any lease other than this Lease.

Section 43.21. Further Assurances. Each party shall execute and deliver such further documents, and perform such further acts, as may be reasonably necessary to achieve the parties' intent in entering into this Lease.

ARTICLE 44

CONFIDENTIALITY; PUBLICITY

Section 44.01. Tenant's Confidentiality Obligations. This Lease and all terms set forth herein (and the other Project Documents and all terms set forth therein) and all

information relating to the WRY and the WRY Project supplied by Landlord or LIRR (pursuant to the RFP or otherwise) shall be kept strictly confidential by Tenant except to the extent such information is available in the public domain (unless Tenant has caused confidential information to enter the public domain in breach of this Section 44.01) or as otherwise required by law or agreed to by Landlord, provided that Tenant may share such information as it deems pertinent with prospective lenders, investors, counsel, consultants, accountants and employees but shall require that they shall maintain similar confidentiality and shall be responsible for any breach of the terms of this confidentiality requirement by such parties.

Section 44.02. Landlord's Confidentiality Obligations. Landlord acknowledges that Tenant has provided and will be hereafter providing confidential information, including trade secrets and proprietary information, the disclosure of which may be harmful to Tenant's competitive position. Accordingly, Landlord agrees that, if disclosure requests are received by Landlord pursuant to the Freedom of Information Law or any judicial or legislative subpoena, requesting any financial information concerning Tenant or its principals, or any trade secret or proprietary information provided to Landlord or the Yards Parcel Operator by Tenant, Landlord shall give Tenant prior notice and the opportunity to object to such Freedom of Information Law request or subpoena (it being understood and agreed that Landlord and the Yards Parcel Operator shall have the right to make disclosures believed in good faith to be required under the Freedom of Information Law or other applicable law notwithstanding any objection of Tenant). Tenant understands and acknowledges that Landlord is a public authority of the State of New York and is subject to review and oversight by legislative and other regulatory bodies, and that Landlord and the Yards Parcel Operator are required by law and may be compelled or requested by such oversight bodies to make public disclosure of information regarding the WRY Project and the terms of the disposition of the Premises, and shall be fully entitled to do so without objection from Tenant, except in the limited circumstances described in this Section 44.02.

Section 44.03. Press Releases. Except as may be required by applicable Legal Requirements, no press release, publicity notice or announcement, regarding or in any way directly or indirectly referring to, any of the terms or provisions of this Lease or any other Project Document, or the transactions contemplated hereby or thereby, shall be made or caused to be made by Tenant or any Affiliate of Tenant without the prior consent of Landlord, which consent may be granted or denied in Landlord's sole and absolute discretion. Tenant shall furnish to Landlord advance copies of any press release, publicity notice or announcement which it desires to make public with respect to this Lease and/or the transactions contemplated hereby. Notwithstanding the foregoing, Landlord may, in response to inquiries from the press, confirm the fact that Tenant has entered into a ground lease of the WRY; provided, however, whether or not in response to any such inquiry, Tenant shall not disclose or confirm any of the terms or provisions of this Lease or any other Project Document.

ARTICLE 45

MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES

Tenant acknowledges that it is the policy of Landlord that minority and women-owned business enterprises ("M/WBEs") shall have significant opportunity to participate in the

performance of the WRY Project. Tenant hereby agrees to undertake to achieve meaningful participation of M/WBEs in the development and construction of the WRY Severed Parcel Project on the Premises to the maximum extent practicable.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

LANDLORD:

METROPOLITAN TRANSPORTATION AUTHORITY

By: _____
Name:
Title:

TENANT:

[_____]

By:

_____
Name:
Title:

EXHIBIT A-1
LEGAL DESCRIPTION OF THE WRY

Yards Parcel

All of the lands below an upper limiting plane of 40.55 feet (Manhattan Borough Datum) within the following horizontal boundary:

Beginning at a point formed by the intersection of the southerly line of West 33rd Street (60' R.O.W.) and the easterly line of Twelfth Avenue (R.O.W. varies); running thence

1. Along said West 33rd Street, South 89°56'53" East, a distance of 800.00 feet to a point formed by the intersection of said West 33rd Street and the westerly line of Eleventh Avenue (100' R.O.W.); thence

2. Along said westerly line of Eleventh Avenue, South 00°03'07" West, a distance of 538.26 feet to a point; thence

3. North 89°49'42" West, a distance of 439.40 feet to a point; thence

4. North 69°32'56" West, a distance of 61.90 feet to a point; thence

5. North 89°57'45" West, a distance of 302.58 feet to a point on the said easterly line of Twelfth Avenue; thence

6. Along said easterly line of Twelfth Avenue, North 00°03'07" East, a distance of 515.85 feet to the Point of Beginning.

Encompassing an area of 422,936 S.F./9.709 acres, more or less.

Facility Airspace Parcel: Airspace Above Lower Limiting Plane

All of the airspace above a lower limiting plane of 40.55 feet (Manhattan Borough Datum) within the following horizontal boundary:

Beginning at a point formed by the intersection of the southerly line of West 33rd Street (60' R.O.W.) and the easterly line of Twelfth Avenue (R.O.W. varies); running thence

1. Along said West 33rd Street, South 89°56'53" East, a distance of 800.00 feet to a point formed by the intersection of said West 33rd Street and the westerly line of Eleventh Avenue (100' R.O.W.); thence

2. Along said westerly line of Eleventh Avenue, South 00°03'07" West, a distance of 538.26 feet to a point; thence

3. North 89°49'42" West, a distance of 439.40 feet to a point; thence

4. North 69°32'56" West, a distance of 61.90 feet to a point; thence

5. North 89°57'45" West, a distance of 302.58 feet to a point on the said easterly line of Twelfth Avenue; thence

6. Along said easterly line of Twelfth Avenue, North 00°03'07" East, a distance of 515.85 feet to the Point of Beginning.

Encompassing an area of 422,936 S.F./9.709 acres, more or less.

Facility Airspace Parcel: Terra Firma

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

Beginning at a point formed by the intersection of the northerly line of West 30th Street (60' R.O.W.) and the easterly line of Twelfth Avenue (R.O.W. varies); running thence

1. Along said easterly line of Twelfth Avenue, North 00°03'07" East, a distance of 196.65 feet to a point; thence

2. South 89°57'45" East, a distance of 302.58 feet to a point; thence

3. South 69°32'56" East, a distance of 61.90 feet to a point; thence

4. South 89°49'42" East, a distance of 439.40 feet to a point on the westerly line of Eleventh Avenue (100' R.O.W.); thence

5. Along said westerly line of Eleventh Avenue, South 00°03'07" West, a distance of 174.24 feet to a point formed by the intersection of said westerly line of Eleventh Avenue and the aforementioned northerly line of West 30th Street; thence

6. Along said northerly line of west 30th Street, North 89°56'53" West, a distance of 800.00 feet to the Point of Beginning.

Encompassing an area of 147,064 S.F./3.376 acres, more or less.

EXHIBIT A-2
LEGAL DESCRIPTION OF THE PREMISES

[to be inserted prior to execution of this Lease]

EXHIBIT A-3
LEGAL DESCRIPTION OF THE YARDS PARCEL

All of the lands below an upper limiting plane of 40.55 feet (Manhattan Borough Datum) within the following horizontal boundary:

Beginning at a point formed by the intersection of the southerly line of West 33rd Street (60' R.O.W.) and the easterly line of Twelfth Avenue (R.O.W. varies); running thence

1. Along said West 33rd Street, South 89°56'53" East, a distance of 800.00 feet to a point formed by the intersection of said West 33rd Street and the westerly line of Eleventh Avenue (100' R.O.W.); thence

2. Along said westerly line of Eleventh Avenue, South 00°03'07" West, a distance of 538.26 feet to a point; thence

3. North 89°49'42" West, a distance of 439.40 feet to a point; thence

4. North 69°32'56" West, a distance of 61.90 feet to a point; thence

5. North 89°57'45" West, a distance of 302.58 feet to a point on the said easterly line of Twelfth Avenue; thence

6. Along said easterly line of Twelfth Avenue, North 00°03'07" East, a distance of 515.85 feet to the Point of Beginning.

EXHIBIT B
PERMITTED EXCEPTIONS

EXHIBIT C-1
ILLUSTRATED OPTION PRICE CALCULATION FOR THE PREMISES

EXHIBIT C-2
ILLUSTRATED OPTION PRICE CALCULATION FOR A UNIT WITHIN THE PREMISES

EXHIBIT D
FORM OF CONDOMINIUM DECLARTION

EXHIBIT E
INTENTIONALLY OMITTED

EXHIBIT F
INTENTIONALLY OMITTED

EXHIBIT G
INTENTIONALLY OMITTED

EXHIBIT H
PILOST AGREEMENT

EXHIBIT I
INTENTIONALLY OMITTED

EXHIBIT J
INTENTIONALLY OMITTED

EXHIBIT K
INTENTIONALLY OMITTED

EXHIBIT L -1
FORM OF SPONSOR GUARANTY

EXHIBIT L -2
FORM OF BUILDING COMPLETION GUARANTY

(Follows immediately)

EXHIBIT M
MEMORANDUM OF LEASE

(Follows immediately)

Record and Return to:

County of New York
[Block ____, Lot ___]

PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP
1285 Avenue of the Americas
New York, New York 10019
Attention: Meredith J. Kane, Esq.

MEMORANDUM OF AGREEMENT OF SEVERED PARCEL LEASE (WESTERN RAIL YARD SECTION OF THE JOHN D. CAEMMERER WEST SIDE YARD)

MEMORANDUM OF AGREEMENT OF SEVERED PARCEL LEASE (WESTERN RAIL YARD SECTION OF THE JOHN D. CAEMMERER WEST SIDE YARD) (this "Memorandum"), made as of the ___ day of _____, 20__, between METROPOLITAN TRANSPORTATION AUTHORITY, a body corporate and politic constituting a public benefit corporation of the State of New York, having an office at 347 Madison Avenue, New York, New York 10017-3739 (and any successor entities thereto, "Landlord") and [_____] ("Tenant").

W I T N E S S E T H :

WHEREAS, Landlord and Tenant have entered into an Agreement of Severed Parcel Lease (Western Rail Yard Section of the John D. Caemmerer West Side Yard) (the "Lease"), dated as of the date hereof, pursuant to which (x) Landlord will lease to Tenant and Tenant will hire from Landlord, the premises more particularly described on Exhibit A attached hereto and made a part hereof (the "Premises") and (y) Landlord has agreed to grant to Tenant an exclusive right to purchase from Landlord, the Premises in accordance with the terms of the Lease; and

WHEREAS, in accordance with Section 294-3 of the New York State Real Property Law, the parties desire to record this memorandum summarizing certain (but not all) of the provisions, covenants and conditions set forth in the Lease.

NOW, THEREFORE, Landlord and Tenant declare as follows:

1. The term of the Lease shall commence on the date hereof, and shall end on [_____], unless such term shall sooner end pursuant to any of the covenants, agreements, terms, provisions and limitations of the Lease or pursuant to law.

2. The Lease contains a purchase option given by Landlord in favor of Tenant to acquire fee title to the Premises and any and all buildings and improvements located thereon, pursuant to and in accordance with the provisions of Article 10 of the Lease.

3. The Lease contains a provision for the severance of the Premises and the execution and creation of one or more severed parcel leases in accordance with Article 9 of the Lease.

4. The Lease provides for certain payments to be made by Tenant before conveyance of title to the Premises.

5. This Memorandum shall be deemed terminated and of no further force or effect following the date upon which the Premises has been conveyed to Tenant.

6. In the event of any inconsistency or conflict between the terms of this Memorandum and the terms and conditions of the Lease, the terms and conditions of the Lease shall control.

7. This Memorandum may be executed in any number of counterparts, each of which shall constitute an original, but all of which, taken together, shall constitute but one and the same instrument.

8. A copy of the Lease is maintained at the offices of Landlord.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, this Memorandum has been duly executed by the parties hereto as of the day and year first above written.

METROPOLITAN TRANSPORTATION AUTHORITY

By: _____

Name:
Title:

[TENANT]

By: _____

Name:
Title:

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

On the ____ day of _____ in the year 20__, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____

Notary Public

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

On the ____ day of _____ in the year 20__, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____

Notary Public

Exhibit A

Premises

EXHIBIT N
TERMINATION OF MEMORANDUM OF LEASE

(Follows immediately)

Record and Return to:

County of New York
[Block ____, Lot _____]

PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP
1285 Avenue of the Americas
New York, New York 10019
Attention: Meredith J. Kane, Esq.

TERMINATION OF MEMORANDUM OF AGREEMENT OF SEVERED PARCEL LEASE (WESTERN RAIL YARD SECTION OF THE JOHN D. CAEMMERER WEST SIDE YARD)

KNOW ALL PERSONS BY THESE PRESENTS THAT as of _____ __, 20___, METROPOLITAN TRANSPORTATION AUTHORITY, a body corporate and politic constituting a public benefit corporation of the State of New York, having an office at 347 Madison Avenue, New York, New York 10017-3739 (and any successor entities thereto, "Landlord") and _____ ("Tenant") DO HEREBY CERTIFY that they have terminated that certain Agreement of Severed Parcel Lease (Western Rail Yard Section of the John D. Caemmerer West Side Yard), dated _____ __, 20___, (the "Lease") and do hereby consent that the Memorandum of Agreement of Severed Parcel Lease, dated _____ __, 20___, recorded in the Office of the City Register of New York County on _____ __, 20___, as CRFN #_____ (the "Memorandum"), providing record notice of the Lease, be terminated of record.

The Memorandum encumbers certain premises in the Borough of Manhattan, City of New York, County of New York and State of New York, which premises are more specifically described in Exhibit A attached hereto and made a part hereof.

This document may be executed in any number of counterparts, each of which shall constitute an original, but all of which, taken together, shall constitute but one and the same instrument.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have caused these presents to be duly executed as of the date first above recited.

METROPOLITAN TRANSPORTATION AUTHORITY

By: _____

Name:
Title:

[TENANT]

By: _____

Name:
Title:

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

On the ____ day of _____ in the year 20__, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____

Notary Public

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

On the ____ day of _____ in the year 20__, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____

Notary Public

Exhibit A

Premises

EXHIBIT O -1
BARGAIN AND SALE DEED WITHOUT COVENANT AGAINST GRANTOR'S ACTS

(Follows immediately)

EXHIBIT O -2
CONDOMNIUM UNIT DEED

(Follows immediately)

EXHIBIT P
SEVERED PARCEL PRO FORMA RENT SCHEDULE

[to be inserted prior to execution of this Lease]

EXHIBIT Q
WRY SEVERED PARCEL PROJECT REQUIREMENTS

[to be inserted prior to execution of this Lease]

AGREEMENT OF SEVERED PARCEL LEASE
(WESTERN RAIL YARD SECTION OF THE JOHN D. CAEMMERER WEST SIDE YARD)

by and between

METROPOLITAN TRANSPORTATION AUTHORITY,

as Landlord,

and

[●]

as Tenant,

dated as of [●], 20[●]

Premises:

Portion of [Facility Airspace Parcel Terra Firma/Airspace Above a Limiting Plane]
Western Rail Yard Section of the John D. Caemmerer West Side Yard
New York, New York
(Manhattan Block [676, Lot 3])

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List of Exhibits

THIS AGREEMENT OF SEVERED PARCEL LEASE (WESTERN RAIL YARD SECTION OF THE JOHN D. CAEMMERER WEST SIDE YARD) is made as of the [●] day of [●], 20[●], by and between **METROPOLITAN TRANSPORTATION AUTHORITY**, a body corporate and politic constituting a public benefit corporation of the State of New York, having an office at 2 Broadway, New York, New York 10004, as landlord, and [●], having an address at c/o The Related Companies, L.P., 60 Columbus Circle, New York, New York 10023, as tenant..

W I T N E S S E T H:

It is hereby mutually covenanted and agreed by and between the parties hereto that this Lease is made upon the terms, covenants and conditions hereinafter set forth.

ARTICLE 1

DEFINITIONS

The terms defined in this Article 1 shall, for all purposes of this Lease, have the following meanings.

"Abatement Extension Adjustment Amount" shall mean $22,298,100.

"Act or Omission" shall have the meaning provided in the WRY Declaration of Easements.

"Additional Rent" shall have the meaning provided in Section 3.09.

["Adjusted GLV Rent Notice" shall have the meaning provided in Section 8.14.

"Adjusted Gross Land Value" shall have the meaning provided in Section 8.14.][1]

"Adjusted Initial Land Value" shall have the meaning provided in Section 3.03(a).

"Affiliate" shall mean, with respect to any specified Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the specified Person. For purposes of this definition and the definition of "Affiliated Person", the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting stock, by contract or otherwise. For the avoidance of doubt, if Tenant is a Related Affiliate, then any Person that is a party to any agreement with MTA or LIRR relating to the WRY Project, which Person is controlled by a Related Control Person, shall constitute an Affiliate of Tenant.

[1] The bracketed language (and applicable defined terms) shall only be included in a Terra Firma Severed Parcel Lease described in Section 9.04 of the WRY Ground Lease.

"Affiliated Person" shall mean, with respect to any specified Person, (a) any Affiliate of such specified Person and (b) any other Person if such other Person and/or its Affiliates collectively own, directly or indirectly, not less than twenty percent (20%) of the economic interests in an entity which controls such specified Person.

"Annual Base Rent" shall have the meaning provided in Section 3.03.

"Approved Facility Airspace Improvement Plans and Specifications" shall have the meaning provided in Section 8.02(d).

"Approved LIRR Work Project Plans and Specifications" shall have the meaning provided in the WRY Construction Agreement.

"Approved MFAI Contractor Submittal" shall have the meaning set forth in Section 2.3(c)(vi) of Exhibit D of the WRY Declaration of Easements.

"Approved Restoration Plans and Specifications" shall have the meaning provided in Section 15.02(b).

"Approved Severed Parcel Plan" shall mean that certain Severed Parcel Plan annexed as Exhibit [●] to that certain [●], dated as of [●], between [●].

"Arbitrator" shall have the meaning provided in Section 40.01(b).

"Assignment" shall have the meaning provided in Section 17.01(a).

"Associated FASP Improvements" shall have the meaning provided in the WRY Declaration of Easements.

"Associated Portion of the LIRR Roof and Facilities" shall mean those portions of the LIRR Roof and Facilities to be constructed in conjunction with the Premises, as described in the list of Approved LIRR Work Project Plans and Specifications attached hereto as Exhibit Q attached hereto.[2]

"Association Documents" shall have the meaning provided in the WRY Declaration of Easements.

"Balance Lease" shall mean the WRY Ground Lease, from and after the date of the initial Severance.

"Balance Parcel" shall mean the premises demises by the Balance Lease.

"Bond Lease Financing" shall have the meaning provided in Article 13.

[2] There will be no Associated Portion of the LIRR Roof and Facilities in connection with any Terra Firma Parcel Severed Parcel Lease (as defined in the WRY Ground Lease).

"Bond-Related Fee Mortgage" shall have the meaning provided in Section 33.02.

["Budgeted Roof Costs" shall mean the Lender-Approved Budget (as defined in the WRY Construction Agreement) for the LIRR Roof and Facilities, or in the event there is no Lender-Approved Budget, the MTA-Approved Budget (as defined in the WRY Construction Agreement) for the LIRR Roof and Facilities. The Budgeted Roof Costs shall take into account and credit any work performed in furtherance of the construction of the LIRR Roof and Facilities prior to the applicable date on which the Budgeted Roof Costs are being determined.][3]

"Building" shall mean any building to be erected within the Premises as described in Exhibit Q, excluding the footings, foundations, columns, FAI Preparation Work and the LIRR Roof and Facilities.

"Building and Related Improvements" shall have the meaning provided in Section 11.02.

"Building Code" shall mean the Building Code of the City of New York, as applicable to the Facility Airspace Improvements.

"Building Completion Guarantor" shall have the meaning provided in Section 11.02.

"Building Completion Guaranty" shall have the meaning provided in Section 11.02.

"Building Component" shall mean any portion of a Building which, subject to the provisions of Section 9.02(d), is permitted to constitute a Severed Subparcel.

"Business Day" shall mean any day which is not a Saturday, Sunday or a day observed as a holiday by either the State of New York or the federal government.

"Capital Improvement" shall have the meaning provided in Section 19.01.

"Casualty" shall have the meaning provided in Section 15.01(a).

"Certificate of Occupancy" shall mean (a) with respect to the LIRR Relocations, the New LIRR Facilities, the Roof Mechanical Equipment, the Roof Utility Facilities or any portion of any of the foregoing, as applicable, a code compliance certificate issued by LIRR acting in its capacity as a Governmental Authority pursuant to Part 1204 of Chapter XXXII of Title 19 of the New York Code, Rules and Regulations, (b) [with respect to the Roof Slab and Support Facilities, a certificate of occupancy or similar sign-off issued by the Governmental Authority responsible for review and approval of code compliance for the Roof Slab and Support

[3] The bracketed language (and applicable defined terms) shall only be included in a Terra Firma Severed Parcel Lease described in Section 9.04 of the WRY Ground Lease.

Facilities (to the extent applicable)][4], and (c) with respect to the Facility Airspace Improvements, a certificate of occupancy issued by the NYCDOB pursuant to Section 645 of the New York City Charter or any successor provision thereto (to the extent applicable).

"City" shall mean The City of New York, a municipal corporation of the State of New York.

"City Register" shall mean the Office of the City Register, New York County.

"Claim" shall have the meaning provided in Section 9.01(f)(iii).

"Closing Payment" shall have the meaning provided in Section 3.01.

"Commencement Date" shall mean the date of this Lease.

"Commencement of Construction" or "Commenced Construction" shall mean (a) with respect to each Building, the commencement of initial construction of such Building and the Associated FASP Improvements pursuant to a Severed Parcel Lease (including without limitation any excavation or other on-site preparation work on Facility Airspace Parcel Terra Firma but excluding (i) test borings, test pilings, soil testing, environmental remediation and other similar pre-construction activities, (ii) construction of any portion of the LIRR Roof and Facilities (whether or not such portion is located above the Roof Slab), (iii) performance of FAI Preparation Work, (iv) construction of the Associated FASP Improvements only, if construction of the Building within the same Severed Parcel has not yet commenced, and (v) any work performed by or on behalf of LIRR, and (b) with respect to the LIRR Roof and Facilities, the meaning ascribed to "Commencement of Construction" or "Commenced Construction" in the WRY Construction Agreement.

"Compensable MTA Party Delay" shall have the meaning provided in the WRY Construction Agreement.

"Condemnation Proceeds" shall have the meaning provided in Section 16.01(b).

"Condemnation Proceeds Depository" shall mean an Institutional Lender which is regularly engaged in the business of administering construction loans, and reasonably acceptable to both Landlord and Tenant to hold the Condemnation Proceeds in accordance with the provisions of Article 16. A Leasehold Mortgagee which is an Institutional Lender shall, upon request, be entitled to serve as Condemnation Proceeds Depository hereunder; provided that such Leasehold Mortgagee shall have agreed in writing, for the benefit of Landlord and pursuant to an instrument reasonably satisfactory to Landlord, to hold such funds in a segregated special account to be used and distributed solely as set forth in Article 16. All funds held by a Condemnation Proceeds Depository pursuant to this Lease shall be drawable in New York City.

[4] The bracketed language (and all references to the LIRR Roof and Facilities and to the Roof Slab in this Lease) will be removed in all Terra Firma Severed Parcel Leases.

"Condominium" shall mean [●].

"Condominium Board" shall mean the board of managers of the condominium created pursuant to the Condominium Documents.

"Condominium By-Laws" shall have the meaning provided in Section 9.01(a).

"Condominium Conversion Date" shall mean the date on which the Condominium Documents are recorded in the City Register.

"Condominium Declaration" shall have the meaning provided in Section 9.01(a).

"Condominium Documents" shall have the meaning provided in Section 9.01(a).

"Construction Contracts" shall mean agreements executed by or on behalf of Tenant for the construction of Facility Airspace Improvements, Restoration, Capital Improvement, rehabilitation, alteration, repair, demolition or other construction performed on the Premises pursuant to this Lease.

"Contested Imposition Deposit" shall have the meaning provided in Section 4.05(b).

"Controlling Ownership" shall mean the ownership of the right to direct the day-to-day business and affairs of a Person; provided that the ownership of the right to approve or consent to certain business or affairs of a Person only through major decision rights or similar protective provisions shall not constitute "Controlling Ownership".

"CPI" shall mean the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor or its successors, New York Northern New Jersey Long Island NY-NJ-CT-PA area, All Items (1982-84 = 100), or any successor index thereto, appropriately adjusted. If the Consumer Price Index ceases to be published and there is no successor thereto, such other index as Landlord and Tenant shall agree upon (or, if they are unable to agree, as determined in accordance with Section 40.01(a)), as appropriately adjusted, shall be substituted for the Consumer Price Index.

"CPI Adjustment" shall mean an adjustment of each specified dollar amount that is subject to CPI Adjustment under this Lease which shall occur as of each anniversary of the Commencement Date by multiplying the original dollar amount being adjusted by the sum of (a) one hundred percent (100%), plus (b) the CPI Increase. As so adjusted, such amount will be utilized until the next CPI Adjustment is calculated as of the next applicable anniversary of the Commencement Date. All CPI Adjustments shall be calculated annually.

"CPI Increase" shall mean the percentage increase, if any (but not decrease, if any) between the CPI for the calendar month which is three (3) months prior to the date hereof and the CPI for the calendar month which is three (3) months prior to the relevant anniversary of the date hereof.

"Declarant Indemnities" shall have the meaning provided in Section 9.01(g)(ii).

"Declarant Net Lessee" shall have the meaning set forth in the Condominium Documents.

"Default" shall mean any condition or event which constitutes or, after notice or lapse of time, or both, would constitute an Event of Default.

"Default Rate" shall have the meaning provided in Article 6.

"Deficiency" shall have the meaning provided in Section 31.03(c).

"Delayed Party" shall have the meaning provided in the definition of "Force Majeure".

"Depository" shall mean any of the Restoration Fund Depository, the Condemnation Proceeds Depository or the Impositions Depository.

"Design and Construction Requirements" shall have the meaning provided in the WRY Declaration of Easements.

"Developer" shall have the meaning provided in the WRY Construction Agreement.

"Due Date" shall mean, with respect to an Imposition or Insurance Premium, the last date on which such Imposition or Insurance Premium can be paid without any fine, penalty, interest or cost being added thereto or imposed by law for the non-payment thereof (but excluding any early payment discount) or, in the case of an Insurance Premium, cancellation, expiration or termination of the applicable insurance policy.

"Election Notice" shall have the meaning provided in Section 10.02.

"Election Notice Date" shall have the meaning provided in Section 10.02.

"Environmental Activity" shall mean any storage, installation, existence, release, threatened release, discharge, generation, abatement, removal, disposal, handling or transportation from, under, into or on the Premises of any Hazardous Substance.

"Equipment" shall mean all fixtures incorporated in the Premises, including, without limitation, all machinery, dynamos, boilers, heating and lighting equipment, pumps, tanks, motors, air conditioning compressors, pipes, conduits, fittings, ventilating and communications apparatus, elevators, escalators, antennas, computers and sensors.

"ERY" shall mean that certain parcel of land in the Borough of Manhattan, which is as of the Commencement Date owned by Landlord, and known as the Eastern Rail Yard Section of the John D. Caemmerer West Side Yard, located between 30th and 33rd Streets and between 10th and 11th Avenues in Manhattan (Manhattan Block 702, Lots 150, 175, 1001, 1002, 1003, 1004, 1301, 1302, 1303, 1304, 8001, 8002 and 8003).

[“Estimated WRY Roof Costs” shall have the meaning provided in Section 8.14.][5]

“Event of Default” shall have the meaning provided in Section 31.01.

“Expiration Date” shall mean the date upon which the term of this Lease shall expire or terminate, whether such date be (a) the Fixed Expiration Date or (b) such earlier date upon which the Term shall cease or be terminated pursuant to the terms hereof.

“Facility Airspace Improvements” shall mean the improvements constructed as part of the WRY Severed Parcel Project on the Premises and including without limitation the residential, commercial, community facility and accessory uses, the Open Space Component (as applicable), and High Line Component (as applicable) but excluding the LIRR Roof and Facilities and any work that is the property of the Yards Parcel Owner or the Yards Parcel Operator pursuant to their respective rights under the WRY Declaration of Easements and any Facility Airspace Improvements to be constructed outside the Premises.

“Facility Airspace Improvements Release to Proceed” shall have the meaning provided in Section 8.03(a).

“Facility Airspace Improvements Restoration” shall have the meaning provided in Section 15.01(b).

“Facility Airspace Parcel” shall have the meaning provided in the WRY Declaration of Easements.

“Facility Airspace Parcel Owner” shall have the meaning provided in the WRY Declaration of Easements.

“FAI Construction Commencement Notice” shall have the meaning provided in Section 8.03(a).

“FAI Preparation Work” shall have the meaning provided in the WRY Construction Agreement.

“FASP Owners Association” shall have the meaning provided in the WRY Declaration of Easements.

“Fee Conversion” shall have the meaning provided in Section 10.03(a).

“Fee Conversion Closing” shall have the meaning provided in Section 10.03(a).

“Fee Conversion Closing Date” shall have the meaning provided in Section 10.03(a).

[5] The bracketed language (and applicable defined terms) shall only be included in a Terra Firma Severed Parcel Lease described in Section 9.04 of the WRY Ground Lease.

"Fee Conversion Option" shall have the meaning provided in Section 10.01.

"Fee Mortgage" shall mean any mortgage, deed of trust, pledge or similar instrument, including, without limitation, any modification, amendment, spreader, consolidation or renewal thereof, which constitutes a lien on Landlord's interest in this Lease and/or the fee interest in the Premises, and includes without limitation the Bond-Related Fee Mortgage.

"Fee Mortgagee" shall mean the mortgagee under a Fee Mortgage.

"Final Completion" shall have the meaning provided in the WRY Construction Agreement.

"Financial Matter" shall mean the determination in accordance with this Lease of (a) FMV Land Value and the WRY Roof Component Financing Cost Savings (if any), [(b) the Adjusted Gross Land Value (only to the extent based on any of the items specified in clause (a) of this definition and the Estimated WRY Roof Costs)][6], (c) Annual Base Rent and the Option Price (in each case only to the extent based on any of the items specified in clause (a) of this definition), and (d) the respective portions of the Condemnation Proceeds attributable to the Facility Airspace Parcel and Improvements thereon, and the Severed Parcel Allocable Shares thereof, but shall expressly exclude (i) any matters related to Tenant's obligations under this Lease to pay any of the foregoing, and (ii) the calculation of the amount of the Closing Payment, the First Post-Closing Payment, the Second Post-Closing Payment, the Annual Base Rent and the Option Price, to the extent not adjusted or otherwise determined based on any of the items specified in clause (a) of this definition.

"Financial Obligations" shall mean the financial obligations of Tenant under this Lease.

"First Post-Closing Payment" shall have the meaning provided in Section 3.02(a).

"Fixed Expiration Date" shall mean the day immediately preceding the ninety-ninth (99th) anniversary of the WRY Ground Lease Commencement Date.

"Floor Area" shall have the meaning provided in Section 12-10 of the Zoning Resolution and shall be measured in accordance with the standards set forth in the Zoning Resolution (notwithstanding that the Premises may be exempt from the application of the Zoning Resolution under Public Authorities Law Section 1266(8)).

"Floor Plans" shall have the meaning provided in Section 9.01(a).

"FMV Base Rent Reset" shall have the meaning provided in Section 3.03(c).

"FMV Land Value" shall have the meaning provided in Section 3.03(a)(iv).

[6] The bracketed language (and applicable defined terms) shall only be included in a Terra Firma Severed Parcel Lease described in Section 9.04 of the WRY Ground Lease.

"FMV Rental Value" shall have the meaning provided in Section 3.03(a)(v).

"FMV Reset Period" shall have the meaning provided in Section 3.03(c).

"Force Majeure" shall have the meaning provided in the WRY Declaration of Easements.

"Governmental Authority" shall have the meaning provided in the WRY Declaration of Easements.

"Hazardous Substance" shall have the meaning provided in the WRY Declaration of Easements.

"High Line" shall mean that certain rail viaduct structure, together with the easements and appurtenances associated therewith, located along the west side of Manhattan, portions of which viaduct structure are located on, and portions of which easements encumber, the WRY.

"High Line Component" shall mean the portion of the High Line which is located on the Premises.

"HYIC" shall mean the Hudson Yards Infrastructure Corporation, a local development corporation incorporated under the Not-for-Profit Corporation Law of the State of New York, and its successors or assigns.

"IDA" shall mean the New York City Industrial Development Agency, and its successors or assigns.

"Impositions" shall have the meaning provided in Section 4.01.

"Impositions Depository" shall mean an Institutional Lender which is reasonably acceptable to both Landlord and Tenant to hold the Contested Imposition Deposit and the Monthly Impositions and Insurance Deposits in accordance with the provisions of Section 4.05 and Article 5. A Leasehold Mortgagee which is an Institutional Lender shall, upon request, be entitled to serve as Impositions Depository hereunder; provided that such Leasehold Mortgagee shall have agreed in writing, for the benefit of Landlord and pursuant to an instrument reasonably satisfactory to Landlord, to hold such funds in a segregated special account to be used and distributed solely as set forth in Section 4.05 or Article 5, as applicable. All funds held by the Impositions Depository pursuant to this Lease shall be drawable in New York City.

"Improvement Approvals" shall mean all permits, consents, certificates and approvals required from any Governmental Authority having jurisdiction for, as the context may require, (a) the construction of the applicable Facility Airspace Improvements in accordance with the Approved Facility Airspace Improvement Plans and Specifications or (b) any Capital Improvement.

"Improvements" shall mean, collectively, the Associated Portion of the LIRR Roof and Facilities, the Capital Improvements and Facility Airspace Improvements, and any and

all alterations and replacements thereof, additions thereto and substitutions therefor, only to the extent each of the same are located within the Premises.

"Included Floor Area" shall mean the maximum Floor Area and zoning uses that may be utilized on the Premises as set forth in Exhibit Q.[7]

"Indemnitees" shall have the meaning provided in Section 26.01.

"Initial Construction of the Improvements" shall have the meaning provided in the WRY Declaration of Easements.

"Initial Fee Conversion Closing Date" shall have the meaning provided in Section 10.02.

"Initial Land Value" shall have the meaning provided in Section 3.03(a)(i).

"Initial Rental Period" shall mean the period commencing on the Commencement Date and ending on the date that is the earlier to occur of (i) the thirtieth (30^{th}) anniversary of the Commencement Date and (ii) the fortieth (40^{th}) anniversary of the WRY Ground Lease Commencement Date.

"Initial Reset Date" shall have the meaning provided in Section 3.03(c).

"Institutional Lender" shall mean (a) a savings bank, a savings and loan association, a commercial bank or trust company (whether acting individually or in a fiduciary capacity), an investment bank, a real estate investment trust, an insurance company organized and existing under the laws of the United States or any state thereof, a not-for-profit religious, educational or eleemosynary institution, an employee welfare, benefit, pension or retirement fund, a Governmental Authority (or subsidiary thereof), a credit union, an endowment fund, or any combination of the foregoing, provided, that any Person referred to in this clause (a), other than a Governmental Authority acting as a conduit issuer of securities, satisfies the Eligibility Requirements (as hereinafter defined); (b) an investment company, a money management firm, a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional "accredited investor" within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any Person referred to in this clause (b) satisfies the Eligibility Requirements; (c) an institution substantially similar to any of the entities described in clauses (a) or (b) that satisfies the Eligibility Requirements; (d) any entity controlled by any of the entities described in clauses (a), (b) or (c) above; (e) a Qualified Trustee (as hereinafter defined) in connection with a securitization of, or the creation of collateralized debt obligations or commercial mortgage backed securities ("CDO") secured by, or financing through an "owner trust" of, a loan to finance the WRY Project or an Improvement (collectively, "Securitization Vehicles"), so long as (i) the special servicer or manager of such Securitization

[7] The maximum zoning floor area is subject to change within a range agreed to by Landlord and Tenant; provided that such changes shall not affect the Severed Parcel Allocable Share and Severed Parcel Pro Forma Rent Schedule.

Vehicle has the Required Special Servicer Rating (as hereinafter defined), (ii) in the case of a Securitization Vehicle other than a CDO Securitization Vehicle, the entire "controlling class" of such Securitization Vehicle is held by one or more entities that are otherwise Institutional Lenders under clauses (a), (b), (c) or (d) of this definition and (iii) in the case of a CDO Securitization Vehicle, the operative documents of such Securitization Vehicle require that the "equity interest" in such Securitization Vehicle is owned by one or more entities that are Institutional Lenders under clauses (a), (b), (c) or (d) of this definition (provided, that if any trustee, special servicer or manager fails to meet the requirements of this clause (e), such Person must be replaced by a Person meeting the requirements of this clause (e) within (30) days); or (f) an investment fund, limited liability company, limited partnership or general partnership (i) of which one or more Institutional Lenders under clauses (a), (b), (c) or (d) of this definition acts as the general partner, managing member or fund manager and owns, directly or indirectly, at least fifty percent (50%) or more of the equity interest or (ii) which, or the general partner, managing member or fund manager of which, has been in the business of investment banking, private investing or private equity for at least five (5) years and satisfies the Eligibility Requirements (including, for purposes of the asset test, assets of an Affiliate or unconditional capital commitments). For the purpose of this definition, (w) the "Required Threshold" means, in the case of (A) an Institutional Lender providing a construction loan, Twenty Billion and 00/100 Dollars ($20,000,000,000.00), (B) an Institutional Lender providing a permanent loan or mezzanine financing, Fifteen Billion and 00/100 Dollars ($15,000,000,000.00) and (C) an Institutional Lender acting as a depository, Five Hundred Million Dollars ($500,000,000.00), provided that if an Institutional Lender is composed of more than one Person, the Required Threshold shall be the combined assets of all such Persons; (x) the "Eligibility Requirements" means, with respect to any Person, that such Person (A) is subject to the jurisdiction of the courts of the State of New York and (B) has assets of not less than the Required Threshold, subject to CPI Adjustment; (y) "Qualified Trustee" means (A) a corporation, national bank, national banking association or trust company, organized and doing business under the laws of the United States of America or any state thereof, authorized under such laws to exercise corporate trust powers and to accept the trust conferred, subject to supervision or examination by federal or state regulatory authority, and having a combined capital and surplus of at least the Required Threshold, subject to CPI Adjustment, (B) an institution insured by the Federal Deposit Insurance Corporation and having a combined capital and surplus of at least the Required Threshold, subject to CPI Adjustment, or (C) an institution whose long-term senior unsecured debt is rated in either of the top two (2) rating categories then in effect of Standard & Poor's ("S&P"), Moody's Investors Services, Inc. ("Moody's"), Fitch, Inc. ("Fitch"), or any other nationally recognized statistical rating agency; and (z) "Required Special Servicer Rating" means (A) in the case of Fitch, a rating of "CSSI", (B) in the case of S&P, being on the list of approved special servicers and (C) in the case of Moody's, acting as special servicer in a commercial mortgage loan securitization that was rated within the twelve (12) month period prior to the date of determination, provided that Moody's has not downgraded or withdrawn the then-current rating on any class of commercial mortgage securities or placed any class of commercial mortgage securities on watch citing the continuation of such special servicer as special servicer of such commercial mortgage securities. In all of the above cases, any Person shall qualify as an Institutional Lender only if it shall (I) be subject (X) by law or by consent to service of process within the State of New York and (Y) to the supervision of (1) the Comptroller of the Currency or the Department of Labor of the United States or the Federal Home Loan Bank Board or the

Insurance Department or the Banking Department or the Comptroller of the State of New York, or the Board of Regents of the University of the State of New York, or the Comptroller of New York City or any successor to any of the foregoing agencies or officials, (2) any agency or official exercising comparable functions on behalf of any other state within the United States, or (3) in the case of a commercial credit corporation, the laws and regulations of the state of its incorporation, or (4) any federal, state or municipal agency or public benefit corporation or public authority advancing or insuring mortgage loans or making payments that, in any manner, assist in the financing, development, operation and maintenance of improvements, and (II) have individual or combined assets, as the case may be, of not less than the Required Threshold, subject to CPI Adjustment. Notwithstanding anything to the contrary in this definition, in the event that an Institutional Lender consists of more than one Person, such Institutional Lender shall designate by written notice to Landlord a single Person with full authority to act on behalf of such Institutional Lender for the purposes of this Lease, and any notice delivered to, or consent or approval obtained from, such Person shall be deemed to have been delivered to, or obtained from, such Institutional Lender for the purposes of this Lease. An amendment of such written notice may be delivered from time to time to Landlord designating a new Person with full authority to act on behalf of such Institutional Lender.

"Insurance Premiums" shall mean the aggregate annual insurance premiums to be paid in respect of any insurance required to be carried by Tenant pursuant to this Lease.

"Involuntary Rate" shall mean the Prime Rate plus two percent (2%) per annum, but in no event in excess of the maximum permissible interest rate then in effect in the State of New York.

"Landlord" shall mean MTA, or any successor to MTA's rights and interests in the Premises or any portion thereof.

"Landlord's Reversionary Interest Value" shall mean the value of Landlord's reversionary interest in any Severed Parcel, which shall be an amount equal to the Severed Parcel Allocable Share of: (i) FOUR BILLION SEVEN HUNDRED SIX MILLION EIGHT HUNDRED NINETY-NINE THOUSAND ONE HUNDRED SEVENTY-SIX AND 00/100 DOLLARS ($4,706,899,176.00) in the year commencing on the ninety-ninth (99th) anniversary of the Commencement Date and (ii) FOUR BILLION SEVEN HUNDRED SIX MILLION EIGHT HUNDRED NINETY-NINE THOUSAND ONE HUNDRED SEVENTY-SIX AND 00/100 DOLLARS ($4,706,899,176.00) discounted to the Fee Conversion Date (or, for purposes of Article 16, the "date of taking" as defined therein) using a discount rate of six and one-half percent (6.5%) per annum for each year prior to the year commencing on the ninety-ninth (99th) anniversary of the Commencement Date.

"Landlord's Termination Rights" shall have the meaning provided in Section 17.03(f).

"Lease" shall mean this Agreement of Severed Parcel Lease (Western Rail Yard Section of the John D. Caemmerer West Side Yard) and all future amendments, modifications, extensions and renewals hereof and exhibits attached hereto.

"Leasehold Mortgage" shall mean any mortgage, deed of trust, pledge or similar instrument, including, without limitation, any modification, amendment, spreader, consolidation or renewal thereof, which constitutes a lien on Tenant's interest in this Lease and the leasehold estate created hereby, provided that such mortgage is held by an Institutional Lender that is not an Affiliate of Tenant, except if such Institutional Lender is providing bona-fide and substantial secured debt financing in connection with the Premises.

"Leasehold Mortgagee" shall mean the mortgagee under a Leasehold Mortgage.

"Leasehold Mortgagee /Mezzanine Lender Notice of Cure" shall have the meaning provided in Section 17.03(d).

"Legal Compliance" shall have the meaning provided in the WRY Declaration of Easements.

"Legal Requirements" shall mean any and all applicable present and future laws, rules, orders, ordinances, regulations, statutes, requirements, directives, permits, consents, certificates, approvals, environmental statutes, codes and executive orders of all Governmental Authorities now existing or hereafter created, of all their departments and bureaus, including the zoning regulations to the extent applicable, and of any applicable fire rating bureau or other body exercising similar functions affecting the Premises, any real property upon or over which the WRY Severed Parcel Project is being constructed (excluding the Yards Parcel), or any portion thereof, or any street, avenue or sidewalk comprising a part or in front thereof or any vault in or under the same.

"LIRR" shall mean The Long Island Rail Road Company, a body corporate and politic constituting a public benefit corporation of the State of New York, having an office at Jamaica Station, Jamaica, New York 11435 and any successor entities thereto.

"LIRR Relocations" shall have the meaning provided in the WRY Declaration of Easements.

