

BROOKLYN BRIDGE PARK

Request for Proposals



Tobacco Warehouse
Brooklyn Bridge Park

Release Date: August 24, 2010

Information Session: 1:00 PM, September 14, 2010

Submission Date: October 18, 2010

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INTRODUCTION/OBJECTIVE

Brooklyn Bridge Park Corporation (“BBP”) is seeking proposals for the rehabilitation and redevelopment of the former Tobacco Warehouse (the “Site”) located in the Empire Fulton Ferry Park section of Brooklyn Bridge Park (the “Park”) on Water Street between Dock Street and New Dock Street. The purpose of this Request for Proposals (“RFP”) is to solicit proposals from prospective respondents (“Respondents”) interested in leasing, redeveloping, and being the primary occupant of the Site as a cultural facility with community uses.

The Respondent ultimately selected for the project through this RFP is referred to herein as the “Selected Respondent”. Potentially acceptable Respondents include teams led by community, education, or cultural organizations.

BBP is also seeking expressions of interest from organizations interested in becoming subtenants of the Selected Respondent, to allow the facility to provide a wide array of cultural programming. All expressions of interest from potential subtenants will be reviewed by BBP and the Selected Respondent, once the Selected Respondent is conditionally designated.

The objectives of this RFP are as follows:

- Creating a new high quality year-round facility in the Park to house cultural, educational and/or community uses. The new facility should activate the Park and serve as the home to an organization or organizations that will also provide public programming both at the Site and throughout the Park.
- Restoring the facility as an active community amenity that will provide access to the general public and be available for community use.
- Stabilizing and preserving the historic structure in accordance with the Secretary of Interior’s Standards for Rehabilitation.
- Integrating the Tobacco Warehouse structure and uses with the operations and public facilities of the Park in a manner sensitive to its historic surroundings.
- Creating a financially self-sustaining model for the continued upkeep and maintenance of the facility that will not require any subsidy from BBP for development, construction or ongoing operations.

BACKGROUND

The Brooklyn Bridge Park Corporation

BBP is a not-for-profit corporation whose Board of Directors includes representatives of the Mayor, Governor, Borough President, City Council, State Senate and State Assembly.

In July 2010, BBP took over responsibilities for the planning, design, construction, and maintenance of Brooklyn Bridge Park from the Brooklyn Bridge Park Development Corporation (“BBPDC”), a wholly owned subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development Corporation (“ESDC”). BBPDC, with ESDC, will continue to be responsible for administering the Modified General Project Plan and environmental review pursuant to SEQRA.

Brooklyn Bridge Park

In the shadow of the Brooklyn Bridge and looking out onto Lower Manhattan and New York Harbor, Brooklyn Bridge Park occupies one of the world’s most beautiful and inspiring urban settings. The project includes approximately 85 acres of waterfront that extends 1.3 miles from John Street in the north (north of the Manhattan Bridge) to Atlantic Avenue in the south (Pier 6). Construction will include the development of Piers 1-6 and their associated uplands, and the areas north of the Brooklyn Bridge. The new world-class park designed by acclaimed landscape architecture firm Michael Van Valkenburgh Associates, Inc., reconnects the visitors and residents of Brooklyn to their waterfront with opportunities to play sports, stroll, or lounge at the water’s edge, adding much-needed open space. Brooklyn Bridge Park contributes to the extraordinary revitalization of waterfront in the New York Harbor, serving as a bridge from the commercial uses of previous centuries to the recreational uses of the future.

The Park will include a mix of expansive lawns, active recreational facilities (including volleyball and basketball courts, soccer fields, handball, and inline skating), playgrounds (including a 1.6 acre signature playground at Pier 6), pathways, bike paths, promenades, and maritime related recreational facilities (such as kayaking and a marina).

Construction of the Park commenced in January 2009 and the first phase, including Pier 1 and portions of Pier 6, is open. The remainder of the Park will open in phases over the next several years.

Empire-Fulton Ferry

Empire-Fulton Ferry is a section of Brooklyn Bridge Park that occupies the existing nine-acre waterfront park located between the historic Manhattan and Brooklyn Bridges. It was built in the 1990’s by the New York State Office of Parks, Recreation and Historic Preservation and control was recently transferred to BBP. From its graceful lawns and boardwalk, Empire Fulton Ferry offers beautiful views of the harbor and Lower Manhattan skyline. Bordering the park are the Civil-War era Empire Stores and Tobacco Warehouse, which played an integral part in the great shipping activities that once dominated this portion of the Brooklyn waterfront.

Empire-Fulton Ferry is currently closed as BBP undertakes an extensive rehabilitation of the grounds. The work will include the installation of new lighting and benches, regrading and extending the lawn into the bed of New Dock Street, new plantings, and the installation of the recently donated Jane’s Carousel. Janes’s Carousel will be housed in a new pavilion near the cove designed by Pritzker prize winning architect Jean Nouvel. The park is expected to re-open to the public in the Summer of 2011. Empire Stores, a vacant 330,000 GSF 4-5 story warehouse, will be the subject of a future Request For Proposals for redevelopment with ground floor retail and upper floor commercial uses.

SITE DESCRIPTION & EXISTING CONDITION

The Tobacco Warehouse was originally constructed as a 5-story brick and timber rectangular building during the Civil War period and was one of many warehouse structures that lined Brooklyn's East River waterfront. With the construction of New Dock Street in the early 20th century, the southern end of the warehouse was truncated to create the current trapezoidal structure. Later in the 20th century the building's height was reduced to two stories. During the 1990's, after the roof collapsed, the building's interior was demolished and the exterior walls were stabilized. For the past decade, the two-story roofless building shell has been used as a popular venue for private events, outdoor theater, festivals and many other activities. A partial list of recent events held at the Tobacco Warehouse includes: TR Warszawa's Macbeth, Le Ballet Africaines, the Brooklyn Ballet, the Festival of Emerging Photographers, Food and Wine's Burger Bash, The New York Photo Festival and Brooklyn Designs.

The building consists of an 18,200 square foot rectangular space (186'-6" x 97'-5") and a contiguous 7,600 SF triangular space (186'-8" x 80'-8"). The two spaces are separated by a brick wall with two doorways between them. The existing exterior walls have heights of approximately 25' to grade. Please see site maps attached as Appendix 1.

The property is being offered "as is" with no existing connections to utilities. **BBP makes no warranties about the condition or stability of the existing walls, footings, foundation or floor.**

ZONING, LAND USE, HISTORIC PRESERVATION AND ENVIRONMENTAL REVIEW

The Site is located within a New York City designated Historic District and is listed on both the State and National Register of Historic Places. The Site is subject to the land use controls of the Modified General Project Plan for Brooklyn Bridge Park Civic and Land Use Improvement Project, approved as modified in June 2010 ("MGPP"), which contains an override of local requirements including zoning and land use. Therefore, the MGPP is the document that determines allowable development on the Site. The MGPP specifically allows the following uses at the Site:

The restored exterior shell of the former Tobacco Warehouse may be used to house a walled garden, café, or space for arts groups.

If a proposal cannot fulfill its program within the existing structure, substantive explanation must be provided of how and why alterations to the historic structure are necessary. BBP will consider proposals that include uses that require roofing over the existing shell to create an interior space or in other ways do not comply with the existing MGPP. However, since such alterations will require environmental review (through the State Environmental Quality Review Act, or "SEQRA"), consultation with the State Historic Preservation Office ("SHPO"), and further modification of the MGPP, Respondents shall be responsible for all costs associated with this review and approval process. Respondents should factor in the costs and schedule impacts and requirements of

this review and approvals process into their proposals. The scope of the environmental review will be dependent on the specific proposal and SHPO consultation and will be determined by ESDC on behalf of BBPDC, the agency acting as the lead on behalf of BBP for the SEQRA review. Please also note that the Final Environmental Impact Statement (FEIS) identifies the area under the Site as an Area of Potential Archeological Sensitivity and any proposed excavations must be done in consultation with SHPO. A copy of the current MGPP and FEIS can be found on our web site at <http://www.brooklynbridgeparknyc.org/uploads/files/564b2a8b-25f9-4d1d-a8c6-78d9d5058c46-mgpp.pdf>.