"LIRR Roof and Facilities" shall have the meaning provided in the WRY Declaration of Easements.

"LIRR Work" shall have the meaning provided in the WRY Construction Agreement.

"Lower Limiting Plane" shall have the meaning provided in the WRY Declaration of Easements (and shall be adjusted in accordance with the terms thereof).

"M/WBEs" shall have the meaning provided in Article 45.

"Major Subtenant" shall have the meaning provided in Section 17.01(a).

"Material Facility Airspace Improvements" shall have the meaning provided in the WRY Declaration of Easements.

"Memorandum of Lease" shall mean a memorandum of this Lease in the form attached hereto as Exhibit M to be executed by Landlord and Tenant on the Commencement Date and recorded in the City Register.

"Mezzanine Lender" shall mean the lender under a Mezzanine Loan.

"Mezzanine Loan" shall mean financing secured by the equity interests in Tenant (and not by a lien on Tenant's interest in this Lease), provided that such Mezzanine Loan is held by an Institutional Lender that is not an Affiliate of Tenant, except if such Institutional Lender is providing bona-fide and substantial secured debt financing in connection with the Premises.

"MFAI Schedule" shall have the meaning provided in the WRY Declaration of Easements.

"Minimum Standards" shall have the meaning provided in Section 8.04(a).

"Monetary Default" shall mean a Default by Tenant in the payment of Annual Base Rent, Insurance Premiums, Impositions or any other item of Rental or other amount payable under this Lease, whether such amount is payable to Landlord or to a third party.

"Monthly Impositions and Insurance Deposits" shall have the meaning provided in Section 5.01(a).

"MTA" shall mean the Metropolitan Transportation Authority, a body corporate and politic constituting a public benefit corporation of the State of New York, having its principal place of business at 2 Broadway, New York, New York 10004 and any successor entities thereto.

"MTA Parties" shall mean LIRR and MTA, collectively.

"New Lease" shall have the meaning provided in Section 17.04(a).

"New LIRR Facilities" shall have the meaning provided in the WRY Declaration of Easements.

"New Tenant" shall have the meaning provided in Section 17.04(a)(i).

"Non-Monetary Default" shall mean a Default by Tenant under this Lease, other than a Monetary Default.

"Notice" shall have the meaning provided in Section 32.01.

"Notice of Dispute" shall have the meaning provided in Section 3.08.

"NYCDOB" shall mean the New York City Department of Buildings (or its successor in function).

"NYS Law Department" shall have the meaning provided in Section 9.01(c).

"Open Space Component" shall have the meaning provided in the WRY Declaration of Easements.

"Option Price" shall have the meaning provided in Section 10.04(a).

"Other Projects" shall have the meaning provided in Section 8.09.

"Patriot Act" shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, and all rules and regulations promulgated thereunder from time to time, in each case as amended from time to time.

"Penn Station" shall mean New York Pennsylvania Station.

"Permitted Exceptions" shall mean all matters listed on Exhibit B annexed hereto and shall also include any and all matters created by or on behalf of, or with the consent of, Tenant, including without limitation all matters created in accordance with the Project Documents (as defined in the WRY Ground Lease).

"Permitted Transfer" shall have the meaning provided in Section 17.01(b).

"Permitted Uses" shall have the meaning provided in Section 30.01.

"Person" shall mean an individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, limited liability company, or government or any agency or subdivision thereof.

"PILOST" shall mean payments in lieu of sales and use taxes that would otherwise have been levied under the New York State Tax Law on the tangible materials and equipment incorporated into the Premises but for the exemption therefrom arising on account of the ownership of the Premises by Landlord.

"PILOST Agreement" shall mean that certain agreement between Landlord, on the one hand, and Tenant, on the other hand, executed simultaneously herewith and attached hereto as Exhibit H, as the same may be modified from time to time.

"PILOT" shall mean payments in lieu of Taxes that are payable to HYIC, the New York City Industrial Development Authority or any other applicable party on the Premises.[8]

"PILOT Agreement" shall mean any agreement(s) in effect from time to time between Tenant, on the one hand, and HYIC, the New York City Industrial Development

[8] If the Premises is not subject to UTEP, this definition will be revised to read "shall mean payments in lieu of Taxes that would otherwise have been levied on the Premises (after taking into consideration any as of right or discretionary abatements or exemptions).

Authority or any other applicable Governmental Authority, on the other hand, with respect to the payment of PILOT, as the same may be modified from time to time.[9]

"Pre-Casualty Condition" shall have the meaning provided in Section 15.01(b).

"Premises" shall mean that portion of the Facility Airspace Parcel, as more particularly described in Exhibit A-2 attached hereto.

"Prime Rate" shall mean the prime or base rate announced as such from time to time by Citibank, N.A., or its successors, at its principal office. Any interest payable under this Lease with reference to the Prime Rate shall be adjusted on a daily basis, based upon the Prime Rate in effect at the time in question, and shall be calculated on the basis of a three hundred sixty (360) day year with twelve (12) months of thirty (30) days each.

"Prohibited Person" shall mean any Person if:

(a) such Person or any of its Affiliated Persons is in monetary default or in breach of any non-monetary obligation under any written agreement with the State of New York (including without limitation Landlord or LIRR) or the City of New York after notice and beyond any applicable cure periods, unless, in each instance, such monetary default or breach either (i) has been waived in writing by the State or City of New York, (ii) is being disputed in a court of law, administrative proceeding, arbitration or other similar forum, (iii) is cured within thirty (30) days after a determination and notice to Tenant from Landlord that such Person is a Prohibited Person as a result of such default or breach, or (iv) is in connection with a payment default under a mortgage loan that is either recourse or non-recourse to a single purpose entity borrower and issued by an agency or authority of the State or City of New York other than the MTA or its subsidiaries;

(b) such Person or any of its Affiliated Persons has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude, is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure, or has had a contract terminated by any governmental agency for breach of contract or for any cause directly or indirectly related to an indictment or conviction. The determination as to whether any Person is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure for purposes of this paragraph (b) shall be within the sole discretion of Landlord, which discretion shall be exercised in good faith; provided, however, that such Person shall not be deemed a Prohibited Person if the State of New York, having actual knowledge that such Person meets the criteria set forth in this paragraph (b), entered into a contract and is then doing business with such Person;

(c) such Person or any of its Affiliated Persons is a terrorist or terrorist organization or is reputed to have substantial business or other affiliations with a terrorist or terrorist organization, including those Persons included on any relevant lists maintained by the

[9] If the Premises is not subject to UTEP, this definition and all references to "PILOT Agreement" will be deleted.

United Nations, the North Atlantic Treaty Organization, the Organization for Economic Cooperation and Development, the Financial Action Task Force, or the Office of Foreign Assets Control, Securities and Exchange Commission, Federal Bureau of Investigation, Central Intelligence Agency or Internal Revenue Service of the United States, all as may be amended from time to time. The determination as to whether any Person is a terrorist or terrorist organization or is reputed to have substantial business or other affiliations with a terrorist or terrorist organization for purposes of this paragraph (c) shall be within the sole discretion of Landlord, which discretion shall be exercised in good faith; provided, however, that such Person shall not be deemed a Prohibited Person if the State of New York, having actual knowledge that such Person meets the criteria set forth in this paragraph (c), entered into a contract and is then doing business with such Person;

(d) such Person is a government, or is directly or indirectly controlled (rather than only regulated) by a government, which is (i) finally determined, beyond right to appeal, by the Federal Government of the United States or any agency, branch or department thereof to be in violation of (including, but not limited to, any participant in an international boycott in violation of) the Export Administration Act of 1979, as amended, or any successor statute, or the regulations issued pursuant thereto, or (ii) subject to the regulations or controls thereof. Such control shall not be deemed to exist in the absence of a determination to that effect by a Federal court or by the Federal Government of the United States or any agency, branch or department thereof;

(e) such Person is a government, or is directly or indirectly controlled (rather than only regulated) by a government, the effects of the activities of which are regulated or controlled pursuant to regulations of the United States Treasury Department or executive orders of the President of the United States of America issued pursuant to the Trading with the Enemy Act of 1917, as amended; or

(f) such Person has received written notice of default in the payment to the City of New York of any real property taxes, sewer rents or water charges, in an amount greater than Ten Thousand Dollars ($10,000), unless such default is then being contested in good faith in accordance with applicable legal requirements with due diligence in proceedings in a court or other appropriate forum or unless such default is cured within thirty (30) days after a determination and notice to Tenant from Landlord that such Person is a Prohibited Person as a result of such default.

"Project Documents" shall mean, collectively, this Lease, the PILOST Agreement and PILOT Agreement (each as executed by Tenant), the WRY Declaration of Easements (only to the extent it relates to an obligation of Tenant in its capacity as a Severed Parcel Owner of the Premises as further set forth in Section 7.01 of this Lease), and any Building Completion Guaranty delivered by Tenant.

"Proposed Facility Airspace Improvement Plans and Specifications" shall have the meaning provided in Section 8.02(c).

"Proposed Facility Airspace Improvement Plans and Specifications Notice" shall have the meaning provided in Section 8.02(d).

"Proposed Restoration Plans and Specifications" shall have the meaning provided in Section 15.02.

"Public Safety" shall have the meaning provided in the WRY Declaration of Easements.

"Qualified Replacement Developer" shall mean any Person that (a) has, in the MTA Parties' reasonable judgment, substantial and satisfactory experience in constructing/developing public infrastructure of a scale and complexity (and with operational sensitivities) similar to the LIRR Work, (b) is not, at the applicable time, disqualified or disbarred from performing work on projects for the MTA Parties or their Affiliates or any other City of New York or New York State agency and (c) is not a Prohibited Person. Landlord, on behalf of the MTA Parties, hereby approves [The Related Companies, L.P., Oxford Hudson Yards LLC, Oxford Properties Corporation, Tishman Speyer Properties, Hines Interests Limited Partnership, The Durst Organization, Boston Properties, Inc., Silverstein Properties, Inc., Forest City Ratner Companies, Vornado Realty Trust, Rudin Management Company, Inc., SL Green, Brookfield,][10] and any Affiliate of any of the foregoing as Qualified Replacement Developers so long as (x) such Person is not a Prohibited Person and (y) in the MTA Parties' reasonable judgment, such Person continues, at the time of the proposed replacement, to meet the requirements for Qualified Replacement Developer set forth herein.

"Qualified Transferee" shall mean (a) a managing member or general partner of Tenant, (b) a Person that is or retains (as construction manager for the construction of the Building(s) on the Premises) a Person with no less than ten (10) years of experience in large scale development projects in an urban environment or (c) a Person that is reasonably acceptable to Landlord; provided, in each case, that the applicable Person is not a Prohibited Person. Landlord, on behalf of the MTA Parties, hereby approves [The Related Companies, L.P., Oxford Hudson Yards LLC, Oxford Properties Corporation, Tishman Speyer Properties, Hines Interests Limited Partnership, The Durst Organization, Boston Properties, Inc., Silverstein Properties, Inc., Forest City Ratner Companies, Vornado Realty Trust, Rudin Management Company, Inc., SL Green, Brookfield,][11] and any Affiliate of any of the foregoing as Qualified Transferees, so long as (x) such Person is not a Prohibited Person and (y) in the MTA Parties' reasonable judgment, such Person continues, at the time of the proposed replacement, to meet the requirements for Qualified Transferee set forth herein.

"Qualifying Sublease" shall have the meaning provided in Section 17.06(c).

"Qualifying Subtenant" shall have the meaning provided in Section 17.06(c).

[10] List of "Qualified Replacement Developers" to be confirmed when the applicable Severed Parcel Lease is entered into, subject to MTA Parties' reasonable judgment.

[11] List of Qualified Transferees to be confirmed when the applicable Severed Parcel Lease is entered into, subject to MTA Parties' reasonable judgment.

"Related Affiliate" shall mean any Person (a) over which any Related Control Person exercises day-to-day operational and managerial control as a managing member or otherwise, and (b) of which one or more Related Beneficial Owners or one or more Persons controlled by any Related Control Persons collectively own, directly or indirectly, at least two percent (2%) of the economic interests; provided, that the aggregate equity investment of such Related Control Persons with respect to both the WRY and ERY shall not be required to exceed ONE HUNDRED MILLION AND 00/100 DOLLARS ($100,000,000.00).

"Related Beneficial Owner" shall mean any of Stephen M. Ross and/or Jeff T. Blau and/or Bruce A. Beal, Jr. and their respective spouses, descendants, heirs, legatees and devisees, and any trust created for the benefit of any of such persons.

"Related Control Person" shall mean any of Stephen M. Ross and/or Jeff T. Blau and/or Bruce A. Beal, Jr.

"Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, migration, leaching, dumping or disposing of a Hazardous Substance into the environment, including the abandonment, discarding, burying or disposing of barrels, containers or other receptacles containing a Hazardous Substance.

"Rent Escalation Date" shall have the meaning provided in Section 3.03(d).

"Rental" shall have the meaning provided in Section 3.05.

"Rental Notice" shall have the meaning provided in Section 3.08.

"Rent Factor" shall have the meaning provided in Section 3.03(a)(iii).

"Replacement Cost" shall have the meaning provided in Section 14.01(b).

"Reset Date" shall mean the respective dates on which each of the FMV Base Rent Resets take effect hereunder.

"Residential Unit" and "Residential Units" shall have the meaning provided in the Condominium Declaration.

"Restoration" shall have the meaning provided in Section 15.01(b).

"Restoration Fund Depository" shall mean an Institutional Lender which is regularly engaged in the business of administering construction loans, and reasonably acceptable to both Landlord and Tenant to hold the Restoration Funds in accordance with the provisions of this Lease. A Leasehold Mortgagee which is an Institutional Lender shall, upon request, be entitled to serve as Restoration Fund Depository hereunder; provided that such Leasehold Mortgagee shall have agreed in writing, for the benefit of Landlord and pursuant to an instrument reasonably satisfactory to Landlord, to hold such funds in a segregated special account to be used and distributed solely as set forth in Article 15. All funds held by a Restoration Fund Depository pursuant to this Lease shall be drawable in New York City.

"Restoration Funds" shall have the meaning provided in Section 15.05(b).

"Restoration Notice" shall have the meaning provided in Section 15.02(b).

"Restore" shall have the meaning provided in Section 15.01(b).

"RFP" shall mean that certain Request for Proposals for Development at the Western Rail Yard Section of the LIRR West Side Yard, issued by Landlord on July 13, 2007, by which Landlord heretofore solicited proposals for the development of the WRY.

"RNDA" shall have the meaning provided in Section 17.06(d).

"Roof Mechanical Equipment" shall have the meaning provided in the WRY Declaration of Easements.

"Roof Slab" shall have the meaning provided in the WRY Declaration of Easements.

"Roof Tax-Exempt Financing" shall have the meaning provided in Article 12.

"Roof Utility Facilities" shall have the meaning provided in the WRY Declaration of Easements.

"Second Post-Closing Payment" shall have the meaning provided in Section 3.02.

"Service Reliability" shall have the meaning provided in the WRY Declaration of Easements.

"Severance" shall have the meaning provided in the WRY Declaration of Easements.

"Severed Parcel" shall have the meaning provided in the WRY Declaration of Easements.

"Severed Parcel Allocable Share" with respect to the Premises, shall mean [●] percent ([●]%), representing Tenant's share of certain financial obligations under this Lease, which Severed Parcel Allocable Share is also set forth in the Approved Severed Parcel Plan. The Severed Parcel Allocable Share shall be expressed as a percentage and based on the pro rata allocation of Floor Area for the Premises based on the WRY Ground Lease.

"Severed Parcel Lease" shall mean this Lease and any other "Severed Parcel Lease" as such term is defined in the WRY Declaration of Easements.

"Severed Parcel Owner" shall have the meaning provided in the WRY Declaration of Easements.

"Severed Parcel Pro Forma Rent Schedule" shall mean the pro forma rent schedule for this Lease (assuming that the Annual Base Rent immediately following each FMV Base Reset shall be equal to one hundred twenty percent (120%) of the Annual Base Rent for the

period immediately prior to the applicable Initial Reset Date or Reset Date) which is attached hereto as Exhibit P.

"Severed Parcel Tenant" shall mean the tenant under any Severed Parcel Lease.

"Severed Subparcel" shall have the meaning provided in Section 9.02(d).

"Severed Subparcel Lease" shall have the meaning provided in Section 9.02(d).

"Severed Subparcel Tenant" shall have the meaning provided in Section 9.02(d).

"Shortfall Amount" shall have the meaning provided in Section 15.05(b).

"Sponsor Guaranty" shall mean that certain [Sponsor Guaranty (Western Rail Yard Section of the John D. Caemmerer West Side Yard) to be executed by [●] Guarantor and delivered to Landlord contemporaneously with the filing of the offering plan (or, if earlier, any no-action application) for the Condominium with the NYS Law Department pursuant to Section 9.01(c) hereof, and in all events prior to the Condominium Conversion Date.

"Subletting" shall have the meaning provided in Section 17.01(a).

"Substantial Completion" or "Substantially Completed" shall mean (a) with respect to the LIRR Roof and Facilities or the Associated Portion of the LIRR Roof and Facilities, the respective meanings set forth in the WRY Construction Agreement; (b) with respect to a commercial Building, the condition of construction for which a temporary or permanent Certificate of Occupancy has been issued for such Building (or the core and shell of such Building); (c) with respect to a residential Building, the condition of construction for which a temporary or permanent Certificate of Occupancy has been issued for such Building; (d) with respect to a Building Component, the condition of construction for which a temporary or permanent Certificate of Occupancy has been issued for such Building Component (or the core and shell of such Building Component); and (e) with respect to any other Facility Airspace Improvements, the condition of construction for which (i) a temporary or permanent Certificate of Occupancy has been issued for such Facility Airspace Improvement, if applicable, or (ii) if not applicable, the architect for such Facility Airspace Improvement has delivered a certification that, in such architect's opinion, the construction of such Facility Airspace Improvement has been substantially completed in accordance with all applicable Legal Requirements.

"Successor Landlord" shall have the meaning provided in Section 33.03.

"Support Facilities" shall have the meaning provided in the WRY Declaration of Easements.

"Tax Year" shall mean each tax fiscal year of the City.

"Taxes" shall mean the real property taxes or any taxes or other payments substituted in lieu thereof of any kind or nature that are, or would be but for any applicable exemption or abatement, assessed, levied or imposed by any Governmental Authority against the Premises or any part thereof which may become payable during the Term.

"Tenant" shall mean the Tenant Named Herein, unless and until the Tenant Named Herein shall assign or transfer its interest hereunder in accordance with the terms of this Lease (other than with respect to a Severed Parcel), in which case the term "Tenant" shall mean only such permitted assignee or permitted transferee.

"Tenant Named Herein" shall mean [●].

"Term" shall mean the term of this Lease, which shall commence on the Commencement Date and expire on the Expiration Date.

"Transfer" shall have the meaning provided in Section 17.01(a).

"Trustee" shall have the meaning provided in Section 31.02(a).

"Unavoidable Delay" shall have the meaning provided in the WRY Declaration of Easements.

"Unit" shall mean a unit within the condominium created pursuant to the Condominium Documents.

"User" shall have the meaning provided in Section 17.01(b)(i).

"UTEP" shall mean the Second Amended and Restated Uniform Tax Exemption Policy of the IDA as approved on December 12, 2006, by the Board of Directors of the IDA, as may be further amended, modified or supplemented from time to time by the Board of Directors of the IDA.[12]

"WRY" shall mean that certain parcel of in the Borough of Manhattan, which is as of the Commencement Date owned by Landlord, and known as the Western Rail Yard Section of the John D. Caemmerer West Side Yard, located between 30th and 33rd Streets and between 11th and 12th Avenues in Manhattan, as more particularly described in Exhibit A-1 attached hereto.

"WRY Construction Agreement" shall mean that certain WRY Construction Agreement, dated as of the April 10, 2014, by and among Landlord, LIRR and Developer, as the same may have been or may hereafter be amended, modified or supplemented in accordance with the terms thereof.

"WRY Declaration of Easements" shall mean that certain Declaration of Easements (Western Rail Yard Section of the John D. Caemmerer West Side Yard) dated as of May 26, 2010 and recorded on June 10, 2010 at CRFN 2010000194077 in the City Register, made by MTA as declarant, as amended by that certain First Amendment to Declaration of Easements (Western Rail Yard Section of the John D. Caemmerer West Side Yard) dated as of April 10, 2014 and recorded on May 7, 2014 at CRFN 2014000154629 in the City Register, as

[12] If the Premises is not subject to UTEP this definition and all references to it shall be removed.

the same may have been or hereafter be amended, modified or supplemented in accordance with the terms hereof, thereof.

"WRY Ground Lease" shall mean that certain Agreement of Lease (Western Rail Yard Section of the John D. Caemmerer West Side Yard) dated as of April 10, 2014, by and between MTA, as landlord, and WRY Tenant LLC, as tenant, a memorandum of which was recorded on May 7, 2014 at CRFN 2014000154630 in the City Register, as amended by that certain First Amendment to Lease dated as of July 9, 2014 by and between MTA and WRY Tenant LLC, as the same may have been or hereafter be amended, modified or supplemented in accordance with the terms thereof.

"WRY Ground Lease Commencement Date" shall mean April 10, 2014.

"WRY Ground Lease Tenant" shall mean the tenant from time to time under the WRY Ground Lease or the Balance Lease, as applicable.

"WRY Open Space Parcel" shall have the meaning provided in Section 10.01(a).

"WRY Project" shall have the meaning provided in the WRY Declaration of Easements.

"WRY Restrictive Declaration" shall mean that certain Restrictive Declaration for the Western Railyard, dated April 10, 2014, which was recorded in the City Register on May 7, 2014 at CFRN 2014000154631, as the same may hereafter be amended, modified or supplemented in accordance with the terms thereof.

"WRY Roof Component" shall have the meaning provided in the WRY Declaration of Easements.

"WRY Roof Component Financing Cost Savings" shall mean the product of (a) fifty percent (50%) of the actual net financing cost savings (after taking into account all fees and expenses incurred by Tenant over and above those that would have been incurred in connection with conventional debt) attributable to the use of tax-exempt debt, if available, to fund some or all of the construction costs of all or any portion of the WRY Roof Component and the Open Space Component, over the cost of commercially available taxable debt for such portion of the WRY Roof Component and the Open Space Component, as well as any other costs or economic loss to Tenant of such financing, such as increased taxes or loss of depreciation deductions, if applicable, as determined at the closing of the construction loan for the Roof Component, and (b) the Severed Parcel Allocable Share. Notwithstanding the foregoing, "WRY Roof Component Financing Cost Savings" shall not include any amounts attributed to the WRY Roof Component or the Open Space Component funded out of the proceeds of tax-exempt financing provided by any Governmental Authority for the construction of affordable housing.

"WRY Severed Parcel Open Space Component" shall have the meaning provided in Section 8.13.

"WRY Severed Parcel Project" shall have the meaning provided in Section 8.01.

"WRY Severed Parcel Project Components" shall mean the Associated Portion of the LIRR Roof and Facilities[13] and the Facility Airspace Improvements (if any) described in the WRY Severed Parcel Project Requirements.

"WRY Severed Parcel Project Requirements" shall mean (a) the list of the Approved LIRR Work Project Plans and Specifications comprising the Associated Portion of the LIRR Roof and Facilities,[14] (b) a description of the Facility Airspace Improvements permitted to be constructed on the Premises (if any), and (c) the maximum Floor Area and zoning uses that may be utilized on the Premises as "Included Floor Area", each of which are attached hereto as Exhibit Q.

"WSY" shall mean that certain parcel of land known as John D. Caemmerer West Side Yard comprised of the WRY and ERY.

"Yards Parcel" shall have the meaning provided in the WRY Declaration of Easements, as more particularly described in Exhibit A-3 attached hereto.

"Yards Parcel Operator" shall have the meaning provided in the WRY Declaration of Easements.

"Yards Parcel Owner" shall have the meaning provided in the WRY Declaration of Easements.

"Zoning Resolution" shall mean the Zoning Resolution of the City of New York, as the same may be amended from time to time.

ARTICLE 2

PREMISES AND TERM OF LEASE

Landlord does hereby demise and lease to Tenant, and Tenant does hereby hire and take from Landlord, the Premises, together with all easements, appurtenances and other rights and privileges now or hereafter belonging or appertaining to the Premises, subject to the Permitted Exceptions. For the avoidance of doubt, the demise and lease of the Premises to Tenant shall include the exclusive right to utilize the Included Floor Area, subject to and as more particularly set forth in the WRY Declaration of Easements.

TO HAVE AND TO HOLD unto Tenant, its successors and assigns, for a term of years commencing on the Commencement Date and expiring on the Expiration Date.

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[13] There will be no Associated Portion of the LIRR Roof and Facilities in connection with any Terra Firma Parcel Severed Parcel Lease (as defined in the WRY Ground Lease) so this term will be removed in all Terra Firma Parcel Severed Parcel Leases.

[14] There will be no Associated Portion of the LIRR Roof and Facilities in connection with any Terra Firma Parcel Severed Parcel Lease (as defined in the WRY Ground Lease) so this term will be removed in all Terra Firma Parcel Severed Parcel Leases.

ARTICLE 3

RENT

Section 3.01. Closing Payment. On or prior to the WRY Ground Lease Commencement Date, WRY Ground Lease Tenant paid to Landlord the product of (x) TWENTY FOUR MILLION SEVEN HUNDRED THOUSAND AND 00/100 DOLLARS ($24,700,000.00) and (y) the Severed Parcel Allocable Share (the "Closing Payment") (as further adjusted or credited in accordance with Section 3.01 of the WRY Ground Lease), the amount of which Closing Payment shall be deemed to have been deducted from the Initial Land Value. Landlord hereby acknowledges receipt of the Closing Payment.

Section 3.02. Post-Closing Payments.

(a) On the first (1st) anniversary of the WRY Ground Lease Commencement Date, Tenant has paid to Landlord the product of (x) TWELVE MILLION THREE HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS ($12,350,000.00) and (y) the Severed Parcel Allocable Share (the "First Post-Closing Payment"), the amount of which First Post-Closing Payment shall, upon payment, be deducted from the Initial Land Value. Landlord hereby acknowledges receipt of the First Post-Closing Payment.

(b) On the second (2nd) anniversary of the WRY Ground Lease Commencement Date, Tenant has paid to Landlord the product of (x) TWELVE MILLION THREE HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS ($12,350,000.00) and (y) the Severed Parcel Allocable Share (the "Second Post-Closing Payment"), the amount of which Second Post-Closing Payment shall be deemed to have deducted from the Initial Land Value. Landlord hereby acknowledges receipt of the Second Post-Closing Payment.

Section 3.03. Annual Base Rent. Tenant shall pay to Landlord, for each year during the Term (prorated for any partial year), the annual sums set forth in this Section 3.03 ("Annual Base Rent"), in equal monthly installments (subject to the last sentence of Section 3.03(b)) in advance, on the first (1st) day of each calendar month of the Term (unless any such date is not a Business Day, in which case payment shall be due on the immediately preceding Business Day), for the period commencing on the Commencement Date and continuing thereafter throughout the balance of the Term.

(a) Definitions. For purposes of this Section 3.03, the following terms shall have the following definitions:

(i) "Initial Land Value" shall mean an amount equal to the product of (x) FOUR HUNDRED NINETY-FOUR MILLION AND 00/100 DOLLARS ($494,000,000.00) and (y) the Severed Parcel Allocable Share.

(ii) "Adjusted Initial Land Value" shall mean the excess of (x) the sum of (A) the Initial Land Value, (B) the WRY Roof Component Financing Cost Savings, if any, and (C) the Abatement Extension Adjustment Amount, over (y) the sum of (A) the Closing Payment, (B) the First Post-Closing Payment, and (C) the Second Post-Closing Payment.

(iii) "Rent Factor" shall mean six and one-half percent (6.5%).

(iv) "FMV Land Value" shall mean the fair market value of the Premises as of the commencement of the FMV Reset Period in question, determined pursuant to Section 3.08 and calculated as if the Premises were (x) encumbered by this Lease, (y) unimproved by the WRY Roof Component and any Facility Airspace Improvements; and (z) to be used for the actual uses in place or under development on the Premises at the time that such FMV Land Value determination is being made (or, if at the time that such FMV Land Value determination is being made, construction has not commenced on any portion of the Premises, the highest and best use permitted for the Premises in accordance with the Zoning Resolution, this Lease (including the Floor Area and use allocations as set forth in the WRY Severed Parcel Project Requirements) and the other applicable Project Documents).

(v) "FMV Rental Value" shall mean the product of (a) ninety percent (90%) of the FMV Land Value and (b) the Rent Factor.

(b) Initial Rental Period. As more particularly described on the Severed Parcel Pro Forma Rent Schedule, Annual Base Rent payable under this Lease during the Initial Rental Period shall equal the product of (x) the Rent Factor and (y) the Adjusted Initial Land Value, subject to the escalations described in Section 3.03(d). The initial Annual Base Rent payable commencing on the Commencement Date and ending on the first Rent Escalation Date is set forth on the Severed Parcel Pro Forma Rent Schedule.

(i) Notwithstanding the foregoing, if the closing of a construction loan for the WRY Roof Component occurs during any calendar month in the Initial Rental Period (after the Commencement Date) and there are WRY Roof Component Financing Cost Savings, the installment of Annual Base Rent payable for each succeeding calendar month in the Initial Rental Period shall, subject to any applicable rent abatements, be an amount equal to the amount of such installment that would have been payable if Annual Base Rent for the year in which such closing occurs (and each subsequent year during the Initial Rental Period) were increased by an amount equal to the product of (x) the WRY Roof Component Financing Cost Savings, and (y) the Rent Factor, which amount shall be increased by ten percent (10%) on every Rent Escalation Date (without duplication of the rent escalations that would otherwise be applicable to the installment of Annual Base Rent).

(c) Annual Base Rent Resets. On the date immediately following the last day of the Initial Rental Period (such date, the "Initial Reset Date"), and on each subsequent twenty-fifth (25^{th}) anniversary of the Initial Reset Date during the Term, Annual Base Rent shall be reset to equal the FMV Rental Value as of such Reset Date, provided that such FMV Rental Value shall be no less than one hundred percent (100%) and not greater than one hundred twenty percent (120%) of Annual Base Rent payable immediately prior to such Reset Date (the period between each Reset Date (if more than one) and the period between the final Reset Date and the Expiration Date, each an "FMV Reset Period"; and each adjustment to Annual Base Rent as set forth in Section 3.03(c), an "FMV Base Rent Reset").

(d) Escalations of Annual Base Rent. Notwithstanding Section 3.03(b) and (c) and as reflected in the Severed Parcel Pro Forma Rent Schedule, Annual Base Rent shall

increase by ten percent (10%) on every fifth (5th) anniversary of the WRY Ground Lease Commencement Date (each, a "Rent Escalation Date"). In the event that any Rent Escalation Date coincides within a year of a Reset Date, Annual Base Rent shall solely be reset as provided in Section 3.03(c) and not escalated as provided in this Section 3.03(d).

Section 3.04. Rent Abatements.

(a) Provided that this Lease is in full force and effect, subject to Section 3.04(g), Annual Base Rent set forth in Section 3.03 shall be abated as follows:.

(b) Intentionally omitted.

(c) Intentionally omitted.

(d) Intentionally omitted.

(e) Intentionally omitted.

(f) Abatement for Compensable MTA Party Delay. If, as of the date of the occurrence of a Compensable MTA Party Delay, either (x) Commencement of Construction with respect to a Building containing or which shall contain commercial and/or anchor retail space shall have occurred, or (y) Commencement of Construction with respect to a Building containing commercial and/or anchor retail space shall not have yet occurred, but one or more space leases with commercial and/or anchor retail tenants for occupancy in the Building to be constructed has been executed, in addition to the other abatements set forth in this Section 3.03, Tenant shall be entitled to the Direct Cost Rent Credit in accordance with Section 2.5(f) of the WRY Construction Agreement and/or Section 2.11 of Exhibit D to the WRY Declaration of Easements.

(g) Modification of Annual Base Rent Abatements. Notwithstanding the foregoing provisions of Section 3.04, or the Severed Parcel Pro Forma Rent Schedule:

(i) [In the event that Commencement of Construction of a Building shall occur during the Initial Abatement Period or the Second Abatement Period (as such terms are defined in the Severed Parcel Pro Forma Rent Schedule, then (x) from and after Commencement of Construction of such Building, Annual Base Rent shall be the greater of (A) Annual Base Rent at the then-current abatement level, and (B) fifty percent (50%) of Annual Base Rent, and (y) from and after the issuance of a temporary or permanent Certificate of Occupancy allowing for physical occupancy with respect to any portion of such Building, one hundred percent (100%) of Annual Base Rent shall become payable, without abatement; and][15]

(ii) with respect to any Severed Parcel upon which Commencement of Construction of a Building shall occur during the Initial Abatement

[15] The bracketed language (and applicable defined terms) shall only be included in a Severed Parcel Lease to the extent applicable (i.e., this Lease commences during an applicable abatement period) as set forth in Section 9.01(a)(ii) of the WRY Ground Lease.

Extension (as defined in the Severed Parcel Pro Forma Rent Schedule), (x) the length of the Initial Abatement Extension shall be reduced with respect to such Severed Parcel to end on the date of the Commencement of Construction of such Building, and (y) the Abatement Extension Adjustment Amount (as defined in the Severed Parcel Pro Forma Rent Schedule) shall be recalculated in accordance with the Severed Parcel Pro Forma Rent Schedule to reflect the change in the Initial Abatement Extension with respect to such Severed Parcel.[16]

Section 3.05. Rental. All of the amounts payable by Tenant to Landlord pursuant to this Lease (except, in all events, PILOT or PILOST payments), including, without limitation, the Closing Payment, First Post-Closing Payment, Second Post-Closing Payment, Annual Base Rent, Additional Rent, and all other sums, costs, expenses or deposits which Tenant in any of the provisions of this Lease assumes or agrees to pay to and/or deposit with Landlord (such amounts, collectively, "Rental") shall constitute rent under this Lease and, in the event of Tenant's failure to pay Rental after the expiration of any applicable notice and cure periods, Landlord (in addition to all other rights and remedies) shall have all of the rights and remedies provided for herein and by law in the case of non-payment of rent. All Rental shall be payable without any abatement, deduction, counterclaim, set-off or offset whatsoever (except as expressly set forth herein), and without notice or demand, in lawful money of the United States, by wire transfer to a bank account designated by Landlord or at such other place as Landlord shall direct from time to time by written notice to Tenant.

Section 3.06. Proration of Rental Payments. Rental of whatever kind that is due for any partial month, year or other applicable period shall be appropriately prorated.

Section 3.07. Net Lease. Except as expressly set forth herein or in any other Project Document, it is the purpose and intention of Landlord and Tenant, and Landlord and Tenant hereby agree that, all Rental shall be absolutely net to Landlord without any abatement, deduction, counterclaim, set-off or offset whatsoever, so that this Lease shall yield, net, to Landlord, the Rental in each year during the term of this Lease, and that all costs, expenses and charges of every kind and nature (including, without limitation, all public and private utilities and services and any easement or agreement maintained for the benefit of the Premises), relating to the Premises shall be paid by Tenant, such that this Lease shall be a so-called "triple net lease".

Section 3.08. FMV Land Value, FMV Rental Value and Interim Annual Base Rent. The FMV Land Value and FMV Rental Value for each FMV Reset Period shall be determined in the following manner: not more than one (1) year and six (6) months prior to the commencement of the relevant FMV Reset Period (or, in the event that the Commencement Date is less than one (1) year and six (6) months prior to the commencement of the relevant FMV Reset Period, promptly following the Commencement Date), Landlord shall submit to Tenant an appraisal, setting forth Landlord's determination of the FMV Land Value and the FMV Rental

[16] The bracketed language (and applicable defined terms) shall only be included in a Severed Parcel Lease to the extent applicable (i.e., if the commencement of construction of a Building pursuant to this Lease shall occur during the Initial Abatement Extension) as set forth in Section 9.01(a)(ii) of the WRY Ground Lease.

Value, together with a letter making express reference to this Section 3.08 and stating that Tenant has thirty (30) days to respond to such notice (the "Rental Notice"). If Tenant shall dispute Landlord's determination (the "Notice of Dispute") by notice given by Tenant to Landlord not later than thirty (30) days after delivery to Tenant of the applicable Rental Notice (TIME BEING OF THE ESSENCE as to the giving of the Notice of Dispute), then Tenant shall engage its own appraiser and deliver to Landlord its determination of the FMV Land Value (and calculation of the corresponding FMV Rental Value) no later than forty-five (45) days following the delivery of the Notice of Dispute. Landlord and Tenant shall attempt to resolve any disagreement in the FMV Land Value in good faith, and if such disagreement is not resolved within thirty (30) days, then such dispute shall be resolved in accordance with Sections 40.01(a) and (b); provided that any appraiser selected by the parties pursuant to this Section 3.08 shall be a member of the American Institute of Real Estate Appraisers (or its successor organization) and shall have been engaged in the business of real estate appraisals in the City of New York for no less than ten (10) years. If for any reason the FMV Rental Value for any FMV Reset Period has not been finally determined by the first day of such FMV Reset Period, then until such final determination, Tenant shall pay as Annual Base Rent the lesser of (a) one hundred ten percent (110%) of the Annual Base Rent payable immediately prior to such Reset Date and (b) the Annual Base Rent calculated using Landlord's determination of FMV Rental Value. Upon final determination of the FMV Land Value and corresponding FMV Rental Value for such FMV Reset Period (i) in the event that the application of such FMV Rental Value shall result in a greater Annual Base Rent than that theretofore paid in respect of such FMV Reset Period, Tenant shall pay the entire amount of any underpayment to Landlord within twenty (20) days of such final determination, without interest, or (ii) in the event that the application of such FMV Rental Value shall result in a lesser Annual Base Rent than that theretofore paid in respect of such FMV Reset Period, Landlord shall credit the amount of such overpayment against the next monthly installments of Annual Base Rent thereafter due and owing, without interest.

Section 3.09. Additional Rent. Tenant shall pay to Landlord, as additional rent ("Additional Rent") under this Lease, the following amounts (except, in all events, PILOT or PILOST payments, which shall be payable in accordance with Section 4.11 and shall not be deemed "rent"): all taxes, assessments, charges, costs, expenses and other sums of money as shall become due and payable by Tenant to or on behalf of Landlord under this Lease, or which Tenant shall assume to pay to or on behalf of Landlord under this Lease (whether or not designated as Additional Rent in this Lease). Upon any failure on the part of Tenant to pay any Additional Rent, Landlord shall have the same legal, equitable and contractual rights, powers and remedies provided in this Lease, by statute, at common law or as are otherwise available to Landlord, in the case of nonpayment of Annual Base Rent, including all interest and penalties that may accrue thereon in the event of Tenant's failure to pay such amounts when due, and all damages, costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements which Landlord may incur by reason of any Default of Tenant or failure on Tenant's part to comply with any of the terms of this Lease, or arising out of any indemnity and/or "hold harmless" agreement given or made by Tenant to Landlord in this Lease, or otherwise incurred by Landlord in connection with the enforcement of its rights and Tenant's obligations under this Lease (provided that Landlord is the prevailing party), and Tenant hereby agrees to pay any such amounts within twenty (20) days after demand by Landlord unless otherwise specifically provided in this Lease.

Section 3.10. Section 467. Upon Tenant's written request, Landlord shall cooperate with Tenant to enable Tenant to account for the appropriate treatment of Annual Base Rent under Section 467 of the Internal Revenue Code of 1986, as amended.

ARTICLE 4

IMPOSITIONS

Section 4.01. Impositions. Subject to any exemptions or abatements which may be granted by any Governmental Authority or as otherwise set forth herein, Tenant shall pay, as hereinafter provided, all of the following items imposed by any Governmental Authority with respect to the Premises (collectively, "Impositions"), all of which shall be calculated without taking into account available exemptions arising on account of the ownership of the Premises by Landlord: (a) Taxes and/or PILOT (if any), with PILOT payable in accordance with Section 4.11, (b) personal property taxes, (c) commercial rent or occupancy taxes, (d) water, water meter and sewer rents, rates and charges, (e) levies, (f) license and permit fees, (g) service charges with respect to police protection, fire protection, street and highway construction, maintenance and lighting, sanitation and water supply, if any, (h) all excise, sales, value added, use and similar taxes, (i) governmental charges for utilities, communications and other services rendered or used in or about the Premises, (j) fines, penalties and other similar or like governmental charges applicable to the foregoing and any interest or costs with respect thereto arising from the failure to make timely payment thereof and (k) any and all other governmental levies, fees, rents, assessments and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, and any interest, penalties or costs with respect thereto arising from the failure to make timely payment thereof, which at any time during (or after, but attributable to a period falling within) the Term are (or, if the Premises or any part thereof or the owner thereof were not exempt therefrom, would have been) (1) assessed, levied, confirmed, imposed upon or would have become due and payable out of or in respect of, or would have been charged with respect to, the Premises or any document to which Tenant is a party creating or transferring an interest or estate in the Premises or the use and occupancy thereof by Tenant and (2) encumbrances or liens on (i) the Premises, (ii) the sidewalks or streets in front of or adjoining the Premises, (iii) any vault, passageway or space in, over or under such sidewalk or street (other than any of the foregoing that are within the sole legal and operational control of a Person other than Tenant), (iv) any appurtenances of the Premises, (v) any personal property (except personal property which is not owned by or leased to Tenant), Equipment or other facility used in the operation thereof, or (vi) the Rental (or any portion thereof) payable by Tenant hereunder. Each such Imposition, or installment thereof, during the Term shall be paid not later than the Due Date thereof. However, if, by law, any Imposition may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the same in such installments and shall be responsible for the payment of such installments only, together with applicable interest, if any, relating to periods prior to the Expiration Date. Tenant shall promptly notify Landlord if Tenant shall have elected to pay any such Imposition in installments. Notwithstanding anything to the contrary herein, Tenant shall have no obligation to pay any Imposition levied on or payable with respect to the Yards Parcel or the High Line Component; provided that Tenant shall indemnify and hold Landlord harmless for any such Impositions. For the avoidance of doubt,

Landlord shall have no liability for any Impositions levied on or payable with respect to the Premises (without limiting its obligation, as agent, to remit any PILOT received from Tenant as provided in Section 4.11).

Section 4.02. Receipts. Tenant, from time to time upon request of Landlord, shall promptly furnish to Landlord official receipts of the appropriate taxing authority, or other evidence reasonably satisfactory to Landlord, evidencing the payment of Impositions.

Section 4.03. Landlord's Taxes. Nothing herein contained shall require Tenant to pay municipal, state or federal income, gross receipts, inheritance, estate, succession, profit or capital gains taxes of Landlord, or any corporate franchise tax imposed upon Landlord or any gains tax imposed on Landlord. Notwithstanding the foregoing, if at any time during the Term, a tax or excise on Rental or the right to receive rents or any other tax, however described, is levied or assessed against Landlord as a substitute, in whole or in part, for any Impositions that would otherwise be payable by Tenant, Tenant shall pay and discharge such tax or excise on Rental or other tax before interest or penalties accrue and the same shall be deemed an Imposition levied against the Premises.

Section 4.04. Impositions Beyond Term. Any Imposition relating to a period a part of which is included within the Term and a part of which is included in a period of time before the Commencement Date or after the Expiration Date (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon or in respect of or become a lien upon the Premises, or shall become payable, during the Term) shall be apportioned between Landlord and Tenant as of the Commencement Date or the Expiration Date, as the case may be, so that Tenant shall pay that portion of such Imposition which that part of such fiscal period included in the period of time after the Commencement Date or before the Expiration Date bears to such fiscal period. Notwithstanding the foregoing, no such apportionment of Impositions as of the Expiration Date shall be made if this Lease is terminated prior to the Fixed Expiration Date as the result of an Event of Default.

Section 4.05. Tenant's Contest. Tenant shall have the right to contest the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith, in which event, payment of such Imposition may be postponed at the election of Tenant if and only as long as:

(a) neither the Premises, nor any part thereof or interest therein or income therefrom or any other assets of or funds appropriated to Landlord would, by reason of such postponement or deferment, be, in the reasonable judgment of Landlord, in imminent danger of being forfeited or lost, and neither Landlord nor Tenant would by reason thereof be subject to any civil or criminal liability;

(b) if the contested amount (together with all interest and penalties in connection therewith) exceeds One Hundred Thousand Dollars ($100,000.00), subject to CPI Adjustment, Tenant shall have either (i) deposited with the Impositions Depository, prior to or simultaneously with such contest, an amount equal to one hundred percent (100%) of the amount so contested and unpaid, together with all interest and penalties in connection therewith and all charges that may or might be assessed against or become a charge on the Premises or any part

thereof in (or during the pendency of) such proceedings (collectively, the "Contested Imposition Deposit") or (ii) delivered to Landlord a letter of credit for the benefit of Landlord in such amount issued by an Institutional Lender or other security, in form and substance reasonably satisfactory to Landlord; and

(c) upon the termination of such proceedings, Tenant shall pay the amount of such Imposition or part thereof as finally determined in such proceedings (the payment of which may have been deferred during the prosecution of such proceedings), together with any costs, fees (including attorneys' fees and disbursements), interest, penalties or other liabilities imposed on Tenant or Landlord in connection therewith. Upon such payment, the Impositions Depository shall return, with interest, if any, any amount deposited with it in respect of such Imposition as aforesaid; provided, however, that the Impositions Depository, at Tenant's request (or, upon Tenant's failure to make such payment in a timely manner, at Landlord's request), shall disburse said monies on deposit with it directly to the taxing authority to whom such Imposition is payable and any remaining monies, with interest, if any, shall be returned promptly to Tenant. If at any time during the continuance of such proceedings any accrued and unpaid interest, penalties and/or charges in connection with such Imposition cause the amount of such Imposition (together with all interest and penalties in connection therewith and all charges that may or might be assessed against or become a charge on the Premises or any part thereof in (or during the pendency of) such proceedings) to exceed the amount of the Contested Imposition Deposit, Tenant, within fifteen (15) days after accrual of the same, shall deposit an amount equal to such excess with the Impositions Depository, and upon failure of Tenant to do so, the amount theretofore deposited may be applied, at the request of Landlord, to the payment, removal and/or discharge of such Imposition, together with the interest and penalties incurred in connection therewith and any costs, fees (including attorneys' fees and disbursements) or other liabilities accruing in any such proceedings, and the balance, if any, together with any interest earned thereon, shall be returned to Tenant or the deficiency, if any, shall be paid by Tenant to Landlord within ten (10) days after demand therefor by Landlord. Notwithstanding anything to the contrary contained in this Section 4.05, if by law an Imposition may be challenged only after payment of such Imposition, Tenant shall pay the same prior to, and as a condition to, the institution of any challenge thereof.

Section 4.06. No Postponement of Tenant's Obligation. Tenant shall have the right, at its sole cost and expense, to seek a reduction in the valuation of the Premises assessed for Taxes by appropriate proceedings diligently conducted in good faith, and to prosecute any action or proceeding in connection therewith; provided, that (a) Tenant shall notify Landlord of any such actions or proceedings, and shall deliver to Landlord copies of any applications or submissions in connection with any such proceeding, at least five (5) Business Days prior to Tenant's submission of the same to the applicable taxing authority and (b) no such action or proceeding shall postpone Tenant's obligation to pay any Imposition except in accordance with the provisions of Section 4.05.

Section 4.07. Landlord Cooperation. Landlord shall not be required to join in any proceedings referred to in Section 4.05 or 4.06 unless the provisions of any law, rule or regulation in effect at the time shall require that Landlord join such proceedings or that such proceedings be brought by or in the name of Landlord, in which event, Landlord shall join and reasonably cooperate in such proceedings, or permit the same to be brought in its name, upon

compliance by Tenant with such conditions as Landlord may reasonably require; provided, however, that Landlord shall not be liable for the payment of any costs or expenses in connection with any such proceedings and Tenant shall reimburse Landlord for, and shall indemnify and hold Landlord harmless from and against, any and all costs or expenses which Landlord may reasonably sustain or incur in connection with any such proceedings, including, without limitation, reasonable attorneys' fees and disbursements. In the event that Tenant shall institute a proceeding referred to in Section 4.05 or 4.06 and no law, rule or regulation in effect at the time requires that such proceeding be brought by and/or in the name of Landlord, Landlord, nevertheless, shall, at Tenant's sole cost and expense, and subject to the reimbursement provisions hereinabove set forth, reasonably cooperate with Tenant in any such proceeding.

Section 4.08. Tax Bills. Any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition asserting non-payment of such Imposition shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill at the time or date stated therein.

Section 4.09. Invoices for Impositions. Tenant shall make all necessary arrangements with the applicable taxing authorities to have invoices for Impositions sent directly to Tenant and, if necessary, Landlord shall, at the request of Tenant and at no cost to Landlord, reasonably cooperate in making such arrangements. In the event that Landlord shall receive after the Commencement Date any invoices for Impositions, Landlord shall promptly forward the same to Tenant.

Section 4.10. Separation of Tax Lots. Landlord agrees to cooperate reasonably with Tenant in any applications to be made by Tenant for the creation of a separate tax lot or lots for the Facility Airspace Parcel, and for any Balance Parcel or Severed Parcels within the Premises, including the execution of any documents as may be required by a Governmental Authority in connection therewith. The costs associated with any such applications for a separate tax lot, including surveying costs, shall be paid by Tenant.

Section 4.11. PILOT; PILOT Agreements; PILOST.

(a) During any period in which a PILOT Agreement is not in effect, Tenant shall pay PILOT to Landlord, as collection agent but not as a portion of Rental, not later than five (5) Business Days prior to the Due Date thereof, which PILOT shall be remitted promptly by Landlord to HYIC (or such other Governmental Authority as HYIC may designate to Landlord from time to time). In no event shall PILOT be deemed an Imposition or a payment of Rental for purposes of this Lease; provided, however that Tenant may contest any payment of PILOT in accordance with procedures set forth in Section 4.05.

(b) Landlord agrees reasonably to cooperate with Tenant (at Tenant's sole cost and expense) in any applications to be made by Tenant to any Governmental Authority for abatements or exemptions to PILOT payments, including UTEP benefits. In connection therewith, Landlord agrees to enter into any modifications of this Lease or other agreements reasonably required by the Governmental Authority conveying such benefits; provided that such modifications or agreements do not materially increase Landlord's obligations

or reduce its rights and privileges hereunder. In addition, Landlord and Tenant acknowledge that the City has committed, upon the request of Tenant, to request that IDA amend the UTEP to include the WRY. If the UTEP is so amended, in determining PILOT, Tenant will be entitled to claim an abatement under the UTEP (if Tenant is granted the UTEP abatement by IDA in accordance with IDA's application procedures). Upon request of Tenant, Landlord, at Tenant's sole cost and expense, will reasonably cooperate with the efforts of Tenant, to cause the City to amend the UTEP to include the WRY.

(c) It is the understanding of the parties that Tenant shall be liable for the payment of PILOST in accordance with the PILOST Agreement. In no event shall PILOST be deemed an Imposition or a payment of Rental for purposes of this Lease; provided, however that Tenant may contest any payment of PILOST in accordance with the procedures set forth in Section 4.05.

ARTICLE 5

DEPOSITS FOR IMPOSITIONS

Section 5.01. Monthly Deposits Following Event of Default.

(a) At Landlord's option, which may be exercised solely at any time during the pendency of an uncured Event of Default under this Lease and no other time, Tenant shall make monthly deposits for Impositions and Insurance Premiums, as set forth in this Article 5. Landlord shall provide Tenant with written notice setting forth Landlord's reasonable estimate of the annual Insurance Premiums and aggregate annual Impositions for the forthcoming twelve (12) month period, and Tenant shall deposit with the Impositions Depository on the first day of each month during the Term, an amount equal to one-twelfth ($1/12^{th}$) of such annual Impositions and one-twelfth ($1/12^{th}$) of such Insurance Premiums as reasonably estimated by Landlord (such deposits, the "Monthly Impositions and Insurance Deposits"). Notwithstanding the foregoing, in the event that a Leasehold Mortgagee shall or a Mezzanine Lender shall require Tenant to deposit funds with such Leasehold Mortgagee or Mezzanine Lender, as applicable, to insure payment of Impositions or Insurance Premiums, any amount so deposited by Tenant shall be credited against the amount, if any, which Tenant would otherwise be required to deposit with the Impositions Depository under this Article 5; provided that such Leasehold Mortgagee or Mezzanine Lender, as applicable, shall have agreed in writing, for the benefit of Landlord and pursuant to an instrument reasonably satisfactory to Landlord, to hold such funds in a segregated special account for the payment of Impositions and Insurance Premiums, and for no other use, and that the Leasehold Mortgagee or Mezzanine Lender, as applicable, shall use such funds to pay Impositions and Insurance Premiums as and when the same are required to be paid hereunder and for no other purpose.

(b) If at any time the monies so deposited by Tenant shall be insufficient to pay the next installment of Impositions or Insurance Premiums then due, Tenant shall deposit with the Impositions Depository the amount of any such insufficiency to enable the Impositions Depository to pay the next installment of Impositions or Insurance Premiums at least

thirty (30) days prior to the Due Date thereof. It is acknowledged that all or a portion of the Insurance Premiums may be payable to the FASP Owners Association in accordance with the Association Documents and/or, following the Condominium Conversion Date, the Condominium Board in accordance with the Condominium Documents.

(c) The Impositions Depository shall hold monies deposited by Tenant pursuant to this Article 5 in a segregated special account for the purpose of paying the charges for which such amounts have been deposited as they become due, and the Impositions Depository shall apply the deposited monies for such purpose not later than the Due Date for such charges.

(d) If at any time during the period that Tenant shall be required to make the deposits required by this Section 5.01 the amount of any Imposition or Insurance Premium is increased or Landlord receives information from the Persons imposing such Imposition that an Imposition will be increased and the monthly deposits then being made by Tenant under this Section 5.01 would be insufficient to pay such Imposition or Insurance Premium thirty (30) days prior to the Due Date thereof, then upon notice from Landlord to Tenant of such fact, the monthly deposits shall thereupon be increased and Tenant shall deposit with the Impositions Depository promptly (but in no event later than twenty (20) days from the applicable notice) sufficient monies for the payment of the increased Imposition or Insurance Premium. Thereafter, the monthly payments shall be adjusted such that Tenant shall deposit with the Impositions Depository an amount sufficient to pay each Imposition and Insurance Premium at least thirty (30) days prior to the Due Date thereof.

(e) For the purpose of determining whether the Impositions Depository has on hand sufficient monies to pay any particular Imposition or Insurance Premium at least thirty (30) days prior to the Due Date thereof, deposits for each category and payee of Imposition and for each Insurance Premium shall be treated separately. The Impositions Depository shall not be obligated to use monies deposited for the payment of an Imposition or Insurance Premium not yet due and payable for the payment of an Imposition or Insurance Premium that is due and payable.

(f) Notwithstanding the foregoing, Tenant expressly acknowledges and agrees that (i) monies deposited with the Impositions Depository pursuant to the provisions of this Article 5 may be held by the Impositions Depository in a single bank account, and (ii) the Impositions Depository shall, in the event Tenant fails to make any payment or perform any obligation required under this Lease, at Landlord's option and direction but subject to the rights of any Leasehold Mortgagees or Mezzanine Lenders, use any such monies for the payment of any Rental.

(g) If this Lease shall be terminated by reason of any Event of Default, or if dispossession occurs pursuant to Article 31 of this Lease, all monies deposited pursuant to this Article 5 then held by the Impositions Depository shall be paid to, and applied by, Landlord in payment of any and all sums due under this Lease and Tenant shall promptly pay the resulting deficiency.

(h) Any interest paid on monies deposited pursuant to this Article 5 shall be applied pursuant to the foregoing provisions against amounts thereafter becoming due and payable by Tenant.

(i) Notwithstanding anything to the contrary herein, if at any time after monies have been deposited with the Impositions Depository pursuant to the provisions of this Article 5 there are no pending Events of Default for a period of thirty (30) consecutive days, all monies so deposited with the Impositions Depository shall be paid over to Tenant, subject to the rights of any Leasehold Mortgagees or Mezzanine Lenders.

ARTICLE 6

LATE CHARGES

In the event that (a) any payment of Rental shall not have been paid by Tenant to Landlord within five (5) Business Days following the date due and (b) Landlord delivers written notice thereof to Tenant (provided that no such notice shall be required with respect to late payments of Annual Base Rent or Closing Payments), such unpaid amount shall bear interest at a rate equal to the sum of the Prime Rate plus two percent (2%) (such rate, the "Default Rate"), from the date on which such payment became due and payable through the date of actual payment. The amount of interest accrued pursuant to the immediately preceding sentence shall become due and payable to Landlord as liquidated damages for the administrative costs and expenses incurred by Landlord by reason of Tenant's failure to make prompt payment, and such amounts shall constitute Additional Rent hereunder. No failure by Landlord to insist upon the strict performance by Tenant of its obligations to pay any such interest shall constitute a waiver by Landlord of its right to enforce the provisions of this Article 6 in any instance thereafter occurring. The provisions of this Article 6 shall not be construed in any way to extend the grace periods or notice periods otherwise set forth in this Lease.

ARTICLE 7

LEASE SUBORDINATE TO WRY DECLARATION OF EASEMENTS; ASSUMPTION BY TENANT OF RIGHTS AND OBLIGATIONS; FASP OWNERS ASSOCIATION

Section 7.01. WRY Declaration of Easements. This Lease, and the rights and obligations of Landlord and Tenant hereunder, shall be subject and subordinate in all respects to the WRY Declaration of Easements. During the Term, Tenant shall be entitled to all rights and benefits, and shall comply with all obligations, of the Severed Parcel Owner of the Premises in accordance with and subject to the WRY Declaration of Easements which obligations shall be incorporated into this Lease as obligations of Tenant hereunder, as if fully set forth herein. For the avoidance of doubt, nothing in this Section 7.01 shall be deemed to expand Tenant's obligations as the Severed Parcel Owner of the Premises within the meaning of Article XVI of the WRY Declaration of Easements, including without limitation, the limitation of Tenant's obligations (in its capacity as a Severed Parcel Owner with respect to its Allocable Share (as such term is defined in the WRY Declaration of Easements) of the obligations of the Facility Airspace Parcel Owner (which constitute Association Matters under the WRY Declaration of Easements). In addition, notwithstanding anything to the contrary in this Lease, nothing in this

Lease shall whatsoever be deemed to (a) derogate from the rights and obligations of the Yards Parcel Owner (including Landlord in its capacity as Yards Parcel Owner) and Yards Parcel Operator as set forth in the WRY Declaration of Easements, or (b) derogate from the rights and obligations of Tenant in its capacity as the Severed Parcel Owner of the Premises in accordance with the WRY Declaration of Easements.

Section 7.02. FASP Owners Association. Landlord acknowledges and agrees that, following the approval or deemed approval of the Association Documents in accordance with the WRY Declaration of Easements, Landlord will accept the performance by the FASP Owners Association or its designee of any obligation of Tenant hereunder which constitutes an Association Matter. Notwithstanding the foregoing, nothing contained herein shall limit Landlord's recourse to Tenant with respect to any Default under this Lease. Landlord and Tenant hereby agree that this Lease shall in all respects be subject and subordinate to the terms and provisions of the Association Documents and any future amendments, modifications or supplements thereof.

ARTICLE 8

DEVELOPMENT RIGHTS AND DEVELOPMENT AND CONSTRUCTION OF THE PROJECT

Section 8.01. Agreement to Develop the WRY Severed Parcel Project. Subject to and in accordance with the terms and conditions set forth in this Lease, the WRY Declaration of Easements and the other Project Documents which are binding on Tenant, Tenant shall cause, at no cost or expense to Landlord, the design, construction and completion of a project (the "WRY Severed Parcel Project") utilizing up to the Included Floor Area, which WRY Severed Parcel Project shall consist of the Associated Portion of the LIRR Roof and Facilities[17] and other WRY Severed Parcel Project Components; provided, however, that the WRY Severed Parcel Project shall in all events be developed and maintained (i) in compliance with the Zoning Resolution and the WRY Restrictive Declaration, (ii) in accordance with the Minimum Standards, and (iii) if the WRY Severed Parcel Project contains a hotel, compliance with the provisions of Public Authorities Law § 2879-b, to the extent applicable. Nothing contained in this Section 8.01 shall be deemed to require the construction of the Associated Portion of the LIRR Roof and Facilities or any portion thereof prior to the date required by the WRY Construction Agreement.

Section 8.02. Facility Airspace Improvement Plans and Specifications.

(a) Intentionally omitted.

(b) The provisions of this Section 8.02 and Exhibit D of the WRY Declaration of Easements are intended to collectively constitute a single set of requirements for

[17] There will be no Associated Portion of the LIRR Roof and Facilities in connection with any Terra Firma Parcel Severed Parcel Lease (as defined in the WRY Ground Lease) so this term will be removed in all Terra Firma Parcel Severed Parcel Leases.

the review and approval by the Yards Parcel Owner, the Yards Parcel Operator and Landlord, collectively, of the Proposed Facility Airspace Improvement Plans and Specifications (including, if applicable, portions thereof that may relate to Material Facility Airspace Improvements on the Premises), other design and scheduling matters, and the imposition of any other requirements hereunder and under the WRY Declaration of Easements with respect to the design and construction of any Facility Airspace Improvements (including any Restoration and Capital Improvement thereto) on the Premises. Landlord hereby appoints the Yards Parcel Operator (and Tenant hereby consents thereto) for all responsibilities in coordinating in all respects the implementation of such provisions on behalf of the Yards Parcel Owner, the Yards Parcel Operator and Landlord. Landlord acknowledges and agrees that Tenant shall be entitled to rely on all consents and approvals (including deemed approvals) by the Yards Parcel Operator as binding on Landlord, Yards Parcel Owner and the Yards Parcel Operator for all such purposes hereunder and under the WRY Declaration of Easements without the requirement of any further inquiry on the part of Tenant.

(c) Prior to the initial Commencement of Construction of any portion of the Facility Airspace Improvements on the Premises (or any portion thereof) pursuant to this Lease, Tenant shall submit to Yards Parcel Operator plans and specifications in a form sufficiently detailed and progressed to enable the Yards Parcel Operator to review the same to the extent provided in this Section 8.02(c) for such portions of the Facility Airspace Improvements to be constructed (the "Proposed Facility Airspace Improvement Plans and Specifications") prepared by a licensed professional engineer or registered architect selected by Tenant, which Proposed Facility Airspace Improvement Plans and Specifications shall be in conformance with all applicable Legal Requirements, the WRY Severed Parcel Project Requirements, and all requirements of the WRY Declaration of Easements. Without limiting any additional requirements under Exhibit D of the WRY Declaration of Easements, the Yards Parcel Operator shall have the right pursuant to this Section 8.02 to review and approve such Proposed Facility Airspace Improvement Plans and Specifications; provided, that such review and approval shall be limited to (i) determining whether such Proposed Facility Airspace Improvement Plans and Specifications conform to the WRY Severed Parcel Project Requirements in all material respects (i.e., with respect to allocation of Floor Area, zoning use and the Parking Component to the extent set forth therein) and (ii) to the extent applicable, that any portion of the WRY Severed Parcel Open Space Component complies with Legal Requirements. If the Yards Parcel Operator reasonably determines that such Proposed Facility Airspace Improvement Plans and Specifications do not conform to the standards set forth (to the extent applicable) in the preceding sentence, and such deviations are not reasonably acceptable to Yards Parcel Operator (on behalf of Landlord and Yards Parcel Owner), then Yards Parcel Operator shall notify Tenant of same within twenty-one (21) days of receipt thereof, specifying in reasonable detail those respects in which such Proposed Facility Airspace Improvement Plans and Specifications do not so conform and are otherwise not reasonable to Yards Parcel Operator. Upon receipt of such notice from Yards Parcel Operator, Tenant shall then either (i) cause such Proposed Facility Airspace Improvement Plans and Specifications to be revised and resubmitted to Landlord for review and approval as aforesaid, or (ii) dispute the disapproval of the Proposed Facility Airspace Improvement Plans and Specifications in accordance with Sections 40.01(a) and (b).

(d) If Yards Parcel Operator shall fail to approve or disapprove any Proposed Facility Airspace Improvement Plans and Specifications within twenty-one (21) days of Tenant's submission thereof to Yards Parcel Operator, Tenant may provide to Yards Parcel Operator a written notice, which notice shall include in capital letters on the first page thereof: "THIS NOTICE IS BEING GIVEN UNDER SECTION 8.02 OF THE AGREEMENT OF SEVERED PARCEL LEASE FOR A PORTION OF THE WESTERN RAIL YARD SECTION OF THE JOHN D. CAEMMERER WEST SIDE YARD. YOUR FAILURE TO RESPOND WITHIN TEN (10) DAYS WILL RESULT IN YOUR DEEMED APPROVAL OF THE PENDING PROPOSED FACILITY AIRSPACE IMPROVEMENT PLANS AND SPECIFICATIONS" (such notice, the "Proposed Facility Airspace Improvement Plans and Specifications Notice"). In the event that Yards Parcel Operator does not approve or disapprove such Proposed Facility Airspace Improvement Plans and Specifications within ten (10) days after Tenant provides Yards Parcel Operator with such Proposed Facility Airspace Improvement Plans and Specifications Notice, Yards Parcel Operator shall be deemed to have approved such Proposed Facility Airspace Improvement Plans and Specifications. As used herein, the term "Approved Facility Airspace Improvement Plans and Specifications" shall mean, with respect to any Facility Airspace Improvements, the Proposed Facility Airspace Improvement Plans and Specifications that have been approved (or have otherwise been deemed approved) by Yards Parcel Operator.

(e) In the event that Tenant shall desire from time to time to modify the Approved Facility Airspace Improvement Plans and Specifications in a material manner, Tenant shall first submit such proposed modifications to Yards Parcel Operator. The submittal, review and approval of any such proposed modifications shall be upon the same terms and conditions as apply to the submittal, review and approval of the applicable Proposed Facility Airspace Improvement Plans and Specifications pursuant to Sections 8.02(c) and (d).

(f) Each Approved Facility Airspace Improvement Plans and Specifications shall comply with all Legal Requirements, including but not limited to the Building Code, as well as all requirements under the WRY Declaration of Easements, to the extent applicable. The responsibility to assure such compliance shall be that of Tenant and not of Landlord or Yards Parcel Operator. Yards Parcel Operator's determination that such Approved Facility Airspace Improvement Plans and Specifications conform to the applicable provisions of Section 8.02(c) shall not be, nor shall it be construed to be, or relied upon as, a determination that such Approved Facility Airspace Improvement Plans and Specifications comply with any Legal Requirements.

(g) All reasonable costs and expenses incurred by Landlord in reviewing the Proposed Facility Airspace Improvement Plans and Specifications and any modifications thereto shall be paid by Tenant to Landlord within thirty (30) days following delivery of an invoice by Landlord, together with evidence reasonably substantiating such costs.

Section 8.03. Facility Airspace Improvements Release to Proceed.

(a) Tenant shall provide to Yards Parcel Operator notice of the date upon which it desires to initiate the Commencement of Construction of any Facility Airspace Improvements on the Premises (the "FAI Construction Commencement Notice"), which FAI

Construction Commencement Notice shall be given not less than thirty (30) days prior to such desired commencement date (and shall be delivered concurrently with an Estimated Sales Tax Statement (as such term is defined in the PILOST Agreement)). Within twenty (20) days after receipt of such notice, Yards Parcel Operator shall provide Tenant with a written release to proceed with the commencement of construction in accordance with the applicable Approved Facility Airspace Improvement Plans and Specifications (the "Facility Airspace Improvements Release to Proceed"), upon satisfaction (or waiver in writing by Yards Parcel Operator) of each of the following conditions:

(i) The Yards Parcel Operator (on behalf of Landlord) shall have approved or shall have been deemed to have approved the Approved Facility Airspace Improvements Plans and Specifications;

(ii) If required pursuant to Exhibit D of the WRY Declaration of Easements:

(1) The Yards Parcel Operator shall have approved or shall be deemed to have approved any Approved MFAI Contractor Submittals for the initial stage of the construction work and Tenant's MFAI Schedule; and

(2) Tenant shall have provided to the Yards Parcel Operator work and safety plans, including job hazard analyses where required;

(iii) Tenant shall have procured and paid for all Improvement Approvals with respect to all of the particular elements of such Facility Airspace Improvements

(iv) If such construction involves the construction of a Building, Tenant shall have (x) delivered to Landlord reasonably satisfactory evidence of closing by Tenant of financing sources (which sources may consist of any combination of debt and/or equity facilities) sufficient to complete the initial construction of such Building, other than work anticipated to be completed by the occupants thereof at their expense (or, if the debt and/or equity facilities intended to be used for such construction, if any, have not closed, the delivery to Landlord of binding commitments therefor), (y) delivered to Landlord the Building Completion Guaranty for such Building, duly executed by the applicable Building Completion Guarantor, and (z) provided to Landlord evidence, satisfactory in the reasonable determination of Landlord, that the agreements between Tenant and the lender under any construction loan facility for such Building fulfill the requirements of Section 17.03(a)(iii);

(v) Tenant shall have complied with the insurance requirements of this Lease and the WRY Declaration of Easements applicable to such Facility Airspace Improvements and the construction thereof (it being acknowledged that the FASP Owners Association has the right to procure and maintain any such insurance on behalf of Tenant in accordance with the WRY Declaration of Easements);

(vi) Tenant's obligations set forth in Section 4.4 of the WRY Declaration of Easements with respect to Section 5 of the New York Lien Law shall have been satisfied;

(vii) Tenant shall have (x) executed and delivered to Landlord a collateral assignment in a form reasonably acceptable to Tenant, Landlord and Leasehold Mortgagee (subject to any prior assignment to any Leasehold Mortgagee) of all agreements, plans, permits and licenses relating to the construction of such Facility Airspace Improvements and the bonds, if any, provided thereunder, and (y) delivered to Landlord a consent and acknowledgement to such collateral assignment in a form reasonably acceptable to Tenant, Landlord and Leasehold Mortgagee, executed by the counterparty under any such agreement (and, to the extent that there are major subcontracts to which such counterparty is a party, by the counterparty to such major subcontracts); provided, however, that if a Leasehold Mortgage is being entered into in connection with the construction of such Facility Airspace Improvements, Tenant shall not be obligated to deliver any such consent and acknowledgement from any such counterparty unless such counterparty is also providing its consent and acknowledgement to a collateral assignment being given by Tenant in favor of the Leasehold Mortgagee; and

(viii) There shall be no outstanding Event of Default or material Non-Monetary Default under this Lease or the Project Documents; provided that such clause shall apply with respect to a material Non-Monetary Default only if Landlord has delivered to Tenant notice of such Non-Monetary Default to the extent required under the applicable provision of Section 31.01 of this Lease.

(b) [Landlord acknowledges that the Facility Airspace Improvements Release to Proceed for the Building has been issued, and all of the foregoing conditions have been either satisfied or waived.][18]

(c) Landlord acknowledges that Developer may perform FAI Preparation Work in accordance with the WRY Construction Agreement, and that such work (including the review of plans, release to proceed, etc.) shall be governed by the WRY Construction Agreement and not the provisions of this Lease.

Section 8.04. Construction Requirements for Facility Airspace Improvements.

(a) Each Facility Airspace Improvement constructed by Tenant on the Premises shall, upon the Commencement of Construction of such Facility Airspace Improvement, be constructed timely and reasonably continuously (subject to Force Majeure and Unavoidable Delay), in a good and workmanlike manner, in compliance with all applicable Legal Requirements and in accordance with all of the standards set forth in this Lease and the WRY Declaration of Easements, to the extent applicable (all of the foregoing, collectively, the "Minimum Standards"). Tenant shall use only new or first-quality material and equipment at least equal in quality and class to the standard of first-class residential, commercial and/or

[18] The bracketed language shall be included if the Facility Airspace Improvements Release to Proceed for the Building has been issued prior to the date of this Lease.

mixed-use buildings, as applicable, then being constructed in New York City. Tenant shall aim to achieve and maintain a Leadership in Energy and Environmental Design (LEED)-NC Silver rating or higher for each Building that is constructed on the Premises and a LEED-ND certification for the WRY. All Facility Airspace Improvements shall be constructed solely on the Premises and shall not depend on any access, services or foundation supports on any other land (except as may be permitted by the WRY Declaration of Easements, [the Condominium Documents][19] and valid non-terminable easements that run with the land, or other consents or rights from a Governmental Authority), except that utility services will be connected directly to the public street. Without limiting the foregoing, Landlord shall reasonably cooperate with Tenant (at Tenant's cost and expense) in obtaining such consents or rights from any Governmental Authority with respect to the utilization of space within and below 11th Avenue as may be in furtherance of the WRY Severed Parcel Project.

(b) Tenant shall obtain all necessary permits, consents, certificates and approvals for the construction of each Facility Airspace Improvement required by all applicable Legal Requirements. Landlord, at the sole cost and expense of Tenant, shall promptly execute and deliver any documents, permits, plans and other instruments that require the execution by the fee owner of the Premises, and otherwise cooperate with Tenant as reasonably required or requested by Tenant in order for Tenant to obtain all permits, consents, certificates and approvals in connection with Tenant's construction of any Facility Airspace Improvements, provided such documents or instruments do not impose any material liability or obligation on Landlord (unless paid by Tenant or against which Landlord is indemnified by Tenant in a manner reasonably satisfactory to Landlord) or materially vary or modify the rights and obligations of the parties under this Lease or the Project Documents.

Section 8.05. Completion Certificates. As and when the following are received by Tenant with respect to a Building or other Facility Airspace Improvement, Tenant shall furnish Landlord with (a) a certificate from an Architect, in customary form, certifying that the Building or other Facility Airspace Improvement has been completed substantially in accordance with the Approved Facility Airspace Improvement Plans and Specifications therefor, (b) a true copy of the temporary or permanent Certificate(s) of Occupancy for the Building or other Facility Airspace Improvement; (c) a complete set of as-built drawings and a survey of the Building or other Facility Airspace Improvement; (d) true copies of all guarantees or certifications called for under any and all construction documents or otherwise received by Tenant; (e) true copies of all certificates required by the Building Code or the NYCDOB to be filed with the NYCDOB; and (f) a true copy of the New York Board of Fire Underwriters Certificate (or the equivalent certificate, if any, of any successor organization) for the Building or other Facility Airspace Improvement, if required.

Section 8.06. No Liens. Except as otherwise provided herein or in the Project Documents, the Premises shall be free and clear of all liens arising out of or connected with the construction of the Facility Airspace Improvements, and any portion thereof, except that the foregoing shall not modify Tenant's right to grant a Leasehold Mortgage or otherwise sublease all or any portion of the Premises in accordance with the provisions of Article 17.

[19] The bracketed language shall be included if a condominium is contemplated at the Premises.

Section 8.07. Title to the Materials, Fixtures and Equipment. The Facility Airspace Improvements and all materials, fixtures and equipment to be incorporated therein (which shall not include, however, personal property and fixtures of Tenant or any subtenants that are permitted to be removed by them pursuant to this Lease and/or any subleases, as applicable, upon the expiration of the terms hereof or thereof) shall, effective upon their installation, constitute the property of Landlord and shall constitute a portion of the Premises covered by this Lease. However, Landlord shall not be liable in any manner for payment or otherwise to any contractor, subcontractor, laborer or supplier of materials in connection with the construction of the Facility Airspace Improvements or the purchase of any such materials, fixtures or equipment, nor shall Landlord have any obligation to pay any compensation to Tenant or any subtenant by reason of Landlord's acquisition of title to the Facility Airspace Improvements or the materials, fixtures or equipment located therein. Notwithstanding the foregoing or anything to the contrary elsewhere contained in this Lease, Landlord will not claim, and during the Term Tenant (or its designee) alone shall be entitled to, all of the federal tax attributes of ownership, including, without limitation, the right to claim depreciation or cost recovery deductions. Tenant hereby acknowledges that Landlord shall own the fee title to the Facility Airspace Improvements (including, without limitation, all materials, fixtures and equipment to be incorporated therein) effective as of the date the same are constructed on the Premises, subject to the terms and conditions of this Lease (including the immediately preceding sentence).

Section 8.08. Required Clauses in WRY Construction Agreements. All construction agreements for the Facility Airspace Improvements shall include the following provisions:

> "[Contractor]/[Subcontractor]/[Materialman] ("Contractor") hereby agrees that notwithstanding that Contractor performed work at and/or supplied materials to the Premises (as such term is defined in the lease pursuant to which Tenant acquired its leasehold interest (the "Lease")) or any part thereof, Landlord shall not be liable in any manner for payment or otherwise to Contractor in connection with the work performed at and/or materials supplied to the Premises. Contractor agrees that it will not file any mechanic's lien against Landlord's fee interest in the Premises or Landlord's interest as landlord under the Lease or bring any other action against Landlord's interest, and Contractor agrees to look solely to Tenant and Tenant's leasehold interest. Nothing contained herein shall prejudice any rights which Contractor may have under the Lien Law of the State of New York. The agreements made under this clause shall be deemed to be made for the benefit of Landlord under the Lease and shall be enforceable by Landlord."

Section 8.09. Coordination with Other Anticipated Development. Tenant acknowledges that significant portions of LIRR infrastructure (including the East River Tunnels, interlocking and track approaches to Penn Station, the track, platform and Level A space in Penn Station, the tracks and interlockings leading to the WSY, and the storage tracks and maintenance facilities of the WSY, all as more particularly set forth in the RFP) are located within the West

31st to 34th Street corridor between 6th Avenue and the Hudson River (the "Corridor"), and that many development projects (collectively, the "Other Projects") within the Corridor may be under construction simultaneously with the WRY Severed Parcel Project (including, but not limited to, other portions of the WRY Project, the potential development of the ERY, the redevelopment of the existing Penn Station and Madison Square Garden, the new Moynihan Station and related development between 9th and 10th Avenues, Landlord's East Side Access project, the rehabilitation of the 11th Avenue Viaduct, New Jersey Transit's, and "Access to the Region's Core" project), and each party hereby agrees to cooperate reasonably with the other in the coordination of the planning, design, preconstruction and construction activities for the WRY Severed Parcel Project with such Other Projects.

Section 8.10. [Intentionally omitted].

Section 8.11. [Intentionally omitted].

Section 8.12. High Line Component. Tenant's obligations with respect to the High Line Component are as set forth in Association Documents.

Section 8.13. WRY Severed Parcel Open Space Component. Tenant shall be responsible for the design and construction of all portions of the Open Space Component located on the Premises (the "WRY Severed Parcel Open Space Component") in accordance with all Legal Requirements (including without limitation the Zoning Resolution), and shall pay all costs and expenses in connection therewith. In furtherance of the foregoing, Tenant shall be responsible for obtaining any and all legal, administrative or other approvals that are required to be obtained, including pursuant to the Zoning Resolution, in connection with the design and construction of the WRY Severed Parcel Open Space Component. This Lease shall remain in full force and effect, and there shall be no abatement of Rental, adjustment to the Initial Land Value or any other modification to the terms of this Lease, notwithstanding any failure or inability of Tenant to obtain any necessary approvals with respect to the WRY Severed Parcel Open Space Component.

ARTICLE 9

CONDOMINIUM CONVERSION; SEVERANCE OF THE PREMISES[20]

Section 9.01. Condominium Conversion. It is acknowledged that it is the intention of the parties to submit the Premises to a condominium form of ownership as set forth in this Section 9.01.

(a) Landlord hereby approves the following documents related to the conversion of the Premises to a condominium form of ownership: (i) the form of Declaration of [●] Condominium (Pursuant to Article 9-B of the Real Property Law of the State of New York) attached hereto as Exhibit D (as same may be amended, modified or supplemented from time to time in accordance with the provisions of this Lease, the "Condominium Declaration"), (ii) the

[20] Article 9 shall be revised as necessary to reflect the intended use and structure of the Premises.

form of master by-laws attached to the Condominium Declaration as Exhibit [__] and the form of residential by laws attached to the Condominium Declaration as Exhibit [___] (as same may be amended, modified or supplemented from time to time in accordance with the provisions of this Lease, collectively, the "Condominium By-Laws"), and (iii) the form of floor plans (the "Floor Plans") attached to the Condominium Declaration as Exhibit [__] (collectively, the "Condominium Documents"). In accordance with the Condominium Documents, there will be created approximately [●] Units, each of which, together with its undivided interest in the Common Elements shall be deemed to be a separate Building Component (but not a separate Severed Subparcel) upon execution and recording of the Condominium Documents.

(b) Prior to the Condominium Conversion Date, Tenant may amend or modify the Condominium Documents, provided that any amendment or modification shall be subject to the approval of Landlord, in its reasonable discretion. Landlord shall approve or disapprove such amendments or modifications to the Condominium Documents within thirty (30) days of its receipt thereof from Tenant, and in the event of a disapproval, Landlord shall include sufficient explanation of the basis for such disapproval. If Landlord shall fail to approve or disapprove such amended or modified Condominium Documents within twenty-one (21) days of Tenant's submission thereof to Landlord, Tenant may provide to Landlord a written notice, which notice shall include in capital letters on the first page thereof: "THIS NOTICE IS BEING GIVEN UNDER SECTION 9.01(b) OF THE AGREEMENT OF SEVERED PARCEL LEASE FOR THE WESTERN RAIL YARD SECTION OF THE JOHN D. CAEMMERER WEST SIDE YARD. YOUR FAILURE TO RESPOND WITHIN TEN (10) DAYS WILL RESULT IN YOUR DEEMED APPROVAL OF THE PENDING AMENDED CONDOMINIUM DOCUMENTS". In the event that Landlord does not approve or disapprove such amended or modified Condominium Documents within ten (10) days after Tenant provides Landlord with such notice, Landlord shall be deemed to have approved such amended or modified Condominium Documents. Any dispute with respect to Landlord's approval or disapproval of the amended or modified Condominium Documents shall be subject to resolution in accordance with Sections 40.01(a) and (b).

(c) Subject to Landlord's approval or deemed approval of the Condominium Documents, Landlord hereby designates and appoints Tenant, on behalf of Landlord, at no cost, expense or liability to Landlord, to make any necessary application to the New York State Department of Law (the "NYS Law Department") in connection with Tenant's efforts to obtain approval of any offering plan for the Condominium by the State of New York and/or make an application requesting a no-action letter, a no-filing required letter, a no jurisdiction letter or letter of similar advice in order to permit the creation of a condominium without the necessity of filing an offering plan and without such sales being made pursuant to an offering plan, which cooperation shall include furnishing to the NYS Law Department such documents, affidavits and information as the NYS Law Department shall reasonably request.

(d) At Tenant's request, Landlord shall execute, in its capacity as fee owner of the Premises, the Condominium Documents as declarant and hereby agrees to record the Condominium Documents, at Tenant's sole cost and expense. Landlord's obligation to execute and record the Condominium Documents is conditioned upon the following:

(i) at the time of the proposed recordation of the Condominium Documents there is no existing and continuing Event of Default or Default under this Lease or the Project Documents; provided that this clause shall apply with respect to a Non-Monetary Default only if Landlord has delivered to Tenant notice of such Non-Monetary Default to the extent required under the applicable provisions of Section 31.01 of this Lease;

(ii) Tenant shall have delivered to Landlord all necessary approvals for the recording of the Condominium Documents, including without limitation a no-action letter, or other required approvals from the NYS Law Department, and all approvals from the New York City Department of Finance;

(iii) Tenant shall have delivered to Landlord the Sponsor Guaranty, duly executed and acknowledged by the [●] Guarantor.

(e) Landlord agrees to reasonably cooperate with Tenant's efforts to obtain separate tax lots for each Unit, including each individual residential unit, and shall execute, at no cost, expense or liability to Landlord, any documents required in connection therewith.

(f) Notwithstanding anything in this Agreement to the contrary:

(i) Landlord shall have no liability under or with respect to any offering plan, any no-action application or any no-action letter, the Condominium Documents or any other document entered into or action taken by Landlord or Tenant pursuant to this Section 9.01 and all obligations of Landlord arising under this Section 9.01 shall be performed at Tenant's sole cost and expense. Neither Landlord, nor any of its Affiliates, subsidiaries or their respective members, directors, officers, employees, agents or servants of Landlord shall have any liability (personal or otherwise) hereunder, and no property or assets of Landlord or the members, directors, officers, employees, agents or servants of Landlord shall be subject to levy, execution or other enforcement procedure under this Section 9.01. Tenant shall include in the offering plan for the Residential Units (or any other Units), and in every Unit sales contract, a waiver and release expressly exculpating and disclaiming any liability on the part of, and providing for the waiver of all claims against, the Declarant Indemnitees in connection with the offering plan or any other matters related to the Units, the Condominium, the Building or the Premises. Tenant further covenants that such waiver and release benefitting the Declarant Indemnitees shall be drafted as a separate waiver and release from any waiver or release benefitting Tenant or its Affiliates.

(ii) Tenant shall, to the fullest extent permitted by law, indemnify, defend and save Landlord and its Affiliates, subsidiaries and their respective agents, contractors, affiliates, licensees, invitees, trustees, members, directors, shareholders, partners, officers, employees and disclosed and undisclosed principals (collectively, the "Declarant Indemnitees"), harmless from and against any and all actions, liabilities, suits, judgments, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, engineers', architects' and attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against any of the Declarant Indemnitees arising out of or in connection with this Section 9.01.

(iii) If any claim, action or proceeding is made or brought against any of the Declarant Indemnitees by reason of any event (or allegation of any event) for which Tenant has agreed to indemnify the Declarant Indemnitees pursuant to clause (ii) of this Section 9.01(g) (any such event or allegation, a "Claim"), then, upon demand by Landlord, Tenant shall, at its sole cost and expense, resist or defend such claim, action or proceeding by such attorneys as Tenant shall select and such Declarant Indemnitee shall approve, which approval shall not be unreasonably withheld.

(iv) The Declarant Indemnitees will not withhold their respective consent(s) to any proposed settlement by the indemnifying party of any matter which is fully covered by such party's indemnification hereunder, provided that such settlement provides solely for the payment of money and does not impose any other liability on the respective Declarant Indemnitee.

(v) The obligations of Tenant under this Section 9.01(g) shall not be affected in any way by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises or any portion thereof.

(vi) The provisions of this Section 9.01(g) shall survive the expiration or termination of this Lease.