In addition, all proposals must comply with the Letter of Resolution between BBPDC, The New York State Office of Parks, Recreation and Historic Preservation, ESDC, and the New York State Office of General Services, and the Letters Patent, copies of which can be found in Appendix 2.

TRANSPORTATION

The Site is well served by local mass transportation. The nearest subways are the F train at the York Street Station and A/C trains at the High Street Station. A few blocks further is the Clark Street station with access to the 2 and 3 trains. The Site is also well served by major roads as it is located between the Brooklyn Bridge and Manhattan Bridge and is three blocks away from the Brooklyn Queens Expressway.

DEVELOPMENT GUIDELINES

Design –Design proposals must be respectful of both the historic structure and the Site’s location adjacent to the Brooklyn Bridge. Design proposals must successfully integrate the facility into the existing design for the Empire Fulton Ferry Park section of Brooklyn Bridge Park and provide for an active façade along the Water Street frontage. Finally, the design proposal must be flexible enough to accommodate multiple users. Preference will be given to design proposals that (1) leave at least a portion of the existing shell in its current outdoor uncovered state (2) stay within the existing walls of the structure, and (3) stay within the height of the existing exterior walls. All design proposals must be approved in consultation with SHPO. To the extent possible, the design shall maximize the sustainable performance of the project by integrating high performance measures and sustainable design practices where appropriate. Any proposal that includes the addition of a roof must incorporate plans to connect the roof drainage system to the Park’s storm water collection system.

Program: The facility should include educational, cultural and/or community uses with an emphasis on uses that will activate the space, be diverse, energetic, affordable and accessible to the public. Office and restaurant/retail spaces will only be allowed to the extent that they are ancillary to the primary use. Preference will be given to proposals that (1) include a plan to provide free public programming to the general public either on the Site or elsewhere in Brooklyn Bridge Park on an annual basis, (2) maximize public access to the Site and the historic structure, and (3) provide access to the facility to multiple users, including other educational, cultural or community groups.

Lease Structure– Respondents may seek to net lease the Site for an initial period of 30 years with two 10-year renewal options which would bring the total term to 50 years. A copy of the form of lease to be executed is attached in Appendix 3. Please include any comments on the lease as part of your proposal. **NO FURTHER COMMENTS/CHANGES TO THE LEASE WILL BE ACCEPTED AFTER A RESPONDENT IS SELECTED.**

Capital Reserve Fund –The Selected Respondent will be required to establish and maintain an interest bearing reserve segregated account (Capital Reserve Fund) for the purpose of paying for the cost of the repair and replacement of any structural components of the facility and for no other purpose. Terms of the Capital Reserve Fund will be memorialized in the lease and will include, among other provisions, the Selected Respondent’s obligation to make annual deposits into the account equal to, at minimum, one percent (1%) of the initial capital investment in the facility (after an initial ramp-up period), and the Selected Respondent’s obligation to report annually on the account withdrawals and purpose of expenditures.

Revenue Payments - Preference will be given to proposals that, in addition to providing for the ongoing maintenance and operation of the facility, also provide revenue to be used for the maintenance and operations of the Park.

Funds and Financing– The Selected Respondent will be responsible for all funds and financing related to the Site, including, but not limited to: development costs, ongoing maintenance and operation costs, utilities expenses and a capital reserve fund. Potential sources of revenue may include corporations, foundations, government, special events, individual contributions, program revenue/earned income and other miscellaneous income.

RFP PROCESS

Informational Meeting/Questions/Site Visit

There will be an information session and Site visit held on September 14, **2010 at 1:00PM** at the Tobacco Warehouse (Water Street between Dock Street and New Dock Street). Those who wish to attend should RSVP by contacting David Lowin, Vice President of Real Estate at dlowin@bbpnyc.org or (718) 222-9252. RSVPs should also be sent to Thelma Washington at twashington@bbpnyc.org or (718) 222-9939. Directions and specific information will be provided upon RSVP. Interested parties are strongly encouraged to attend this event. **If you are not able to attend, please contact BBP to indicate your interest in the project so that you will receive any updates or amendments to the RFP.**

Respondents may submit questions and/or request clarifications by emailing dlowin@bbpnyc.org; all questions will be answered via group update emails from time to time.

How to Submit

Eight (8) paper copies of the proposal and one (1) electronic version on disc or USB drive in pdf format for the proposals and xls format for the financial information, identified by “Tobacco Warehouse RFP Response” on the envelope, must be submitted to and received by BBP by 3:00 PM on **Monday, October 18, 2010**. Such proposals must be delivered to the following address:

David Lowin, Vice President
Brooklyn Bridge Park
334 Furman Street
Brooklyn, NY 11201

Proposal Requirements

Proposals from Respondents must contain the following elements:

A. **Project Description**

Respondents must fill out the form titled “Project Description” included in Appendix 7. Respondents may include additional information to describe the proposed project.

B. **Financial Information**

Respondents must provide the following financial information:

- Pro forma operating budgets for ten years. Please outline all assumptions on which the pro forma document is based. The pro forma document should include all necessary capital improvements over time and reserves and debt service payments associated with construction financing. The budget should be in the format of the chart titled “Proposed Project Operating Budget” in Appendix 7,
- A construction budget defining specific hard and soft costs, and sources and uses of funds. The budget should be in the format of chart titled “Proposed Project Capital Budget” in Appendix 7.
- Letters of interest and/or intent from lenders and/or donors, if applicable.
- A schedule of proposed contributions to and draws from the Capital Reserve Fund indicating a minimum annual deposit equal to 1% of the initial capital investment, after a 10-year ramp up period. A copy of the schedule format can be found in Appendix 7.

In order to complete our analysis in a timely manner, the pro forma document must be submitted on a computer disc or USB drive in Excel.

C. **Respondent Description**

Respondents must demonstrate sufficient financial resources and professional ability to redevelop and operate the Site in a manner consistent with its proposal. In order to demonstrate this, Respondents must fill out the form titled “Respondent Description” in Appendix 7. In addition, Respondents must provide:

- If available, the latest credit report for each of the principals and any relevant business entities and the most recent financial statements for the Respondent and each of its principals. If Respondent’s team consists of a partnership or joint venture, then audited net worth statements must be submitted for each member.
- 5 years of audited financial statements for the lead entity on the development team. If possible, these financial statements should be in the format of the form entitled “Operating Budget – Existing Facility” in Appendix 7. This entity must also submit 5 years of Form 990 submissions to the IRS.
- Any additional documentation or information evidencing the strength of Respondent’s team and its ability to complete the project.
- Additional information may be requested later in the selection process.

D. Site Plan & Architectural Design

Respondents must provide conceptual/schematic drawings for the redeveloped Site, including site-use plans, floor plans, elevations, sections, renderings of the redeveloped Site from each façade and the interior, and a summary of the proposed building program with all square footages identified. Drawings must list proposed materials, and include appropriate dimensions. Eight (8) copies of the conceptual drawings for the Site must be provided. Drawings must indicate the graphic scale.

E. Permits

Respondents must identify all permits and authorizations required for the proposed redevelopment.

G. Green Building/Sustainable Design

Respondents must submit a Green Building Plan that includes a narrative describing the proposed project’s sustainable design elements.

A list of Green Building resources and contact information can be found in Appendix 4.

H. Construction Schedule

Respondents must provide a construction schedule for the proposed project.

I. MWBE

Respondents must submit a plan to address MWBE participation in the project, as is required by the MGPP, administered by ESDC on behalf of BBPDC. ESDC’s non-discrimination and affirmative action policies will apply. There is a 20% Minority/Women Owned Business Enterprise contractor and/or subcontractor participation goal during the development of the project, and an overall goal of 25% minority and female workforce participation during construction. For more detail on ESDC non-discrimination and affirmative action policies, please see Appendix 9.

J. Statement of Agreement

Respondents must submit a statement signed by an authorized principal or officer

of the Respondent that states that the Respondent has read this RFP and the Appendices fully and agrees to the terms and conditions set forth in this RFP and in the Appendices. A form of the Statement of Agreement can be found in Appendix 7.

K. Capital Reserve Fund and Potential Other Revenue Payments

Respondent must submit the form entitled “Schedule of Contributions to the Capital Reserve Fund” in Appendix 7. Respondents should also indicate if there will be additional revenue payments that would go towards the general maintenance and operations of the Park.

Subtenant Expressions of Interest

During the conditional designation period, BBP and the Selected Respondent will begin discussions with other cultural organizations that are seeking to be subtenants, in order to provide additional programming at the Site. Parties that wish to express interest in being a subtenant may do so now or at any reasonable time through the conditional designation period. Subtenants will be chosen by the Selected Respondent with the approval of BBP. Parties wishing to become subtenants will be asked to provide the following information:

- Form titled “Subtenant Questionnaire” in Appendix 7.
- Latest credit report for each of the principals and any relevant business entities and the most recent financial statements for the prospective subtenant and each of its principals. If the prospective subtenant’s team consists of a partnership or joint venture, then audited net worth statements must be submitted for each member.
- 5 years of audited financial statements for the subtenant. If possible, these financial statements should be in the format of the form entitled “Operating Budget – Existing Facility” in Appendix 7.
- 5 years of Form 990 submissions to the IRS.

Selection Criteria

BBP will evaluate each proposal according to the criteria listed below, taking into account the information provided in the proposal, references, and any other information about the Respondent’s performance available to BBP. Proposals that are not complete or do not conform to the requirements of this RFP will not be considered. BBP reserves the right to request additional information, site visits, interviews, or presentations.

- *Design* – The extent to which the design: (1) is thoughtful, innovative and of a high quality, (2) respects both the historic nature of the Site, the relationship to the Brooklyn Bridge, and the relationship to the Park design, (3) is contextual with surrounding uses, (4) provides an attractive façade towards both the street and the Park, (5) efficiently houses the proposed program and accommodates multiple users, (6) meets the preferences described in the Design section of the Development Guidelines. **Weight: 20%**;

- *Program* – Respondent’s programming track record, number of programming days that will be scheduled, extent to which the planned programming adds to the vitality and energy of the Park, number and nature of events that will be offered for free to the public both at the Site and in the Park, extent to which the primary tenant offers programming of an affordable and accessible nature, extent to which the program provides public access to the Site, including use of the facility by multiple cultural, educational, arts or community groups. **Weight: 20%**;
- *Financial Feasibility* – Respondent team’s demonstrated financial ability to complete the project, availability of identifiable funding sources to finance the project, and sufficient revenue to support operating expenses, capital costs, debt service, and contributions to the capital reserve fund. BBP will evaluate the Respondent’s assets, bank, donor or other lender references, and current commitments in order to assess the Respondent’s capacity to secure construction and permanent financing, meet construction lender’s equity requirements, absorb any cost overruns, and commence and complete construction of the Respondent’s entire development project in a timely manner. **Weight: 20%**;
- *Respondent Team Qualifications* – Experience, development skills, and financial resources necessary to complete a high-quality project on time and within budget; previous experience in managing and operating community and/or cultural institutions, in a financially sustainable manner, and in compliance with all applicable laws; factors that will be considered are experience in real estate development and construction, managing cultural institutions, and producing high-quality arts/cultural events. **Weight: 20%**;
- *Schedule* – Ability to complete the project, given the constraints set forth in the development controls, in a timely fashion. Preference will be given to respondents who demonstrate ability to complete the project prior to the end of 2013. **Weight: 10%**;
- *Potential Revenue* – Respondents are encouraged to demonstrate the ability to provide revenue to be used for the maintenance and operations of the Park to the maximum extent feasible. **Weight 5%**.
- *Green Building Plan* – To the maximum extent possible, proposals should incorporate green building, sustainable development, and “smart building” concept and technologies in order to enhance overall design and construction, while simultaneously making the building environmentally responsible. **Weight: 5%**.

Proposal Review

BBP will form a selection committee to review responses to the RFP in collaboration and consultation with staff of the New York City Economic Development Corporation and several New York City agencies, including the Department of Cultural Affairs, Parks and Recreation, and the Landmarks Preservation Commission. All proposals will be rated on the criteria listed above. The selection committee may request an interview with the top

rated Respondents. The committee may also request that these Respondents submit additional information to clarify their proposals.

Expressions of interest from potential subtenants will be reviewed by BBP and Selected Respondent.

Conditional Designation Period

After review of the proposals, the selection committee will recommend a respondent team to the BBP Board of Directors (“Board”) for approval. Upon receiving Board approval BBP will conditionally designate the Selected Respondent. A copy of the form of conditional designation letter can be found in Appendix 3.

During the conditional designation period, the Selected Respondent will be expected to complete its due diligence, including ordering a title report from a reputable title insurance or abstract company if applicable. These due diligence items must be prepared at the sole cost and expense of the Selected Respondent. These expenses are non-refundable. All work products shall become property of BBP upon submission. During this period, BBP and the Selected Respondent will also begin discussions with the other cultural organizations that may provide additional programming at the facility.

Review and Approvals Process

The following reviews and approvals will be required in order to close on the lease. Selected Respondent will be responsible for all costs associated with these reviews and approvals:

1. **Environmental Review:** ESDC, on behalf of BBPDC, will act as the lead agency and review the proposal and determine the extent of environmental review required in order to comply with SEQRA. Selected Respondent will reimburse BBP for all expenses relating to the completion of environmental review, including the costs for outside consultants, outside legal services and other professional services.
2. **Historic Preservation:** Selected Respondent will submit design documentation as required to SHPO for its review and comment. The Selected Respondent must address the Secretary of Interior’s Standards for Rehabilitation in the design documentation. To the extent that Selected Respondent’s proposal involves additions or alterations to historic resources (including potential archeological resources) that would not meet the Secretary’s Standards, the Selected Respondent must enter into consultation with the SHPO to avoid, minimize or mitigate any Adverse Impacts or Adverse Effects to historic resources. Selected Respondent will be responsible for any required mitigation of Adverse Impacts or Adverse Effects to historic resources. A copy of the Secretary’s Standards for Rehabilitation can be seen at: <http://www.nps.gov/history/hps/tps/tax/rhb/stand.htm>.