(g) Following the Condominium Conversion Date:

(i) the Condominium Documents shall be deemed to be and shall be superior to this Lease (and any further amendments, modifications and/or severances thereof), provided that to the extent there is any inconsistency between the terms of this Lease and the terms of the Condominium Documents then the terms of this Lease shall govern;

(ii) this Lease shall automatically be deemed amended so that all references to the "Premises" demised by this Lease shall refer to the Units, and the common interest appurtenant thereto;

(iii) Tenant shall automatically be deemed the "Declarant Net Lessee" with respect to the Units without any further action required by Landlord or Tenant, and this Lease shall be deemed a "Declarant Net Lease" with respect to such Units. In furtherance thereof, Landlord hereby assigns to Tenant, as Declarant Net Lessee, and Tenant hereby assumes, all of the rights and obligations of the Unit Owner (as such term is defined in the Condominium Documents) with respect to any such Unit that is demised by this Lease, including, without limitation (i) the voting rights appurtenant to a Unit, (ii) the right to appoint such member or members to the Condominium Board and (iii) the right to enter into subleases, in each case, subject in all respects to the terms and conditions of this Lease and the Condominium Documents. Such assignment and assumption of rights and obligations shall be automatic without any further action required by Landlord or Tenant, provided that upon the request of Landlord or Tenant, Landlord and Tenant shall execute, acknowledge and deliver an instrument in recordable form confirming (a) such assignment and assumption of rights and obligations; and (b) any amendments to this Lease necessary to reflect the conversion of the

Premises to a condominium form of ownership as contemplated herein. Notwithstanding the foregoing, in no event shall such assignment and assumption derogate, limit or otherwise restrict any obligation of Tenant to obtain the consent of Landlord for the matter in question prior to taking action under the Condominium Documents where such matter either (x) requires Landlord's consent under this Lease or (y) requires the consent of the Declarant Net Lessor under the Condominium Documents;

(iv) Landlord will accept the performance by the Condominium Board or its designee of any obligation of Tenant hereunder, which the Condominium Board may perform pursuant to the Condominium Documents. Notwithstanding the foregoing, nothing contained herein shall limit Landlord's recourse to Tenant with respect to any Default under this Lease as provided herein;

(v) If a Monetary Default or an Event of Default under this Lease has occurred and is continuing, Tenant shall not vote or direct any representative of the Condominium Board to vote or take any action with respect to the FASP Owners Association without receiving the prior written consent of Landlord to the matter in question, which consent shall be in Landlord's sole discretion. In addition to the foregoing, if a Non-Monetary Default has occurred and is continuing (which has not yet ripened into an Event of Default), Tenant shall not vote its Condominium Unit interest (or otherwise direct any representative of the Condominium Board to vote or take any action with respect to the FASP Owners Association) without receiving the prior written consent of Landlord to the matter in question, which consent shall be in Landlord's reasonable discretion. Such consent shall be deemed granted if Landlord fails to approve or disapprove Tenant's request to vote its Condominium Unit interest (or to otherwise direct any representative of the Condominium Board to vote or take any action with respect to the FASP Owner's Association) following the delivery of a second notice at least ten (10) Business Days following the first request for approval, and Landlord fails to respond to such second notice within ten (10) Business Days after the delivery thereof;

(vi) If an Event of Default has occurred and is continuing, Landlord, by written notice to Tenant and the Condominium Board, shall have the right to replace Tenant's designees on the Condominium Board with a designee of Landlord; provided that (i) such appointment shall be deemed rescinded upon the cure of such Event of Default (whether by Tenant, a Leasehold Mortgagee or Mezzanine Lender in accordance with the applicable provisions herein) without any further action required by Landlord or Tenant and (ii) in the event that a Leasehold Mortgagee or Mezzanine Lender is taking the actions described in Section 17.03 with respect to, and is curing such Event of Default, then the Leasehold Mortgagee or Mezzanine Lender shall be entitled to replace Tenant's designee on the Condominium Board, which right shall be superior to that of Landlord to replace Tenant's designee under this Section 9.01(i);

(vii) Tenant shall promptly provide copies to Landlord of any written notices of assessment or default received by Tenant under the Condominium Documents; and

(viii) In the event of any conflict between the terms of the Condominium Documents and the terms of this Lease with respect to the use and occupancy of a Unit demised by this Lease, the more restrictive terms shall govern.

Section 9.02. Severance.

(a) Intentionally Omitted.

(b) Intentionally Omitted.

(c) Intentionally Omitted.

(d) Upon Tenant's written request, at any time and from time to time, provided that the conditions set forth in this Section 9.02(d) have been satisfied, and at the sole cost and expense of Tenant, the Premises may be subdivided into two (2) or more separate parcels in accordance with the this Section 9.02(d), each of which parcels (sometimes referred to herein as a "Severed Subparcel") shall, following such severance (a "Subparcel Severance"), constitute a separate and distinct Severed Parcel and the tenants thereunder shall each be a Severed Parcel Tenant with respect to the applicable Severed Parcel (a "Severed Subparcel Tenant").

(i) In furtherance of the foregoing, Landlord and Tenant (or any other Person to whom Tenant would be permitted to Transfer its interest in this Lease at the time of such Subparcel Severance) shall (A) execute, acknowledge and deliver new Severed Parcel Leases with respect to each such Severed Subparcel (other than a single Severed Subparcel designated by Tenant for which this Lease may be amended accordingly) in substantially the same form as this Lease, together with memoranda of such leases in recordable form, and terminations of such memoranda in recordable form to be held in escrow; and (B) execute, acknowledge and deliver an amendment to this Lease including the information applicable to such Severed Subparcel as set forth in clause Section 9.02(d)(ii), together with an amendment to the memorandum of this Lease to reflect the change in the demised Premises (each of the new Severed Subparcel leases described in clause (A) and the amendment to this Lease described in clause (B), a "Severed Subparcel Lease"). For the avoidance of doubt, from and after each Subparcel Severance, wherever the Balance Lease or another a Balance Lease or Severed Parcel Lease refers to a Severed Parcel, Severed Parcel Lease or Severed Parcel Tenant, such references shall be deemed to include Severed Subparcels, Severed Subparcel Leases and Severed Subparcel Tenants.

(ii) Each Severed Subparcel Lease shall set forth: (A) the maximum Floor Area and zoning uses that may be utilized on such Severed Subparcel; (B) such Severed Subparcel Tenant's share of the Severed Parcel Allocable Share (which shall reflect the allocation set forth in the Condominium Documents or such other methodology agreed by Landlord and Tenant to reasonably reflect the economic value of the Severed Subparcel); (C) a statement of the initial Annual Base Rent for such Severed Subparcel; and (D) a revised Severed Parcel Pro Forma Rent Schedule for such Severed Subparcel. In addition, Tenant shall deliver legal descriptions of each of the Severed Subparcels and undertake, at Tenant's sole cost and expense, all actions necessary to cause the Severed Subparcels to comprise separate tax lots.

Landlord, in its capacity as fee owner, at the cost and expense of Tenant, shall execute all documents as shall be reasonably required in connection therewith.

(iii) Notwithstanding anything to the contrary in this Section 9.02(d), the Premises shall not be subdivided into Severed Subparcels, unless (A) there are no continuing Events of Default or material Non-Monetary Defaults under this Lease or the Project Documents; provided that such clause shall apply with respect to a material Non-Monetary Default only if Landlord has delivered to Tenant notice of such Non-Monetary Default to the extent required under the applicable provision of Section 31.01 of this Lease; (B) Substantial Completion of the Associated Portion of the LIRR Roof and Facilities shall have been achieved; (C) a core and shell Certificate of Occupancy for the entirety of the Building which is to be subdivided into Severed Subparcels shall have been issued, (D) the Building Component constituting a Severed Subparcel consists of a single use (i.e. office, retail, hotel, residential rental or residential condominium), and constitutes the entirety of such use within the Building that will remain subject to a Severed Subparcel Lease, (E) Landlord shall have reasonably approved any amendments to the Condominium Documents in accordance with the terms of Section 9.01(b) hereof (if applicable) and (F) the Condominium Conversion Date shall have occurred. Upon the consummation of a Subparcel Severance as provided in this Section 9.02(d), Tenant shall submit to Landlord an update to the Approved Severed Parcel Plan to reflect the creation of each Severed Subparcel and the portion of the Severed Parcel Allocable Share assigned to each such Severed Subparcel.

(iv) Landlord shall only be required to allow the creation of Severed Subparcels and enter into Severed Parcel Leases in accordance with this Section 9.02(d) to the extent that Tenant is creating the Severed Subparcels for a bona-fide commercial purpose in accordance with the financing, development and operation of several Building Components. Landlord shall not unreasonably withhold its consent to the creation of Severed Subparcels, subject to the provisions of this Section 9.02(d). Landlord and Tenant hereby acknowledge and agree that certain Severed Parcels are intended to include multiple Building Components for which Severed Subparcels are anticipated to be created, including (x) the Severed Parcel(s) located east of the planned Hudson Boulevard, which may include, in the aggregate, up to six (6) Building Components for which Severed Subparcels are anticipated to be created, and (y) the Severed Parcel(s) located west of the planned Hudson Boulevard, which may each include no more than three (3) Building Components for which Severed Subparcels are anticipated to be created. Notwithstanding the foregoing provisions of this Section 9.02(d)(iv) or clause (D) of Section 9.02(d)(ii), Tenant shall be permitted to create additional Severed Subparcels in accordance with this Section 9.02(d), provided that, simultaneously with the creation of such additional Severed Subparcel(s), Tenant shall close fee title to such Severed Subparcel(s) pursuant to the Fee Conversion Option in accordance with Article 10, such that, at any given time, there shall be no more than six (6) Severed Subparcel Leases, in the aggregate, for the Severed Parcel(s) located east of the planned Hudson Boulevard and no more than three (3) Severed Subparcel Leases for each Severed Parcel located west of the planned Hudson Boulevard.

(v) From and after the execution and delivery of a Severed Subparcel Lease, Tenant shall have no rights or obligations under this Lease with respect to such Severed Subparcel or Severed Subparcel Lease, and shall be released from all liabilities arising

from such Severed Subparcel or under the Severed Subparcel Lease from and after the date of such Subparcel Severance. Notwithstanding anything to the contrary herein, with respect to each Severed Subparcel Lease, no Default or Event of Default under such Severed Subparcel Lease shall be deemed a Default or Event of Default under any other Severed Parcel Lease, Severed Subparcel Lease, and no Default or Event of Default under other Severed Parcel Leases and other Severed Subparcel Leases shall be deemed a Default or Event of Default under each such Severed Subparcel Lease. The foregoing shall be confirmed in an amendment to this Lease and in each Severed Subparcel Lease.

(e) Within thirty (30) days after receipt of an invoice from Landlord (together with reasonably substantiating evidence of costs), Tenant or the applicable Severed Subparcel Tenant shall pay any and all reasonable costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred by Landlord in connection with the creation of the condominium or reviewing and implementing any request for a Subparcel Severance or subdivision in accordance with this Section 9.02, including without limitation its review of the Condominium Documents.

ARTICLE 10

FEE CONVERSION OPTION

Section 10.01. Fee Conversion Option. Tenant shall have the option to purchase fee title to the Premises or any portion thereof (provided that such portion must consist of the entirety of one or more Unit(s) [or a WRY Open Space Parcel (provided that there shall be no more than one WRY Open Space Parcel on the entire WRY)]) concurrently with the earlier of (a) Substantial Completion of the Building, or (b) if with respect to one or more Residential Units, the closing of the first Residential Unit in the Building, notwithstanding that such closing may occur prior to Substantial Completion of such Building; provided, however, that it shall be a precondition of any such closing that Substantial Completion of the Associated Portion of the LIRR Roof and Facilities shall have been achieved prior to such closing. In addition, Tenant shall have the option to purchase fee title to any portion of the Premises upon which a portion of the WRY Severed Parcel Open Space Component has been constructed (an "WRY Open Space Parcel"), together with any Facility Airspace Improvements located thereon, at any time after: (i) Substantial Completion of the Associated Portion of the LIRR Roof and Facilities and (ii) the portion of the WRY Severed Parcel Open Space Component located within the WRY Open Space Parcel has been Substantially Completed (each of the purchase options set forth in this Section 10.01, a "Fee Conversion Option" and the Premises, Unit(s) or WRY Open Space Parcel to be purchased, an "Option Property").

Section 10.02. Conditions Precedent. Tenant shall exercise a Fee Conversion Option by delivery of written notice to Landlord (an "Election Notice"), which notice shall specify a closing date (an "Initial Fee Conversion Closing Date") for the closing of the sale and purchase of the Option Property, which Initial Fee Conversion Closing Date shall be not less than thirty (30) days and not more than ninety (90) days after the date of delivery of the Election Notice (an "Election Notice Date"). An Election Notice shall be valid only if, on the Fee Conversion Closing Date, all of the following conditions have been satisfied:

(a) Tenant shall have paid to Landlord all PILOST due and owing, and shall have delivered any letter of credit required to be delivered, pursuant to the PILOST Agreement;

(b) Tenant shall have paid to Landlord all Annual Base Rent, Additional Rent and other Rental then due and payable (including, except for a purchase of an WRY Open Space Parcel, a pro-rated portion of any Annual Base Rent due and payable for the month in which the Fee Conversion Closing occurs), as well as all other amounts due and owing by Tenant to Landlord under any other Project Document;

(c) In the event that Final Completion of the Associated Portion of the LIRR Roof and Facilities, if any, (or, for the purchase of an WRY Open Space Parcel, the portion of the LIRR Roof and Facilities located in, on, or under the applicable WRY Open Space Parcel) has not been achieved, Tenant shall deposit with MTA cash or letter of credit in the amount of twice the estimated cost of the Punch List items remaining for such Associated Portion of the LIRR Roof and Facilities, which amount shall be returned to Tenant or its designee upon Final Completion of the Associated Portion of the LIRR Roof and Facilities (or, for the purchase of an WRY Open Space Parcel, the portion of the LIRR Roof and Facilities located in, on, or under the applicable WRY Open Space Parcel);

(d) [Tenant shall have paid to Landlord all PILOT then due and owing under Section 4.01, if any, and to HYIC, or any other applicable party, all PILOT then due and owing pursuant to the PILOT Agreement (if any);] and

(e) Tenant shall have cured any Monetary Default or Non-Monetary Default under this Lease of which Tenant has been given notice.

Section 10.03. Sale and Purchase Agreement. If Tenant exercises a Fee Conversion Option, the closing of the sale and purchase of the following procedures shall apply for Fee Conversions, except that the provisions of Section 10.05 shall apply in lieu thereof exclusively to the Fee Conversion of individual Residential Units:

(a) If Tenant exercises a Fee Conversion Option, the closing of the sale and purchase of the Option Property (such sale and purchase, a "Fee Conversion" and such closing, a "Fee Conversion Closing") shall be held at the offices of Landlord's attorneys in the City of New York (or such other location as may be mutually agreed to by Landlord and Tenant), at 10:00 a.m., on the Initial Fee Conversion Closing Date. The Initial Fee Conversion Closing Date shall be subject to adjournment by Tenant upon reasonable advance notice from Tenant to Landlord at any time and from time to time; provided, that no adjournment shall excuse or delay Tenant's obligations under this Lease (the actual date on which a Fee Conversion Closing occurs, a "Fee Conversion Closing Date").

(b) Landlord shall cause the Option Property to be free and clear of any liens or encumbrances created by an act or omission of Landlord following the Commencement Date of this Lease, except to the extent requested or consented to by Tenant. Landlord shall, at its sole cost and expense, terminate, remove or discharge any such liens or encumbrances no later than the Fee Conversion Closing Date, but shall have no responsibility or

liability for any other liens or encumbrances. Landlord shall have no obligation to cause the Option Property to be free and clear of any liens or encumbrances created by an act or omission of Tenant, including encumbrances on this Lease. Tenant shall be responsible for any costs and expenses to terminate, remove or discharge any such liens or encumbrances.

(c) Landlord, at a Fee Conversion Closing, shall convey title to the Option Property to Tenant or its designee, free and clear of liens and encumbrances, except for Permitted Exceptions, by delivery of a fully executed and acknowledged Bargain and Sale Deed without Covenant, in the form of Exhibit O-1 attached hereto in the case of the Premises or for any Severed Subparcels which constitute one or more Units, a Condominium Unit Deed in the form of Exhibit O-2 attached hereto. The obligations set forth in the preceding sentence shall include, but not be limited, to Landlord having the obligation to, at Landlord's sole cost and expense, cause the Fee Mortgage, if any, to be released from the Option Property upon payment of the Option Price on or prior to the Fee Conversion Closing of such Option Property. At the time of the Fee Conversion Closing, at Tenant's election, in its sole discretion, the Bargain and Sale Deed shall be modified from the form attached hereto to include that Tenant shall have the right to assume Landlord's right, title and interest under this Lease whereupon Tenant's interest under the fee and leasehold interests of the Premises shall not be deemed to have merged. In furtherance of the foregoing, at a Fee Conversion Closing Landlord shall also deliver to Tenant or its designee a duly executed and acknowledged certificate of non-foreign status pursuant to Section 1445 of the Internal Revenue Code in the form of Exhibit S attached hereto and duly executed counterparts to any New York City and New York State real property transfer tax returns and forms. Simultaneously with the Fee Conversion Closing of a WRY Open Space Parcel or a Severed Subparcel which constitutes one or more Units, Landlord and Tenant shall (at the sole cost and expense of Tenant) execute an amendment to this Lease in recordable form, together with any affidavits, tax returns and/or other instruments customarily executed in connection with the same, amending:

(i) in the case of the WRY Open Space Parcel, the description of the Premises to exclude such WRY Open Space Parcel (but not otherwise amending the terms of this Lease, including, without limitation, the amount of Annual Base Rent); and

(ii) in the case of one or more Unit(s), (a) the description of the Premises to exclude such Unit(s) that is/are subject to a Fee Conversion and (b) the amount of Annual Base Rent payable under this Lease to exclude the portion of rent attributable to the purchased Unit(s), such excludable amount being the product of (x) the Annual Base Rent and (y) the allocation to each such Unit of a portion of the Severed Parcel Allocable Share (which shall be the aggregate proportionate undivided interests in the common elements appurtenant to such Unit(s) pursuant to the Condominium Documents) (but not otherwise amending the terms of this Lease).

(d) Tenant shall pay to Landlord (i) at a Fee Conversion Closing of the Premises or a Severed Subparcel consisting of one or more Units, the Option Price, or to such other party as directed by Landlord, by certified check drawn on a bank which is a member of the New York Clearinghouse Association (or a successor thereto) or, at Landlord's option, by wire transfer of immediately available federal funds to an account or accounts designated by

Landlord, and (ii) at a Fee Conversion Closing of an WRY Open Space Parcel, Ten Dollars ($10.00).

(e) Tenant shall pay all New York City and New York State real property transfer taxes and recording charges which may be due and payable in connection with a Fee Conversion and the recording of the deed thereto. Tenant shall be solely responsible for any title search and survey charges and any title insurance premiums in respect of title insurance obtained by Tenant or its designee, as well as any and all costs associated with any loan obtained by Tenant or its designee, in connection with a Fee Conversion Option and a Fee Conversion Closing. Tenant shall be solely responsible for any reasonable legal fees and administrative costs incurred by Landlord in connection with a Fee Conversion Option and a Fee Conversion Closing.

(f) Tenant's obligation to close title under a Fee Conversion Option shall be expressly conditioned upon the truth and accuracy in all material respects of each of the following representations and warranties of Landlord to be made as of the applicable Fee Conversion Closing Date with respect to the Option Property, as applicable, any or all of which Tenant may waive in the exercise of its sole discretion:

(i) Landlord has not received any written notice of any actual or threatened condemnation proceeding with regard to all or any part of the Option Property; and

(ii) all consents, authorizations and other actions on the part of Landlord which are necessary in order to permit Landlord to consummate the sale of the Option Property have been obtained and taken.

(g) Except as otherwise set forth in this Article 10, Tenant, upon a Fee Conversion Closing, shall be deemed to have accepted the Option Property in its then "as is" and "where is" condition, without any representations, warranties or agreements in respect thereof; provided that nothing herein shall reduce or otherwise limit any obligations of the Yards Parcel Owner under the WRY Declaration of Easements. Notwithstanding the foregoing, if the whole of the Premises or any material portion thereof shall be taken under eminent domain or condemnation proceedings, or if suit or other action shall be instituted for the taking or condemnation of the whole or any material portion thereof, Tenant shall nonetheless have the right to exercise a Fee Conversion Option, in which event Landlord shall pay and/or assign to Tenant (or its designee) on the applicable Fee Conversion Closing Date all condemnation awards paid and all of Landlord's right, title and interest in and to all such awards payable by reason of such damage, loss or taking.

Section 10.04. Purchase Price. The purchase price (the "Option Price") for (a) the entirety of the Premises shall be equal to the sum of (x) all future Annual Base Rent payments due under this Lease through the Fixed Expiration Date (taking into account all rent escalations and FMV Base Rent Resets, and assuming that the Annual Base Rent for the period during the Term immediately following each FMV Base Rent Reset shall be equal to one hundred twenty percent (120%) of the Annual Base Rent for the period expiring on the day immediately prior to the applicable Initial Reset Date or Reset Date), with each such payment discounted to the Fee Conversion Closing Date using a discount rate of six and one-half percent

(6.5%) per annum, as more particularly set forth on the Severed Parcel Pro Forma Rent Schedule plus (y) Landlord's Reversionary Interest Value as of the Fee Conversion Closing Date. (an illustration of a calculation of the Option Price for the entirety of the Premises is attached hereto as Exhibit C-1), or (b) the entirety of any Unit shall be equal to (i) the sum of (x) all future Annual Base Rent payments due under this Lease through the Fixed Expiration Date (taking into account all rent escalations and FMV Base Rent Resets, and assuming that the Annual Base Rent for the period during the Term immediately following each FMV Base Rent Reset shall be equal to one hundred twenty percent (120%) of the Annual Base Rent for the period expiring on the day immediately prior to the applicable Initial Reset Date or Reset Date), with each such payment discounted to the Fee Conversion Closing Date using a discount rate of six and one-half percent (6.5%) per annum, as more particularly set forth on the Severed Parcel Pro Forma Rent Schedule plus (y) Landlord's Reversionary Interest Value as of the Fee Conversion Closing Date multiplied by (ii) the proportionate undivided interest in the common elements appurtenant to such Unit pursuant to the Condominium Documents (or such other methodology agreed to by Landlord and Tenant to reasonably reflect the economic value of the applicable Unit). An illustration of a calculation of the Option Price for the entirety of a Unit is attached hereto as Exhibit C-2.

Section 10.05. Special Procedures for Individual Residential Units. In lieu of purchasing the entirety of the Residential Units as contemplated under Section 10.04, Tenant shall have the right to purchase individual Residential Units (each a "Residential Unit Closing") pursuant to the following procedures:

(a) All of the conditions precedent for a Fee Conversion as set forth in Section 10.02 shall have been satisfied, except that Tenant shall provide Landlord no less than sixty (60) days prior notice as to the date it anticipates the first Residential Unit Closing to occur.

(b) The following additional conditions precedent shall have been satisfied:

(i) Tenant shall have included the waiver and release language in the offering plan for the Residential Units and in each Residential Unit sales contract as described in Section 9.01(f)(i) above.

(ii) Tenant shall have delivered to Landlord an instrument from a creditworthy entity reasonably acceptable to Landlord indemnifying the Declarant Indemnitees as set forth in Section 9.01(f)(ii) above. Tenant and Landlord acknowledge and agree that the Sponsor Guaranty, or the Substitute Collateral (as such term is defined in the Sponsor Guaranty), satisfies the requirement set forth in this Section 10.05(b)(ii).

(iii) Landlord and Tenant shall have entered into an escrow agreement in such form and with an escrow agent reasonably acceptable to Landlord and Tenant, which escrow agreement shall govern all Residential Unit Closings and shall provide, among other things, that (w) Landlord shall deposit in escrow executed (but undated) Condominium Unit Deeds for each of the Residential Units, (x) Tenant shall have the right to designate the grantee of each Condominium Unit Deed, (y) Landlord and Tenant shall each deposit in escrow executed (but undated) forms of modifications of this Lease, together with the other documents,

instruments and affidavits, as contemplated by clauses (c)(iii) and (c)(iv)) below and (z) the escrow agent shall be permitted to release a Condominium Unit Deed only upon the confirmation by Landlord that the conditions for a Residential] Unit Closing as set forth therein have been satisfied (including its approval of the applicable Residential Unit Closing Statement).

(iv) Tenant shall deliver to Landlord no less than five (5) Business Days prior to each Residential Unit Closing a statement (the "Residential Unit Closing Statement") containing:

(1) A calculation of the purchase price for such Residential Unit (each, the "Residential Unit Purchase Price"), which shall be equal to (i) the sum of (x) all future Annual Base Rent payments due under this Lease through the Fixed Expiration Date (taking into account all rent escalations and FMV Base Rent Resets, and assuming that the Annual Base Rent for the period during the Term immediately following each FMV Base Rent Reset shall be equal to one hundred twenty percent (120%) of the Annual Base Rent for the period expiring on the day immediately prior to the applicable Initial Reset Date or Reset Date), with each such payment discounted to the Fee Conversion Closing Date using a discount rate of six and one-half percent (6.5%) per annum, as more particularly set forth on the Severed Parcel Pro Forma Rent Schedule plus (y) Landlord's Reversionary Interest Value as of the Fee Conversion Closing Date; multiplied by (ii) the proportionate undivided interest in the common elements appurtenant to such Residential Unit pursuant to the Condominium Documents, calculated as if the proportionate undivided interest in the common elements appurtenant to all of the Units in the Building collectively equaled 100% of the undivided interest in the common elements of the Condominium. An illustration of a calculation of the Residential Unit Purchase Price is attached hereto as Exhibit I;

(2) A calculation of the Annual Base Rent to be payable under this Lease following the Residential Unit Closing (the "Post Closing Annual Base Rent"), which shall be equal to the Annual Base Rent, less the product of (x) the Annual Base Rent and (y) the aggregate proportionate undivided interests in the common elements appurtenant to the Residential Units pursuant to the Condominium Documents that have been subject to a Fee Conversion, calculated as provided in clause b(iv)(1)(ii) above.

(c) At each Residential Unit Closing:

(i) Landlord shall cause each Residential Unit to be free and clear of any liens or encumbrances created by an act or omission of Landlord following the Commencement Date of this Lease, except to the extent requested or consented to by Tenant. Landlord shall, at its sole cost and expense, terminate, remove or discharge any such liens or encumbrances no later than the Residential Unit Closing Date, but shall have no responsibility or liability for any other liens or encumbrances. Landlord shall have no obligation to cause the

Residential Unit to be free and clear of any liens or encumbrances created by an act or omission of Tenant, including encumbrances on this Lease. Tenant shall be responsible for any costs and expenses to terminate, remove or discharge any such liens or encumbrances.

(ii) Landlord shall convey title to the applicable Residential Unit to Tenant or its designee by delivery of a fully executed and acknowledged Condominium Unit Deed in the form of Exhibit O-2 attached hereto. In furtherance of the foregoing, at each Residential Unit Closing, Landlord shall also deliver to Tenant or its designee a duly executed and acknowledged certificate of non-foreign status pursuant to Section 1445 of the Internal Revenue Code in the form of Exhibit S attached hereto, duly executed counterparts to any New York City and New York State real property transfer tax returns and forms and such other affidavits or instruments that are customarily required in connection with such transactions.

(iii) Landlord and Tenant shall (at the sole cost and expense of Tenant) execute an amendment to this Lease in recordable form, together with any affidavits, tax returns and/or other instruments customarily executed in connection with the same, amending (x) the Annual Base Rent to equal the Post-Closing Annual Base Rent and (y) the legal description of the Premises to exclude all Residential Units that have been subject to a Fee Conversion.

(iv) Tenant or its designee shall pay all New York City and New York State real property transfer taxes and recording charges which may be due and payable in connection with a Residential Unit Closing and the recording of the deed thereto. Tenant or its designee shall be solely responsible for any title search and survey charges and any title insurance premiums in respect of title insurance obtained by Tenant or its designee, as well as any and all costs associated with any loan obtained by Tenant or its designee, in connection with a Residential Unit Closing. Tenant shall be solely responsible for any reasonable legal fees and administrative costs incurred by Landlord in connection with a Residential Unit Closing.

(v) Tenant (or its designee) shall pay to Landlord (x) the Residential Unit Purchase Price plus (y) a transaction fee ("Transaction Fee") equal to (1) the Residential Unit Purchase Price for such Residential Unit, multiplied by (2) the sum of the New York City Real Property Transfer Tax and New York State Real Estate Transfer Tax rates that would apply to a transfer of the entirety of the Residential Units (the "Commercial Rate"; under current Applicable Law, the Commercial Rate equals 3.025%). In the event that a Residential Unit is conveyed to Tenant or its designee (either as beneficial owner or nominee), in lieu of a direct conveyance by Landlord to a third party residential purchaser, then the Transaction Fee shall be reduced by the New York City Real Property Transfer Tax, New York State Real Estate Transfer Tax, and, if applicable, the tax imposed under New York Tax Law Section 1402-a (the "Mansion Tax") actually payable by Tenant or its designee to the applicable taxing authorities (all such taxes actually paid, the "Actual Taxes") in connection with such conveyance. Notwithstanding the foregoing, if Actual Taxes (such Actual Taxes, the "Additional Taxes") are imposed by New York City and/or New York State, either as a result of an audit or otherwise, on any conveyance described in the first sentence of this clause (v) on the basis that a "conveyance" by Landlord to Tenant or its designee is deemed to have occurred in addition to the actual conveyance by Landlord to the third party residential purchaser, Landlord shall promptly credit to Tenant (or an Affiliate of Tenant) an amount equal to the portion of such Additional Taxes (but not interest or penalties thereon) (which credit shall not exceed the amount of Transaction

Fee), which credit shall be applied, at Tenant's option, against the next sums due either from Tenant to Landlord under this Lease or from an Affiliate of Tenant to Landlord under the WRY Lease or any Severed Parcel Lease in effect on the WSY. The language contained in the last sentence of this Section 10.05(c)(v) shall survive the expiration or earlier termination of this Lease.

(d) Except as otherwise set forth in this Article 10, Tenant or its designee, upon a Residential Unit Closing, shall be deemed to have accepted the applicable Residential Unit in its then "as is" and "where is" condition, without any representations, warranties or agreements in respect thereof; provided that nothing herein shall reduce or otherwise limit any obligations of the Yards Parcel Owner under the WRY Declaration of Easements.

ARTICLE 11

GUARANTIES

Section 11.01. Sponsor Guaranty. Prior to the Condominium Conversion Date, Tenant shall cause the [●] Guarantor to enter into and deliver to Landlord that certain Sponsor Guaranty (Western Rail Yard Section of the John D. Caemmerer West Side Yard) in the form attached hereto as Exhibit L-1.

Section 11.02. Building Completion Guaranty. Prior to the Commencement of Construction of each Building, Tenant shall cause a completion guaranty for such Building and Related Improvements (as defined in the Building Completion Guaranty) in the form attached hereto as Exhibit L (each such guaranty delivered in connection with this Lease, a "Building Completion Guaranty") to be delivered to Landlord (together with any deliveries required to be delivered by the Building Completion Guarantor thereunder prior to the effective date of such Building Completion Guaranty) by one or more creditworthy entities satisfying the requirements set forth therein (any such entity or entities, collectively, a "Building Completion Guarantor").

Section 11.03. Administration of Guarantees. Tenant shall pay or reimburse Landlord for all reasonable out-of-pocket costs and expenses incurred by Landlord in connection with its administration of any Building Completion Guaranty delivered or proposed to be delivered pursuant to this Lease, including without limitation Landlord's reasonable attorneys' and accountants' fees and expenses incurred in evaluating requests for Landlord's consent thereunder.

ARTICLE 12

TAX-EXEMPT FINANCING OF WRY ROOF COMPONENT CONSTRUCTION

Landlord shall cooperate with Tenant and Tenant's tax and bond counsel in order to determine the legal and financial feasibility of financing portions of the WRY Roof Component and/or the Open Space Component construction costs with tax-exempt financing ("Roof Tax-Exempt Financing"). In the event that Roof Tax-Exempt Financing is legally and financially feasible and practicable, and would result in a net financing cost savings (after all fees

and expenses) over conventional debt to finance all or any portion of the WRY Roof Component and/or the Open Space Component, as applicable, and would not otherwise adversely impact the economics of Tenant's ownership and operation of the Premises, Landlord and Tenant shall use diligent efforts to close Roof Tax-Exempt Financing to finance all or any portion of the WRY Roof Component and/or the Open Space Component, as applicable, and shall modify the terms and provisions of this Lease and the other Project Documents to the extent reasonably necessary to accommodate such Roof Tax-Exempt Financing. It is understood and agreed that any Roof Tax-Exempt Financing shall be without cost, expense or recourse to Landlord or any of its Affiliates. All costs and expenses associated with Roof Tax-Exempt Financing, including the costs of all credit instruments or enhancements necessary to support an issuance of Roof Tax-Exempt Financing, will be capitalized and paid out of the proceeds thereof. Landlord shall have no obligation to make any payments of debt service on the Roof Tax Exempt Financing. The WRY Roof Component Financing Cost Savings (if any) will be added to the Initial Land Value from and after the closing of such construction loan in accordance with Section 3.03(b).

ARTICLE 13

BONDABLE NET LEASE

At Landlord's request, and at its sole cost and expense, and subject to Tenant's review and approval of all information relevant to the Bond Lease Financing, Tenant shall reasonably cooperate with Landlord and Landlord's tax and bond counsel in order to determine the legal and financial feasibility of the issuance of tax-exempt bonds based on this Lease to enable Landlord to receive the net proceeds of bonds where the principal, premium (if any) and interest on such bonds are entirely serviced by installments of Annual Base Rent (the "Bond Lease Financing"). In the event that Bond Lease Financing is legally and financially feasible, and Landlord desires to undertake such Bond Lease Financing, this Lease and the Project Documents shall be modified as shall be reasonably necessary to accommodate the Bond Lease Financing; provided, that such modifications do not adversely impact the schedule or the development of the WRY Severed Parcel Project or Tenant's (or its successors', assigns' or designees') financing thereof, or alter Tenant's right to exercise any Subparcel Severance or Fee Conversion Option provided for herein (and any Bondable Lease Financing shall be expressly subordinate thereto). All costs and expenses associated with the Bond Lease Financing, including the costs of all credit instruments or enhancements necessary to support an issuance of the Bond Lease Financing, as well as all debt service and other payments or penalties on the Bond Lease Financing (including without limitation any pre-payment obligations in connection with a Subparcel Severance or Fee Conversion), shall be the sole responsibility of Landlord. The components of Adjusted Initial Land Value shall be adjusted as necessary such that the Annual Base Rent calculated pursuant to Section 3.03 shall be equal to the total annual cost to Tenant of the debt service necessary to service the Bond Lease Financing; provided, however, that in the event Landlord obtains Bond Lease Financing, the total annual cost to Landlord shall not exceed the Annual Base Rent specified in Section 3.03; provided, further, that no Bond Lease Financing shall accelerate any payments of Annual Base Rent. Tenant understands and acknowledges that the use of a Bond Lease Financing may result in net proceeds to Landlord that exceed the Initial Land Value.

ARTICLE 14

INSURANCE

Section 14.01. Required Insurance.

(a) Tenant shall at all times maintain, or cause to be maintained, at its sole cost and expense, the insurance required to be maintained by the Facility Airspace Parcel Owner under Article VIII of the WRY Declaration of Easements with respect to the Premises (subject to the provisions of Article XVI of the WRY Declaration of Easements), and shall comply with all of the provisions of Article VIII of the WRY Declaration of Easements in connection therewith.

(b) In addition to the foregoing, at all times following Substantial Completion of any Building on the Premises, Tenant shall maintain, or cause to be maintained, at its sole cost and expense, property insurance on such Building and its contents providing coverage for loss or damage by fire and other hazards covered under the equivalent of what was formerly known as an "all risk" policy, and including coverage for loss or damage by water, subsidence (excluding, at Tenant's option, normal settling only) and, to the extent, if any, from time to time hereafter commonly insured against by prudent owners of properties comparable to such Building in New York County, flood, earthquake, war risks, and terrorism; provided, however, that in no event shall the foregoing be deemed to obligate Tenant to carry or cause to be carried any insurance with respect to any item of movable personal property located in such Building. Such insurance shall be written on an "Agreed Amount" basis, for the full replacement cost of such Building, with a sublimit for business interruption in an amount, from time to time equal to not less than the sum of one hundred percent (100%) of the then Annual Base Rent, Impositions and insurance premiums for a twelve (12) month period, and provided that additional sublimits may be imposed with approval of Landlord (the "Replacement Cost"), as reasonably determined in the manner hereinafter provided. The Replacement Cost shall include, without limitation, the cost of demolition and debris removal, excavations, grading, paving, landscaping, architects, and development fees, after taking into account increased costs of construction attributable to building code requirements, and shall not be reduced by depreciation or obsolescence of such Building. Within thirty (30) days after Substantial Completion of such Building, the substantial completion of any Restoration or the substantial completion of any material Capital Improvement, as applicable, Tenant shall cause an examination of such Building to be made by an appraiser selected by Tenant and approved by the company providing the property insurance required by this Section 14.01(b), in order to determine the Replacement Cost thereof, and, promptly after each such examination is made, the amount of insurance required under this Section 14.01(b) shall be adjusted accordingly, in accordance with such examination and the requirements of this Section 14.01(b). In the absence of any material changes to such Building requiring an examination of such Building as hereinabove provided, the Replacement Cost thereof shall be deemed to have increased or decreased, as appropriate, to reflect increases or decreases in the Marshall and Swift Cost Index or such other published index of construction costs as shall be selected by Tenant with the concurrence of its insurance carrier and Landlord (acting reasonably). Each property insurance policy hereunder shall state that the valuation of any loss to be determined thereunder shall be made on a replacement-cost basis.

(c) In addition to the foregoing, Tenant shall maintain, or cause to be maintained, at its sole cost and expense, such other insurance in such amounts as may from time to time be reasonably required by Landlord against such other insurable hazards as at the time are commonly or customarily insured against in the case of premises similarly situated and/or with similar uses to the Premises.

Section 14.02. Additional Insurance Requirements.

(a) All insurance policies required to be maintained by Tenant hereunder shall be issued (i) by responsible companies authorized to do business in the State of New York, each having an AM Best rating of not less than A-VII (or its equivalent) and (ii) under insurance policies in form and content required by this Lease and otherwise reasonably satisfactory to Landlord.

(b) Tenant and Landlord shall cooperate in connection with the adjustment and collection of any insurance recoveries that may be due in the event of loss, and Tenant shall execute and deliver to Landlord such proofs of loss and other instruments which may reasonably be required for the purpose of obtaining the recovery of any such insurance monies.

(c) Tenant shall not carry separate liability or property insurance concurrent in form or contributing in the event of loss with that required by this Lease to be furnished by Tenant, unless Landlord, LIRR and any other parties designated by Landlord with a bona fide insurable interest are included therein as additional insureds with respect to liability or loss payees with respect to property, as their interests may appear, with loss payable as provided in this Lease. Tenant shall immediately notify Landlord of the carrying of any such separate insurance and shall cause a certified copy of such insurance policy, bearing notations evidencing the payment of the Insurance Premiums therefor or accompanied by other evidence reasonably satisfactory to Landlord of such payment, to be promptly delivered to Landlord as required pursuant to Section 14.03.

(d) Tenant shall not violate or permit to be violated any of the conditions or provisions of any insurance policy required to be maintained hereunder, and Tenant shall so perform and satisfy or cause to be performed and satisfied the requirements of the companies writing such policies so that at all times companies of good standing reasonably satisfactory to Landlord and meeting the requirements of this Lease shall be willing to write and/or continue such insurance. Tenant shall provide written notice to Landlord promptly after Tenant becomes aware that any claim or proceeding has been filed against Tenant with respect to matters occurring in or around the Premises whether or not alleging negligence on the part of Landlord which involves any actual or alleged serious personal injury or death, or any other claim that presents an unusual exposure to the coverage, including without limitation (i) cord injury (including without limitation paraplegia or quadriplegia), (ii) amputations requiring a prosthesis, (iii) brain damage affecting mentality or the central nervous system (including without limitation permanent disorientation, behavior disorder, personality change, seizures, motor deficit, inability to speak, hemiplegia or unconsciousness), (iv) blindness, (v) third-degree burns involving over ten percent (10%) of the body or second-degree burns involving over thirty percent (30%) of the body, (vi) multiple fractures (involving more than one member or non-

union), (vii) fracture of both heel bones, (viii) nerve damage causing paralysis and loss of sensation in an arm and hand, (ix) massive internal injuries affecting body organs, (x) injury to a nerve at the base of the spinal canal or any other back injury resulting in incontinence of bowel and/or bladder, or (xi) fatalities.

(e) Tenant shall procure and maintain policies for all insurance required by the provisions of this Lease for periods of not less than one (1) year (if such policy term is customary and available) and shall procure renewals thereof from time to time and deliver evidence of the same to Landlord as promptly as reasonably practicable but in all events within five (5) days after renewal. If Tenant shall fail to procure any such policies or renewals thereof in accordance herewith within five (5) days after receiving notice of such failure, Landlord may procure the same, and Tenant shall be obligated to reimburse Landlord as Additional Rent hereunder for all costs and expenses incurred by Landlord in connection therewith.

(f) Each policy of insurance required to be obtained by Tenant hereunder shall contain, to the extent generally obtainable, and whether or not an additional premium shall be required in connection therewith, (i) a provision that no unintentional act or omission of any named insured or unintentional violation of warranties, declarations or conditions by any named insured shall prejudice the coverage afforded by such policy, (ii) an agreement by the insurer that such policy shall not be canceled (or not renewed) without at least thirty (30) days' (or in the case of nonpayment of premiums, ten (10) days') prior written notice to Landlord, all Fee Mortgagees, LIRR and any other parties designated by Landlord with a bona fide insurable interest, (iii) no exclusion for Yards Parcel Permitted Uses (as such term is defined in the WRY Declaration of Easements), and (iv) a waiver by the insurer of any claim for insurance premiums against any named insured other than Tenant.

Section 14.03. Delivery of Policies and Certificates. Upon the execution and delivery of this Lease and thereafter as promptly as reasonably practicable but in all events within five (5) days after the renewal of policies theretofore furnished pursuant to this Article 14, Tenant shall, upon the written request of Landlord, obtain and deliver to Landlord, within fifteen (15) days after the date of any such request, a certificate from Tenant's insurer or independent insurance agent certifying to Landlord, as certificate holder, in reasonable detail the insurance policies then being maintained by Tenant in accordance with the requirements of this Article 14. However, if requested by Landlord, Tenant shall deliver to Landlord, within forty-five (45) days after a request therefor or ninety (90) days after the binding of coverage, whichever is later, a copy of such policies. If Landlord exercises its option to request copies of original policies in the case of discovery or to resolve a legal matter, Developer shall deliver to Landlord, as the case may be, within thirty (30) days of the request, or within ninety (90) days after the binding of coverage, whichever is later, a copy of such policies.

Section 14.04. CPI Increase. All dollar amounts referenced in this Article 14 shall be subject to CPI Adjustment, and shall be reasonable and customary for similar exposures.

ARTICLE 15

CASUALTY AND USE OF INSURANCE PROCEEDS

Section 15.01. Tenant's Obligation to Restore.

(a) If all or any portion of the WRY Roof Component shall be destroyed or damaged in whole or in part by fire or other casualty (including, without limitation, any casualty for which insurance was not obtained or obtainable) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen (a "Casualty"), the rights and obligations of Landlord and Tenant with respect thereto shall be governed by the provisions of Section 3.4 and Article X of the WRY Declaration of Easements and, following the Condominium Conversion Date, the applicable provisions of the Condominium Documents.

(b) If all or any portion of the Facility Airspace Improvements located on the Premises (including any portions thereof encroaching on adjacent property) shall be destroyed or damaged in whole or in part by a Casualty, Tenant shall give to Landlord prompt notice thereof, and shall promptly undertake and pursue with reasonable diligence to completion (subject to Force Majeure), at its sole cost and expense (unless such Casualty was caused by the gross negligence or willful misconduct of Landlord or its agents, in which event such Restoration shall be at the sole cost and expense of Landlord) and in accordance with the terms and conditions set forth herein, and regardless of whether or not insurance proceeds, if any, shall be sufficient therefor, to repair, alter, restore, replace and/or rebuild (collectively, "Restore"; and any such repair, alteration, restoration, replacement and/or rebuilding, a "Restoration") such portions of the Facility Airspace Improvements as shall have been so damaged or destroyed. Any Restoration of such Facility Airspace Improvements (a "Facility Airspace Improvements Restoration") shall be as nearly as possible to the condition thereof existing immediately prior to such occurrence (the "Pre-Casualty Condition"), or, with respect to any Building, the lesser of the Pre-Casualty Condition of such Building or the then-standard for a first-class quality building for a like use.