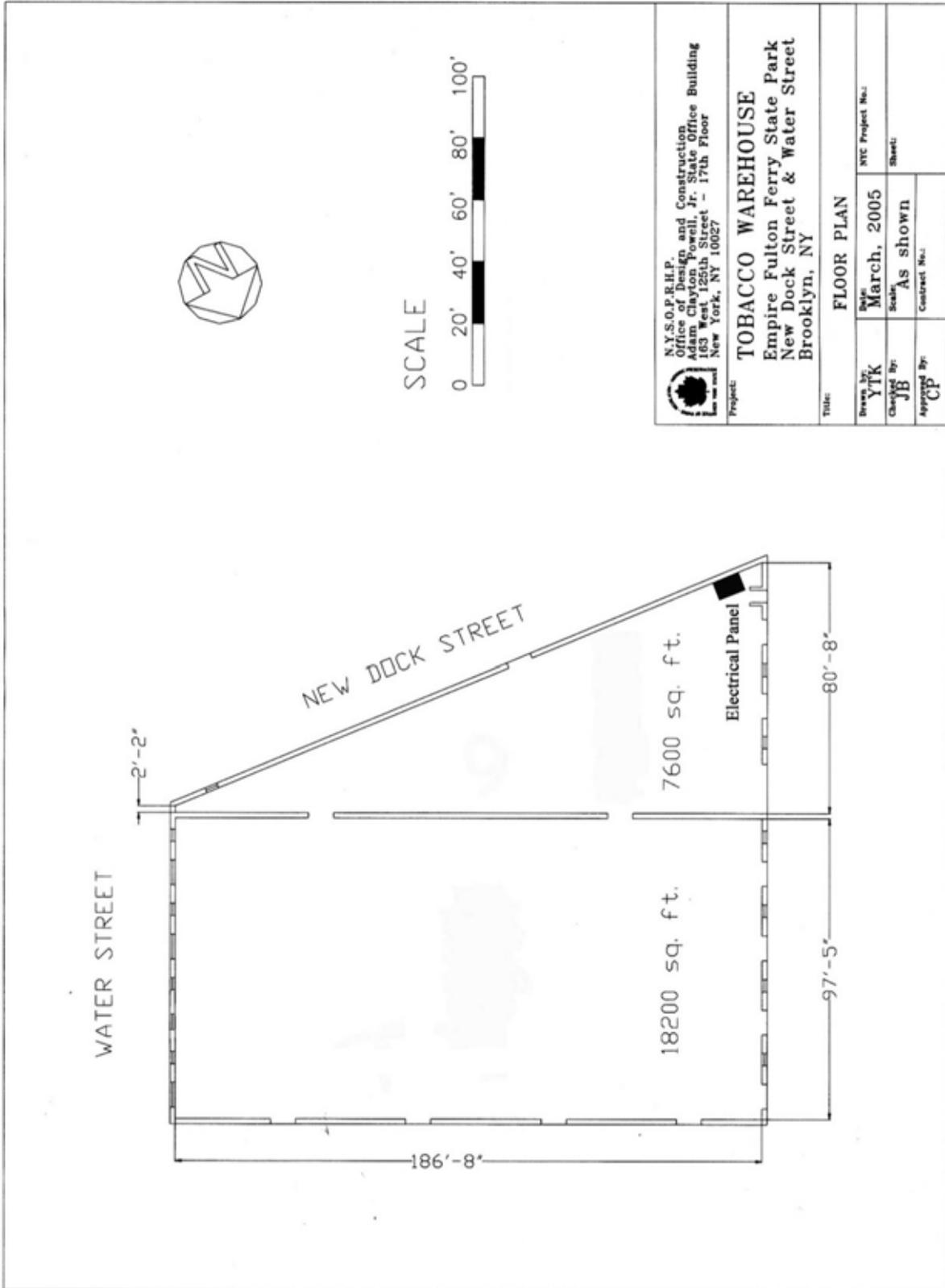
- 3. MGPP Modifications Process:** ESDC, on behalf of BBPDC, will determine if the proposed program is compliant with the existing MGPP. If the program is found to be non-compliant with the existing MGPP, then the existing MGPP must be modified. The modification process includes, (1) Environmental and Historic Preservation Review (as indicated above) (2) Preliminary approval by both the BBPDC and ESDC Boards of Directors (2) a Public Hearing, preceded by a 30 day notice period and a followed by a 30 day comment period, and (3) final approval by both the BBPDC and ESDC Boards of Directors.

Following completion of the review and approvals process, Selected Respondent will close on the lease with BBP.

CONDITIONS, TERMS, AND LIMITATIONS

This RFP and any transaction resulting from such proposals are subject to the conditions, terms and limitations set forth in Appendix 5.

APPENDIX 1: SITE PLAN AND CONTEXT MAP





BROOKLYN BRIDGE PARK | BROOKLYN BRIDGE PLAZA
 Brooklyn Bridge Park Development Corporation
 Michael Van Valkenburgh Associates, Inc.
 May 2010

APPENDIX 2: LETTER OF RESOLUTION AND LETTERS PATENT

**LETTER OF RESOLUTION
AMONG
THE NEW YORK STATE URBAN DEVELOPMENT CORPORATION
D/B/A EMPIRE STATE DEVELOPMENT CORPORATION,
BROOKLYN BRIDGE PARK DEVELOPMENT CORPORATION,
THE NEW YORK STATE OFFICE OF PARKS, RECREATION AND HISTORIC
PRESERVATION,
AND
EMPIRE STORES, LLC
REGARDING
THE BROOKLYN BRIDGE PARK AND EMPIRE STORES
BROOKLYN, KINGS COUNTY**

WHEREAS, the proposed project - the result of collaboration between New York State and New York City under the aegis of the Brooklyn Bridge Park Development Corporation (BBPDC), a subsidiary of the New York State Urban Development Corporation (UDC), doing business as the Empire State Development Corporation (ESDC) - is the creation of the Brooklyn Bridge Park, an approximately 85-acre park that would stretch along approximately 1.3 miles of Brooklyn's East River waterfront from Jay Street in the north, to Atlantic Avenue in the south (the "Project");

WHEREAS, the park would dramatically transform a largely underused and publicly inaccessible waterfront into an important new public amenity that would serve the borough and the region. The proposed park would be created from those areas encompassing Piers 1 through 6 and related upland property, the existing Empire-Fulton Ferry State Park and New York City Department of Parks and Recreation-operated Main Street Park, and the Con Edison property on John Street east of the Manhattan Bridge ("John Street Site"), creating a continuous waterfront esplanade along the entire site. The park would include landscaped areas and ecological habitats; recreational facilities for sports such as soccer and basketball; a marina for recreational boating; protected waters for kayaking; and a limited amount of development essential to the park's creation, including retail, restaurant, residential, and hotel space;

WHEREAS, although the State and City will underwrite the cost of park construction, once completed, the park itself must be self-sufficient. The funds to support park operations and maintenance must flow from revenue-generating park components. These features will be limited to a small area of parkland and must be consistent with maintaining an urban environment supportive of the mission of the park. The new buildings that would result include two residential buildings in the Pier 6 upland area, a hotel and residential development in the Pier 1 upland area, and a new residential building at the northwest corner of Pearl and John Streets. In addition to the increased activity the residential and commercial land uses would bring to the site, they would provide the park with the financial resources needed to ensure its care and maintenance;

WHEREAS, the Project would have an overall positive effect on historic resources by maintaining a number of architectural resources for reuse, opening up greater views of the Brooklyn Bridge and Manhattan Bridge, creating views to the historic waterfront, and the rehabilitation and adaptive reuse of the Empire Stores in the Fulton Ferry Historic District, which is a resource eligible for listing on the State and National Registers of Historic Places, to include new retail, restaurant and commercial uses;

WHEREAS, Empire Stores, LLC ("Empire LLC") has entered into a Memorandum of Understanding with BBPDC to develop the Empire Stores to include new retail, restaurant and commercial uses;

WHEREAS, ESDC is the lead agency in the preparation of the Environmental Impact Statement ("EIS") being prepared under the State Environmental Quality Review Act ("SEQRA") and City Environmental Quality Review ("CEQR"), for the proposed park;

WHEREAS, through the preparation of the EIS and consultation with The New York State Office of Parks, Recreation and Historic Preservation (OPRHP), it has been determined that the Cold Storage Warehouse buildings at 66 Furman Street are a resource eligible for listing on the State and National Registers of Historic Places.

WHEREAS, all prudent and feasible alternatives have been explored for the reuse of the Cold Storage Warehouse buildings for use as residential and hotel facilities as needed to provide the revenue generating requirements of the Park;

WHEREAS, the demolition of the Cold Storage Warehouse buildings constitute an Adverse Impact;

WHEREAS, ESDC in consultation with OPRHP has determined that the project may have an Impact upon the following Historic Resources within the project area

1. Brooklyn Bridge, Spans the East River between Brooklyn and Manhattan
2. Manhattan Bridge, Spans the East River between Brooklyn and Manhattan
3. Fulton Ferry Historic District, roughly bounded by the East River and Doughty, Water, Front and Main Streets
4. D.U.M.B.O. Historic District, Roughly bounded by the East River and John Street, Front and York Streets, Main and Washington Streets, and Jay and Bridge Streets
5. Brooklyn Heights Historic District, roughly bounded by Cadman Plaza West (Old Fulton Street), Atlantic Avenue and Furman, Henry, Clinton and Court Streets

WHEREAS, the EIS identified historic resources located on the Project site that may be affected during construction of the Project, such as the Brooklyn Bridge's stone piers and the Tobacco Inspection Warehouse;

WHEREAS, a Phase 1A Archaeological Study prepared for the project area concludes that construction of new buildings may impact potential archaeological resources. The areas that have been identified as containing potential archaeological resources are: Empire Stores, residential building sites in the Pier 6 upland area, the hotel/residential site in the Pier 1 upland area, and the John Street site;

WHEREAS, the purpose of this Letter of Resolution ("LOR") is to ensure that appropriate mitigation measures are undertaken to address the identified Adverse Impact due to the demolition of the Cold Storage Warehouse buildings, and to avoid any construction-related damage on historic and archaeological resources;

NOW, THEREFORE, as referenced in the EIS and in accordance with Section 14.09 of the New York State Parks, Recreation and Historic Preservation Law, ESDC, BBPDC, Empire LLC and OPRHP agree that the Project may proceed subject to the Stipulations specified below:

STIPULATIONS

- 1. ESDC/BBPDC will undertake a Historic American Building's Survey (HABS) Level II photographic documentation of the Cold Storage Warehouse building. This documentation will be conducted by a recognized professional credentialed for preparing such reports. The HABS report will be reviewed by ESDC/BBPDC and OPRHP for its completeness and acceptance. Copies of the documentation will be provided to the Brooklyn Historical Society, the Museum of the City of New York, and two copies to OPRHP (one for their records and one to be forwarded to the New York State Archives).**
- 2. ESDC/BBPDC will use best efforts to encourage future development on the Cold Storage Warehouse site to retain and reuse portions of the original building, to the extent feasible and practical. Design plans shall be developed in consultation with OPRHP and submitted at the preliminary (35%) and pre-final (75%) completion stages for OPRHP comment. If OPRHP makes substantive comments during the pre-final design review, OPRHP may request the opportunity to review the final design.**
- 3. A Construction Protection Plan (CPP) will be prepared in coordination with a licensed professional engineer, and developed and implemented in consultation with OPRHP for the Brooklyn Bridge's stone piers during the demolition of the Purchase Building and to avoid any construction-related damage to the Tobacco Inspection Warehouse and any other historic resources within 90 feet of the project site. The construction protection plan shall meet the requirements specified in the New York City Department of Buildings (NYCBOD) Technical Policy and Procedure Notice #10/88**

concerning procedures for avoidance of damage to historic structures resulting from adjacent construction. The CPP shall describe in detail the construction procedures of the Project related to Historic Properties and the construction procedures associated with other projects under construction in the vicinity of each of the Historic Properties. This plan shall be submitted to OPRHP for review and approval prior to implementation.

4. Rehabilitation of the Empire Stores will be conducted in a manner that is compatible with and respects the architectural and historic significance of the resource and in accordance with the Secretary of the Interior's Standards for Rehabilitation. Interior and exterior design plans shall be developed in consultation with OPRHP and submitted at the preliminary (35%) and pre-final (75%) completion stages for OPRHP comment. If OPRHP makes substantive comments during the pre-final design review, OPRHP may request the opportunity to review the final design.
5. As final design for the park is advanced, consultation with SHPO will be conducted to review whether proposed construction may have an adverse impact to potential archaeological resources for those portions of the park that have been identified as potentially sensitive for 18th – 19th Century deposits. This consultation will evaluate if potential resources can be avoided and attempt to identify ways to accomplish avoidance. In the event that archaeologically sensitive areas cannot be avoided, testing methods, and if necessary, mitigation measures will be developed in consultation with SHPO and implemented as early as possible in order to avoid undue delays during construction.
6. BBPDC will share with OPRHP proposed renderings for the new building to be built in the D.U.M.B.O. Historic District at John Street. Design plans shall be developed in consultation with OPRHP and submitted at the preliminary (35%) and pre-final (75%) completion stages for OPRHP comment. If OPRHP makes substantive comments during the pre-final design review, OPRHP may request the opportunity to review the final design.
7. If construction activities or Project plans change such that the Project may newly affect an Historic Property, ESDC shall notify OPRHP and invite OPRHP to participate in consultation to determine the appropriate course of action.

Any party to this LOR may propose to ESDC that the LOR be amended, whereupon ESDC shall consult with the other parties to this LOR to consider such amendment. Any amendment must be agreed upon in writing by all parties to this agreement.

This LOR shall take effect on the date it is signed by the last signatory and will remain in effect until the Stipulations have been met.

EMPIRE STATE DEVELOPMENT CORPORATION

BY:  DATE: January 18, 2006
Eileen Miltenberger

TITLE: Chief Operating Officer & Executive VP

BROOKLYN BRIDGE PARK DEVELOPMENT CORPORATION

BY: Wendy Leventer DATE: January 18, 2006
Wendy Leventer

TITLE: President

NEW YORK STATE OFFICE OF PARKS, RECREATION AND HISTORIC
PRESERVATION

BY: Kevin A. Proppert DATE: 1/17/06

TITLE: Historic Preservation Field Services Director

EMPIRE STORES, LLC

BY:  _____

DATE: 1/18/06

TITLE: Jeshayah Boymelgreen, Manager

AMENDMENT TO THE LETTER OF RESOLUTION
AMONG THE
NEW YORK STATE URBAN DEVELOPMENT CORPORATION D/B/A EMPIRE
STATE DEVELOPMENT CORPORATION, BROOKLYN BRIDGE PARK
DEVELOPMENT CORPORATION,
THE NEW YORK STATE OFFICE OF PARKS, RECREATION AND HISTORIC
PRESERVATION AND EMPIRE STORES, LLC
REGARDING THE
BROOKLYN BRIDGE PARK AND EMPIRE STORES

WHEREAS, a Letter of Resolution for the Brooklyn Bridge Park Project (Attachment A), executed in 2006 by the New York State Urban Development Corporation d/b/a The Empire State Development Corporation (ESDC), Brooklyn Bridge Park Development Corporation (BBPDC), New York State Office of Parks, Recreation and Historic Preservation (OPRHP), and Empire Stores, LLC, established procedures for implementation pursuant to Section 14-09 of the New York State Parks, Recreation and Historic Preservation Law;

WHEREAS, the stipulations of the Letter of Resolution pertained to appropriate mitigation measures to address the Adverse Impact identified in the project Environmental Impact Statement due to demolition of the Cold Storage Warehouse buildings (CSW), and to avoid any construction-related damage on historic and archeological resources;

WHEREAS, the Letter of Resolution stipulated that that ESDC/BBPDC encourage future developments on the CSW site to retain and reuse portions of the original building, to the extent feasible and practical;

WHEREAS, construction on the portion of Brooklyn Bridge Park surrounding the CSW site began in December 2008 and is expected to last approximately 12-18 months;

WHEREAS, BBPDC plans to re-use wood salvaged from CSW in several park buildings, benches and playgrounds;

WHEREAS, BBPDC found it necessary to delay the disposition of the CSW site for future development until market conditions are more favorable;

WHEREAS the park surrounding the CSW is likely to be completely developed prior to the disposition of the CSW site for future development due to this delay,

WHEREAS, delaying the disposition of the CSW site for future development requires delaying the potential demolition of the CSW buildings in order to allow the future development to retain and reuse portions of the buildings;

WHEREAS, delaying the demolition of the CSW buildings until after the surrounding park is complete would impose significant logistical, financial, and scheduling difficulties on the project;

WHEREAS, BBPDC submitted a Construction Protection Plan for Phase I construction to OPRHP on August 14, 2008 that was approved by OPRHP on September 12, 2008.

WHEREAS, this Construction Protection Plan included provisions for the protection of the CSW buildings during the construction of Phase I of the park.