(c) Notwithstanding the foregoing, following the Condominium Conversion Date and the Fee Conversions of one or more Unit(s), Tenant shall only be obligated hereunder to Restore the Units demised by this Lease and not any portion of the Building that is the obligation of the Condominium Board or another Unit Owner to Restore in accordance with the Condominium Documents; provided that Tenant shall use commercially reasonable efforts to cause the Condominium Board to Restore in accordance with the Condominium Documents and subject to the further provisions of this Article 15, the Condominium common elements of the Building and any other portion of the Building that materially affects the value or usefulness of the Units demised by this Lease. Tenant shall in no event vote its Condominium Unit interest in favor of demolishing, rather than the Restoring, the Building, without the prior written consent of Landlord in each instance. The Condominium Documents shall provide, and Tenant shall use commercially reasonable efforts to enforce, that the Condominium Board shall comply with the provision of this Article 15 with respect to all portions of the Building which are the Condominium Board's obligation to restore.

Section 15.02. Restoration Plans and Specifications.

(a) Tenant shall submit to Landlord, not later than sixty (60) days prior to the commencement of any Facility Airspace Improvements Restoration, complete plans and specifications therefor (the "Proposed Restoration Plans and Specifications"), prepared by a licensed professional engineer or registered architect selected by Tenant for the performance of the Restoration and approved by Landlord therefor, which approval shall not be unreasonably withheld (provided that nothing herein shall prevent Tenant from making any immediately necessary repairs in the event of an emergency situation, to comply with Legal Requirements (to the extent so required) or minor repairs immediately required to comply with the requirements of any sublease). Such Proposed Restoration Plans and Specifications shall be subject to the review and approval of Landlord, which review and approval shall not be unreasonably withheld or delayed and shall be limited to determining whether such Proposed Restoration Plans and Specifications are consistent with the requirements of Section 15.01. If Landlord reasonably determines that such Proposed Restoration Plans and Specifications do not conform to the requirements of Section 15.01, and such deviations are not reasonably acceptable to Landlord, then Landlord shall notify Tenant of same, specifying in reasonable detail those respects in which such Proposed Restoration Plans and Specifications do not so conform and are not otherwise acceptable to Landlord. Upon receipt of notice from Landlord that the Proposed Restoration Plans and Specifications are not in conformance with the requirements of Section 15.01 and have not been approved, Tenant shall then either (i) cause such Proposed Restoration Plans and Specifications to be revised and resubmitted to Landlord for review and approval as aforesaid, or (ii) dispute the disapproval of such Proposed Restoration Plans and Specifications under Section 40.01(a) and (b).

(b) If Landlord shall fail to approve or disapprove such Proposed Restoration Plans and Specifications within twenty-one (21) days after Tenant's submission thereof to Landlord, Tenant may provide to Landlord a written notice, which notice shall include in capital letters on the first page thereof: "THIS NOTICE IS BEING GIVEN UNDER SECTION 15.02 OF THE AGREEMENT OF SEVERED PARCEL LEASE FOR THE WESTERN RAIL YARD SECTION OF THE JOHN D. CAEMMERER WEST SIDE YARD. YOUR FAILURE TO RESPOND WITHIN THIRTY (30) DAYS WILL RESULT IN YOUR DEEMED APPROVAL OF THE RESTORATION PLANS" (such notice, the "Restoration Notice"). In the event Landlord does not approve or disapprove such Proposed Restoration Plans and Specifications within ten (10) days after Tenant provides Landlord with the Restoration Notice, Landlord shall be deemed to have approved such Proposed Restoration Plans and Specifications. As used herein, the term "Approved Restoration Plans and Specifications" shall mean the final Proposed Restoration Plans and Specifications that have been approved (or have otherwise been deemed approved) by Landlord.

(c) In the event Tenant shall desire to modify the Approved Restoration Plans and Specifications which Landlord theretofore approved pursuant to Sections 15.02(a) and (b), Tenant shall submit the proposed modifications to Landlord and Landlord shall review the proposed changes to determine whether or not they (i) conform to the requirements of Section 15.01 and (ii) provide for design, equipment, engineering and materials which are comparable in quality to those provided for in the previously-approved Approved Restoration Plans and Specifications. If Landlord determines that the proposed changes do not satisfy the

criteria set forth in clauses (i) and (ii) of the immediately preceding sentence, Landlord shall so advise Tenant, specifying in reasonable detail the aspects of such proposed modifications that do not conform to the above requirements. Within twenty (20) Business Days after Landlord shall have so notified Tenant, Tenant shall submit revised plans and specifications for the Restoration to Landlord for review. Each review by Landlord of Tenant's submissions shall be carried out within twenty (20) Business Days of the date of delivery thereof, and if Landlord shall not have notified Tenant of its determination within such twenty (20) Business Day period, it shall be deemed to have determined that the proposed changes are satisfactory.

(d) The Approved Restoration Plans and Specifications shall comply with all Legal Requirements, including but not limited to the Building Code, as well as the same requirements of the WRY Declaration of Easements and the WRY Construction Agreement as are applicable to the Initial Construction of the Improvements, to the extent applicable. The responsibility to assure such compliance shall be that of Tenant and not of Landlord. Landlord's determination that the Approved Restoration Plans and Specifications conform to the requirements of Section 15.01 shall not be, nor shall it be construed to be, or relied upon as, a determination that the Approved Restoration Plans and Specifications comply with any Legal Requirements or with any of the requirements of the WRY Declaration of Easements and the WRY Construction Agreement as are applicable to the Initial Construction of the Improvements.

(e) All reasonable costs and expenses incurred by Landlord in reviewing the Proposed Restoration Plans and Specifications and any modifications thereto shall be paid by Tenant to Landlord (unless such Casualty was caused by the negligence or willful misconduct of Landlord or its agents, in which event such costs and expenses shall be borne exclusively by Landlord).

Section 15.03. No Obligation of Landlord. Except in the event a Casualty was caused by the negligence or willful misconduct of Landlord or its agents, Landlord shall not be obligated to undertake any Restoration of any Facility Airspace Improvements or to pay any of the costs or expenses thereof; provided, however, that if (a) Tenant shall fail or neglect to perform any Restoration required hereunder with reasonable diligence (subject to Force Majeure), or having so commenced such Restoration, shall fail or neglect to complete the same with reasonable diligence (subject to Force Majeure) in accordance with the terms of this Lease, and (b) except in the event of a failure which adversely affects Public Safety, Service Reliability or Legal Compliance in any respect or an emergency (in which event Landlord shall endeavor if practicable to give written notice of such failure to Tenant), Landlord shall give written notice of such failure to Tenant, and such failure shall continue for fifteen (15) days after the giving of such notice, then (subject to the cure rights of any Leasehold Mortgagee hereunder, except in the event of an emergency) Landlord may, but shall not be required to, complete such Restoration at Tenant's expense, which Restoration shall (except to the extent that the same would interfere with Public Safety, Service Reliability or Legal Compliance in any respect) be conducted by Landlord in a prompt and efficient manner so as to minimize interference with the operation and business activities on the Premises and upon the terms and conditions applicable to entry by Landlord upon the Premises in accordance with the WRY Declaration of Easements. In any case where this Lease shall expire or be terminated prior to the completion of Restoration, Landlord may elect, but shall not be required, to complete such Restoration, and (unless such Casualty was caused by the negligence or willful misconduct of Landlord or its agents) Tenant shall pay, or

reimburse Landlord for, all amounts spent in connection with any Restoration so undertaken by Landlord within fifteen (15) days after demand therefor. Tenant's obligations under this Section 15.03 shall survive the expiration or termination of this Lease.

Section 15.04. Restoration in Accordance with Project Documents. Any Facility Airspace Improvements Restoration that utilizes the easements set forth in the WRY Declaration of Easements shall be conducted in accordance with the same terms and conditions of the WRY Declaration of Easements and the WRY Construction Agreement as are applicable to the Initial Construction of the Improvements.

Section 15.05. Progress Payments for Restoration.

(a) Prior to commencing any Facility Airspace Improvements Restoration that is reasonably likely to cost more than Three Million Dollars ($3,000,000), subject to CPI Adjustment, Tenant shall furnish Landlord with an estimate of the costs thereof, prepared by the licensed professional engineer or registered architect selected by Tenant and approved by Landlord pursuant to Section 15.02. Landlord, at its option and (subject to the last sentence of this Section 15.05(a)) expense, may engage a licensed professional engineer or registered architect to prepare its own estimate of the cost of such Facility Airspace Improvements Restoration (but only if such Restoration is estimated by the Tenant to cost more than Three Million Dollars ($3,000,000), subject to CPI Adjustment). In the event of any dispute between the two estimates, such dispute shall be resolved in accordance with Sections 40.01(a) and (b). If Landlord engages an engineer or architect to prepare its own estimate as aforesaid and the estimate thereafter agreed upon by Landlord and Tenant or determined by a court or arbitrator, as the case may be, exceeds the estimate previously furnished by Tenant by not less than five percent (5%), then Tenant shall reimburse Landlord for the reasonable costs and expenses incurred by Landlord in connection with the preparation of its own estimate.

(b) In the event that the cost of any Facility Airspace Improvements Restoration as determined based on the estimate obtained pursuant to Section 15.05(a) is greater than Five Million Dollars ($5,000,000), subject to CPI Adjustment, all proceeds of insurance payable in respect of damage to such Facility Airspace Improvements, upon disbursement by the insurer, and any additional funds as may be needed from Tenant to complete any Restoration (the "Shortfall Amount") as determined based on such estimate (such insurance proceeds and Shortfall Amount, collectively, the "Restoration Funds") shall be deposited with the Restoration Fund Depository prior to the commencement of any Facility Airspace Improvements Restoration; provided, however, that in lieu of depositing the Shortfall Amount, Tenant may deliver to Landlord a guaranty for such Shortfall Amount from a creditworthy guarantor subject to the reasonable approval of Landlord.

(c) Subject to the further provisions of this Article 15, the Restoration Fund Depository shall pay over to Tenant from time to time, upon the following terms, the Restoration Funds, for the purpose of the performance by Tenant of any Facility Airspace Improvements Restoration; provided, however, that the Restoration Fund Depository, before paying such monies over to Tenant, shall reimburse Landlord (and shall be entitled to reimburse itself) therefrom to the extent, if any, of the necessary, reasonable and proper expenses

(including reasonable attorneys' fees) paid or incurred by the Restoration Fund Depository and Landlord, respectively, in the collection of such Restoration Funds:

(i) Subject to the provisions of Sections 15.06 and 15.07, the Restoration Funds shall be paid to Tenant in installments as the Facility Airspace Improvements Restoration progresses, upon application by Tenant to both the Restoration Fund Depository and Landlord showing the cost of labor and materials purchased and delivered to the Premises for incorporation into such Restoration, or incorporated therein since the last previous application, and due and payable or paid by Tenant;

(ii) If any vendor's, mechanic's, laborer's, or materialman's lien is filed against the Premises or any part thereof, or if any public improvement lien relating to the Restoration is created or permitted to be created by Tenant and is filed against Landlord (or any assets of, or funds appropriated to Landlord), Tenant shall not be entitled to receive any further installment until all such liens are satisfied or discharged (by bonding or otherwise);

(iii) The amount of any installment to be paid to Tenant shall be (x) the product of (A) the total Restoration Funds and (B) a fraction, the numerator of which is the cost of labor and materials theretofore incorporated (or delivered to the Premises to be incorporated) by Tenant in the Restoration and the denominator of which is the total estimated cost of the Restoration, such estimated cost determined in accordance with Section 15.05(a), less (y) (A) all payments theretofore made to Tenant out of the Restoration Funds and (B) ten percent (10%) of the amount so determined until the Restoration is fifty percent (50%) complete, with no additional retention after the Restoration is fifty percent (50%) complete (it being understood that the retention from the period prior to fifty percent (50%) completion may be reduced to a final retention of twice the estimated cost of punch list items upon substantial completion before a full payment upon final completion); and

(iv) Upon completion of and payment in full for the Restoration by Tenant, the balance of the Restoration Funds net of any Rental then due and owing shall be paid over to Tenant, subject to the rights of any Leasehold Mortgagee or Mezzanine Lenders to such balance of funds.

(v) If a Leasehold Mortgage shall have provisions for the disbursement of Restoration Funds which differs from the disbursement provisions set forth in Sections 15.05, 15.06 or 15.07, then Tenant shall comply with the provisions of such Leasehold Mortgage in lieu of any conflicting provisions set forth herein, so long as such Leasehold Mortgage provides that Restoration Funds will be applied exclusively to complete the Facility Airspace Improvements Restoration prior to the application of excess Restoration Fund proceeds to any other purpose.

(d) Notwithstanding the foregoing, if Landlord shall perform or continue any Facility Airspace Improvements Restoration, pursuant to the provisions of Section 15.03, then the Restoration Fund Depository shall, upon request therefor by Landlord, pay over the Restoration Funds to Landlord to the extent not previously paid to Tenant pursuant to this Section 15.05, and Tenant shall pay to Landlord, within ten (10) days after demand therefor, any sums in excess of the portion of the Restoration Funds received by Landlord necessary to

complete the Restoration. Upon request therefor by Tenant, Landlord shall deliver to Tenant from time to time, but no more frequently than monthly, a certificate setting forth, in reasonable detail, the expenditures made by Landlord for such Restoration.

Section 15.06. Conditions Precedent to Disbursements. The following shall be conditions precedent to each payment made by the Restoration Fund Depository to Tenant as provided in Section 15.05 above:

(a) Tenant shall have submitted to the Restoration Fund Depository and to Landlord a certificate from the aforesaid engineer or architect approved by Landlord pursuant to Section 15.02, which certificate shall (i) certify that the sum then requested to be withdrawn either has been paid by Tenant (or is due and payable) to contractors, subcontractors, materialmen, engineers, architects or other Persons (whose names and addresses shall be stated) who have rendered or furnished services or materials for the Restoration, (ii) give a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of said Persons in respect thereof, (iii) state in reasonable detail the progress of the work up to the date of said certificate, (iv) certify that no part of such expenditures has been or is being made the basis, in any previous or then pending requisition, for the withdrawal of the Restoration Funds or has been made out of the Restoration Funds previously received by Tenant, (v) certify that the sum then requested does not exceed the value of the services and materials described in the certificate, and (vi) certify that the balance of the Restoration Funds held by the Restoration Fund Depository (whether from the proceeds of insurance or by deposit of Tenant's own funds) and any additional insurance proceeds not yet disbursed will be sufficient upon completion of the Restoration to pay for the same in full, and include a reasonably detailed estimate of the cost of such completion;

(b) Tenant shall have furnished to Landlord an official search, or a certificate of a title insurance company reasonably satisfactory to Landlord, or other evidence reasonably satisfactory to Landlord, showing that there has not been filed any vendor's, mechanic's, laborer's or materialman's statutory or other similar lien affecting the Premises or any portion thereof, or any public improvement lien with respect to the Premises or the Restoration affecting Landlord, or the assets of, or funds appropriated to, Landlord, which has not been discharged of record (by bonding or otherwise), except such as will be discharged upon payment of the requisite amount out of the sum then requested to be withdrawn; and

(c) at the time of making such payment, there shall be no existing and unremedied Event of Default on the part of Tenant; provided, however, that in the event that a Monetary Default shall then exist of which Landlord has provided Tenant notice to the extent required under this Lease, the Restoration Fund Depository shall be obligated to pay over to Landlord, prior to any payment to Tenant, the amount required to cure such Monetary Default, together with all other sums to which Landlord is then entitled pursuant to this Lease as a result of such Monetary Default.

Section 15.07. Additional Requirements for Restoration. Tenant shall deliver to Landlord:

(a) at least thirty (30) Business Days prior to commencement of any Facility Airspace Improvements Restoration, (i) any permits required by any Governmental Authority with respect to such Restoration and (ii) at the request of Landlord, any drawings, information or samples (in addition to the Approved Restoration Plans and Specifications) to which the Yards Parcel Operator would be entitled to under the WRY Declaration of Easements. All such materials for the Restoration (together with the Approved Restoration Plans and Specifications therefor) shall become the sole and absolute property of Landlord, subject to the rights of any architects and engineers who prepared the same, if for any reason this Lease shall be terminated; and

(b) at least ten (10) Business Days prior to commencement of such Restoration:

(i) a contract or construction management agreement reasonably satisfactory to Landlord in form collaterally assignable to Landlord (subject to any prior assignment to any Leasehold Mortgagee), made with a reputable and responsible contractor or construction manager approved by Landlord, which approval shall not be unreasonably withheld, providing for the completion of the Restoration in accordance with the Approved Restoration Plans and Specifications, free and clear of all liens, encumbrances, security agreements, interests and financing statements relating thereto;

(ii) (x) a collateral assignment to Landlord in a form reasonably acceptable to Tenant, Landlord and any Leasehold Mortgagee (subject to any prior assignment to any Leasehold Mortgagee) of all agreements, plans, permits and licenses relating to such Restoration and the bonds, if any, provided thereunder, and (y) a consent and acknowledgement to such collateral assignment in a form reasonably acceptable to Tenant, Landlord and Leasehold Mortgagee, executed by the counterparty under any such agreement (and, to the extent that there are major subcontracts to which such counterparty is a party, by the counterparty to such major subcontracts); provided, however, that if a Leasehold Mortgage is being entered into in connection with such Restoration, Tenant shall not be obligated to deliver any such consent and acknowledgement from any such counterparty unless such counterparty is also providing its consent and acknowledgement to a collateral assignment being given by Tenant in favor of the Leasehold Mortgagee;;

(iii) for any Restoration costing in excess of Five Million Dollars ($5,000,000), subject to CPI Adjustment, payment and performance bonds in forms and by sureties satisfactory to Landlord, naming the contractor performing the Restoration as obligor and Landlord and Tenant and any Leasehold Mortgagees, if applicable, as obligees, each in a penal sum equal to the Shortfall Amount or, in lieu thereof, such other security as shall be reasonably satisfactory to Landlord; and

(iv) evidence of the insurance policies required pursuant to Article 14 issued by responsible insurers, bearing notations evidencing the payment of premiums or accompanied by other evidence satisfactory to Landlord of such payments.

Section 15.08. As-Built Plans. Tenant shall deliver to Landlord, within thirty (30) days after the completion of any Restoration, a complete set of "as-built" plans therefor,

together with a statement in writing from a registered architect or licensed professional engineer that such plans are complete and correct.

Section 15.09. Option to Terminate. Notwithstanding the foregoing, if, within five (5) years prior to the Fixed Expiration Date, all or substantially all of the Premises shall be destroyed or damaged, Tenant shall have the option to terminate this Lease, and upon the surrender thereof (a) Tenant shall be relieved from the Restoration requirements for the Facility Airspace Improvements set forth in this Lease, and (b) Tenant shall assign and/or deliver all insurance proceeds to Landlord.

Section 15.10. No Abatement. Tenant hereby acknowledges and agrees that it shall have no right of reduction, abatement, setoff, refund or deduction of Rental, by reason of damage to or total, substantial or partial destruction of the WRY Roof Component or the Facility Airspace Improvements or any part thereof, due to any reason or cause whatsoever, and Tenant, notwithstanding any present or future law or statute, shall have no right to terminate this Lease or to quit or surrender the Premises or any part thereof except as set forth in Section 15.09. Tenant expressly agrees that its obligations hereunder, including, without limitation, the payment of Rental, shall continue as though the Improvements had not been damaged or destroyed and without abatement, suspension, diminution or reduction of any kind. It is the intention of Landlord and Tenant that the foregoing is an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York. Subject to the foregoing, nothing herein shall be deemed to limit or restrict any remedies available to Tenant at law or otherwise with respect to any Restorations that are the obligation of Landlord hereunder.

ARTICLE 16

CONDEMNATION

Section 16.01. Taking of All or Substantially All of the Premises.

(a) If the whole or substantially all of the Premises shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among Landlord, Tenant and those authorized to exercise such right, this Lease and the Term shall terminate and expire on the date of such taking and the Rental payable by Tenant hereunder shall be equitably apportioned as of the date of such taking. The term "substantially all of the Premises" shall mean such portion of the Premises as when so taken would leave remaining a balance of the Premises which, due either to the area so taken or the location of the part so taken in relation to the part not so taken, would not, under economic conditions, applicable zoning laws and/or building regulations then existing or prevailing, permit the economic operations of the Improvements located on such remaining portions of the Premises for their permitted uses hereunder.

(b) If the whole or substantially all of the Premises shall be taken or condemned as provided in Section 16.01(a), the award or damages received with respect to the Premises (the "Condemnation Proceeds") shall be apportioned as follows: (i) there shall first be paid to Landlord the sum of (x) all future Annual Base Rent payments due under this Lease through the Fixed Expiration Date (taking into account all rent escalations and FMV Base Rent

Resets, and assuming that the Annual Base Rent for the period immediately following each FMV Base Rent Reset shall be equal to one hundred twenty percent (120%) of the Annual Base Rent for the period ending on the day immediately prior to the applicable Initial Reset Date or Reset Date), with each such payment discounted to the date of payment of the Condemnation Proceeds using a discount rate of six and one-half percent (6.5%) per annum, as more particularly set forth on the Severed Parcel Pro Forma Rent Schedule, plus (y) Landlord's Reversionary Interest Value as of the date of taking; and (ii) subject to the rights of any Leasehold Mortgagees and Mezzanine Lenders, Tenant shall receive the balance, if any, of such Condemnation Proceeds. Each of Landlord and Tenant shall execute any and all documents that may be reasonably required in order to facilitate collection by the other of its respective portion of the Condemnation Proceeds.

Section 16.02. Date of Taking. For purposes of this Article 16, the "date of taking" shall be deemed to be the earlier of (a) the date on which actual possession of the whole or substantially all of the Premises, or a part thereof, as the case may be, is acquired by any lawful power or authority pursuant to the provisions of the applicable federal or New York State law or (b) the date on which title to the Premises or a portion thereof shall have vested in any lawful power or authority pursuant to the provisions of the applicable federal or New York State law.

Section 16.03. Partial Taking; Tenant's Obligation to Restore. If less than substantially all of the Premises shall be taken as provided in Section 16.01(a), this Lease and the Term shall continue as to the portion of the Premises remaining, and the rate of Annual Base Rent to be paid by Tenant to Landlord during the Term thereafter shall be calculated as the product of (a) the Annual Base Rent and (b) a fraction, (i) the numerator of which is the number of square feet of Floor Area remaining in the Premises after the taking and (ii) the denominator of which is the maximum Floor Area square footage available to the Premises prior to such taking. Tenant, whether or not the Condemnation Proceeds, if any, shall be sufficient for the purpose shall (subject to Force Majeure) undertake diligent Restoration of any remaining portion of the Improvements not so taken, such that the remaining part of the Improvements shall be complete, operable and in good condition and repair in conformity with the requirements of Section 15.01. In the event of any partial taking pursuant to this Section 16.03, the entirety of the Condemnation Proceeds for or attributable to the portion of the Premises so taken shall be apportioned as follows: (x) there shall first be paid to the Condemnation Proceeds Depository such sums as shall be necessary to pay the costs of Restoration of the portion of the Premises remaining; (y) after deducting the sums specified in (x), there shall next be paid to Landlord the product of (A) the sum of (I) all future Annual Base Rent payments due under this Lease through the Fixed Expiration Date (taking into account all rent escalations and FMV Base Rent Resets, and assuming that the Annual Base Rent for the period immediately following each FMV Base Rent Reset shall be equal to one hundred twenty percent (120%) of the Annual Base Rent for the period ending on the day immediately prior to the applicable Initial Reset Date or Reset Date), with each such payment discounted to the date of payment of the Condemnation Proceeds using a discount rate of six and one-half percent (6.5%) per annum, as more particularly set forth on the Severed Parcel Pro Forma Rent Schedule, plus (II) Landlord's Reversionary Interest Value as of the date of taking; and (B) a fraction, the numerator of which is the number of square feet of Floor Area available to the portion of the Premises so taken, and the denominator of which is the

Floor Area square footage available to the Premises prior to such taking; and (z) the balance remaining, if any, of such Condemnation Proceeds shall be paid to Tenant, subject to any rights of Leasehold Mortgagees or Mezzanine Lenders. Subject to the provisions and limitations in this Article 16, the Condemnation Proceeds Depository shall make available to Tenant as much of that portion of the Condemnation Proceeds actually received and held by the Condemnation Proceeds Depository, if any (less all necessary and proper expenses paid or incurred by the Condemnation Proceeds Depository, the Leasehold Mortgagee most senior in lien and Landlord in the condemnation proceedings), as may be necessary to pay the costs of Restoration of the portion of the Premises remaining. Payments to Tenant as aforesaid shall be disbursed in the manner and subject to the conditions set forth in Article 15 as are applicable to the disbursement of Restoration Funds. Any balance of the award held by the Condemnation Proceeds Depository and any cash and the proceeds of any security deposited with the Condemnation Proceeds Depository pursuant to Section 16.04 remaining after completion of the Restoration, net of any Rental then due and owing, shall be paid to Tenant (subject to the rights of any Leasehold Mortgagees and Mezzanine Lenders). Each of Landlord and Tenant shall execute any and all documents that may be reasonably required in order to facilitate collection by the other of its respective portion of the Condemnation Proceeds.

Section 16.04. Deficiency in Proceeds. If the cost of any Restoration required by the terms of Section 16.03, as determined in the manner set forth in Section 15.05(a), exceeds both (a) Five Million Dollars ($5,000,000), subject to CPI Adjustment and (b) the balance of the Condemnation Proceeds after payment of the expenses set forth in the fourth sentence of Section 16.03, then, prior to the commencement of such Restoration, Tenant shall deposit with the Condemnation Proceeds Depository a bond, cash or other security reasonably satisfactory to Landlord (including a guaranty, as set forth in Section 15.05(b)) in the amount of such excess, to be held and applied by the Condemnation Proceeds Depository in accordance with the provisions of Section 16.03, as security for the completion of the Restoration.

Section 16.05. Temporary Taking. If the temporary use of the whole or any part of the Premises shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement between Tenant and those authorized to exercise such right, Tenant shall give prompt notice thereof to Landlord and the Term shall not be reduced or affected in any way and Tenant shall continue to pay in full the Rental payable by Tenant hereunder without reduction or abatement, and Tenant, provided that no Event of Default shall then exist, shall be entitled to receive for itself any and all Condemnation Proceeds received in connection with such temporary taking; provided, however, that:

(a) if the taking is for a period not extending beyond the Term and if the Condemnation Proceeds therefor shall be paid less frequently than in monthly installments, the same shall be paid to and held by the Condemnation Proceeds Depository as a fund, which the Condemnation Proceeds Depository shall apply from time to time, first, to the payment of Rental, and next as set forth in the Leasehold Mortgage most senior in lien; provided, that in the event such taking results in changes or alterations in any of the Improvements, which would necessitate an expenditure for Restoration of such Improvements to their former condition, then a portion of such Condemnation Proceeds considered by Landlord, in its reasonable opinion, as

appropriate to cover the expenses of such Restoration shall be retained by the Condemnation Proceeds Depository and applied and paid over toward the Restoration of such Improvements to their former condition, substantially in the same manner and subject to the same conditions as provided in Section 15.05; and any portion of such Condemnation Proceeds, which shall not be required pursuant to this Section 16.05(a) to be applied to the Restoration of the Improvements or to the payment of Rental or as set forth in the Leasehold Mortgage most senior in lien, shall be paid to Tenant; or

(b) if the taking is for a period extending beyond the Term, the Condemnation Proceeds with respect thereto shall be apportioned between Landlord and Tenant as of the Expiration Date, and Landlord's and Tenant's share thereof, if paid less frequently than in monthly installments, shall be paid to the Condemnation Proceeds Depository and applied in accordance with the provisions of Section 16.05(a); provided, however, that the amount of any Condemnation Proceeds allowed or retained for the Restoration of the Improvements and not previously applied for such purpose shall remain the property of Landlord if this Lease shall expire prior to the completion of such Restoration.

Section 16.06. Sale in Lieu of Condemnation. In the event of a negotiated sale of all or a portion of the Premises in lieu of condemnation, the proceeds of such sale shall be distributed as provided in this Article 16 as if such sale were a condemnation and such proceeds were Condemnation Proceeds, and all other provisions of this Article 16 shall apply as if such sale were a condemnation. Neither party shall agree to such a sale without the prior written consent of the other party (which may be withheld in such party's sole discretion).

Section 16.07. Participation in Proceedings. Landlord, Tenant and any Leasehold Mortgagee shall be entitled to file a claim and otherwise participate in any condemnation or similar proceeding and all hearings, trials and appeals in respect thereof.

Section 16.08. Claims for Personal Property. Notwithstanding anything to the contrary contained in this Article 16, in the event of any permanent or temporary taking of all or any part of the Premises, Tenant, its Leasehold Mortgagees and its subtenants (to the extent permitted under a sublease) shall have the exclusive right to assert claims for any trade fixtures and personal property so taken which were the property of Tenant or its subtenants (but not including any Equipment) and for relocation expenses of Tenant or its subtenants, and all awards and damages in respect thereof shall belong to Tenant and its subtenants, and Landlord hereby waives any and all claims to any part thereof; provided, however, that if there shall be no separate award or allocation for such trade fixtures or personal property, then such claims of Tenant and its subtenants, or awards and damages, shall be subject and subordinate to Landlord's claims under this Article 16, and in no event shall any such claim of Tenant or any subtenant in any way reduce the amount of any award otherwise payable to Landlord with respect to the taking of its fee interest in the Premises or the Yards Parcel or the amount of any award otherwise payable with respect to the taking of Tenant's leasehold interest hereunder.

Section 16.09. Taking of Yards Parcel and Facility Airspace Parcel. If all or portions of both the Yards Parcel and the Facility Airspace Parcel shall be taken or condemned as provided in Section 16.01(a), separate awards or damages in respect thereof shall be made as between the Yards Parcel and the Facility Airspace Parcel. If such taking constitutes the whole

or substantially all of the Premises, the award or damages payable with respect to the Premises shall be apportioned as provided in Section 16.01(b), and the Condemnation Proceeds payable with respect to the Yards Parcel shall be paid to the Yards Parcel Owner. If such taking affects less than substantially all of the Premises, the provisions of Section 16.03 shall apply with respect to the Condemnation Proceeds payable with respect to the Premises, and the Condemnation Proceeds payable with respect to Yards Parcel shall be paid to the Yards Parcel Owner. If there shall be any dispute as to that portion of the Condemnation Proceeds which is attributable to the Yards Parcel or the Premises, such dispute shall be resolved in accordance with Section 40.01(a) and (b).

ARTICLE 17

ASSIGNMENT, SUBLETTING, MORTGAGES, ETC.

Section 17.01. No Transfers without Landlord Consent; Permitted Transfers. Except as otherwise specifically provided in this Article 17,

(a) Tenant shall not sell, assign, transfer, pledge, mortgage or otherwise encumber, in whole or in part (any such action, an "Assignment") either this Lease or any interest of Tenant in this Lease, whether by operation of law or otherwise, nor shall any Assignment be effected of the issued or outstanding capital stock of a corporation that is Tenant or of a corporation owning a controlling interest in Tenant, whether held directly or indirectly, and whether made voluntarily, involuntarily by operation of law or otherwise, if such Assignment will or may result in a change of the Controlling Ownership of Tenant as of the Commencement Date, nor shall any voting trust or similar agreement be entered into with respect to such stock, nor any reclassification or modification of the terms of such stock take place, nor shall there be any merger or consolidation of such corporation into or with another corporation, nor shall additional stock (or any warrants, options or debt securities convertible, directly or indirectly, into such stock) in any such corporation be issued if the issuance of such additional stock (or such other securities, when exercised or converted into stock), will result in a change of the Controlling Ownership of such corporation as held by the shareholders thereof as of the Commencement Date, nor shall any Assignment be effected with respect to any general partner's interest in a partnership which is Tenant or in a partnership owning a controlling interest in Tenant, whether directly or indirectly, and whether made voluntarily, involuntarily by operation of law or otherwise, if such Assignment will or may result in a change of the Controlling Ownership of Tenant as of the Commencement Date, nor shall any Assignment be effected with respect to any managing member's interest in a limited liability company which is Tenant or in a limited liability company owning a controlling interest in Tenant, whether directly or indirectly, and whether made voluntarily, involuntarily, by operation of law or otherwise, if such Assignment will result in a change of the Controlling Ownership of Tenant as of the Commencement Date, nor shall Tenant sublet the Premises (or, if the Improvements shall consist of, or are intended to consist of, multiple Buildings, any Building or portion of the Premises on which a Building is to be constructed) as an entirety or substantially as an entirety (any such subletting, a "Subletting", and such subtenant, a "Major Subtenant"), without the prior written consent of Landlord in each case, which consent may be granted or withheld in Landlord's sole discretion (each of the foregoing transactions is herein referred to as a "Transfer"). Nothing contained in this Section 17.01(a) shall restrict or prohibit or be deemed to restrict or prohibit (a)

any Assignment or Transfer in the equity interests in any Person whose common stock is quoted on a recognized securities exchange such as the New York Stock Exchange or NASDAQ or (b) an Assignment or Transfer in the equity interests in Tenant or any other Person that does not, directly or indirectly, result in a change in the Controlling Ownership of Tenant.

(b) Notwithstanding anything to the contrary in Section 17.01(a), the following "Permitted Transfers" shall be permitted upon the terms set forth in this Section 17.01(b) and Section 17.02 without any consent or approval of Landlord:

(i) at any time, Tenant may Transfer all of its right, title, interest and obligations under this Lease (or otherwise effectuate a change in the Controlling Ownership of Tenant) to a Related Affiliate;

(ii) Tenant may effectuate a change in the Controlling Ownership of Tenant to [Oxford Hudson Yards LLC (or any other Affiliate of OMERS Administration Corporation)][21] and replace WRY Developer and any other Affiliate of The Related Companies, L.P. under the balance of the Project Documents insofar as they relate to the Premises (excluding the Rent/Financial Payments Guaranty, any Buildings Completion Guaranty, any Sponsor Guaranty and any other guaranty given by The Related Companies, L.P., and/or OP USA Debt Holdings Limited Partnership to the MTA Parties, at any time following (x) the election of Oxford Hudson Yards LLC to remove Related Hudson Yards, LLC as the Administrative Member of Hudson Yards Gen-Par, LLC (the "GP") and exercise its right to direct the day-to-day business and affairs of the GP and Tenant pursuant to that certain Limited Liability Company Agreement of the GP, dated as of May 26, 2010, by and between Related Hudson Yards, LLC and Oxford Hudson Yards LLC, as amended by that certain Amendment No. 1 to Limited Liability Company Agreement of Hudson Yards Gen-Par, LLC, dated as of October 10, 2012 (as the same have been or may be further amended from time to time, the "GP LLC Agreement"), or (y) consummation of the purchase by Oxford Hudson Yards LLC of one hundred percent (100%) of Related Hudson Yards, LLC's membership interests in the GP pursuant to the GP LLC Agreement, in each case provided that (A) Tenant shall notify Landlord of such change in Controlling Ownership and (B) if such a change in Controlling Ownership occurs prior to the Substantial Completion of the LIRR Work, Tenant is or retains as construction manager a Qualified Replacement Developer to perform the obligations of Developer under the WRY Construction Agreement; it being understood and agreed that [Oxford Properties Group][22] or any wholly-owned subsidiary thereof shall be a Qualified Replacement Developer so long as it (x) employs or, promptly following such change in Controlling Ownership, retains, New York-based personnel with reasonably sufficient construction experience in New York City to oversee the performance of the LIRR Work, (y) is not, at the applicable time, disqualified or disbarred from performing work on projects for the MTA Parties or their Affiliates or any other City of New York or New York State agency, and (z) is not a Prohibited Person. For the avoidance of doubt, following such a change in Controlling Ownership, the Rent/Financial Payments Guaranty, any Buildings Completion Guaranty, any

[21] To be confirmed when the applicable Severed Parcel Lease is entered into.

[22] To be confirmed when the applicable Severed Parcel Lease is entered into.

Sponsor Guaranty and any other guaranty given by The Related Companies, L.P., and/or OP USA Debt Holdings Limited Partnership to the MTA Parties shall remain in full force and effect and nothing contained in this Section 17.01(b)(ii) shall derogate from (1) the obligations of The Related Companies, L.P. or OP USA Debt Holdings Limited Partnership thereunder or (2) any obligations of any other Affiliate of The Related Companies, L.P. under any other Project Document to which it is a party to the extent accruing prior to the date of such replacement;

(iii) upon or after the Commencement of Construction of one or more Buildings, Tenant may Transfer all of its right, title, interest and obligations under this Lease (or otherwise effectuate a change in the Controlling Ownership of Tenant) to a user (or an entity or entities beneficially owned by such user) which will acquire such Building(s) and the Premises for its own use and occupancy pursuant to a fee-based development agreement with Tenant, Developer or their respective Affiliates and such user is not a Prohibited Person ("User"). Prior to the Substantial Completion of the Associated Portion of the LIRR Roof and Facilities, each User shall agree that Developer may not be removed or replaced under the WRY Construction Agreement, without the prior written consent of Landlord (which consent may be exercised in Landlord's sole discretion). In the event that Landlord grants its consent to the substitution of another party in lieu of Developer as developer of the Associated Portion of the LIRR Roof and Facilities then (A) there shall be at all times a single point of contact reasonably satisfactory to the Yards Parcel Operator (which may be a joint venture among Developer and such Qualified Replacement Developer) which is responsible to the Yards Parcel Operator for coordinating and overseeing all work of Developer and any Qualified Replacement Developer in connection with the construction of the WRY Roof Component; (B) in the event of any dispute between Developer and the Qualified Replacement Developer over any matters related to construction sequencing, the Yards Parcel Operator shall give priority to the completion of the Associated Portion of the LIRR Roof and Facilities which is then under construction by the Qualified Replacement Developer and shall not be obligated to deliver any conflicting track outages to Developer; and (C) the Yards Parcel Operator shall be released and indemnified and held harmless by Developer, the Qualified Replacement Developer and Tenant in respect of any decisions with respect to any construction sequencing made at the request of Developer or Qualified Replacement Developer while there is more than one party working in the Yards Parcel;

(iv) upon or after the Substantial Completion of the Associated Portion of the LIRR Roof and Facilities (or at any time if the Premises is located wholly on Facility Airspace Parcel Terra Firma), Tenant may Transfer all of its right, title, interest and obligations under this Lease (or otherwise effectuate a change in the Controlling Ownership of Tenant) and the balance of the Project Documents insofar as they relate to the Premises (and/or Tenant is a party thereto) to any Qualified Transferee; provided that in the event Commencement of Construction of the Building(s) on the Premises has not occurred, then such Qualified Transferee shall be obligated to provide the Building Completion Guaranty from a Building Completion Guarantor upon Commencement of Construction of such Building (and if a Building is under construction but not yet Substantially Completed, then the Qualified Transferee shall be obligated to deliver a replacement of the Building Completion Guaranty); and

(v) from and after the Substantial Completion of a Building and Associated FASP Improvements and (unless the Premises is wholly located on Facility

Airspace Parcel Terra Firma) Substantial Completion of the Associated Portion of the LIRR Roof and Facilities, Tenant may Transfer all of its right, title, interest and obligations under this Lease (or otherwise effectuate a change in the Controlling Ownership of Tenant), together with the balance of the Project Documents insofar as they relate to the Premises (and/or the Tenant is a party thereto), to any Person who is not then a Prohibited Person.

Section 17.02. Conditions and Procedures for Permitted Transfers.

(a) All Permitted Transfers shall be subject to the following terms:

(i) at the time of making such Transfer there is no existing and continuing Event of Default or Default under this Lease or the Project Documents; provided that this clause shall apply with respect to a Non-Monetary Default only if Landlord has delivered to Tenant notice of such Non-Monetary Default to the extent required under the applicable provisions of Section 31.01 of this Lease;

(ii) if such Transfer is an Assignment of this Lease (but not including transfers in the equity interests of a Person that results in a change in the Controlling Ownership of Tenant), such Assignment shall be in writing, duly executed, acknowledged and in proper form (or a memorandum thereof that is in proper form) for recording;

(iii) Tenant shall give written notice to Landlord of the making of such Transfer, which notice shall include the proposed effective date thereof, not less than twenty (20) days prior to the proposed effective date, together with (x) in the event of an Assignment of this Lease, the proposed form of the Assignment agreement and (y) relevant background information about the proposed transferee and its principals, including, without limitation, all information reasonably necessary to confirm that the proposed transferee is in compliance with the provisions of Section 17.01(b) (as applicable) and is not a Prohibited Person;

(iv) upon the effective date of such Transfer, the proposed transferee shall not be a Prohibited Person; it being agreed that Landlord shall notify Tenant within fifteen (15) days after Tenant's delivery of the notice referenced in subsection (iii) above as to whether the proposed transferee is a Prohibited Person;

(v) the assignee, Major Subtenant or successor entity is not entitled, directly or indirectly, to diplomatic or sovereign immunity and shall be subject to the service of process in the jurisdiction of the federal, state and local courts sitting in New York State (unless such sovereign immunity is waivable and waived by such Person in connection with its obligations under this Lease);

(vi) in the event of an Assignment of this Lease (but not including transfers in the equity interests of a Person that results in a change in the Controlling Ownership of Tenant), not later than ten (10) Business Days after the effective date of any such Assignment, Tenant shall deliver to Landlord a duplicate original or certified copy of such Assignment instrument; and

(vii) anything contained in Section 17.01(a) to the contrary notwithstanding, the exercise by a Mezzanine Lender of (y) any rights it may have under its Mezzanine Loan with respect to obtaining title to the direct or indirect equity interests of Tenant, which may have been pledged to such Mezzanine Lender pursuant to such Mezzanine Loan, or (z) any foreclosure remedies it may have, shall not be a Transfer or Assignment requiring the consent of Landlord hereunder; provided that such Mezzanine Loan shall have been made for a valid business purpose and not principally for the purpose of transferring such equity interests and/or the leasehold estate created hereby.

(b) Any Assignment of this Lease (but not including transfers in the equity interests of a Person that results in a change in the Controlling Ownership of Tenant or Assignments by mortgage or pledge), shall not be effective for purposes of this Lease unless and until the transferee shall execute, acknowledge and deliver to Landlord an agreement or certificate, in form and substance reasonably satisfactory to Landlord, whereby the transferee shall (i) assume the obligations and performance of this Lease and agree to be bound by all of the covenants, agreements, terms, provisions and conditions hereof on the part of Tenant to be performed or observed on and after the effective date of any such Transfer, and (ii) agree that no further Transfer shall be made except in accordance with this Article 17. Tenant acknowledges that, if Tenant engages in a Transfer in violation of the provisions of this Lease, and notwithstanding the acceptance of Rental by Landlord from an assignee or transferee or any other party, then Tenant shall remain fully and primarily and jointly and severally liable for the payment of the Rental due and to become due under this Lease and for the performance and observance of all of the covenants, agreements, terms, provisions and conditions of this Lease on the part of Tenant to be performed or observed. If, as and when Tenant Transfers this Lease as permitted hereunder, and an assignee assumes all of Tenant's obligations under this Lease, then from and after the date of such Transfer, the Tenant who has so assigned this Lease shall be released from and shall have no further obligations under this Lease other than any obligations that arose before the effective date of such Transfer (unless assumed in writing, in recordable form, by assignee). Promptly after request by Tenant, Landlord shall confirm the foregoing by a writing in form and substance reasonably satisfactory to Landlord and Tenant.

Section 17.03. Leasehold Mortgages.

(a) Notwithstanding anything to the contrary in Section 17.01(a), Tenant shall have the right to mortgage or pledge its interest in this Lease to one or more Leasehold Mortgagees and/or to permit the direct or indirect interest in Tenant to be pledged to a Mezzanine Lender, in each case without Landlord's consent, at any time and from time to time during the Term, provided that no holder of any Leasehold Mortgage or Mezzanine Loan, nor anyone claiming by, through or under any such Leasehold Mortgage or Mezzanine Loan, shall by virtue thereof acquire any greater rights hereunder than Tenant has, except the right to cure or remedy Tenant's defaults or to become entitled to a new lease as more fully set forth in this Section 17.03 and Section 17.04 and such other rights as are expressly granted to Leasehold Mortgagees or Mezzanine Lenders hereunder. A permitted subtenant shall have the right to mortgage or permit its interest in a permitted sublease to be pledged to one or more Leasehold Mortgagees and/or permit the direct or indirect interests in subtenant to be pledged to Mezzanine Lenders without Landlord's consent, at any time and from time to time during the Term.

Notwithstanding the foregoing, however, no Leasehold Mortgage or Mezzanine Loan shall be effective, unless:

(i) at the time of making such Leasehold Mortgage or Mezzanine Loan there is no existing and unremedied Default or Event of Default on the part of Tenant under this Lease; provided that this clause shall apply with respect to a Non-Monetary Default only if Landlord has delivered to Tenant notice of such Non-Monetary Default to the extent required under the applicable provisions of Section 31.01 of this Lease; and provided, further that if an Event of Default exists, but this Lease has not been terminated and such Event of Default will be cured simultaneously with the granting of such Leasehold Mortgage or Mezzanine Loan or with the proceeds from such Leasehold Mortgage or Mezzanine Loan, Tenant may mortgage its interest in this Lease and/or pledge the direct or indirect interests in Tenant subject to such cure;

(ii) such Leasehold Mortgage shall be subject to all the agreements, terms, covenants and conditions of this Lease;

(iii) such Leasehold Mortgage shall contain in substance each of the following provisions (and no provisions inconsistent therewith in any material respect):

(u) "This instrument is executed upon condition that (unless this condition be released or waived by Landlord under said Lease or its successors in interest by an instrument in writing) no purchaser or transferee of said Lease at any foreclosure sale hereunder, or other transfer authorized by law by reason of a default hereunder where no foreclosure sale is required, shall, as a result of such sale or transfer, acquire any right, title or interest in or to said Lease or the leasehold estate hereby mortgaged or pledged, unless (A) Landlord shall be given written notice of such sale or transfer of said Lease and the effective date thereof within ten (10) days after the effective date of such sale or transfer, and (B) such purchaser or transferee shall agree that a duplicate original or certified copy of the instrument of sale or transfer, together with the recording data therefor (to the extent then available), shall be delivered to Landlord within twenty (20) days after the date of recordation thereof."

(v) "The purchaser or transferee of said Lease shall, effective from and after the effective date of the foreclosure or transfer in lieu of foreclosure, assume and agree to perform all of the terms, covenants and conditions of the Lease to be observed or performed on the part of Tenant and agree that no further or additional mortgage or assignment of the Lease hereby mortgaged shall be made except in accordance with the provisions contained in Article 17 of that Lease."

(w) "This mortgage is not a security interest in or lien on the fee interest in the Premises covered by the Lease hereby mortgaged or on Landlord's interest in the Yards Parcel or the WRY".

(x) "The mortgagee hereunder waives all right and option to retain and apply the proceeds of any insurance or the proceeds of any condemnation award toward payment of the sum secured by this mortgage to the extent such proceeds are required for and applied to the demolition, repair or restoration of the mortgaged premises in accordance with the provisions of the Lease hereby mortgaged."

(y) "This mortgage and all rights of the mortgagee hereunder are, without the necessity for the execution of any further documents, subject and subordinate to the rights of Landlord under the Lease hereby mortgaged, as said Lease may have been previously modified, amended or renewed, or may hereafter be modified, amended or renewed with the consent of the mortgagee. Nevertheless, the holder of this mortgage agrees from time to time upon request and without charge to execute, acknowledge and deliver any instruments reasonably requested by Landlord to evidence the foregoing subordination."

(b) Tenant or the Leasehold Mortgagee or Mezzanine Lender shall give to Landlord written notice of the making of any Leasehold Mortgage or Mezzanine Loan (which notice shall contain the name and office address of the Leasehold Mortgagee or Mezzanine Lender) within ten (10) days after the execution and delivery of such Leasehold Mortgage or Mezzanine Loan and a duplicate original or certified copy thereof; provided that Landlord shall recognize the rights of a Leasehold Mortgagee or Mezzanine Lender hereunder upon the receipt of the foregoing information from and after the date so delivered even if such date is after such ten (10) day period.

(c) Landlord shall give to each Leasehold Mortgagee or Mezzanine Lender, at the address of such Leasehold Mortgagee or Mezzanine Lender set forth in the notice from such Leasehold Mortgagee or Mezzanine Lender or from Tenant delivered in the manner provided by Article 32, a copy of each notice given by Landlord to Tenant hereunder (including Default and Event of Default notices) at the same time as and whenever any such notice shall thereafter be given by Landlord to Tenant, and no such notice by Landlord shall be deemed to have been duly given to Tenant (and no grace or cure period shall be deemed to have commenced) unless and until a copy thereof shall have been given to each such Leasehold Mortgagee or Mezzanine Lender. Each Leasehold Mortgagee and Mezzanine Lender (i) shall thereupon have a period of ten (10) days more in the case of a Default in the payment of Annual Base Rent or other Rental and thirty (30) days more in the case of any other Default (or in the case of a non-Monetary Default which shall require more than thirty (30) days to cure using due diligence, then such longer period of time as shall be necessary so long as such Leasehold Mortgagee or Mezzanine Lender shall have commenced to cure (or caused to be commenced such cure) within such thirty (30) day period and continuously prosecutes or causes to be prosecuted the same to completion with reasonable diligence), after the applicable period afforded Tenant for remedying the Default or causing the same to be remedied has expired and (ii) shall, within such period and otherwise as herein provided, have the right (but not the obligation) to remedy such Default or cause the same to be remedied. Landlord shall accept performance by or on behalf of a Leasehold Mortgagee or Mezzanine Lender of any covenant, condition or agreement on Tenant's part to be performed hereunder with the same force and

effect as though performed by Tenant, so long as such performance is made in accordance with the terms and provisions of this Lease. Landlord shall not object to any entry onto the Premises by or on behalf of a Leasehold Mortgagee or a Mezzanine Lender to the extent necessary to effect such Leasehold Mortgagee's or Mezzanine Lender's cure rights, provided such entry is in compliance with applicable law.

(d) No Non-Monetary Default by Tenant or Event of Default arising from a non-monetary obligation shall be deemed to exist (including, for the avoidance of doubt, for purposes of Sections 17.02(a)(i) and 17.03(a)(i)) as long as a Leasehold Mortgagee or Mezzanine Lender, in good faith, (i) shall have commenced to cure (or caused to be commenced such cure) such Default within thirty (30) days after the expiration of the applicable period afforded to Tenant for remedying such Default, and continuously prosecutes or causes to be prosecuted the same to completion with reasonable diligence (subject to Force Majeure) or (ii) if possession or control of the Premises or any part thereof is required in order to cure such Default, and Leasehold Mortgagee or Mezzanine Lender shall have notified Landlord within thirty (30) days after the expiration of the applicable period afforded to Tenant for remedying the Default of its intention to institute foreclosure proceedings to obtain possession or control directly or through a receiver, and thereafter commences such foreclosure proceedings, prosecutes such proceedings with all reasonable diligence and continuity (subject to Force Majeure) and, upon obtaining possession and ownership of Tenant's estate hereunder, commences or causes its designee to commence promptly to cure the Default (if not theretofore commenced pursuant to subclause (ii) of Section 17.03(j)) and prosecutes the same to completion with all reasonable diligence and continuity (subject to Force Majeure); provided that the Leasehold Mortgagee or Mezzanine Lender or its designee shall have delivered to Landlord, in writing, within the time periods set forth in subclause (i) or (ii) herein, its agreement, subject to the last sentence of this Section 17.03(d), to cause the party obtaining possession and ownership of Tenant's estate hereunder to agree to take the action described in subclause (i) or (ii) herein (and, if applicable, the action described in subclause (i) or (ii) of Section 17.03(j)) (the "Leasehold Mortgagee/Mezzanine Lender Notice of Cure"); and provided, further, that during the period in which the actions comprising the Leasehold Mortgagee/Mezzanine Lender Notice of Cure are being performed, all of the other obligations of Tenant under this Lease (other than those that require possession or control of the Premises in order to cure) are being duly performed (including, without limitation, payment of all Rental due hereunder) within any applicable notice and grace periods (subject, however to the notice and cure rights of Leasehold Mortgagees and Mezzanine Lenders under Section 17.03(c)). In the event that at any time after the delivery of the Leasehold Mortgagee/Mezzanine Lender Notice of Cure, the Leasehold Mortgagee or Mezzanine Lender notifies Landlord, in writing, that it has relinquished possession or control of the Premises or that it will not institute foreclosure proceedings or, if such proceedings have been commenced, that it has discontinued them, thereupon, Landlord shall have the unrestricted right to terminate this Lease by reason of any Event of Default (and to take any other action it deems appropriate by reason of any Default by Tenant), and upon any such termination the provisions of Section 17.04 shall apply.

(e) A Leasehold Mortgagee, Mezzanine Lender, successor leasehold owner, assignee or transferee gaining possession or control of the Premises pursuant to a foreclosure or transfer in lieu of foreclosure shall not be bound by any deadline for completion of any construction or alterations required of Tenant under this Lease; provided, however, that such

party gaining possession and ownership of Tenant's estate hereunder pursuant to a foreclosure or transfer in lieu of foreclosure shall with all reasonable diligence and continuity prosecute completion of same; and provided, further, that it shall be an obligation under this Lease to cure any default under the WRY Construction Agreement (after the expiration of any applicable notice and cure period contained therein) that relates solely to the Associated Portion of the LIRR Roof and Facilities, and such Leasehold Mortgagee, Mezzanine Lender, successor leasehold owner, assignee or transferee shall be obligated, with respect to the Premises, to cure such default with respect to the Associated Portion of the LIRR Roof and Facilities in accordance with the WRY Construction Agreement. Notwithstanding anything in this Section 17.03 to the contrary, a Leasehold Mortgagee, Mezzanine Lender, successor leasehold owner, assignee or transferee gaining possession or control of the Premises pursuant to a foreclosure or transfer in lieu of foreclosure shall not, be required to cure any Non-Monetary Defaults or Events of Default arising from non-monetary obligations of Tenant that are not capable of being cured by such party gaining possession or control of the Premises, and if any Leasehold Mortgagee, Mezzanine Lender, successor leasehold owner, assignee or transferee shall acquire the Premises pursuant to a foreclosure or transfer in lieu of foreclosure, then any such Non-Monetary Default or Events of Default arising from a non-monetary obligation by Tenant that is not capable of being cured shall no longer be deemed a Default or Event of Default.

(f) With respect to any Non-Monetary Default, so long as a Leasehold Mortgagee or Mezzanine Lender shall be diligently exercising its cure rights under this Section 17.03 (or the rights described in Section 17.03(d)(ii), as the case may be), Landlord shall not (i) re-enter the Premises (except as provided in Section 17.03(j)), (ii) serve a termination notice, or (iii) bring a proceeding on account of such Default to (x) dispossess Tenant and/or other occupants of the Premises, (y) re-enter the Premises, or (z) terminate this Lease or the leasehold estate (such rights described in clauses (i), (ii) and (iii)) "Landlord's Termination Rights"). In addition, with respect to any Monetary Default, Landlord shall not exercise any of Landlord's Termination Rights so long as a Leasehold Mortgagee or a Mezzanine Lender shall be diligently exercising its cure rights under this Section 17.03 within the time periods set forth above; provided, however, that (A) nothing contained in this Section 17.03(f) shall in any way affect, diminish or impair the right of Landlord to exercise any of Landlord's Termination Rights or to enforce any other remedy in the event of any other Event of Default or Default, as applicable, by Tenant in the performance of its obligations hereunder, and (B) upon any cessation of a Leasehold Mortgagee or Mezzanine Lender so exercising such rights and undertaking such activities, Landlord may exercise any of Landlord's Termination Rights hereunder. Nothing in the protections to Leasehold Mortgagees or Mezzanine Lenders provided in this Lease shall be construed to either (I) extend the Term beyond the Fixed Expiration Date provided for in this Lease that would have applied if no Default had occurred, or (II) require such Leasehold Mortgagee or Mezzanine Lender to cure any non-Monetary Default by Tenant that is not capable of being cured as a condition to preserving this Lease or to such Leasehold Mortgagee obtaining a New Lease as provided in Section 17.03(a).

(g) Notwithstanding anything to the contrary herein, the exercise of any rights or remedies of a Leasehold Mortgagee under a Leasehold Mortgage or a Mezzanine Lender under a Mezzanine Loan, including the consummation of any foreclosure or Transfer in lieu of foreclosure, shall not constitute a Default under this Lease or require the consent of Landlord; provided, however, that any Transfer of this Lease resulting from any such foreclosure

or transfer in lieu of foreclosure to an entity other than a Leasehold Mortgagee, Mezzanine Lender or their Affiliates shall be a Default under this Lease unless (x) such Transfer meets the requirements of Section 17.02 (excluding the requirement that the transferee be a Related Affiliate, which shall be inapplicable to any Transfer resulting from or following any such foreclosure or transfer in lieu of foreclosure), and (y) the transferee is a Qualified Transferee.

(h) No Leasehold Mortgagee or Mezzanine Lender shall become liable under the provisions of this Lease unless and until such time as it becomes, and then only for so long as it remains, the owner of the leasehold estate created hereby and no performance by or on behalf of a Leasehold Mortgagee or Mezzanine Lender of Tenant's obligations hereunder shall cause such Leasehold Mortgagee or Mezzanine Lender to be deemed to be a "mortgagee in possession" unless and until such Leasehold Mortgagee shall take possession or control of the Premises, or such Mezzanine Lender take possession or control of Tenant, as applicable.

(i) If there is more than one Leasehold Mortgagee, the rights and obligations afforded by this Section 17.03 to a Leasehold Mortgagee shall be exercisable only by the party whose collateral interest in the Premises is senior in lien (or which has obtained the consent of any Leasehold Mortgagees that are senior to such Leasehold Mortgagee).

Section 17.04. New Lease.

(a) In the event of a termination of this Lease, prior to the Fixed Expiration Date, whether by summary proceedings to dispossess, service of notice to terminate, or otherwise, due to an event specified in Article 31, Landlord shall serve upon each Leasehold Mortgagee who is entitled to notice, written notice of such termination promptly following the same, 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. Subject to clause (e) of this Section 17.04, the Leasehold Mortgagee entitled to the rights afforded by this Section 17.04 shall thereupon have the option to obtain a new lease in accordance with and upon the following terms and conditions (a "New Lease"):

(i) Upon the written request of such Leasehold Mortgagee, served upon Landlord in accordance with Article 32, within forty-five (45) days after service upon the Leasehold Mortgagee of notice of termination by Landlord, Landlord shall enter into a New Lease of the Premises with such Leasehold Mortgagee, a special-purpose Affiliate thereof or any designee of such Leasehold Mortgagee that is an Institutional Lender (such Leasehold Mortgagee, Affiliate thereof or designee, the "New Tenant"), as provided in clause (ii) of this Section 17.04(a).

(ii) The New Lease shall be effective as of the date of termination of this Lease and shall be for the remainder of the Term and at the Rental and upon all the agreements, terms, covenants and conditions hereof. Upon the execution of such New Lease, the New Tenant shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for its termination, and shall otherwise with reasonable diligence commence to remedy any non-Monetary Defaults under this Lease and shall pay all costs and expenses, including, without limitation, reasonable attorneys' fees, court costs and disbursements incurred by Landlord in connection with such Defaults and termination, the

recovery of possession of the Premises and the preparation, execution and delivery of such New Lease, less any net monies received by Landlord from the date of termination of this Lease for rent or for use and occupancy of the Premises. Landlord shall have no obligation to deliver physical possession of the Premises in connection with the giving of any such New Lease to the extent that Landlord shall not previously have recovered possession of same. Nothing herein contained shall release Tenant from any of its obligations under this Lease which shall not have been discharged or fully performed by Tenant or by such Leasehold Mortgagee or New Tenant.

(b) As between Landlord and New Tenant, any New Lease, and the leasehold estate created thereby, subject to the same conditions contained in this Lease, shall continue to maintain the same priority as this Lease with regard to any Leasehold Mortgage or Fee Mortgage or any other lien, charge or encumbrance whether or not the same shall then be in existence.

(c) Upon the execution and delivery of a New Lease under this Section 17.04, all subleases which theretofore may have been assigned to Landlord shall be assigned and transferred, without recourse, by Landlord to the New Tenant. Between the date of termination of this Lease and the date of execution and delivery of the New Lease, if a Leasehold Mortgagee shall have requested such New Lease as provided in Section 17.04(a), Landlord shall not enter into any new subleases, cancel or modify in any material respect any then-existing subleases or accept any cancellation, termination or surrender thereof (unless such termination shall be effected as a matter of law on the termination of this Lease) without the written consent of the Leasehold Mortgagee, not to be unreasonably withheld or delayed, except as permitted in the subleases.

(d) If there is more than one Leasehold Mortgagee, Landlord shall enter into a New Lease with the Leasehold Mortgagee whose Leasehold Mortgage is senior in lien (or which has obtained the consent of any Leasehold Mortgagees that are senior to such Leasehold Mortgagee) as the Leasehold Mortgagee entitled to the rights afforded by this Section 17.04.

(e) Any rejection of this Lease by any trustee of Tenant in any bankruptcy, reorganization, arrangement or similar proceeding which would otherwise cause this Lease to terminate, shall, without any action or consent by Landlord, Tenant or any Mortgagee, effect the transfer of Tenant's interest hereunder to the most senior Leasehold Mortgagee or its nominee or designee. Upon any such transfer to a Leasehold Mortgagee, such Leasehold Mortgagee may (i) reject the transfer of this Lease upon giving notice thereof to Landlord no later than forty-five (45) days after notice from Landlord of such transfer, in which case such Leasehold Mortgagee shall have no further obligations hereunder, or (ii) may request a new lease in accordance with the provisions of this Section 17.04. In the event that the most senior Leasehold Mortgagee shall fail either to effect the transfer of this Lease or request a new lease, then Landlord shall notify all remaining Leasehold Mortgagees that the most senior Leasehold Mortgagee has failed to exercise such right whereupon each other Leasehold Mortgagee may, within twenty (20) days of receiving such notice have the same alternative rights, exercisable within the same period after receipt of such notice. If more than one Leasehold Mortgagee shall have elected to either effect such transfer or request such new lease (subject to the liens of all

Leasehold Mortgagees senior in lien in each case) the Leasehold Mortgagee with the most senior lien priority shall be deemed to have exercised such right.

Section 17.05. Additional Mortgagee Protective Clauses. In addition to the other rights, notices and cure periods afforded to Leasehold Mortgagees, Landlord further agrees that:

(a) without the prior written consent of each Leasehold Mortgagee, Landlord will neither agree to any modification or amendment of this Lease which would have an adverse effect on such holder, nor accept a surrender or cancellation of this Lease;

(b) Landlord shall consider in good faith any modification to this Lease requested by a Leasehold Mortgagee as a condition or term of granting financing to Tenant, provided that the same does not materially increase Landlord's obligations or diminish Landlord's rights and immunities hereunder;

(c) the Leasehold Mortgagee most senior in lien priority (or as otherwise agreed by the Leasehold Mortgagees) shall have the right to participate in any arbitration proceedings under Section 40.01(b), provided that only one (1) Leasehold Mortgagee shall have such participation rights at any given time;

(d) the Leasehold Mortgagee most senior in lien priority (or as otherwise agreed by the Leasehold Mortgagees) shall have the right to participate in the adjustments of any insurance claims of the nature set forth in Articles 14 and 15 and condemnation awards of the nature set forth in Article 16 and to serve as the Condemnation Proceeds Depository; provided, however, that only one (1) Leasehold Mortgagee shall have such participation rights at any given time; and provided, further, that any such Leasehold Mortgagee (i) shall irrevocably agree that all insurance proceeds shall be paid directly to the Condemnation Proceeds Depository for distribution in accordance with the terms of this Lease and (ii) shall give to the Condemnation Proceeds Depository, in the Condemnation Proceeds Depository's favor, a direction to execute and/or endorse any claims or checks necessary for the payment of, or representing the payment of, insurance proceeds, to be distributed by the Condemnation Proceeds Depository, in accordance with the terms of this Lease; and

(e) at the request of Tenant from time to time, Landlord shall execute and deliver an instrument addressed to the holder of any Leasehold Mortgage or Mezzanine Loan confirming that such holder is a Leasehold Mortgagee or Mezzanine Lender and entitled to the benefit of all provisions contained in the Lease which are expressly stated to be for the benefit of Leasehold Mortgagees or Mezzanine Lenders.

Section 17.06. Subleases.

(a) Without limiting the provisions of Sections 17.01, Tenant may grant a sublease or license to any Person or Persons to use or occupy less than substantially all of the Premises without the necessity of obtaining the consent of Landlord, provided that if more than one Building is located on the Premises, the consent of Landlord shall be required with respect to any sublease or license of all or substantially all of any single Building.

(b) Each sublease or license of any portion of the Premises shall provide that: (i) such sublease or license is subject to this Lease; (ii) such sublease shall expire on or prior to the Fixed Expiration Date or, subject to Section 17.06(d), upon the earlier termination of this Lease pursuant to Article 31; (iii) subject to Section 17.06(d), Landlord shall have no obligation to the subtenant or licensee with respect to any right or obligation of the landlord under such sublease or the licensor under such license, as the case may be; and (iv) the subtenant or licensee shall not be a Prohibited Person as of the date of the execution of such sublease or license.

(c) At Tenant's option (or upon the request of Landlord), Tenant shall deliver to Landlord a copy of any sublease or license of any portion of the Premises (which may be unexecuted but which shall, in all other respects, be in final form), together with a summary of the material terms thereof (including without limitation a description of the subleased or licensed premises, the rent and the term of such sublease or license), prior to or promptly after execution and delivery of the same. Within thirty (30) days after receipt of the same by Landlord, Landlord shall notify Tenant whether same is a "Qualifying Sublease". Landlord shall have the right to designate any sublease or license as a Qualifying Sublease; provided, however, that Landlord shall be required to designate any sublease or license a Qualifying Sublease if (i) a Leasehold Mortgagee has executed a non-disturbance agreement with respect to such sublease or license; or (ii) the subtenant or licensee thereunder is either (x) a Major Subtenant that has acquired its interest in the Premises pursuant to a Permitted Transfer or (y) any other subtenant or licensee of a space lease consisting of (I) not less than a full floor of office space or (II) a retail or restaurant space, each made to an unrelated third party at a rental not less than the prevailing market rental (as reasonably determined by Landlord) (the subtenant or licensee under any Qualifying Sublease, a "Qualifying Subtenant"). If Landlord shall determine that any sublease or license is a Qualifying Sublease, then the provisions of Section 17.06(d) shall apply. If Landlord shall determine that any sublease or license is not a Qualifying Sublease, Landlord shall provide to Tenant written notice thereof, setting forth the reason for such determination in reasonable detail. If Tenant disputes such determination in writing within ten (10) days after its receipt of such notice from Landlord, such dispute shall be resolved in accordance with Section 40.01(a) and (b).

(d) In the event Landlord acquires or succeeds to the interest of Tenant under a Qualifying Sublease (the date upon which such event occurs hereinafter referred to as the "Succession Date"), then, provided, that on the Succession Date no event of default exists and is continuing under such Qualifying Sublease which would permit the landlord thereunder to terminate such Qualifying Sublease or exercise any dispossess remedies provided for in such Qualifying Sublease, then (i) such Qualifying Sublease shall continue as a direct lease between Landlord and the Qualifying Subtenant upon all of the terms, covenants, conditions and agreements set forth in the Qualifying Sublease and remaining to be performed, with the same force and effect as if Landlord, as landlord under the Qualifying Sublease, and the Qualifying Subtenant as tenant under the Qualifying Sublease, entered into a lease (on such terms, covenants and conditions, including any renewals thereof) as of the date of the termination of this Lease, for a term equal to the unexpired term of the Lease, (ii) at the request of either party, Landlord and the Qualifying Subtenant shall execute and exchange an instrument confirming such direct lease relationship, but the failure of either party to execute such instrument shall not affect their rights and obligations with respect to said direct lease relationship, and (iii) the Qualifying

Subtenant shall be bound by said direct lease relationship and to attorn to Landlord and recognize Landlord as its landlord and shall pay its rent, additional rent and all other sums due under the Qualifying Sublease at the address designated by Landlord by written notice to such Qualifying Subtenant from time to time. Notwithstanding the foregoing or anything else contained in this Lease, neither Landlord, nor anyone claiming by, through or under Landlord, shall be:

(i) bound by the provisions of this Section 17.06(d) until after Tenant shall have delivered to the Qualifying Subtenant possession of the portion of the Premises demised by the Qualifying Sublease;

(ii) liable for any act or omission of any prior landlord (including, without limitation, the then defaulting landlord); provided, however, that nothing herein shall be construed to relieve a successor landlord of liability in respect of any acts or omissions of the landlord under the Qualifying Sublease (i) first occurring on or after the Succession Date, or (ii) first occurring prior to the Succession Date and continuing after the Succession Date; provided, that (x) such successor landlord receives notice following the Succession Date of such continuing actions or omissions, (y) notwithstanding any shorter time limitation set forth in the Qualifying Sublease, following the later of the Succession Date or the date of notice to such successor landlord of such actions or omissions, such successor landlord shall be entitled to a period of ninety (90) days to cure such acts or omissions which constitute a breach of the Qualifying Sublease (or such longer period as may be reasonably necessary to cure such acts or omissions; provided, that such successor landlord is proceeding diligently), and (z) such successor landlord shall in no event be liable for any such acts or omissions in respect of any time period prior to the expiration of such cure period;

(iii) subject to any offsets or defenses that the Qualifying Subtenant may have against any prior landlord (including, without limitation, Tenant); provided, however, that such successor landlord will recognize offsets expressly provided in the Qualifying Sublease to the extent that they relate to recoupment of any actual overpayment by the Qualifying Subtenant for the lease year immediately preceding the Succession Date of operating expense or real estate tax escalations which were paid by the Qualifying Subtenant based on estimates, and which exceed the actual operating expense or real estate tax escalations due for such period under the Qualifying Sublease;

(iv) bound by any payment that the Qualifying Subtenant might have made to any prior landlord (including, without limitation, the then defaulting landlord), or any other Person of (x) rental, common area charges, or any other charge payable under the Qualifying Sublease for more than the current month, except to the extent such payments are actually turned over to Landlord or (y) any security deposit which shall not have been actually turned over to Landlord;

(v) bound by any covenant to undertake or complete any construction of a Building, the premises demised by the Qualifying Sublease, or any portion of either;

(vi) bound by any obligation to make any payment to such Qualifying Subtenant (except where the obligation to make such payment is expressly set forth in the Lease and such obligation first arises after the Succession Date); or

(vii) bound by any amendment to any such Qualifying Sublease or modification thereof, which is not specifically referenced in such Qualifying Sublease (by way of example, confirmation of expansion or renewal options specifically referenced in the Qualifying Sublease shall not be affected by this clause (vii)), which reduces the basic rent, additional rent, supplemental rent or other charges payable under such Qualifying Sublease (except to the extent equitably reflecting a reduction in the space covered by such Qualifying Sublease), or shortens or lengthens the term thereof, or otherwise increases the obligations of the landlord or reduces the benefits to the landlord thereunder, or results in such sublease no longer being a Qualifying Sublease, made without the prior written consent of Landlord (unless such amendment or modification has been approved by the Leasehold Mortgagee, in which event no such consent of Landlord shall be required).

The provisions of this Section 17.06(d) are self-operative and shall apply, without any further action by any party, upon a determination in accordance with Section 17.06(c) that a sublease or license is a Qualifying Sublease. Notwithstanding the foregoing, promptly upon request by Landlord, Tenant or the Qualifying Subtenant, each of Landlord and the Qualifying Subtenant shall duly execute, acknowledge and deliver one or more counterparts of an instrument confirming its rights and obligations under this Section 17.06(d) in the form of Exhibit T attached hereto (each such instrument, an "RNDA"). Landlord's recognition of any Qualifying Sublease shall be conditioned on the provisions in this Section 17.06(d)

ARTICLE 18

REPAIRS AND MAINTENANCE

Section 18.01. Repairs. Tenant shall take good care of the Premises, including, without limitation, the Facility Airspace Improvements and the roofs, foundations and appurtenances thereto, water, sewer, gas and other utility connections, pipes and mains which are located on or service the Premises (unless the same is within the sole legal and operational control of the City, a public utility company or any other third party) and all Equipment, and shall put, keep and maintain the Facility Airspace Improvements in good and safe order and condition, and make all repairs therein and thereon, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary or appropriate to keep the same in good and safe order and condition, and whether or not necessitated by wear, tear, obsolescence or defects, latent or otherwise; provided, however, that Tenant's obligations with respect to Restoration resulting from a casualty or condemnation shall be as provided in Articles 15 and 16. Tenant shall not commit or suffer, and shall use all reasonable precaution to prevent, waste, damage or injury to the Premises. When used in this Section 18.01, the term "repairs" shall include all necessary replacements, alterations and additions. All repairs made by Tenant shall be at least equal in quality and class to the original work and shall be made in compliance with (a) all Legal Requirements, (b) the New York Board of Fire Underwriters or any successor thereto, and (c) any other applicable rules, regulations and requirements governing

means and methods of construction over the Yards Parcel set forth in the WRY Declaration of Easements.

Section 18.02. No Obligation on Landlord. Landlord shall not be required to furnish any services, utilities or facilities whatsoever to the Premises, nor shall Landlord have any duty or obligation to make any alteration, change, improvement, replacement, Restoration or repair to, nor to demolish, any Improvements, except as otherwise expressly set forth herein or the WRY Declaration of Easements. Except as expressly provided herein or in the WRY Declaration of Easements, Tenant assumes the full and sole responsibility for the condition, operation, repair, alteration, improvement, replacement, maintenance and management of the Premises and the Facility Airspace Improvements located thereon.

ARTICLE 19

CHANGES, ALTERATIONS AND ADDITIONS

Section 19.01. Capital Improvements. From and after Substantial Completion of the Facility Airspace Improvements on the Premises, Tenant shall not demolish, replace or materially alter the Facility Airspace Improvements, or any part thereof (except as provided with respect to Equipment in Article 21), or make any material addition thereto, whether voluntarily or in connection with repairs required by this Lease (any such demolition, replacement, alteration, rebuilding or addition of improvements, a "Capital Improvement"), unless Tenant shall comply with the following requirements:

(a) No Capital Improvement shall be undertaken unless and until Tenant shall have procured from all Governmental Authorities all Improvement Approvals for the proposed Capital Improvement which are required to be obtained prior to the commencement of the proposed Capital Improvement and paid for the same. Landlord, at the sole cost and expense of Tenant, shall promptly execute and deliver any applications for Improvement Approvals that require the execution by the fee owner of the Premises, and otherwise cooperate with Tenant as reasonably required or requested by Tenant in order for Tenant to obtain all Improvement Approvals, provided such documents or instruments do not impose any liability or obligation on Landlord (unless paid by Tenant or against which Landlord is indemnified by Tenant in a manner reasonably satisfactory to Landlord) or reduce any of the rights of Landlord under this Lease or the Project Documents in more than a *de minimis* manner. True copies of all such Improvement Approvals shall be delivered by Tenant to Landlord prior to commencement of any proposed Capital Improvement.

(b) All Capital Improvements, when completed, shall be of such a character as not to reduce the value and quality of the Premises below its value immediately prior to the commencement of such Capital Improvement. Landlord shall have the right to review plans and specifications for any proposed Capital Improvement to determine whether such standards have been met. Any disputes with respect to such standards shall be resolved in accordance with Section 40.01(a) and (b). The WRY Roof Component, the LIRR Relocations and New LIRR Facilities shall not be altered except pursuant to the provisions of the WRY Declaration of Easements.

(c) All Capital Improvements shall be made with reasonable diligence and continuity (subject to Force Majeure) and in a good and workmanlike manner and in compliance with (i) all Improvement Approvals, (ii) if required pursuant to Section 19.01(b), the plans and specifications for such Capital Improvements as approved by Landlord, (iii) the orders, rules, regulations and requirements of any Board of Fire Underwriters or any similar body having jurisdiction, (iv) the provisions of the WRY Declaration of Easements and (v) all other Legal Requirements.

(d) No construction of any Capital Improvement shall be commenced until Tenant shall have delivered to Landlord original insurance policies, or certificates of insurance with respect to such policies together with copies of such policies, issued by responsible insurers and bearing notations evidencing the payment of premiums or installments thereof then due or accompanied by other evidence satisfactory to Landlord of such payments, for the insurance required by Article 14 (or, if applicable, the WRY Declaration of Easements). If, under the provisions of any casualty, liability or other insurance policy or policies then covering the Premises or any part thereof, any consent to such Capital Improvement by the insurance company or companies issuing such policy or policies shall be required to continue and keep such policy or policies in full force and effect, Tenant, prior to the commencement of construction of such Capital Improvement, shall obtain such consent and pay any additional premiums or charges therefor that may be imposed by said insurance company or companies.

Section 19.02. As-Built Plans. All Capital Improvements shall be carried out under the supervision of an architect selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld. Upon completion of any Capital Improvement, Tenant shall furnish to Landlord a complete set of "as-built" plans for such Capital Improvement together with a copy of the Certificate of Occupancy issued therefor, to the extent a modification thereof was required.

Section 19.03. Title. Title to all additions, alterations, improvements and replacements made to the Improvements, including, without limitation, the Capital Improvements, shall forthwith vest in Landlord as provided in Section 8.07, without any obligation by Landlord to pay any compensation therefor to Tenant.

ARTICLE 20

REQUIREMENTS OF PUBLIC AUTHORITIES AND OF INSURANCE UNDERWRITERS AND POLICIES

Section 20.01. Compliance with Legal Requirements. Tenant promptly shall comply with all Legal Requirements without regard to the nature or cost of the work required to be done, extraordinary, as well as ordinary, of all Governmental Authorities now existing or hereafter created, and of any and all of their departments and bureaus, of any applicable fire rating bureau or other body exercising similar functions, affecting the Premises, or affecting the construction, maintenance, use, operation, management or occupancy of the Premises, whether or not the same involve or require any structural changes or additions in or to the Premises, without regard to whether or not such changes or additions are required on account of any particular use to which the Premises, or any part thereof, may be put, and without regard to the

fact that Tenant is not the fee owner of the Premises. Tenant also shall comply with any and all provisions and requirements of any casualty, liability or other insurance policy required to be carried by Tenant under the provisions of this Lease.

Section 20.02. Right to Contest. Tenant, at its sole cost and expense, after notice to Landlord, may contest, by appropriate proceedings prosecuted diligently and in good faith, the validity or applicability of any Legal Requirement; provided, that (a) Landlord shall not be subject to civil liability or criminal penalty or to prosecution for a crime, nor shall the Premises or any part thereof be subject to being condemned or vacated, by reason of non-compliance or otherwise, by reason of such contest; (b) if an adverse decision in such proceeding or the failure to pay any judgment resulting from such adverse decision could result in the imposition of any lien against the Premises, then before the commencement of such contest, Tenant shall furnish to Landlord the bond of a surety company reasonably satisfactory to Landlord, or other deposit or security in each case in form, substance and amount reasonably satisfactory to Landlord, and shall indemnify Landlord against the cost of such compliance and liability resulting from or incurred in connection with such contest or non-compliance (including the costs and expenses in connection with such contest); (c) Tenant shall keep Landlord regularly advised as to the status of such proceedings; (d) such contest shall be prosecuted with diligence and in good faith to final adjudication, settlement, compliance or other disposition of the Legal Requirement so contested; (e) such contest, and any disposition thereof (including, without limitation, the cost of complying therewith and paying all interest, penalties, fines, liabilities, fees and expenses in connection therewith), shall be at the sole cost of and shall be paid by Tenant; (f) promptly after disposition of the contest, Tenant shall comply with such Legal Requirement to the extent determined by such contest; and (g) notwithstanding any bond, deposit or other security furnished to Landlord, Tenant shall comply with any Legal Requirement in accordance with the applicable provisions of this Lease if the Premises, or part thereof, shall be in danger of being forfeited or if Landlord is in danger of being subject to criminal liability or penalty, or civil liability, in connection with such contest. Landlord shall be deemed subject to prosecution for a crime if Landlord or any of its respective officers, directors, partners, shareholders, agents or employees is charged with a crime of any kind whatever unless such charge is withdrawn ten (10) days before such party is required to plead or answer thereto.

Section 20.03. Environmental Requirements. Without limiting anything contained in the WRY Declaration of Easements, Landlord and Tenant shall not undertake, permit or suffer any Environmental Activity other than (a) in compliance with all applicable Legal Requirements and all of the terms and conditions of all insurance policies covering, related to or applicable to the Premises (including the WRY Declaration of Easements), and (b) in such a manner as shall keep the Premises free from any lien imposed in respect of or as a consequence of such Environmental Activity. Landlord shall take all necessary steps to ensure that any Environmental Activity undertaken by it or on its behalf is undertaken, and Tenant shall take all necessary steps to ensure that any other Environmental Activity undertaken or permitted at the Premises is undertaken, in each case in such a manner as to provide prudent safeguards against potential risks to human health or the environment or to the Premises. Each party shall notify the other within twenty-four (24) hours of the Release of any Hazardous Substance from or at the Premises. If Tenant shall breach the covenants provided in this Section 20.03, then in addition to any other rights and remedies which may be available to Landlord under this Lease or otherwise

at law or in equity, Landlord may require Tenant to take all actions, or to reimburse Landlord for the costs of any and all actions taken by Landlord upon Tenant's failure to act promptly, as are necessary or reasonably appropriate to cure such breach. Landlord shall have the right from time to time and at Landlord's expense to conduct an environmental audit of the Premises during regular business hours, and Tenant shall cooperate in the conduct of such environmental audit. Landlord shall provide a copy of any such audit to Tenant; provided, however, that in the event such environmental audit concludes that there has been a material breach by Tenant of the terms and conditions set forth in this Section 20.03, Tenant shall reimburse Landlord for the reasonable costs of such environmental audit. Landlord shall use its reasonable efforts to minimize interference with Tenant's use and occupancy of the Premises in performing such environmental audit, and shall repair any damage to the Premises caused by the same, except that Landlord shall have no such repair obligation to the extent the damage was due to any Environmental Activity.

ARTICLE 21

EQUIPMENT

Section 21.01. Property of Landlord. Until the Fee Conversion Closing, all Equipment on the Premises shall be and shall remain the property of Landlord; provided, that Tenant (or its designee) shall be deemed the owner of Equipment for federal income tax purposes. Tenant shall not have the right, power or authority to, and shall not, remove any Equipment from the Premises without the consent of Landlord, which consent shall not be unreasonably withheld; provided, however, that any such consent shall not be required in connection with repairs, cleaning or other servicing, or if the same is promptly replaced (subject to Force Majeure) by Equipment which is at least equal in utility and value to the Equipment being removed, and such removal and replacement does not materially reduce the value of the Premises or materially increase the risk to life or safety of the occupants or users of the Improvements. Notwithstanding the foregoing, Tenant shall not be required to replace any Equipment which performed a function which has become obsolete or otherwise is no longer necessary or desirable in connection with the use or operation of the Premises, unless such failure to replace would reduce the value of the Premises or would result in a reduced level of maintenance of the Premises, in which case Tenant shall be required to install such Equipment as may be necessary to prevent such reduction in the value of the Premises or in the level of maintenance.

Section 21.02. Replacement. Tenant shall keep all Equipment in good order and repair and shall replace the same when necessary with items at least equal in utility and value to the Equipment being replaced.

ARTICLE 22

DISCHARGE OF LIENS; BONDS

Section 22.01. Creation of Liens. Subject to the provisions of Section 22.02, and except as otherwise expressly provided herein, Tenant shall not create or permit to be created any lien, encumbrance or charge upon the Premises or any part thereof, the income therefrom or any assets of, or funds appropriated to, Landlord, and Tenant shall not suffer any other matter or

thing whereby the estate, right and interest of Landlord in the Premises or any part thereof might be impaired.

Section 22.02. Discharge of Liens. If any mechanic's, laborer's or materialman's lien (other than a lien arising out of any work performed by or on behalf of Landlord) at any time shall be filed in violation of the obligations of Tenant pursuant to Section 22.01 against the Premises or any part thereof, the Yards Parcel or any part thereof, or, if any public improvement lien created or permitted to be created by Tenant shall be filed against any assets of, or funds appropriated to, Landlord, Tenant shall (a) within forty-five (45) days after notice of the filing thereof shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise, and (b) indemnify, defend, protect and hold the MTA Parties harmless from and against any and all loss, cost, injury, damage or expense (including reasonable attorneys' fees and charges) arising out of such lien and/or the sums claimed to be due which give rise to such lien. If Tenant shall fail to cause such lien to be discharged of record within such forty-five (45) day period, and if such lien shall continue for an additional ten (10) days following the last day of such forty-five (45) day period, then, in addition to any other rights or remedies, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event, Landlord shall be entitled, if Landlord so elects, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances. Any amount so paid by Landlord, including all reasonable costs and expenses incurred by Landlord in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements, together with interest thereon at the Involuntary Rate from the respective dates of Landlord's making of the payment or incurring of the costs and expenses until the date of actual repayment to Landlord of such amounts, shall constitute Rental and shall be paid by Tenant to Landlord within ten (10) days after demand therefor. Notwithstanding the foregoing provisions of this Section 22.02, Tenant shall not be required to discharge any such lien if Tenant is in good faith contesting the same and has furnished a cash deposit or a security bond or other such security satisfactory to Landlord in an amount sufficient to pay such lien with interest and penalties.

Section 22.03. No Authority to Contract in Name of Landlord. Nothing contained in this Lease shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to or repair of the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of materials that would give rise to the filing of any lien against Landlord's interest in the Premises or any part thereof, the WSY or any part thereof, or any assets of, or funds appropriated to, Landlord. Notice is hereby given, and Tenant shall cause all Construction Contracts to provide, that Landlord shall not be liable for any work performed or to be performed at the Premises for Tenant or any subtenant, for any materials furnished or to be furnished at the Premises for any of the foregoing, and that no mechanic's or other lien for such work or materials shall attach to or affect the estate or interest of Landlord in and to the Premises or any part thereof, the Yards Parcel or any part thereof, the WSY or any part thereof, or any

assets of, or funds appropriated to, Landlord. Tenant shall have no power to do any act or make any contract which may create or be the foundation for any lien, mortgage or other encumbrance upon the estate or assets of, or funds appropriated to, Landlord or of any interest of Landlord in the Premises.

ARTICLE 23

DELIVERY OF POSSESSION AND PERMITTED EXCEPTIONS TO TITLE

Section 23.01. As-Is Condition; No Representations. Tenant acknowledges that Tenant is fully familiar with the Premises and the zoning status, physical condition and environmental condition thereof, and the Permitted Exceptions. Tenant accepts the Premises in its existing legal and physical condition and state of repair, and, except as otherwise expressly set forth in this Lease, no representations or warranties, express or implied, have been made by or on behalf of Landlord in respect of the Premises or the status of title or the physical condition thereof, including, without limitation, the environmental condition thereof and the zoning or other laws, regulations, rules and orders applicable thereto, the amount of Taxes or other Impositions that may be assessed against the Premises or the use that may be made of the Premises. Tenant hereby acknowledges and represents that Tenant has not relied on any such representations or warranties, and that Landlord shall in no event whatsoever be liable for any latent or patent defects in the Premises. Nothing herein shall limit the obligations of the Yards Parcel Owner under the WRY Declaration of Easements or any rights Tenant may have as a Facility Airspace Parcel Owner thereunder.

Section 23.02. Delivery of Possession. Landlord shall deliver possession of the Premises on the Commencement Date vacant and free of occupants and tenancies, subject only to the Permitted Exceptions; provided, that Tenant acknowledges and agrees that the use and occupancy of the Yards Parcel (and, by way of easement, portions of the Premises to the extent permitted by the WRY Declaration of Easements) by LIRR and/or any other Yards Parcel Operator subject to and in accordance with the WRY Declaration of Easements shall at all times be permitted and shall in no event constitute a default of Landlord under this Lease.