WHEREAS, Empire Stores, LLC is no longer the conditionally designated developer for the Empire Stores site and is no longer a Brooklyn Bridge Park developer;

WHEREAS, it is intended that the 2006 Letter of Resolution be amended to clarify the procedures that will be implemented to mitigate the Adverse Impact identified in the project Environmental Impact Statement due to demolition of the CSW buildings, and to avoid any construction-related damage on historic and archeological resources;

STIPULATIONS

BBPDC will ensure that the following stipulations are implemented as part of the subsequent planning, design, and construction of the Brooklyn Bridge Park Project:

1. OPRHP concurs that the demolition of CSW buildings is warranted at this time;
2. Where financially feasible, BBPDC will salvage the long leaf yellow pine from the CSW buildings, with a goal of salvaging a minimum of 70% of the available wood. The salvaged wood will be made available for reuse in the following order of priority:
 - a. Incorporation as a design element in Brooklyn Bridge Park, (e.g., cladding for park buildings, park benches, and Pier 6 playground);
 - b. A reserve stockpile for replacement, as necessary, of the salvaged wood used in the park;
 - c. Incorporation into the rehabilitation and adaptive reuse of the Empire Stores, if deemed appropriate by BBPDC;
 - d. Incorporation into future development on the CSW site, if deemed appropriate by BBPDC;
 - e. Use in any other public park in New York, provided that the entity responsible for such park pays all costs and expenses with respect to the storage, shipment, delivery and installation of the salvaged wood; and
 - f. If the salvaged wood has not been reused in accordance with items a through e above within five years of the date of this Amendment, BBPDC may attempt to sell the salvaged lumber to a salvage lumber broker, and if there is no financially feasible offer for the salvaged lumber, then BBPDC

may use or dispose of the lumber in such manner as BBPDC deems appropriate;

3. Where financially feasible, BBPDC will salvage the ornamental metal stars at the end of the tie rods from the CSW buildings. The salvaged ornaments will be made available for reuse in the following order of priority:
 - a. Incorporation as a design element elsewhere in Brooklyn Bridge Park if deemed appropriate by BBPDC;
 - b. Incorporation into the rehabilitation and adaptive reuse of the Empire Stores if deemed appropriate by BBPDC;
 - c. Incorporation into future development on the CSW site, if deemed appropriate by BBPDC; and
 - d. Use in any other public park in New York, provided that the entity responsible for such park pays all costs and expenses with respect to the storage, shipment, delivery, and installation of the salvaged wood;
4. BBPDC will examine the cost impact, construction feasibility, aesthetic appropriateness and financial feasibility of reusing salvaged brick from the CSW buildings in the rehabilitation and adaptive reuse of the Empire Stores. If BBPDC deems it appropriate and financially feasible, BBPDC may salvage a portion of the bricks from the CSW to for reuse in Empire Stores;
5. Specific salvage plans for the wood, ornamental metal stars, and bricks shall be presented to OPRHP for review and consultation;
6. Design Plans for future development on the CSW site shall be presented to OPRHP for review and consultation;
7. Based on the above, the CSW is hereby removed from the Construction Protection Plan for Phase I of Brooklyn Bridge Park construction;
8. All other stipulations pertaining to the 2006 Letter of Resolution will remain in effect as modified by this amendment.

NEW YORK STATE URBAN DEVELOPMENT
CORPORATION D/B/A EMPIRE STATE
DEVELOPMENT CORPORATION

By: _____
Title: _____
Date: _____

BROOKLYN BRIDGE PARK DEVELOPMENT
CORPORATION

By: _____
Title: _____
Date: _____

NEW YORK STATE OFFICE OF PARKS,
RECREATION, AND HISTORIC PRESERVATION

By: _____
Title: _____
Date: _____

**SECOND AMENDMENT TO THE LETTER OF RESOLUTION
FOR THE BROOKLYN BRIDGE PARK PROJECT AMONG THE
NEW YORK STATE URBAN DEVELOPMENT CORPORATION D/B/A EMPIRE
STATE DEVELOPMENT CORPORATION, BROOKLYN BRIDGE PARK
DEVELOPMENT CORPORATION, THE NEW YORK STATE OFFICE OF GENERAL
SERVICES AND THE NEW YORK STATE OFFICE OF PARKS, RECREATION AND
HISTORIC PRESERVATION**

February 26, 2010

WHEREAS, a Letter of Resolution (LOR) for the Brooklyn Bridge Park (the "Project") (Attachment A) executed on January 18, 2006 by the New York State Urban Development Corporation d/b/a The Empire State Development Corporation (ESDC), Brooklyn Bridge Park Development Corporation (BBPDC), New York State Office of Parks, Recreation and Historic Preservation (OPRHP), and Empire Stores, LLC, established procedures for implementation pursuant to Section 14.09 of the New York State Parks, Recreation and Historic Preservation Law;

WHEREAS, Empire Stores, LLC, previously a potential tenant for the Empire Stores, has withdrawn its proposal to develop the property and is no longer a party to this MOU;

WHEREAS, the first amendment to the LOR that primarily affected the Cold Storage Warehouse buildings executed on February 28, 2009 remains in effect (Attachment B);

WHEREAS, to advance the Project the New York State Office of General Services (OGS) is conveying by letters patent Empire Fulton Ferry State Park to BBPDC in two parcels: Parcel A (open space) and Parcel B (Empire Stores and the Tobacco Inspection Warehouse);

STIPULATIONS

ESDC and BBPDC will ensure that the following stipulations are implemented as part of the planning, design, and construction of the Project:

1. Maintenance and rehabilitation of the Empire Stores and the Tobacco Inspection Warehouse and renovation of the open space will be conducted in a manner that is compatible with and respects the architectural and historic significance of the Historic Resources identified in the LOR within the Project area.
2. All other stipulations in the 2006 Letter of Resolution and the 2009 Amendment, copies of which are attached hereto and made part hereof, remain in effect.

Signature Pages to Follow

NEW YORK STATE URBAN DEVELOPMENT
CORPORATION D/B/A EMPIRE STATE
DEVELOPMENT CORPORATION

Rachel Shatz

Name: Rachel Shatz

Title: VP, Planning & Environmental Review

ACKNOWLEDGEMENT

STATE OF NEW YORK)
) ss.:
COUNTY OF *New York*)

On the 19th day of February, in the year 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared *Rachel Shatz*, 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.

Jezanna Plasbori

NOTARY PUBLIC

2011

*THE PEOPLE OF THE STATE OF NEW YORK, BY THE GRACE OF GOD,
FREE AND INDEPENDENT*

TO ALL WHOM THESE PRESENTS SHALL COME, GREETING:

KNOW YE, That pursuant to Section 6263-a of the New York State Urban Development Corporation Act and Findings of the Commissioner of General Services dated *July 8*, 2010, and in consideration of the sum of One Dollar (\$1.00), lawful money of the United States of America, paid by the New York State Urban Development Corporation, d/b/a Empire State Development Corporation, acting through the Brooklyn Bridge Park Development Corporation, a public benefit corporation of the State of New York, having its principal office and place of business at 633 Third Avenue, New York, New York 10017, we have given and granted and by these presents do hereby give and grant unto the said BROOKLYN BRIDGE PARK DEVELOPMENT CORPORATION, its grantees or successors in interest, the right, title and interest of the People of the State of New York in and to the following described parcels, currently known as Empire Fulton Ferry State Park:

Parcel A

All those certain plots, pieces or parcels of land with the buildings and improvements thereon erected, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

Beginning at a point on the easterly side of New Dock Street, being 208 feet 6 inches northerly from the corner formed by the intersection of the northerly side of Water Street with the easterly side of New Dock Street; running thence easterly along the northerly side of a two story brick building and continuing to and along the northerly side of a four story brick building and a five story brick building a total distance of 692 feet 5 3/4 inches to a point on the westerly side of Main Street which is distant 190 feet 2 inches northerly from the corner formed by the intersection of the northerly side of Water Street with the westerly side of Main Street, as measured along the westerly side of Main Street; thence northerly along the westerly side of Main Street and the westerly side of Main Street if extended to the East River, 478 feet 8-3/4 inches to the pierhead line of the East River, established in 1857; thence southwesterly along the said pierhead line, 825 feet 2-

3/8 inches to the easterly side of New Dock Street; thence southerly along the easterly side of New Dock Street, 260 feet 9 1/2 inches to the corner, at the point or place of beginning.