Section 23.03. Tenant's Representations. Tenant hereby represents, warrants and covenants to Landlord that:

(a) Tenant is a [_____] duly organized and existing in good standing under the laws of the State of [_____], and qualified to do business in the State of New York;

(b) Tenant has the full, right, power, authority and legal capacity to execute and deliver this Lease, to execute and deliver the instruments referred to herein, and to enter into and fully perform the transactions contemplated hereby, or thereby;

(c) all actions and consents required by Tenant to authorize the transactions contemplated by this Lease have been duly performed and obtained;

(d) all Persons who execute this Lease and the instruments contemplated by this Lease on behalf of Tenant will be duly authorized and empowered on behalf of Tenant to do so and to enter into all transactions contemplated by this Lease, and by such instruments;

(e) the execution, delivery and consummation of the transactions contemplated hereby and performance of this Lease have not and will not conflict with any provisions of any federal, state laws or regulations to which Tenant is subject, or conflict with, result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or credit agreement, corporate charter, bylaws or other instrument to which Tenant is a party or by which Tenant or its assets may be bound or affected;

(f) this Lease is a legal, valid and binding obligation of Tenant, enforceable against Tenant in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally;

(g) Tenant is not, as of the Commencement Date (and Tenant covenants that Tenant shall not, at any time during the Term, be) a Prohibited Person;

(h) Tenant is as of the Commencement Date (i) in compliance with the Patriot Act, as applicable; (ii) in compliance with the Office of Foreign Assets Control sanctions and regulations promulgated under the authority granted by the Trading with the Enemy Act, 12 U.S.C. § 95 (a) et seq., and the International Emergency Economic Powers Act, 50 U.S.C. § 1701, et seq., in each case as applicable and as amended or replaced from time to time; and (iii) a Person which (w) is not, and has never been, under investigation by any Governmental Authority for, and has not been charged with or convicted of a crime under, 18 U.S.C. § § 1956 or 1957 (as amended or replaced from time to time) or any predicate offense thereunder; (x) has never been assessed a civil penalty under, or had any of its funds seized, frozen or forfeited in any action relating to, any anti-money laundering laws or predicate offenses thereunder; (y) has taken such steps and implemented such policies as are reasonably necessary to ensure that it is not promoting, facilitating or otherwise furthering, intentionally or unintentionally, the transfer, deposit or withdrawal of criminally-derived property, or of money or monetary instruments which are (or which Tenant suspects or has reason to believe are) the proceeds of any illegal activity or which are intended to be used to promote or further any illegal activity; and (z) has taken such steps and implemented such policies as are reasonably necessary to ensure that it is in compliance with all laws and regulations applicable to its business for the prevention of money laundering and with anti-terrorism laws and regulations, with respect both to the source of funds from its investors and from its operations, which steps include the development and implementation of an anti-money laundering compliance program within the meaning of Section 352 of the Patriot Act, to the extent Tenant is required to develop such a program under the rules and regulations promulgated pursuant to Section 352 of the Patriot Act; and

(i) Tenant has not dealt with any broker in connection with this Lease or the transactions contemplated hereby, and Tenant shall indemnify, defend and hold Landlord harmless from and against any claim for commission or other compensation that is asserted by

any broker, finder or other agent which claims to have dealt with Tenant in connection with this Lease and/or the WRY Severed Parcel Project, together with the cost of defending any such claim.

Section 23.04. Landlord's Representations. Landlord hereby represents, warrants and covenants to Tenant that:

(a) Landlord is duly organized and validly existing under the laws of the State of New York and has the full right, power, authority and legal capacity to execute and deliver this Lease, to execute and deliver the instruments referred to herein, and to enter into and fully perform the transactions contemplated hereby, or thereby;

(b) all actions and consents required by Landlord to authorize the transactions contemplated by this Lease have been duly performed and obtained;

(c) all Persons who execute this Lease and the instruments contemplated by this Lease on behalf of Landlord will be duly authorized and empowered on behalf of Landlord to do so and to enter into all transactions contemplated by this Lease, and by such instruments;

(d) the execution, delivery and consummation of the transactions contemplated hereby and performance of this Lease have not and will not conflict with any provisions of any federal, state laws or regulations to which Landlord is subject, or conflict with, result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or credit agreement, corporate charter, bylaws or other instrument to which Landlord is a party or by which Landlord or its assets may be bound or affected;

(e) this Lease is a legal, valid and binding obligation of Landlord, enforceable against Landlord in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally; and

(f) Landlord has not dealt with any broker in connection with this Lease or the transactions contemplated hereby, and Landlord shall indemnify, defend and hold Tenant harmless from and against any claim for commission or other compensation that is asserted by any broker, finder or other agent which claims to have dealt with Landlord in connection with this Lease and/or the WRY Severed Parcel Project, together with the cost of defending any such claim.

ARTICLE 24

INTENTIONALLY OMITTED

ARTICLE 25

LANDLORD NOT LIABLE FOR INJURY OR DAMAGE, ETC.

Section 25.01. No Liability for Injury. Without limiting Section 7.01, Landlord shall not in any event whatsoever be liable to Tenant or to any other Person for any injury or damage happening on, in or about the Premises and its appurtenances to Tenant or any other Person, nor for any injury or damage to the Premises or to any property belonging to Tenant or to any other Person, which may be caused by any fire or breakage, or by the use, misuse or abuse of the WRY Roof Component or any of the Facility Airspace Improvements (including, but not limited to, any of the common areas within the Facility Airspace Improvements, Equipment, elevators, hatches, openings, installations, stairways, hallways, or other common facilities), or the streets or sidewalk area within the Premises or which may arise from any other cause whatsoever, except to the extent any of the foregoing shall have resulted from the negligence or intentional misconduct of Landlord, its officers, agents, employees or licensees; nor shall Landlord in any event be liable for the acts or failure to act of any other tenant of any premises within the WSY other than the Premises, or of any agent, representative, employee, contractor or servant of such other tenant.

Section 25.02. No Liability for Utility Failure. Without limiting Section 7.01, Landlord shall not be liable to Tenant or to any other Person for any failure of water supply, gas or electric current, nor for any injury or damage to any property of Tenant or of any other Person or to the Premises caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storms or disturbances, or water, rain or snow which may leak or flow from the street, sewer, gas mains or subsurface area or from any part of the Premises, or leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein, or from any other place, nor for interference with light or other incorporeal hereditaments by anybody, or caused by any public or quasi-public work, except to the extent any of the foregoing shall have resulted from the negligence or intentional misconduct of Landlord or its officers, agents, employees or licensees.

Section 25.03. No Liability for Soil Conditions. Without limiting Section 7.01, in no event shall Landlord be liable to Tenant or to any other Person for any injury or damage to any property of Tenant or of any other Person or to the Premises, arising out of any sinking, shifting, movement, subsidence, failure in load-bearing capacity of, or other matter or difficulty related to, the soil, or other surface or subsurface materials, on the Premises or in the WSY, it being agreed that Tenant shall assume and bear all risk of loss with respect thereto.

ARTICLE 26

INDEMNIFICATION OF LANDLORD AND OTHERS

Section 26.01. Indemnification. Tenant shall not do, or knowingly permit any subtenant, or sublessee of a subtenant or any employee, agent or contractor of Tenant or of any subtenant, or sublessee of a subtenant to do, any act or thing upon the Premises which may reasonably be likely to subject Landlord to any liability or responsibility for injury or damage to persons or property, or to any liability by reason of any violation of law or any other Legal Requirement, and shall use its best efforts to exercise such control over the Premises so as to fully protect Landlord against any such liability. Tenant, to the fullest extent permitted by law, shall indemnify, defend and save Landlord, LIRR, any former Landlord which held its interest herein at any time from and after the Commencement Date, the State of New York and their respective agents, directors, officers and employees (collectively, the "Indemnitees"), harmless from and against any and all loss, cost, liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses (including without limitation engineers', architects' and attorneys' fees and charges), which may be suffered by, imposed upon or incurred by or asserted against any of the Indemnitees, by reason of any of the following occurring during the Term, except to the extent that the same shall have been caused in whole or in part by the negligence or intentional misconduct of any of the Indemnitees:

(a) construction of the Facility Airspace Improvements or any other work or thing done in or on the Premises or any part thereof;

(b) any use, non-use, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises or any part thereof;

(c) any negligent or tortious act or failure to act (or act or failure to act which is alleged to be negligent or tortious) within the Premises or any part thereof;

(d) any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in or on the Premises or any part thereof or in, or about any sidewalk or vault located thereon or adjacent thereto (unless such sidewalk or vault is solely within the control of a utility company);

(e) any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in or on the WSY or the Yards Parcel or any part thereof, but only to the extent caused by or suffered or incurred by any negligent or tortious act or failure to act (or act which is alleged to be negligent or tortious) within the Premises or any part thereof;

(f) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with;

(g) any lien or claim which may have arisen out of any act of Tenant, any subtenant, any sublessee of a subtenant, or any of their respective agents, contractors,

servants or employees against or on the Premises, or any lien or claim created or permitted to be created by Tenant, any subtenant, any sublessee of a subtenant, or any of their respective agents, contractors, servants or employees, in respect of the Premises against any assets of, or funds appropriated to, any of the Indemnitees under the laws of the State of New York or of any other Governmental Authority, or any liability which may be asserted against any of the Indemnitees with respect thereto;

(h) any failure on the part of Tenant to keep, observe and perform any of the terms, covenants, agreements, provisions, conditions or limitations on Tenant's part to be kept, observed or performed contained in the WRY Declaration of Easements, the Design and Construction Requirements, the WRY Construction Agreement, any subleases, or any other contracts and agreements affecting the Premises;

(i) any default by a Building Completion Guarantor under a Building Completion Guaranty;

(j) any tax attributable to the execution, delivery or recording of this Lease other than any real property transfer gains tax or other transfer tax which may be imposed on Landlord; or

(k) any contest by Tenant permitted pursuant to the provisions of this Lease, including, without limitation, Article 4 and Article 20.

Section 26.02. Landlord Indemnification Obligations. Nothing herein shall reduce or otherwise limit the indemnification obligations of Landlord as Yards Parcel Owner to Tenant as Facility Airspace Parcel Owner pursuant to the WRY Declaration of Easements.

Section 26.03. Obligations Not Affected by Insurance. The obligations of Tenant under this Article 26 shall not be affected in any way by the absence in any case of insurance coverage or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises.

Section 26.04. Notice and Defense Process. If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event for which Tenant has agreed to indemnify the Indemnitees in Section 26.01, then, upon demand by such Indemnitee, Tenant shall resist or defend such claim, action or proceeding (in such Indemnitee's name, if necessary) by the attorneys for Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance maintained by Tenant) or (in all other instances) by such attorneys as Tenant shall select and such Indemnitee shall approve, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, and except with respect to personal injury or other liability claims within the coverage limits afforded by Tenant's liability insurance and being defended by attorneys for, or approved by, Tenant's insurance carrier, an Indemnitee may, in the event that there exists a dispute, an actual or potential conflict of interest or a divergence of interest that (in each case) would make it inadvisable in the good-faith judgment of such Indemnitee to be (or continue to be) represented by such attorneys, engage its own attorneys to defend or to assist in its defense of such claim, action or proceeding, and the Indemnitee shall pay the reasonable fees and disbursements of such attorneys; provided, that the Indemnitee shall

be entitled to recover the reasonable fees and disbursements of such attorneys as part of any judgment in favor of the Indemnitee with respect to such claim, action or proceeding. No Indemnitee will unreasonably withhold its consent to any proposed settlement by Tenant of a matter which is fully covered by Tenant's indemnification hereunder; provided, that such settlement provides solely for the payment of money and does not impose any other liability on any Indemnitee.

Section 26.05. No Consequential Damages. Notwithstanding anything to the contrary herein, in no event shall Tenant be liable for any consequential damages to Landlord, any other Indemnitee or any other Person and in no event shall Landlord or any other Indemnitee be liable for any consequential damages to Tenant or any other Person.

Section 26.06. Survival. The provisions of this Article 26 shall survive the Expiration Date with respect to actions or the failure to take any actions or any other matter arising prior to the Expiration Date.

ARTICLE 27

RIGHT OF INSPECTION, ETC.

Section 27.01. Landlord Right of Inspection. Tenant shall permit Landlord and its agents or representatives to enter the Premises at all reasonable times and upon reasonable notice (except in cases of emergency) for the purpose of (a) inspecting the Premises, (b) determining whether or not Tenant is in compliance with its obligations under this Lease or any other Project Document, and (c) making any necessary repairs to the Premises and performing any work therein (i) that Landlord may elect to perform pursuant to Section 18.03, or (ii) that may be necessary by reason of Tenant's failure to make any such repairs or perform any such work or perform any other obligations of Tenant under this Lease; provided, that, except in the event of an emergency and except as otherwise provided in this Lease, Landlord shall have delivered to Tenant written notice specifying such repairs or work and Tenant shall have failed to make such repairs or to do such work within thirty (30) days after the giving of such notice (subject to Force Majeure), or if such repairs or such work cannot reasonably be completed during such thirty (30) day period, to have commenced and be diligently pursuing the same (subject to Force Majeure). Notwithstanding the foregoing, Landlord's right to inspect the interior of any completed Buildings shall be further limited to the extent that Tenant has only limited rights to enter same in accordance with any agreements with subtenants and other occupants, except in case of an emergency.

Section 27.02. No Duty on Landlord. Nothing in this Article 27 or elsewhere in this Lease shall imply any duty upon the part of Landlord to do any work required to be performed by Tenant hereunder and performance of any such work by Landlord shall not constitute a waiver of Tenant's Default in failing to perform the same; provided, however, that nothing contained in this Section 27.02 shall derogate from the obligations of the Yards Parcel Owner under the WRY Declaration of Easements. Landlord, during the progress of any such work, may keep and store at the Premises all necessary materials, tools, supplies and equipment. Except in the event of gross negligence or willful misconduct, Landlord shall not be liable for any damage to Tenant or any subtenant by reason of the making of such repairs or the

performance of any such work, or on account of bringing or storing materials, tools, supplies and equipment onto the Premises during the course thereof; provided that Landlord shall use reasonable efforts to minimize damage or any interference to Tenant's operations resulting from Landlord's exercise of its rights under this Article 27, and the obligations of Tenant under this Lease shall not be affected thereby. To the extent that Landlord undertakes such work or repairs, such work or repairs shall be commenced and completed in a good and workmanlike manner, and with reasonable diligence, subject to Force Majeure.

ARTICLE 28

LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

Section 28.01. Landlord Right to Cure. If Tenant at any time shall be in Default after notice thereof and after the expiration of any applicable grace periods provided under this Lease for Tenant or a Leasehold Mortgagee, to cure or commence to cure same, Landlord, without waiving or releasing Tenant from any obligation of Tenant contained in this Lease, may (but shall be under no obligation to) perform such obligation on Tenant's behalf.

Section 28.02. Reimbursement of Landlord. All reasonable sums paid by Landlord and all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by Landlord in connection with its performance of any obligation pursuant to Section 28.01, together with interest thereon at the Involuntary Rate from the date of Landlord's making of each such payment or incurring of each such sum, cost, expense, charge, payment or deposit until the date of actual repayment to Landlord, shall be paid by Tenant to Landlord within ten (10) days after Landlord shall have submitted to Tenant a statement substantiating, in reasonable detail, the amount demanded by Landlord. No payment or performance by Landlord pursuant to Section 28.01 shall be or be deemed to be a waiver or release of any breach or Default of Tenant with respect thereto or of the right of Landlord to terminate this Lease, institute summary proceedings or take any such other action as may be permissible hereunder if an Event of Default by Tenant shall have occurred. Landlord shall not be limited in the scope of any damages (other than consequential damages) which Landlord may claim against Tenant arising out of or by reason of Tenant's failure to provide and keep insurance in force to the amount of the insurance premium or premiums not paid, but Landlord also shall be entitled to recover, as damages for such breach, the uninsured amount of any loss and damage and the reasonable costs and expenses of suit (including, without limitation, reasonable attorneys' fees and disbursements) suffered or incurred by reason of damage to or destruction of the Premises.

ARTICLE 29

NO ABATEMENT OF RENTAL

Except as may be otherwise expressly provided herein, Tenant shall have no right of abatement, diminution, reduction, setoff or refund of Rental payable by Tenant hereunder or of the other obligations of Tenant hereunder under any circumstances. The parties intend that Tenant's obligation to pay Rental hereunder is absolute except where expressly provided otherwise in this Lease, and the obligations of Tenant hereunder shall be separate and

independent covenants and agreements and shall continue unaffected unless such obligations shall have been modified or terminated pursuant to an express provision of this Lease.

ARTICLE 30

PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 30.01. Permitted Use. Subject to the provisions of law, this Lease and the other Project Documents binding on Tenant, Tenant shall occupy the Premises for the purpose of constructing, maintaining and operating the Facility Airspace Improvements for the WRY Severed Parcel Project (as may be modified from time to time in accordance with the provisions hereof), any other incidental uses thereto or in furtherance thereof and any other purposes approved by Landlord in its sole discretion (collectively, the "Permitted Uses"), and for no other use or purpose.

Section 30.02. No Unlawful Use. Tenant shall not use or occupy the Premises, nor permit or suffer the Premises or any part thereof to be used or occupied, for any unlawful, illegal or extra-hazardous business, use or purpose, or in such manner as to constitute a nuisance of any kind (public or private) or that unreasonably interferes with the beneficial use of other property, or for any purpose or in any way in violation of any Certificate of Occupancy or of any Legal Requirements, or which may make void or voidable any insurance then in force with respect to the Premises. Immediately upon the discovery of any such unpermitted, unlawful, illegal or extra-hazardous use, Tenant shall take all necessary actions, legal and equitable, to compel the discontinuance of such use. If for any reason Tenant shall fail to take such actions in a timely fashion, and such failure shall continue for thirty (30) days after notice from Landlord to Tenant specifying such failure, Landlord is hereby irrevocably authorized (but not obligated) to take all such actions in Tenant's name and on Tenant's behalf, Tenant hereby appointing Landlord as Tenant's attorney-in-fact coupled with an interest for all such purposes. Tenant shall, within ten (10) days after demand therefor by Landlord, reimburse Landlord for all reasonable sums paid by Landlord and all reasonable costs and expenses incurred by Landlord acting pursuant to the immediately preceding sentence (including, without limitation, reasonable attorneys' fees and disbursements), together with interest thereon at the Involuntary Rate from the respective dates of Landlord's making of each such payment or incurring of each such cost, expense or charge until the date of actual repayment of such amounts to Landlord.

Section 30.03. No Adverse Possession. Tenant shall not knowingly suffer or permit the Premises or any portion thereof to be used by the public in such manner as might reasonably tend to impair title to the Premises or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse usage, prescriptive rights or adverse possession by the public, as such, or of implied dedication of the Premises or any portion thereof.

ARTICLE 31

EVENTS OF DEFAULT; CONDITIONAL LIMITATIONS, REMEDIES, ETC.

Section 31.01. Events of Default. Each of the following events shall be an "Event of Default" hereunder (provided that, any written notice of Default required to be given by Landlord to Tenant as set forth in this Section 31.01 shall contain a clear and conspicuous statement that Landlord intends to exercise its rights hereunder in the event that such Default becomes an Event of Default) and any such notice shall also be sent to the Persons listed on Exhibit R hereto:

(a) if Tenant shall fail to pay any item of Rental, or any part thereof, when the same shall become due and payable and such failure shall continue for five (5) Business Days after written notice from Landlord to Tenant;

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

(c) if Tenant shall admit, in writing, that it is unable to pay its debts as such become due;

(d) if Tenant shall make an assignment for the benefit of creditors;

(e) if Tenant shall file a voluntary petition under Title 11 of the United States Code or if such petition is filed against it, and an order for relief is entered, or if Tenant shall file any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other statute or law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, or of all or any substantial part of its properties or of the Premises or any interest therein of Tenant, or if Tenant shall take any corporate action in furtherance of any action described in Section 31.01(c), (d) or (e);

(f) if within ninety (90) days after the commencement of any proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other statute or law, such proceeding shall not have been dismissed, or if, within ninety (90) days after the appointment, without the

consent or acquiescence of Tenant, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant or of all or any substantial part of its properties or of the Premises or any interest therein of Tenant, such appointment shall not have been vacated or stayed on appeal or otherwise, or if, within thirty (30) days after the expiration of any such stay, such appointment shall not have been vacated;

(g) if Tenant shall abandon the Premises, and such abandonment shall continue for thirty (30) days after written notice thereof from Landlord;

(h) if this Lease or the estate of Tenant hereunder or any portion thereof (whether by operation of law or otherwise) shall be assigned, subleased, transferred, mortgaged or encumbered, or there shall be a Transfer, in each case without Landlord's approval to the extent required hereunder or without compliance with the provisions of this Lease applicable thereto and such transaction shall not be made to comply or voided ab initio within thirty (30) days after written notice thereof from Landlord to Tenant;

(i) if a levy under execution or attachment shall be made against the Premises and such execution or attachment shall not be vacated or removed by court order, bonding or otherwise within a period of thirty (30) days;

(j) if Tenant shall at any time fail to maintain its corporate existence in good standing, or to pay any corporate franchise tax when and as the same shall become due and payable, and such failure shall continue for thirty (30) days after written notice thereof from Landlord to Tenant;

(k) if, solely with respect to the Premises, a default by Tenant under the WRY Restrictive Declaration, and such default shall be unremedied for thirty (30) days after written notice thereof from Landlord to Tenant;

(l) if a default by Tenant under any of the WRY Declaration of Easements (solely to the extent applicable to the Premises as set forth in Section 7.01 hereof), the PILOT Agreement or the PILOST Agreement, or a default by a Building Completion Guarantor under a Building Completion Guaranty (whenever in force and effect), shall occur and remain outstanding after the expiration of any applicable notice and cure period therefor; provided, that if there is no notice and cure period under such declaration, agreement or guaranty, Tenant shall be entitled to the notice and cure period set forth in Section 31.01(b) as if such default were a failure by Tenant to observe or perform one or more of the other terms, conditions, covenants or agreements contained in this Lease; provided further that is shall not be deemed a default under the Building Completion Guaranty if a replacement guaranty is delivered to MTA within the cure period set forth in such guaranty; and/or

(m) [if a default under the WRY Construction Agreement shall occur and remain outstanding and Tenant has not commenced the Cure Obligations (as defined in the

WRY Construction Agreement) with respect solely to the Associated Portion of the LIRR Roof and Facilities within the cure period provided to Tenant in the WRY Construction Agreement.][23]

Section 31.02. Primary Remedies; Expiration and Termination of Lease.

(a) If any Event of Default described in Sections 31.01(b) through (k), shall occur and Landlord, at any time thereafter (unless such Event of Default has been remedied), at its option, gives notice to Tenant stating that this Lease and the Term shall expire and terminate on the date specified in such notice, which date shall be not less than twenty (20) days after the giving of such notice, then this Lease and the Term and all rights of Tenant under this Lease shall expire and terminate as if the date specified in the notice given pursuant to this Section 31.02(a) were the Fixed Expiration Date, and Tenant immediately shall quit and surrender the Premises and the provisions of Article 37 shall apply. Notwithstanding anything to the contrary contained herein, if such termination shall be stayed by order of any court having jurisdiction over any proceeding described in Sections 31.01(e) or (f), or by federal or state statute and such stay expires, or if the trustee appointed in any such proceeding (the "Trustee"), Tenant or Tenant as debtor-in-possession shall fail to assume Tenant's obligations under this Lease within the period prescribed therefor by law or within one hundred twenty (120) days after entry of the order for relief or as may be allowed by the court, or if Tenant, Tenant as debtor-in-possession or the Trustee shall fail to provide adequate protection of Landlord's right, title and interest in and to the Premises or adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease as provided in Section 31.15, Landlord, to the extent permitted by law or by leave of the court having jurisdiction over such proceeding, shall have the right, at its election, to terminate this Lease on ten (10) days' notice to Tenant, Tenant as debtor-in-possession or the Trustee and upon the expiration of said ten (10) day period this Lease shall cease and expire as aforesaid and Tenant, Tenant as debtor-in-possession and/or the Trustee, as the case may be, shall immediately quit and surrender the Premises as aforesaid.

(b) If an Event of Default described in Section 31.01(a), (l) or (m) shall occur, or this Lease shall be terminated as provided in Section 31.03(a), Landlord, without notice, may re-enter and repossess the Premises by summary proceedings or other lawful process.

Section 31.03. Effect of Termination. If this Lease shall be terminated as provided in Section 31.02(a), or Tenant shall be dispossessed by summary proceedings or otherwise as provided in Section 31.02(b):

(a) Tenant shall pay to Landlord all Rental payable by Tenant under this Lease through the date upon which this Lease and the Term shall have expired or through the date of re-entry upon the Premises by Landlord, as the case may be;

(b) Landlord may complete all construction required to be performed by Tenant hereunder and may repair and alter the Premises in such manner as Landlord may deem necessary or advisable (and may apply to the foregoing all funds, if any, then held by any

[23] To be deleted in Terra Firma Severed Parcel Leases.

Depository pursuant to the terms of this Lease) without relieving Tenant of any liability under this Lease or otherwise affecting any such liability, and/or let or relet the Premises or any portion thereof for the whole or any part of the remainder of the Term or for a longer period, in Landlord's name or as agent of Tenant, and out of any rent and other sums collected or received as a result of such reletting Landlord shall: (i) first, pay to itself the reasonable cost and expense of terminating this Lease, re-entering, retaking, repossessing, completing construction and repairing or altering the Premises, or any part thereof, and the cost and expense of removing all persons and property therefrom, including in such costs brokerage commissions, legal expenses and reasonable attorneys' fees and disbursements, (ii) second, pay to itself the reasonable cost and expense sustained in securing any new tenant or other occupant, including in such costs brokerage commissions, legal expenses and reasonable attorneys' fees and disbursements and other expenses of preparing the Premises for reletting, and, if Landlord shall maintain and operate the Premises, the reasonable cost and expense of operating and maintaining the Premises, and (iii) third, pay to itself any balance remaining on account of the liability of Tenant to Landlord. Landlord shall, within a reasonable period of time following the repossession of the Premises, undertake a request for proposals or other process in accordance with Landlord's official policy for real property dispositions to seek a replacement tenant for the Premises, it being understood and agreed that (x) Landlord shall have discretion as to whether or not to enter into a new lease for the Premises with a replacement tenant, and as to the terms of any such new lease, (y) no prospective lease shall diminish the amount of any Deficiency owed to Landlord pursuant to the terms of Section 31.03(c) unless and until such new lease is actually executed and delivered between Landlord and a replacement tenant, and (z) except as aforesaid, Landlord in no way shall be responsible or liable for any failure to relet the Premises or any part thereof, or for any failure to collect any rent due on any such reletting, and no such failure to relet or to collect rent under any new lease shall operate to relieve Tenant of any liability under this Lease or to otherwise affect any such liability;

(c) Tenant shall be liable for and shall pay to Landlord, as damages, any deficiency (referred to as a "Deficiency") between the Rental reserved in this Lease for the period which otherwise would have constituted the unexpired portion of the Term and the net amount, if any, of rents collected under any reletting effected pursuant to the provisions of Section 31.03(b) for any part of such period (first deducting from the rents collected under any such reletting all of the payments to Landlord described in Section 31.03(b)); any such Deficiency shall be paid in installments by Tenant on the days specified in this Lease for the payment of installments of Rental, and Landlord shall be entitled to recover from Tenant each Deficiency installment as the same shall arise, and no suit to collect the amount of the Deficiency for any installment period shall prejudice Landlord's right to collect the Deficiency for any subsequent installment period by a similar proceeding; and

(d) whether or not Landlord shall have collected any Deficiency installments as aforesaid, Landlord shall be entitled to recover from Tenant, and Tenant shall pay to Landlord, on demand, in lieu of any Deficiency, as and for liquidated and agreed final damages (it being agreed that it would be impracticable or extremely difficult to fix the actual damage), a sum equal to the amount by which the Rental reserved in this Lease for the period which otherwise would have constituted the unexpired portion of the Term exceeds the then fair and reasonable rental value of the Premises for the same period, both discounted to present worth at the rate of six and one-half percent (6.5%) per annum, less the aggregate amount of any

Deficiencies theretofore collected by Landlord pursuant to the provisions of Section 31.03(c) for the same period; it being agreed that before presentation of proof of such liquidated damages to any court, commission or tribunal, if the Premises, or any part thereof, shall have been relet by Landlord on an arm's-length basis for the period which otherwise would have constituted the unexpired portion of the Term, or any part thereof, the amount of rent reserved upon such reletting shall be deemed, prima facie, to be the fair and reasonable rental value for the part or the whole of the Premises so relet during the term of the reletting. Upon payment of such sum by Tenant, Tenant shall no longer be liable to make payments for a Deficiency.

Section 31.04. Survival of Obligations. No termination of this Lease pursuant to Section 31.02(a) or taking possession of or reletting the Premises, or any part thereof, pursuant to Sections 31.02(b) and 31.03(b), shall relieve Tenant of its liabilities and obligations hereunder, all of which shall survive such expiration, termination, repossession or reletting.

Section 31.05. [Intentionally Omitted].

Section 31.06. Tenant's Waiver. To the extent not prohibited by law, Tenant hereby waives and releases all rights now or hereafter conferred by statute or otherwise which would have the effect of limiting or modifying any of the provisions of this Article 31. Tenant shall execute, acknowledge and deliver any instruments which Landlord may request, whether before or after the occurrence of an Event of Default, evidencing such waiver or release.

Section 31.07. Successive Suits. Suit or suits for the recovery of damages, or for a sum equal to any installment or installments of Rental payable hereunder or any Deficiencies or other sums payable by Tenant to Landlord pursuant to this Article 31, may be brought by Landlord from time to time at Landlord's election, and nothing herein contained shall be deemed to require Landlord to await the date whereon this Lease or the Term would have expired had there been no termination by reason of an Event of Default.

Section 31.08. Bankruptcy Damages. Nothing contained in this Article 31 shall limit or prejudice the right of Landlord to prove and obtain as liquidated damages in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding an amount equal to the maximum allowed by statute or rule of law governing such proceeding and in effect at the time when such damages are to be proved, whether or not such amount shall be greater than, equal to or less than the amount of the damages referred to in any of the preceding Sections of this Article 31.

Section 31.09. No Reinstatement. No receipt of monies by Landlord from Tenant after the termination of this Lease, or after the giving of any notice of the termination of this Lease, shall reinstate, continue or extend the Term or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Landlord to enforce the payment of Rental payable by Tenant hereunder or thereafter falling due, or operate as a waiver of the right of Landlord to recover possession of the Premises by proper remedy, except as herein otherwise expressly provided, it being agreed that after the service of notice to terminate this Lease or the commencement of any suit or summary proceedings, or after a final order or judgment for the possession of the Premises, Landlord may demand, receive and collect any monies due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or

judgment, all such monies collected being deemed payments on account of the use and operation of the Premises or, at the election of Landlord, on account of Tenant's liability hereunder.

Section 31.10. Waiver of Notice of Re-Entry. Except as otherwise expressly provided herein or as prohibited by applicable law, Tenant hereby expressly waives the service of any notice of intention to re-enter provided for in any statute, or of the institution of legal proceedings to that end, and Tenant, for and on behalf of itself and all persons claiming through or under Tenant, also waives any and all right of redemption provided by any law or statute now in force or hereafter enacted or otherwise, or re-entry or repossession or to restore the operation of this Lease in case Tenant shall be dispossessed by a judgment or by warrant of any court or judge or in case of re-entry or repossession by Landlord or in case of any expiration or termination of this Lease, and Landlord and Tenant waive and shall waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any claim of injury or damage. The terms "enter", "re-enter", "entry" or "re-entry" as used in this Lease are not restricted to their technical legal meanings.

Section 31.11. No Waiver by Landlord. No failure by Landlord (or its predecessor as interest as Landlord) to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial Rental during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by a party, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the non-breaching party. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof.

Section 31.12. Injunction. In the event of any breach or threatened breach by a party of any of the covenants, agreements, terms or conditions contained in this Lease, the non-breaching party shall be entitled to seek to enjoin such breach or threatened breach and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Lease. To the extent permitted by law, each party hereby waives any requirement for the posting of bonds or other security in any such action.

Section 31.13. Rights Cumulative. Each right and remedy of Landlord provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise. Notwithstanding the foregoing, in no event shall Landlord be

entitled, directly or indirectly, to recover more than once from Tenant, any tenant under the Balance Lease or a Severed Parcel Lease, or Developer for the same element of Landlord's damage.

Section 31.14. Enforcement Costs. Tenant shall pay to Landlord all costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Landlord in any action or proceeding to which Landlord may be made a party by reason of any act or omission of Tenant. In the event Landlord is the prevailing party, Tenant also shall pay to Landlord all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by Landlord in enforcing any of the covenants and provisions of this Lease and incurred in any action brought by Landlord against Tenant on account of the provisions hereof, and all such costs and expenses may be included in and form a part of any judgment entered in any proceeding brought by Landlord against Tenant on or under this Lease. All of the sums paid or obligations incurred by Landlord as aforesaid, with interest at the Involuntary Rate, shall be paid by Tenant to Landlord within thirty (30) days after demand by Landlord.

Section 31.15. Adequate Assurance. If an order for relief is entered or if a stay of proceeding or other act becomes effective in favor of Tenant or Tenant's interest in this Lease in any proceeding which is commenced by or against Tenant under the present or any future federal Bankruptcy Code or any other present or future applicable federal, state or other statute or law, Landlord shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy code, statute, law or this Lease, including, without limitation, such rights and remedies as may be necessary to adequately assure the complete and continuous future performance of Tenant's obligations under this Lease. Adequate protection of Landlord's right, title and interest in and to the Premises, and adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease, shall include, without limitation, the following requirements:

(a) that Tenant shall comply with all of its obligations under this Lease;

(b) that Tenant shall pay to Landlord, on the first day of each month occurring subsequent to the entry of such order, or on the effective date of such stay, a sum equal to the amount by which the Premises diminished in value during the immediately preceding monthly period, but, in no event, an amount which is less than the aggregate Rental payable for such monthly period;

(c) that Tenant shall continue to use the Premises in the manner required by this Lease;

(d) that Landlord shall be permitted to supervise the performance of Tenant's obligations under this Lease;

(e) that Tenant shall hire, at its sole cost and expense, such security personnel as may be necessary to insure the adequate protection and security of the Premises;

(f) that Tenant shall pay to Landlord within thirty (30) days after entry of such order or the effective date of such stay, as partial adequate protection against future diminution in value of the Premises and adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease, a security deposit as may be required by law or ordered by the court;

(g) that Tenant has and will continue to have unencumbered assets after the payment of all secured obligations and administrative expenses to assure Landlord that sufficient funds will be available to fulfill the obligations of Tenant under this Lease;

(h) that Landlord be granted a security interest acceptable to Landlord in property of Tenant, other than property of any of Tenant's officers, directors, shareholders, employees or partners, to secure the performance of Tenant's obligations under this Lease; and

(i) that if Tenant, Tenant as debtor-in-possession or the Trustee assumes this Lease and proposes to assign the same (pursuant to Title 11 U.S.C. Section 365, as the same may be amended) to any Person who shall have made a bona fide offer to accept an assignment of this Lease on terms acceptable to the Trustee, Tenant or Tenant as debtor-in-possession, then notice of such proposed assignment, setting forth (i) the name and address of such Person, (ii) all of the terms and conditions of such offer, and (iii) the adequate assurance to be provided Landlord to assure such Person's future performance under the Lease, including, without limitation, the assurances referred to in Title 11 U.S.C. Section 365(b)(3) (as the same may be amended), shall be given to Landlord by the Trustee, Tenant or Tenant as debtor-in-possession no later than twenty (20) days after receipt by the Trustee, Tenant or Tenant as debtor-in-possession of such offer, but in any event no later than ten (10) days prior to the date that the Trustee, Tenant or Tenant as debtor-in-possession shall make application to a court of competent jurisdiction for authority and approval to enter into such assignment and assumption, and Landlord shall thereupon have the prior right and option, to be exercised by notice to the trustee given at any time prior to the effective date of such proposed assignment, to accept an assignment of this Lease upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such Person, less any brokerage commissions which may be payable out of the consideration to be paid by such Person for the assignment of this Lease.

Section 31.16. Leasehold Mortgagee Protections. Nothing contained in this Article 31 shall be deemed to modify the provisions of Sections 17.03, 17.04 or 17.05.

Section 31.17. Severed Parcels. Notwithstanding anything to the contrary contained herein, upon the Subparcel Severance of any Severed Subparcel from this Lease, in no event shall any Default or Event of Default arising under any Severed Subparcel Lease or the Severed Subparcel demised thereby constitute or be deemed a Default or Event of Default under this Lease. In no event shall any Default or Event of Default arising under the Balance Lease, any other Severed Parcel Lease or any Severed Subparcel Lease, or the premises demised thereby, constitute or be deemed a Default or Event of Default under this Lease.

ARTICLE 32

NOTICES

Section 32.01. Notice Addresses. Whenever it is provided in this Lease that a notice, demand, request, consent, approval or other communication (each, a "Notice") shall or may be given to or served upon either of the parties by the other, and whenever either of the parties shall desire to give or serve upon the other any Notice with respect hereto or the Premises, each such Notice shall be in writing and, any law or statute to the contrary notwithstanding, shall not be effective for any purpose unless given or served as follows: (a) by personal delivery (with receipt acknowledged), (b) delivered by reputable, national overnight delivery service (with its confirmatory receipt therefor), next Business Day delivery specified, (c) sent by registered or certified United States mail, postage prepaid, or (d) sent by a telephonic facsimile transmitting machine (with the receipt of such transmittal acknowledged in writing or by telephone), with a confirmatory copy to be delivered thereafter by duplicate notice in accordance with any of clauses (a), (b) or (c) of this Section 32.01, in each case to the parties as follows:

if to Landlord to its address first set forth above, attention: Director of Real Estate,
with a copy at the same time to the address set forth above, attention: General Counsel,
and to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019
Attention: Meredith J. Kane, Esq.

if to Tenant, to its address first set forth above, attention: [_____];

with a copy at the same time to the address set forth above, attention: [_____],

and to:

Either party may change the address(es) to which any such Notice is to be delivered by furnishing ten (10) days written notice of such change(s) to the other party in accordance with the provisions of this Section 32.01. The attorney for any party may send Notices on that party's behalf.

Section 32.02. When Notices Deemed Given. Every Notice shall be deemed to have been given or served (a) if given by hand or overnight delivery service, upon delivery thereof, (b) if given by telephonic facsimile transmitting machine, upon delivery by such means

to the addressee, regardless of the timing of receipt of any confirmatory copy, and (c) if given by certified or registered mail, on the third (3rd) Business Day after the posting of the same, postage prepaid; in each case with failure to accept delivery to constitute delivery for such purpose.

Section 32.03. Notices to Mortgagees. If requested in writing by any Leasehold Mortgagee or Mezzanine Lender (which request shall be made in the manner provided in Section 32.01 and shall specify an address to which Notices shall be given), any Notice of Default to a Tenant shall also be given contemporaneously to such Leasehold Mortgagee or Mezzanine Lender with a copy thereof, if requested, to such Leasehold Mortgagee's or Mezzanine Lender's attorneys, in the manner herein specified.

ARTICLE 33

SUBORDINATION; FEE MORTGAGES

Section 33.01. Lease Not Subordinate. Landlord's interest in this Lease (as this Lease may be modified, amended or supplemented) and in the Premises shall not be subject or subordinate to (a) any mortgage now or hereafter placed upon Tenant's interest in this Lease or (b) any other liens, security interests or encumbrances now or hereafter affecting Tenant's interest in this Lease (other than the Permitted Exceptions and the WRY Declaration of Easements).

Section 33.02. Fee Mortgage. This Lease and Tenant's interest in this Lease, as the same may be modified, amended or renewed, and any New Lease or the interest of Tenant under a New Lease as provided for in Section 17.04 shall not be subject or subordinate to (a) any Fee Mortgage or (b) to any other liens or encumbrances on Landlord's fee estate, except for the Permitted Exceptions and any other liens or encumbrances created or consented to by Tenant or as a consequence of Tenant's acts or omissions or the construction of the Improvements. For so long as that certain Fee Mortgage dated as of _____, and recorded in the Office of the City Register on _____ at CRFN _____ (as the same may hereafter be modified, amended, severed, and/or restated, the "Bond-Related Fee Mortgage") is outstanding, Landlord shall not amend, modify or supplement, or cause or permit to be amended, modified or supplemented, Articles 13 or 14 of the Bond-Related Fee Mortgage without the prior written consent of Tenant, Leasehold Mortgagee and Mezzanine Lender, except that the Fee Mortgagee may, without the consent of Tenant, Leasehold Mortgagee or Mezzanine Lender, delegate to Landlord any obligations which the Fee Mortgagee is obligated to perform under such Articles.

Section 33.03. Successor Landlord. If any Fee Mortgagee or any of its successors or assigns, or any designee of any Fee Mortgagee, shall succeed to the rights of Landlord under this Lease, whether through possession or foreclosure action or delivery of a deed, then, at the request of such party so succeeding to Landlord's rights (such party, a "Successor Landlord"), Tenant shall automatically attorn to and recognize such Successor Landlord as Tenant's landlord under this Lease. Upon such attornment this Lease shall continue in full force and effect as a direct lease between the Successor Landlord and Tenant upon and subject to all of the terms, conditions and covenants as are set forth in this Lease, except that the Successor Landlord shall not (a) be liable for any previous act or omission of Landlord under this Lease which shall not be continuing; (b) be subject to any offset, not expressly provided for in

this Lease, which theretofore shall have accrued to Tenant against Landlord; (c) be bound by any modification of this Lease entered into subsequent to the date of the applicable Fee Mortgage, or by any previous prepayment of more than one month's Rental, unless such modification or prepayment shall have been expressly approved in writing by the Fee Mortgagee; or (d) be obligated to make any improvements to, or perform any work at, or furnish any services to, the Premises (it being understood that Landlord has no such obligations under this Lease; provided, however, that nothing contained in this Section 33.03 shall derogate from the obligations of the Yards Parcel Owner under the WRY Declaration of Easements). The provisions of this Section 33.03 shall be self-operative, and no instrument of any such attornment shall be required or needed by the holders of any such Fee Mortgage. In confirmation of any such attornment Tenant shall, at Landlord's request or at the request of any such Fee Mortgagee, promptly execute and deliver such further instruments as may be reasonably required by any such Fee Mortgagee. Notwithstanding anything to the contrary herein, in the event that any such transfer causes the Premises no longer to be exempt from sales and use taxes, then Tenant shall have no obligation to pay Successor Landlord PILOST hereunder, the PILOST Agreement shall be deemed void and of no further force and effect and any obligation of Tenant contingent on paying PILOST (including Section 10.02(a)) shall be deemed to be stricken from this Lease and of no further force and effect.

Section 33.04. Notices and Cure Rights of Fee Mortgagee. If Landlord or a Fee Mortgagee gives Tenant Notice of the name and address of a Fee Mortgagee, then Tenant hereby agrees to give to any such Fee Mortgagee copies of all Notices sent by Tenant to Landlord under this Lease at the same time and in the same manner as and whenever Tenant shall give any such Notice to Landlord, and no such Notice shall be deemed given to Landlord hereunder unless and until a copy of such Notice shall have been so delivered to such Fee Mortgagee. Such Fee Mortgagee shall have the right to remedy any default of Landlord under this Lease, or to cause any default of Landlord under this Lease to be remedied, and, for such purpose, Tenant hereby grants such Fee Mortgagee such additional period of time as may be reasonable to enable such Fee Mortgagee to remedy, or cause to be remedied, any such default in addition to the period given to Landlord for remedying, or causing to be remedied, any such default. Tenant shall accept performance by such Fee Mortgagee of any term, covenant, condition or agreement to be performed by Landlord under this Lease with the same force and effect as though performed by Landlord. No default under this Lease shall exist or shall be deemed to exist (a) as long as such Fee Mortgagee, in good faith, shall have commenced to cure such default and shall be prosecuting the same to completion with reasonable diligence, subject to Force Majeure, (b) if such default is not susceptible of being cured by such Fee Mortgagee, or (c) as long as such Fee Mortgagee, in good faith, shall have notified Tenant that such Fee Mortgagee intends to institute proceedings under the Fee Mortgage to acquire possession of the Premises, and, thereafter, as long as such proceedings shall have been instituted and shall be prosecuted with reasonable diligence. In the event of the termination of this Lease by reason of Landlord's default hereunder, upon such Fee Mortgagee's written request, given within thirty (30) days after any such termination, Tenant, within fifteen (15) days after receipt of such request, shall execute and deliver to such Fee Mortgagee or its designee or nominee a new lease of the Premises for the remainder of the Term of this Lease upon all of the terms, covenants and conditions of this Lease. Neither such Fee Mortgagee nor its designee or nominee shall become liable under this Lease unless and until such Fee Mortgagee or its designee or nominee becomes, and then only

for so long as such Fee Mortgagee or its designee or nominee remains, the fee owner of the Premises. Such Fee Mortgagee shall have the right, without Tenant's consent, to foreclose the Fee Mortgage or to accept a deed in lieu of foreclosure of such Fee Mortgage.

Section 33.05. No Impairment of Title.

(a) Nothing contained in this Lease or any action or inaction by Landlord shall be deemed or construed to mean that Landlord has granted to Tenant any right, power or permission to do any act or make any agreement which may create, give rise to, or be the foundation for, any right, title, interest, lien, charge or other encumbrance other than this Lease upon the estate of Landlord in the Premises. In amplification and not in limitation of the foregoing, Tenant shall not permit any portion of the Premises to be used by any person or persons or by the public, as such, at any time or times during the term of this Lease, in such manner as might impair Landlord's title to or interest in the Premises or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse use, adverse possession, prescription, dedication, or other similar claims of, in, to or with respect to the Premises or any part thereof.

(b) Notwithstanding the provisions of this Section 33.05 to the contrary, Tenant shall have the right to create customary and ordinary utility easements which are reasonably required in connection with the construction of the Improvements, any Restoration or Capital Improvement or the operation of the Premises for the Permitted Uses; provided, that Tenant provides each such utility easement to Landlord for its prior written approval, which approval shall not be unreasonably withheld or delayed; and provided, further, that in no event shall Landlord be subject to any liability whatsoever under such utility easements, and Tenant shall indemnify, protect and hold harmless Landlord from any such liability. In addition, Landlord shall agree to cooperate with Tenant in the execution, acknowledgment and recordation of any restrictive declarations or easement agreements required by Governmental Authorities (including without limitation the New York City Planning Commission), including any documents subordinating this Lease to such restrictive declarations or easement agreements, provided, however, that (i) such restrictive declarations or easement agreements shall be in form and substance reasonably acceptable to Landlord, (ii) Landlord shall have no personal liability with respect to such restrictive declarations or easement agreements, (iii) no such restrictive declarations or easement agreements shall impair the value or operation of the Yards Parcel or any rights of the Yards Parcel Owner, and (iv) all costs (including reasonable attorneys' fees) for reviewing and/or executing and recording same shall be at Tenant's sole cost and expense.

ARTICLE 34

EXCAVATIONS AND SHORING; STREET WIDENING; COORDINATION OF ROOF MECHANICAL EQUIPMENT

Section 34.01. Excavations and Shoring. If any excavation shall be made or contemplated to be made for construction or other purposes upon property adjacent to the Premises, Tenant shall either:

(a) afford to Landlord, or, at Landlord's option, to the person or persons causing or authorized to cause such excavation, the right to enter upon the Premises in a reasonable manner (and subject to the reasonable security requirements of Tenant and the occupants of the Premises) for the purpose of doing such work as may be necessary, without expense to Landlord, to preserve any of the walls or structures of the Facility Airspace Improvements or WRY Roof Component from injury or damage and to support the same by proper foundations; provided, that (i) such work shall be done promptly, in a good and workmanlike manner and subject to all applicable Legal Requirements, (ii) Tenant shall have an opportunity to have its representatives present during all such work and (iii) Tenant shall be indemnified by such Person performing such excavation, as the case may be, against any injury or damage to the Improvements or persons or property therein which may result from any such work, but shall not have any claim against Landlord for suspension, diminution, abatement, offset or reduction of Rental payable by Tenant hereunder, or in connection with any injury or damage to the Improvements or persons or property therein; or

(b) do or cause to be done all such work, without expense to Landlord, as may be necessary to preserve any of the walls or structures of the Improvements from injury or damage and to support the same by proper foundations; provided, that Tenant shall not, by reason of any such excavation or work, have any claim against Landlord for damages or for indemnity or for suspension, diminution, abatement, offset or reduction of Rental payable by Tenant hereunder, or in connection with any injury or damage to the Improvements or persons or property therein.

Section 34.02. Street Widening. If at any time during the term of this Lease any proceedings are instituted or orders made for the widening or other enlargement of any street contiguous to the Premises, which requires removal of any projection or encroachment on, under or above any such street, or any changes or alterations upon the Premises or in the sidewalks, grounds, parking facilities, plazas, areas, vaults, gutters, alleys, exit ways, curbs or appurtenances, Tenant, at Tenant's sole cost and expense, shall promptly comply with such requirements. In the event that Tenant shall fail to comply with any such proceedings or orders within thirty (30) days after Tenant's receipt of notice thereof, Landlord may perform the work necessary to cause compliance with the same, and the amount expended therefor, together with any interest, fines, penalties, reasonable architect's and attorneys' fees, or other expenses incurred by Landlord in effecting such compliance or by reason of the failure of Tenant so to comply, shall be payable by Tenant to Landlord on demand as Additional Rent. Tenant shall be permitted to contest in good faith any proceeding or order for street widening in accordance with Section 20.02.

ARTICLE 35

CERTIFICATES BY LANDLORD AND TENANT

Section 35.01. Tenant Estoppels. At any time, and from time to time, upon not less than twenty-one (21) days' notice by Landlord, Tenant shall execute, acknowledge and deliver to Landlord and to any other party specified by Landlord a statement certifying: (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications), (b) the date to which

each obligation constituting Rental (and, to the extent required to be paid to Landlord, PILOT) has been paid, (c) stating whether or not any other amounts due and owing by Tenant to Landlord under any other Project Documents have been paid, (d) stating whether or not, to the best knowledge of Tenant, Landlord is in default in performance of any covenant, agreement or condition contained in this Lease or other Project Document, and, if so, specifying each such default of which Tenant may have knowledge, (e) stating whether Substantial Completion of any Building or portion thereof has occurred, whether Substantial Completion and/or Final Completion of the WRY Roof Component (or an applicable Associated Portion of the LIRR Roof and Facilities) has occurred, and whether Substantial Completion of any other Facility Airspace Improvements has occurred, and (f) certifying as to any other matter with respect to this Lease as Landlord or such other addressee may reasonably request.

Section 35.02. Landlord Estoppels. At any time, and from time to time, upon not less than twenty-one (21) days' notice by Tenant, Landlord shall execute, acknowledge and deliver to Tenant and to any other party specified by Tenant a statement certifying: (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications), (b) the date to which each obligation constituting Rental (and, to the extent required to be paid to Landlord, PILOT) has been paid, (c) stating whether or not any other amounts due and owing by Tenant to Landlord under any other Project Documents have been paid, (d) stating whether or not, to the best knowledge of Landlord, Tenant is in default in performance of any covenant, agreement or condition contained in this Lease or other Project Document, and, if so, specifying each such default of which Landlord may have knowledge, (e) stating whether Substantial Completion of any Building or portion thereof has occurred, whether Substantial Completion and/or Final Completion of the WRY Roof Component (or an applicable Associated Portion of the LIRR Roof and Facilities) has occurred, and whether Substantial Completion of any other Facility Airspace Improvements has occurred, and (f) certifying as to any other matter with respect to this Lease as Tenant or such other addressee may reasonably request.

ARTICLE 36

CONSENTS AND APPROVALS

Section 36.01. Consents to Be in Writing. All consents and approvals which may be given under this Lease shall, as a condition of their effectiveness, be in writing.

Section 36.02. Consent Not a Waiver. It is understood and agreed that the granting of any consent or approval by Landlord to Tenant to perform any act of Tenant requiring Landlord's consent or approval under the terms of this Lease, or the failure on the part of Landlord to object to any such action taken by Tenant without Landlord's consent or approval, shall not be deemed a waiver by Landlord of its right to require such consent or approval for any further similar act by Tenant, and Tenant hereby expressly covenants and warrants that as to all matters requiring Landlord's consent or approval under the terms of this Lease Tenant shall secure such consent or approval for each and every happening of the event requiring such consent or approval, and shall not claim any waiver on the part of Landlord of the requirement to secure such consent or approval.

Section 36.03. Consent Not to Be Unreasonably Delayed. Anywhere in this Lease where Landlord has agreed not unreasonably to withhold its consent, Landlord also agrees that its consent shall not be unreasonably delayed or conditioned.

Section 36.04. Landlord Not Liable for Money Damages. Whenever in this Lease Landlord's consent or approval is required and this Lease provides that Landlord's consent or approval shall not be unreasonably withheld and Landlord shall refuse such consent or approval, or in any instance in which Landlord shall delay its consent or approval, Tenant shall in no event be entitled to make, nor shall Tenant make, any claim, and Tenant hereby waives any claim, for money damages (nor shall Tenant claim any money damages by way of set-off, counterclaim or defense) based upon any claim or assertion by Tenant that Landlord unreasonably withheld or unreasonably delayed its consent or approval. Tenant's sole remedy shall be an action or proceeding to enforce any such provision, for specific performance, injunction or declaratory judgment or for a determination in accordance with Section 40.01(a) and (b) as to whether Landlord reasonably withheld its consent.

Section 36.05. Landlord's Discretionary Consents. Notwithstanding anything to the contrary contained in this Lease, whenever in this Lease Landlord's consent or approval is required and this Lease does not provide that Landlord's consent or approval shall not be unreasonably withheld (or such consent or approval is subject to Landlord's reasonable discretion or words of like meaning), Landlord shall have the right to withhold such consent or approval in its sole and absolute discretion.

ARTICLE 37

SURRENDER AT END OF TERM

Section 37.01. Surrender at End of Term. On the Expiration Date of this Lease, or upon a re-entry by Landlord upon the Premises pursuant to the terms of Article 31, Tenant shall well and truly surrender and deliver up to Landlord the Premises in good order, condition and repair, reasonable wear and tear excepted, free and clear of all lettings, occupancies, liens and encumbrances other than those, if any, (a) existing as of the date hereof, (b) created, or consented to, by Landlord or (c) which lettings and occupancies by their express terms and conditions extend beyond the Expiration Date and which Landlord shall have consented and agreed, in writing, may extend beyond the Expiration Date without any payment or allowance whatever by Landlord. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises on any such Expiration Date or date of re-entry.

Section 37.02. Delivery of Premises Agreements. On the Expiration Date, or upon a re-entry by Landlord upon the Premises pursuant to Article 31, Tenant shall deliver to Landlord (a) fully-executed counterparts of all subleases in effect with respect to the Premises, and of any service and maintenance contracts then affecting the Premises, (b) true and complete maintenance records for the Premises in Tenant's possession or control, (c) all original licenses and permits then pertaining to the Premises, (d) permanent or temporary Certificates of Occupancy then in effect for each of the Improvements, (e) all warranties and guarantees then in effect which Tenant has received in connection with any work or services performed or Equipment installed at the Premises or in the Improvements and (f) all financial records, reports

and books pertaining to the Premises, and any and all other documents of every kind and nature whatsoever relating to the Premises in Tenant's possession or control, together with duly executed assignments thereof to Landlord, where applicable.

Section 37.03. Abandonment of Property. Any personal property of Tenant or of any subtenant or other occupant of the Premises which shall remain on the Premises for thirty (30) days after the termination of this Lease and after the removal of Tenant or such subtenant or other occupant from the Premises, may, at the option of Landlord, be deemed to have been abandoned by Tenant or such subtenant or other occupant and either may be retained by Landlord as its property or be disposed of, without accountability, in such manner as Landlord may see fit. Landlord shall not be responsible for any loss or damage occurring to any such property owned by Tenant or any subtenant or other occupant of the Premises.

Section 37.04. Survival. The provisions of this Article 37 shall survive any termination of this Lease.

ARTICLE 38

ENTIRE AGREEMENT

This Lease, together with the Exhibits hereto and with the other Project Documents, contains all the promises, agreements, conditions, inducements and understandings between Landlord and Tenant relative to the Premises and there are no promises, agreements, conditions, understandings, inducements, warranties, or representations, oral or written, expressed or implied, between them other than as herein or therein set forth and other than as may be expressly contained in any written agreement between the parties executed simultaneously herewith.

ARTICLE 39

QUIET ENJOYMENT

Landlord covenants that so long as this Lease is in full force and effect and Tenant is not in default beyond any applicable notice and grace period hereunder, Tenant shall and may (subject, however, to the exceptions, reservations, terms and conditions of this Lease) peaceably and quietly have, hold and enjoy the Premises for the term hereby granted without molestation or disturbance by or from Landlord or any Person claiming through Landlord and free of any encumbrance created or suffered by Landlord, except for (a) those encumbrances, liens or defects of title, created or suffered by Tenant and (b) the Permitted Exceptions. This covenant shall be construed as running with the WRY to and against subsequent owners and successors in interest and is not, nor shall it operate or be construed as, a personal covenant of Landlord, except to the extent of Landlord's interest in the Premises and only so long as such interest shall continue, and thereafter this covenant shall be binding upon such subsequent owners and successors in interest of Landlord's interest under this Lease, to the extent of their respective interests, as and when they shall acquire the same, and only so long as they shall retain such interest.

ARTICLE 40

DISPUTE RESOLUTION

Section 40.01. Dispute Resolution Procedures.

(a) In any cases where this Lease expressly provides for the settlement of a dispute in accordance with this Section 40.01(a), the parties shall attempt in good faith for a period of not less than thirty (30) days to resolve any dispute, and if such dispute remains unresolved despite such efforts, Tenant shall have the right to refer such dispute to the President (or a similar official) of Landlord. If such dispute remains unresolved for an additional period of not less than twenty-one (21) days, despite good-faith efforts by Tenant to resolve the same through discussions with the President (or a similar official) of Landlord, then the parties shall have the right to pursue all available legal and equitable remedies (unless such dispute is an Arbitrable Claim, in which case the same shall be resolved in accordance with Section 40.01(b)).

(b) In any cases concerning a dispute of a Financial Matter or where this Lease expressly provides for the settlement of any other dispute in accordance with Section 40.01(a) and this Section 40.01(b) ("Arbitrable Claims"), and Landlord and Tenant are unable to negotiate a resolution to such Arbitrable Claim as set forth in Section 40.01(a), either party may submit such Arbitrable Claim to binding arbitration by giving written notice thereof to the other party and to the Arbitrator. The following provisions shall apply to any such arbitration:

(i) The arbitration shall be administered and conducted by a neutral Person in New York, New York, mutually agreed to by Landlord and Tenant from time to time (the "Arbitrator"). The Arbitrator shall have not less than ten (10) years' experience in the subject area of the Arbitrable Claim, and shall not have been employed by, or engaged in a professional capacity (other than as an arbitrator) for either of Landlord or Tenant. In the event that Landlord and Tenant cannot agree within fifteen (15) days on the identity of the Arbitrator, either party may apply to the Supreme Court, New York County, for the appointment of an Arbitrator, provided however, that if an arbitrator has been appointed and is still serving in such capacity under any Project Document for the resolution of a dispute between Landlord and Tenant concerning the same or any similar issue, such arbitrator shall serve as Arbitrator hereunder. The Arbitrator shall, once so selected, serve as Arbitrator for all disputes hereunder in the subject matter of the Arbitrable Claim until the earlier of (x) the fifth (5^{th}) anniversary of the date hereof and (y) any death, incapacity, resignation or removal (by mutual agreement of Landlord and Tenant) of the Arbitrator. Landlord and Tenant (acting reasonably and in good faith) shall from time to time thereafter select a successor Arbitrator, who may or may not have previously served as the Arbitrator, through the procedures set forth above. The fees and expenses of the Arbitrator in connection with the arbitration shall be borne fifty percent (50%) by Landlord and fifty percent (50%) by Tenant.

(ii) Within fifteen (15) Business Days after the delivery of an arbitration notice in accordance with the foregoing provisions of this Section 40.01(b), each party shall submit to the Arbitrator a single proposed settlement of the dispute (which settlement shall not be inconsistent with this Lease), together with such written explanation or evidence relating thereto as such party deems appropriate. After making its submission, a party may not

make any additions to or deletions from, or otherwise change, the same. If either party fails to make a submission within such fifteen (15) Business Day period, TIME BEING OF THE ESSENCE WITH RESPECT THERETO, such party shall be deemed to have irrevocably waived its right to make any submission.

(iii) Within five (5) Business Days after the earlier of (x) the receipt by the Arbitrator of submissions from both parties in accordance with clause (ii) of this Section 40.01(b) or (y) the end of the fifteen (15) Business Day period described in such clause, the Arbitrator shall select the settlement proposed in one of such submissions, in its entirety and without any modification thereto, and shall render a determination to such effect in a signed and acknowledged written instrument, originals of which shall be sent simultaneously to the parties. Such determination shall be conclusive, final and binding on the parties, shall constitute an "award" by the Arbitrator for the purposes of applicable law, and judgment may be entered thereon in any court of competent jurisdiction.

(iv) It is expressly understood and agreed that the pendency of a dispute hereunder shall at no time and in no respect constitute a basis for either party not to comply, or otherwise fully perform in accordance with, this Lease.

(v) If either party protests the determination of the Arbitrator, such party may commence a lawsuit in the New York Supreme Court for New York County under Article 75 or Article 78 of the New York Civil Practice Law and Rules, as applicable, it being understood that the review of the Court shall be limited to the question of whether or not the Arbitrator's determination is arbitrary, capricious or without a rational basis. No evidence or information about the matter in dispute shall be introduced or relied upon in any such actions or proceedings that has not been submitted to the Arbitrator in accordance with clause (ii) of this Section 40.01(b).

ARTICLE 41

INVALIDITY OF CERTAIN PROVISIONS

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

ARTICLE 42

RECORDING OF MEMORANDUM

The parties hereto agree that this Lease shall not be recorded. Notwithstanding the foregoing, simultaneously with the execution of this Lease, the parties have executed: (a) a memorandum of this Lease substantially in the form of Exhibit M attached hereto which may be recorded by either party, and (b) to be held in escrow by Landlord, a recordable memorandum of termination of this Lease in the form of Exhibit N attached hereto and all transfer tax forms

required to be filed in connection with a termination of this Lease. In the event of a termination of this Lease, Landlord shall have the right, without prior notice to or the consent of Tenant, (i) to cause to be recorded such memorandum of termination and (ii) to file any such transfer tax forms as are required in connection therewith. Tenant hereby appoints Landlord as its attorney-in-fact to execute such a termination statement on its behalf. This appointment shall be deemed to be coupled with an interest and irrevocable. Notwithstanding the foregoing, in the event Tenant brings a legal action against Landlord in a court of competent jurisdiction seeking to enjoin Landlord's termination of this Lease, Landlord shall not record such memorandum of termination until a final non-appealable judgment upholding such termination has been entered in such legal action. Supplementing the other liabilities and indemnities of Tenant to Landlord under this Lease, and notwithstanding any other provision of this Lease (including, without limitation, any provision purporting to create a sole and exclusive remedy for the benefit of Landlord), agrees to indemnify and hold Landlord harmless from and against any and all losses, costs, damages, liens, claims, counterclaims, liabilities or expenses (including, but not limited to, attorneys' fees, court costs and disbursements) incurred by Landlord arising from or by reason of the recording of this Lease, or any notice of pendency (unless Tenant prevails in a final non-appealable order against Landlord in the action underlying such notice of pendency). The provisions of this Article 42 shall survive any Fee Conversion Closing or any early termination of this Lease.

ARTICLE 43

MISCELLANEOUS

Section 43.01. Captions. The captions of this Lease are for convenience of reference only and in no way define, limit or describe the scope or intent of this Lease or in any way affect this Lease.

Section 43.02. Table of Contents. The Table of Contents is for the purpose of convenience of reference only and is not to be deemed or construed in any way as part of this Lease or as supplemental thereto or amendatory thereof.

Section 43.03. Pronouns. The use herein of the neuter pronoun in any reference to Landlord or Tenant shall be deemed to include any individual Landlord or Tenant, and the use herein of the words "successors and assigns" or "successors or assigns" of Landlord or Tenant shall be deemed to include the heirs, legal representatives and assigns of any individual Landlord or Tenant.

Section 43.04. Depository Charges. Any Depository may pay to itself out of the monies held by such Depository pursuant to this Lease its reasonable charges for services rendered hereunder. Tenant shall pay to such Depository any additional charges for such Depository's services.

Section 43.05. More than One Person. If more than one Person is named as or becomes Tenant hereunder, Landlord may require the signatures of all such Persons in connection with any notice to be given or action to be taken by Tenant hereunder except to the extent that any such Person shall designate another such Person as its attorney-in-fact to act on

its behalf, which designation shall be effective until receipt by Landlord of notice of its revocation. Subject to Section 43.06, each Person named as Tenant shall be fully, and jointly and severally, liable for all of Tenant's obligations hereunder. Any notice by Landlord to any Person named as Tenant shall be sufficient and shall have the same force and effect as though given to all parties named as Tenant. If all such parties designate in writing one Person to receive copies of all notices, Landlord agrees to send copies of all notices to that Person.

Section 43.06. Limitation of Liability.

(a) The liability of Landlord or of any other Person who has at any time acted as Landlord hereunder for damages or otherwise shall be limited to Landlord's interest in the Premises, including, without limitation, the rents and profits therefrom, the proceeds of any insurance policies covering or relating to the Premises, any awards payable in connection with any condemnation of the Premises or any part thereof, and any other rights, privileges, licenses, franchises, claims, causes of action or other interests, sums or receivables appurtenant to the Premises. Neither Landlord nor any such Person nor any of the members, managers, trustees, directors, officers, employees, agents or servants of Landlord or any such Person shall have any liability (personal or otherwise) hereunder beyond Landlord's interest in the Premises, and no other property or assets of Landlord or any such Person or any of the members, managers, trustees, directors, officers, employees, agents or servants of either shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies hereunder.

(b) The liability of Tenant, or of any Person who has at any time acted as Tenant hereunder, for damages or otherwise shall be limited to Tenant's interest in the Premises, including, without limitation, the rents and profits therefrom, the proceeds of any insurance policies covering or relating to the Premises, any awards payable in connection with any condemnation of the Premises or any part thereof, any funds held by a Depository pursuant to any of the provisions of this Lease, and any other rights, privileges, licenses, franchises, claims, causes of action or other interests, sums or receivables appurtenant to the Premises. Neither Tenant nor any such Person nor any of the members, managers, trustees, directors, officers, employees, agents or servants or either shall have any liability (personal or otherwise) hereunder beyond Tenant's interest in the Premises, and no other property or assets of Tenant or any such Person or any of the members, managers, trustees, directors, officers, employees, agents or servants of either shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies hereunder. Nothing herein shall be construed as limiting or affecting the liability or obligation of a Building Completion Guarantor under a Building Completion Guaranty; such liability and obligations being governed in all respects by the terms of the applicable Building Completion Guaranty.

Section 43.07. No Merger. Except as otherwise expressly provided in this Lease, there shall be no merger of this Lease or the leasehold estate created hereby with the fee estate in the Premises or any part thereof by reason of the same Person acquiring or holding, directly or indirectly, this Lease or the leasehold estate created hereby or any interest in this Lease or in such leasehold estate as well as the fee estate in the Premises.

Section 43.08. No Brokers. Each of the parties warrants and represents to the other party that neither it nor any affiliate has dealt with any broker, finder or like entity or agent in connection with this Lease transaction or the transactions contemplated hereby, or on account of introducing the parties, the preparation or submission of brochures, the negotiation or execution of this Lease or the execution of the transactions contemplated hereby. If any claim is made by any Person who shall claim to have acted or dealt with Tenant or Landlord in connection with this transaction, the party through which such broker is claiming such entitlement shall pay the brokerage commission, fee or other compensation to which such Person is entitled, shall indemnify and hold harmless the other party against any claim asserted by such Person for any such brokerage commission, fee or other compensation and shall reimburse such other party for any costs or expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred in defending itself against claims made against it for any such brokerage commission, fee or other compensation.

Section 43.09. Amendments in Writing. This Lease may not be changed, modified or terminated orally, but only by a written instrument of change, modification or termination executed and delivered by each of Landlord and Tenant.

Section 43.10. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of New York.

Section 43.11. Successors and Assigns. The agreements, terms, covenants and conditions herein shall be binding upon, and shall inure to the benefit of, Landlord and Tenant and their respective successors and (except as otherwise provided herein) assigns.

Section 43.12. Sections. Except as otherwise specified herein, all references in this Lease to "Articles" or "Sections" shall refer to the designated Article(s) or Section(s), as the case may be, of this Lease.

Section 43.13. Plans and Specifications. All of Tenant's right, title and interest in all plans and drawings required to be furnished by Tenant to Landlord under this Lease and in any and all other plans, drawings, specifications or models prepared in connection with the construction of the Improvements, any Restoration or Capital Improvement, or any other construction at the Premises shall become the sole and absolute property of Landlord upon the Expiration Date, subject to the rights of the architects and engineers that prepared the same. Tenant shall deliver all such documents to Landlord promptly upon the Expiration Date. Tenant's obligation under this Section 43.13 shall survive the expiration or termination of this Lease.

Section 43.14. Licensed Professionals. All references in this Lease to "licensed professional engineer," "licensed surveyor" or "registered architect" shall mean a professional engineer, surveyor or architect who is licensed or registered, as the case may be, by the State of New York.

Section 43.15. Amendments to WRY Declaration of Easements. Landlord shall not enter into or cause to be entered into any amendment or supplement to the WRY Declaration of Easements, which (a) increases, materially alters or otherwise materially affects Tenant's

rights or obligations under this Lease or the WRY Declaration of Easements, (b) further limits the permitted uses of the Premises, (c) limits Tenant's rights under this Lease to dispose of, or assign its interest in, the Premises or (d) decreases or alters the rights of a Leasehold Mortgagee, unless the same is consented to by Tenant (and, in the case of (d), by such Leasehold Mortgagee) or is made subject and subordinate to this Lease and to the rights of such Leasehold Mortgagee. In the event Landlord shall enter into or cause to be entered into an amendment or supplement to the WRY Declaration of Easements which is not in conformity with this Section 43.15, Tenant shall not be obligated to comply with the provisions of such amendment or supplement which do not so conform and the same shall have no force or effect with respect to Tenant or any Leasehold Mortgagee.

Section 43.16. No Joint Venture. Nothing herein is intended nor shall be deemed to create a joint venture or partnership between Landlord and Tenant, nor to make Landlord in any way responsible for the debts or losses of Tenant.

Section 43.17. Tax Benefits. To the extent permitted by law, notwithstanding that Landlord shall own the Premises and the Improvements, Tenant shall have the right to all depreciation deductions, investment tax credits and other similar tax benefits attributable to any construction, demolition and Restoration performed by Tenant or attributable to the ownership of the Improvements. Landlord, from time to time, shall execute and deliver such instruments as Tenant shall reasonably request in order to effect the provisions of this Section 43.17, and Tenant shall pay Landlord's reasonable costs and expenses thereof. Landlord makes no representations as to the availability of any such deductions, credits or tax benefits.

Section 43.18. Submission Not an Offer. Submission of this Lease by Landlord to Tenant does not constitute an offer by Landlord to lease the Premises upon the terms hereof, and in no event will Landlord be bound hereunder except until the closing occurs under the WRY Agreement to Enter Into Lease.

Section 43.19. Construction. This Lease shall be construed without regard to any presumption or other rule requiring construction against the party causing this Lease to be drafted. In the event of any action, suit, arbitration, dispute or proceeding affecting the terms of this Lease, no weight shall be given to any deletions or striking out of any of the terms of this Lease contained in any draft of this Lease and no such deletion or strike out shall be entered into evidence in any such action, suit, arbitration, dispute or proceeding nor given any weight therein.

Section 43.20. Separate Obligations. Whenever it is provided in this Lease that Tenant shall take certain actions, fulfill certain obligations or incur certain liabilities, Landlord acknowledges and agrees that, without limiting Section 7.01, (a) Tenant's obligations and liabilities shall be limited to those obligations and liabilities arising on the Premises and shall not extend to the Balance Parcel, any other Severed Parcel (or Severed Subparcel) or the ERY; and (b) the Balance Parcel Tenant's and each other Severed Parcel Tenant's obligations and liabilities shall be limited to those obligations and liabilities arising on the Severed Parcel demised thereby and shall not extend to any other portion of the WRY or ERY. Tenant shall have no liability for any acts or omissions by WRY Ground Lease Tenant or any other Severed Parcel Tenant or the tenant under any lease demising a portion of the WRY or ERY that is not demised by this Lease. Conversely, none of the tenant under the WRY Ground Lease (nor any

lease demising a portion of the WRY), or any other Severed Parcel Tenant shall be liable for any acts or omissions by Tenant or arising from the Premises (as adjusted following a Subparcel Severance). Accordingly, the obligation of Tenant hereunder is several and not joint with any other tenant under any lease other than this Lease.

Section 43.21. Further Assurances. Each party shall execute and deliver such further documents, and perform such further acts, as may be reasonably necessary to achieve the parties' intent in entering into this Lease.

ARTICLE 44

CONFIDENTIALITY; PUBLICITY

Section 44.01. Tenant's Confidentiality Obligations. This Lease and all terms set forth herein (and the other Project Documents and all terms set forth therein) and all information relating to the WRY and the WRY Project supplied by Landlord or LIRR (pursuant to the RFP or otherwise) shall be kept strictly confidential by Tenant except to the extent such information is available in the public domain (unless Tenant has caused confidential information to enter the public domain in breach of this Section 44.01) or as otherwise required by law or agreed to by Landlord, provided that Tenant may share such information as it deems pertinent with prospective lenders, investors, counsel, consultants, accountants and employees but shall require that they shall maintain similar confidentiality and shall be responsible for any breach of the terms of this confidentiality requirement by such parties.

Section 44.02. Landlord's Confidentiality Obligations. Landlord acknowledges that Tenant has provided and will be hereafter providing confidential information, including trade secrets and proprietary information, the disclosure of which may be harmful to Tenant's competitive position. Accordingly, Landlord agrees that, if disclosure requests are received by Landlord pursuant to the Freedom of Information Law or any judicial or legislative subpoena, requesting any financial information concerning Tenant or its principals, or any trade secret or proprietary information provided to Landlord or the Yards Parcel Operator by Tenant, Landlord shall give Tenant prior notice and the opportunity to object to such Freedom of Information Law request or subpoena (it being understood and agreed that Landlord and the Yards Parcel Operator shall have the right to make disclosures believed in good faith to be required under the Freedom of Information Law or other applicable law notwithstanding any objection of Tenant). Tenant understands and acknowledges that Landlord is a public authority of the State of New York and is subject to review and oversight by legislative and other regulatory bodies, and that Landlord and the Yards Parcel Operator are required by law and may be compelled or requested by such oversight bodies to make public disclosure of information regarding the WRY Project and the terms of the disposition of the Premises, and shall be fully entitled to do so without objection from Tenant, except in the limited circumstances described in this Section 44.02.

Section 44.03. Press Releases. Except as may be required by applicable Legal Requirements, no press release, publicity notice or announcement, regarding or in any way directly or indirectly referring to, any of the terms or provisions of this Lease or any other Project Document, or the transactions contemplated hereby or thereby, shall be made or caused to be made by Tenant or any Affiliate of Tenant without the prior consent of Landlord, which consent

may be granted or denied in Landlord's sole and absolute discretion. Tenant shall furnish to Landlord advance copies of any press release, publicity notice or announcement which it desires to make public with respect to this Lease and/or the transactions contemplated hereby. Notwithstanding the foregoing, Landlord may, in response to inquiries from the press, confirm the fact that Tenant has entered into a ground lease of the WRY; provided, however, whether or not in response to any such inquiry, Tenant shall not disclose or confirm any of the terms or provisions of this Lease or any other Project Document.

ARTICLE 45

MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES

Tenant acknowledges that it is the policy of Landlord that minority and women-owned business enterprises ("M/WBEs") shall have significant opportunity to participate in the performance of the WRY Project. Tenant hereby agrees to undertake to achieve meaningful participation of M/WBEs in the development and construction of the WRY Severed Parcel Project on the Premises to the maximum extent practicable.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

LANDLORD:

METROPOLITAN TRANSPORTATION AUTHORITY

By: _____
Name:
Title:

TENANT:

[_____]

By:
_____
Name:
Title:

EXHIBIT A-1
LEGAL DESCRIPTION OF THE WRY

Yards Parcel

All of the lands below an upper limiting plane of 40.55 feet (Manhattan Borough Datum) within the following horizontal boundary:

Beginning at a point formed by the intersection of the southerly line of West 33rd Street (60' R.O.W.) and the easterly line of Twelfth Avenue (R.O.W. varies); running thence

1. Along said West 33rd Street, South 89°56'53" East, a distance of 800.00 feet to a point formed by the intersection of said West 33rd Street and the westerly line of Eleventh Avenue (100' R.O.W.); thence

2. Along said westerly line of Eleventh Avenue, South 00°03'07" West, a distance of 538.26 feet to a point; thence

3. North 89°49'42" West, a distance of 439.40 feet to a point; thence

4. North 69°32'56" West, a distance of 61.90 feet to a point; thence

5. North 89°57'45" West, a distance of 302.58 feet to a point on the said easterly line of Twelfth Avenue; thence

6. Along said easterly line of Twelfth Avenue, North 00°03'07" East, a distance of 515.85 feet to the Point of Beginning.

Encompassing an area of 422,936 S.F./9.709 acres, more or less.

Facility Airspace Parcel: Airspace Above Lower Limiting Plane

All of the airspace above a lower limiting plane of 40.55 feet (Manhattan Borough Datum) within the following horizontal boundary:

Beginning at a point formed by the intersection of the southerly line of West 33rd Street (60' R.O.W.) and the easterly line of Twelfth Avenue (R.O.W. varies); running thence

1. Along said West 33rd Street, South 89°56'53" East, a distance of 800.00 feet to a point formed by the intersection of said West 33rd Street and the westerly line of Eleventh Avenue (100' R.O.W.); thence

2. Along said westerly line of Eleventh Avenue, South 00°03'07" West, a distance of 538.26 feet to a point; thence

3. North 89°49'42" West, a distance of 439.40 feet to a point; thence

4. North 69°32'56" West, a distance of 61.90 feet to a point; thence

5. North 89°57'45" West, a distance of 302.58 feet to a point on the said easterly line of Twelfth Avenue; thence

6. Along said easterly line of Twelfth Avenue, North 00°03'07" East, a distance of 515.85 feet to the Point of Beginning.

Encompassing an area of 422,936 S.F./9.709 acres, more or less.

Facility Airspace Parcel: Terra Firma

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

Beginning at a point formed by the intersection of the northerly line of West 30th Street (60' R.O.W.) and the easterly line of Twelfth Avenue (R.O.W. varies); running thence

1. Along said easterly line of Twelfth Avenue, North 00°03'07" East, a distance of 196.65 feet to a point; thence

2. South 89°57'45" East, a distance of 302.58 feet to a point; thence

3. South 69°32'56" East, a distance of 61.90 feet to a point; thence

4. South 89°49'42" East, a distance of 439.40 feet to a point on the westerly line of Eleventh Avenue (100' R.O.W.); thence

5. Along said westerly line of Eleventh Avenue, South 00°03'07" West, a distance of 174.24 feet to a point formed by the intersection of said westerly line of Eleventh Avenue and the aforementioned northerly line of West 30th Street; thence

6. Along said northerly line of west 30th Street, North 89°56'53" West, a distance of 800.00 feet to the Point of Beginning.

Encompassing an area of 147,064 S.F./3.376 acres, more or less.

EXHIBIT A-2
LEGAL DESCRIPTION OF THE PREMISES

[to be inserted prior to execution of this Lease]

EXHIBIT A-3
LEGAL DESCRIPTION OF THE YARDS PARCEL

All of the lands below an upper limiting plane of 40.55 feet (Manhattan Borough Datum) within the following horizontal boundary:

Beginning at a point formed by the intersection of the southerly line of West 33rd Street (60' R.O.W.) and the easterly line of Twelfth Avenue (R.O.W. varies); running thence

1. Along said West 33rd Street, South 89°56'53" East, a distance of 800.00 feet to a point formed by the intersection of said West 33rd Street and the westerly line of Eleventh Avenue (100' R.O.W.); thence

2. Along said westerly line of Eleventh Avenue, South 00°03'07" West, a distance of 538.26 feet to a point; thence

3. North 89°49'42" West, a distance of 439.40 feet to a point; thence

4. North 69°32'56" West, a distance of 61.90 feet to a point; thence

5. North 89°57'45" West, a distance of 302.58 feet to a point on the said easterly line of Twelfth Avenue; thence

6. Along said easterly line of Twelfth Avenue, North 00°03'07" East, a distance of 515.85 feet to the Point of Beginning.

EXHIBIT B
PERMITTED EXCEPTIONS

EXHIBIT C-1
ILLUSTRATED OPTION PRICE CALCULATION FOR THE PREMISES

EXHIBIT C-2
ILLUSTRATED OPTION PRICE CALCULATION FOR A UNIT WITHIN THE PREMISES

EXHIBIT D
FORM OF CONDOMINIUM DECLARTION

EXHIBIT E
INTENTIONALLY OMITTED

EXHIBIT F
INTENTIONALLY OMITTED

EXHIBIT G
INTENTIONALLY OMITTED

EXHIBIT H
PILOST AGREEMENT

EXHIBIT I
INTENTIONALLY OMITTED

EXHIBIT J
INTENTIONALLY OMITTED

EXHIBIT K
INTENTIONALLY OMITTED

EXHIBIT L -1
FORM OF SPONSOR GUARANTY

EXHIBIT L -2
FORM OF BUILDING COMPLETION GUARANTY

(Follows immediately)

EXHIBIT M
MEMORANDUM OF LEASE

(Follows immediately)

Record and Return to:

County of New York
[Block ____, Lot ___]

PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP
1285 Avenue of the Americas
New York, New York 10019
Attention: Meredith J. Kane, Esq.

MEMORANDUM OF AGREEMENT OF SEVERED PARCEL LEASE (WESTERN RAIL YARD SECTION OF THE JOHN D. CAEMMERER WEST SIDE YARD)

MEMORANDUM OF AGREEMENT OF SEVERED PARCEL LEASE (WESTERN RAIL YARD SECTION OF THE JOHN D. CAEMMERER WEST SIDE YARD) (this "Memorandum"), made as of the ___ day of _____, 20__, between METROPOLITAN TRANSPORTATION AUTHORITY, a body corporate and politic constituting a public benefit corporation of the State of New York, having an office at 2 Broadway, New York, New York 10004 (and any successor entities thereto, "Landlord") and [_____] ("Tenant").

W I T N E S S E T H :

WHEREAS, Landlord and Tenant have entered into an Agreement of Severed Parcel Lease (Western Rail Yard Section of the John D. Caemmerer West Side Yard) (the "Lease"), dated as of the date hereof, pursuant to which (x) Landlord will lease to Tenant and Tenant will hire from Landlord, the premises more particularly described on Exhibit A attached hereto and made a part hereof (the "Premises") and (y) Landlord has agreed to grant to Tenant an exclusive right to purchase from Landlord, the Premises in accordance with the terms of the Lease; and

WHEREAS, in accordance with Section 294-3 of the New York State Real Property Law, the parties desire to record this memorandum summarizing certain (but not all) of the provisions, covenants and conditions set forth in the Lease.

NOW, THEREFORE, Landlord and Tenant declare as follows:

1. The term of the Lease shall commence on the date hereof, and shall end on [_____], unless such term shall sooner end pursuant to any of the covenants, agreements, terms, provisions and limitations of the Lease or pursuant to law.

2. The Lease contains a purchase option given by Landlord in favor of Tenant to acquire fee title to the Premises and any and all buildings

and improvements located thereon, pursuant to and in accordance with the provisions of Article 10 of the Lease.

3. The Lease contains a provision for the severance of the Premises and the execution and creation of one or more severed parcel leases in accordance with Article 9 of the Lease.

4. The Lease provides for certain payments to be made by Tenant before conveyance of title to the Premises.

5. This Memorandum shall be deemed terminated and of no further force or effect following the date upon which the Premises has been conveyed to Tenant.

6. In the event of any inconsistency or conflict between the terms of this Memorandum and the terms and conditions of the Lease, the terms and conditions of the Lease shall control.

7. This Memorandum may be executed in any number of counterparts, each of which shall constitute an original, but all of which, taken together, shall constitute but one and the same instrument.

8. A copy of the Lease is maintained at the offices of Landlord.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, this Memorandum has been duly executed by the parties hereto as of the day and year first above written.

METROPOLITAN TRANSPORTATION AUTHORITY

By: _____

Name:
Title:

[TENANT]

By: _____

Name:
Title:

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

On the ____ day of _____ in the year 20__, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____

Notary Public

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

On the ____ day of _____ in the year 20__, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____

Notary Public

Exhibit A

Premises

EXHIBIT N
TERMINATION OF MEMORANDUM OF LEASE

(Follows immediately)

Record and Return to:

County of New York
[Block ____, Lot _____]

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, New York 10019
Attention: Meredith J. Kane, Esq.

TERMINATION OF MEMORANDUM OF AGREEMENT OF SEVERED PARCEL LEASE (WESTERN RAIL YARD SECTION OF THE JOHN D. CAEMMERER WEST SIDE YARD)

KNOW ALL PERSONS BY THESE PRESENTS THAT as of _____ __, 20___, METROPOLITAN TRANSPORTATION AUTHORITY, a body corporate and politic constituting a public benefit corporation of the State of New York, having an office at 2 Broadway, New York, New York 10004 (and any successor entities thereto, "Landlord") and _____ ("Tenant") DO HEREBY CERTIFY that they have terminated that certain Agreement of Severed Parcel Lease (Western Rail Yard Section of the John D. Caemmerer West Side Yard), dated _____ __, 20___, (the "Lease") and do hereby consent that the Memorandum of Agreement of Severed Parcel Lease, dated _____ __, 20___, recorded in the Office of the City Register of New York County on _____ __, 20___, as CRFN #_____ (the "Memorandum"), providing record notice of the Lease, be terminated of record.

The Memorandum encumbers certain premises in the Borough of Manhattan, City of New York, County of New York and State of New York, which premises are more specifically described in Exhibit A attached hereto and made a part hereof.

This document may be executed in any number of counterparts, each of which shall constitute an original, but all of which, taken together, shall constitute but one and the same instrument.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have caused these presents to be duly executed as of the date first above recited.

METROPOLITAN TRANSPORTATION AUTHORITY

By: _____

Name:
Title:

[TENANT]

By: _____

Name:
Title:

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

On the ____ day of _____ in the year 20__, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____

Notary Public

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

On the ____ day of _____ in the year 20__, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____

Notary Public

Exhibit A

Premises

EXHIBIT O -1
BARGAIN AND SALE DEED WITHOUT COVENANT AGAINST GRANTOR'S ACTS

(Follows immediately)

EXHIBIT O -2
CONDOMNIUM UNIT DEED

(Follows immediately)

EXHIBIT P
SEVERED PARCEL PRO FORMA RENT SCHEDULE

[to be inserted prior to execution of this Lease]

EXHIBIT Q
WRY SEVERED PARCEL PROJECT REQUIREMENTS

[to be inserted prior to execution of this Lease]

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