Parcel B

Beginning at a point on the easterly side of New Dock Street, being 208 feet 6 inches northerly from the corner formed by the intersection of the northerly side of Water Street with the easterly side of New Dock Street; running thence easterly along the northerly side of a two story brick building and continuing to and along the northerly side of a four story brick building and a five story brick building a total distance of 692 feet 5 1/2 inches to a point on the westerly side of Main Street; which is distant 190 feet 2 inches northerly from the corner formed by the intersection of the northerly side of Water Street with the westerly side of Main Street, as measured along the westerly side of Main Street; thence southerly along the westerly side of said Main Street 129 feet 11 inches to a point thereon which is distant 60 feet 3 inches northerly from the corner formed by the intersection of the northerly side of Water Street with the westerly side of Main Street; thence westerly on a line forming an interior angle of 89 degrees 36 minutes 40 seconds with the westerly side of Main Street, 88 feet; thence southerly parallel with the westerly side of Main Street, 10 feet; thence westerly parallel with the northerly side of Water Street, 24 feet 8 inches; thence southerly on a line forming an exterior angle of 89 degrees 32 minutes 30 seconds with the northerly side of Water Street, 50 feet to the northerly side of Water Street; thence westerly along the northerly side of Water Street 487 feet to the intersection of the northerly side of Water Street with the easterly side of New Dock Street; thence northerly along the easterly side of New Dock Street 208 feet 6 inches to the point or place of beginning.

Together with all the right, title and interest of, in and to New Dock, Water and Main Streets, to the center lines thereof, in front of and adjoining said premises.

Being portions of the same premises conveyed to The People of the State of New York from The Consolidated Edison Company of New York, Inc. by deed dated February 22, 1978 and recorded on March 13, 1978, in Reel 981 of Deeds, page 514.

This conveyance is made and accepted subject to the following terms and conditions:

1. This conveyance is made for the sole purpose of including Empire Fulton Ferry State Park in and part of Brooklyn Bridge Park in accordance with the Modified General project Plan adopted by Brooklyn Bridge Park Development Corporation and the Empire State Development Corporation on or about December 18, 2006, as amended, and on file in the Office of General Services in Albany, New York.

- 2 (a) No demolition, construction, alteration, remodeling or excavations shall be undertaken with respect to the Tobacco Warehouse, the Empire Stores building, except in accordance with the Second Amended Letter of Resolution among the Office of General Services, the Office of Parks Recreation and Historic Preservation, the Empire State Development Corporation and the Brooklyn Bridge Park Development Corporation, dated February 26, 2010 and filed in the Office of General Services in Albany, New York and to be filed with this Letters Patent in the City Register's Office, Kings County.
- (b) The terms and conditions in 2(a) above shall be a covenant running with the land and shall inure to the benefit of the People of the State of New York and be binding upon Brooklyn Bridge Park Development Corporation, its successors and assigns, the same as if they were in every case named and expressed.
3. Brooklyn Bridge Park Development Corporation acknowledges that assistance from the United States Department of the Interior, in the form of a grant from the Land and Water Conservation Fund, has been used in the development of a portion of the premises described herein, as more fully depicted on the map attached hereto as Exhibit "A" (hereinafter "Open Space"), and accordingly, such Open Space shall not be converted to a use other than public outdoor recreation, but shall be maintained in public outdoor recreation in perpetuity unless a conversion of such lands is obtained and adequate replacement lands provided and approved by the United States Secretary of the Interior pursuant to 16 USC § 2509.
4. The premises described in Parcel A shall be improved and maintained for park and recreation purposes. In the event that the premises described in Parcel A are not used for such purposes, the title thereto hereby conveyed shall revert to the People of the State of New York and the Attorney General may institute an action in the Supreme Court for a judgment declaring a reversion of such title in the State of New York.

TOGETHER WITH all and singular the rights, hereditaments and appurtenances to the same belonging or in any wise appertaining

TO HAVE AND TO HOLD the above premises unto the said BROOKLYN BRIDGE PARK DEVELOPMENT CORPORATION, its grantees or successors in interest forever, subject to the aforesaid conditions

IN WITNESS WHEREOF, *our*

Commissioner of General Services, has

executed these letters patent in and to the year day of July 2010

THE PEOPLE OF THE STATE OF NEW YORK

By: John C. Egan
John C. Egan
COMMISSIONER OF GENERAL SERVICES

STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the Great Seal of the State of New York
was hereto affixed on the 12th day of July 2010

Sandra J. Tallman
Deputy Secretary of State

Approved this 26th day

of July, 2010

Office of the State Comptroller

By: Christie E. Brown

Approved as to form this 22nd

of July, 2010

Andrew M. Cuomo
Attorney General

By: [Signature]
Principal Assistant Attorney General

The People of the State of New York

10

Brooklyn Bridge Park Development Corporation

LETTERS PATENT

STATE OF NEW YORK
Department of State

Recorded in Book of Patents

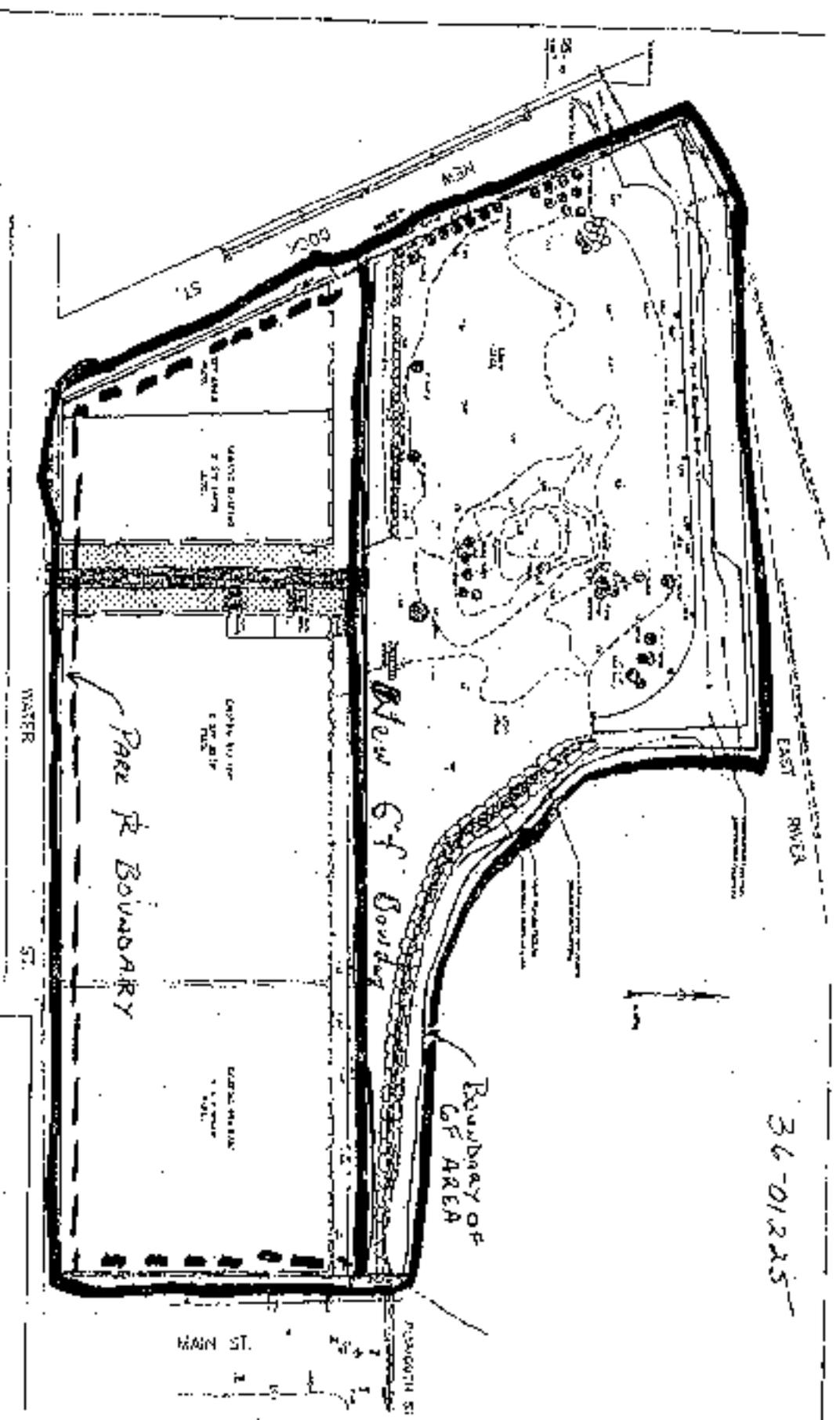
No. _____ of page _____

Date: _____
Daniel E. Shapiro
First Deputy Secretary of State

By _____
Linda Lasci
Miscellaneous Records

Return to: _____

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36-01225

Map submitted 10/1/61

James Downing
Sr. Administrative Engineer

covered 10/3/68

Notes of Dr. Jones, Ph.D., Wildlife Preservation Program Analysis

EMPIRE FULTON FERRY
 STATE PARK
 G-P MAP

APPENDIX 3: CONDITIONAL DESIGNATION DOCUMENTS

CONDITIONAL DESIGNATION

[DATE]

[SELECTED DEVELOPER]

Re: Conditional Designation regarding the Request for Proposals issued by the Brooklyn Bridge Park Corporation (“BBP”) on August 23, 2010 (“RFP”) and the response to such RFP by the [Selected Respondent] dated [October XX, 2010] for the proposed project located at The Tobacco Warehouse, Brooklyn Bridge Park

Dear [Selected Respondent]

BBP is pleased to advise [Selected Respondent] or an affiliated entity (whichever, the “Developer”) that, subject to the conditions set forth below, Developer is hereby conditionally designated until the Expiration Date (as hereinafter defined) to enter into a Development Parcel Sublease Agreement with BBP (the “Lease”) for the proposed lease, development and use of the above referenced property (the “Property”). A copy of the Lease is annexed hereto as Exhibit A. The Property is currently owned by the Brooklyn Bridge Park Development Corporation (“BBPDC”), and leased to BBP pursuant to a Master Ground Lease Agreement made as of July 29, 2010 (the “Master Lease”). Upon Developer satisfying the conditions set forth in this Conditional Designation, BBP, upon obtaining all required approvals, will enter into a Development Parcel Ground Lease Agreement with BBPDC, whereby the Property will be severed from the Master Lease, and BBP will be permitted to enter into the Lease with Developer.

This Conditional Designation shall be for a term (the “Term”) commencing on the date (the “Effective Date”) this Conditional Designation is signed by all parties and ending on a date (the “Expiration Date”) which shall be the earliest of (i) [DATE CERTAIN], (ii) the date that Developer satisfies the conditions contained herein and the parties execute the Lease, and (iii) such earlier date on which BBP or Developer elects to terminate this Conditional Designation in accordance with the terms hereof.

This Conditional Designation is not intended to create binding obligations between the parties or liability on the part of any of the parties except as specifically stated below. This Conditional Designation is made subject to the Developer’s acceptance of and agreement to the following terms and conditions:

1. **General Understandings:** Developer agrees to use its best efforts and proceed with due diligence to perform its obligations hereunder. Developer agrees to submit or act on all required deliverables in a timely fashion and to work in good faith to complete its due diligence and the predevelopment tasks in accordance with this Conditional Designation.
2. **Site:** BBP will lease the Site to Developer to develop it in accordance with development guidelines to be established in accordance with the Modified General Project Plan for Brooklyn Bridge Park Civic and Land Use Improvement Project (“MGPP”), approved as modified in June 2010, the Letter of Resolution executed in 2006 and amended on or about February 28, 2009 and February 26, 2010, as each may be further modified, and any additional requirements that may be prescribed by the State Historic Preservation Office (“SHPO”) or any other governmental agency with jurisdiction over the Property.
3. **The Project:** The “Project” is a cultural or community facility as more particularly described in Developer’s response to the RFP dated [October XX], 2010.
4. **Down Payment:**
 - (a) Upon execution of this Conditional Designation, Developer will deposit with BBP a down payment in the sum of one hundred thousand dollars (\$100,000), which BBP shall hold in escrow during the Term hereof.
 - (b) On the date which is the sixth (6th) month anniversary of the Effective Date, Developer shall increase the down payment to five

hundred thousand dollars (\$500,000), less documented costs incurred and paid by Developer in connection with preconstruction environmental review, Property testing, design and engineering work performed pursuant to this Conditional Designation. Developer shall provide written evidence of such expenditures with such back-up documentation as may be reasonably requested by BBP.

- (c) In addition, from and after the date of Developer's deposit of the additional down payment pursuant to sub-paragraph (b) above, upon Developer's request, the down payment may be utilized to pay or to reimburse Developer for additional costs and expenses incurred or paid by Developer in connection with preconstruction environmental review, Property testing, design and engineering work pursuant to this Conditional Designation. Developer shall provide written evidence of such expenditures incurred by or to be paid by Developer, with such back-up documentation as may be reasonably requested by BBP.
- (d) The balance of the down payment remaining in escrow upon the Expiration Date and execution of the Lease shall be transferred to the Capital Reserve Fund defined in the Lease.
- (e) If this Conditional Designation is terminated as a result of Developer's failure to perform hereunder, the balance of the down payment remaining in escrow upon such termination shall be retained by BBP.

5. Project Costs: Within thirty (30) days after the Effective Date, the Developer shall provide BBP with an updated detailed description of Project costs, scope of work, design of Project and all sources, terms and conditions of financing (to the extent available), including debt and equity.

6. Environmental Review: (a) Developer, shall reimburse BBP for all costs and expenses associated with the environmental review process, including the fees of outside consultants, legal services and other professional fees; and at Developer's sole cost and expense, it shall address all environmental impacts identified through the State Environmental Quality Review ("SEQR") process and perform all necessary environmental clean-up or mitigation procedures pursuant to applicable laws and regulations upon, under, or in the vicinity of the Property, in such a manner and within such time as may be required by any and all governmental authorities having jurisdiction over the Property.

(b) BBP and Developer shall cooperate, as necessary to obtain SHPO and SEQRA approvals, and to the extent necessary, modifications to the MGPP, at Developer's sole cost and expense. Developer agrees that it will not contact or meet with staff of SHPO or the NYS Department of Environmental Conservation in connection with such SHPO and SEQR approvals without prior consultation with and approval of BBP.

(c) During the term of this Conditional Designation, and no later than [XXX], Developer shall have access to the Property, pursuant to a license agreement, a copy of which is annexed hereto as Exhibit B to perform such tests, due diligence and preconstruction activities (*i.e.*, soil borings, test pits, masonry testing, mortar sampling, load testing, etc.) as is reasonably necessary for the Project.

(d) The Developer, in recognition of the environmental sensitivity of the Property, shall utilize low impact development techniques and green building technologies when feasible as well as the highest standards of site design and construction.

- 7. Governing Documents:** The Project must be in full compliance with the MGPP, the Master Lease, the Ground Lease, and Letter of Resolution, all of which are defined in the RFP and have been made available to Developer. Developer represents that it is fully familiar with all such governing documents, and has determined that it is capable of accomplishing the Project in accordance with the terms, conditions and requirements contained therein.
- 8. Rights:** It is expressly agreed that this Conditional Designation does not create or give rise to any contractual or other legally enforceable rights, obligations or liabilities of any kind on the part of any party, other than those express obligations set forth herein. This letter does not in any manner obligate nor shall it be construed to obligate the parties to enter into the Lease or any other agreement concerning the Project and/or the Property. This letter designates Developer as the exclusive party to whom BBP will lease the Property during the Term. Anything to the contrary herein notwithstanding, this letter does not in any manner obligate nor shall it be construed to obligate BBP or Developer to enter into any contract or lease with respect to the Property. Therefore, it is further agreed that this Conditional Designation may be terminated for any reason at any time by Developer or BBP upon written notice to the other at (x) the address of Developer set forth above or (y) the address of BBP on its letterhead on page 1 of this letter.

- 9. No Assignment:** This Conditional Designation may not be assigned to any person or entity without the prior written consent of BBP, which consent may be granted or withheld by BBP in its sole and absolute discretion.
- 10. Exclusivity:** During the Term, BBP will not offer the Property to other entities; nor shall Developer attempt to locate any other site for its long-term use.
- 11. No Brokers:** Developer represents that it has not dealt with any broker in connection with this Project. Developer agrees that it shall forever defend, indemnify and hold harmless BBP, the City of New York, Brooklyn Bridge Park Development Corporation, the State of New York and NYS Urban Development Corporation d/b/a Empire State Development Corporation (“ESDC”), and their respective officers, owners, directors, members, principals, agents, representatives and employees, from and against any and all liabilities, claims, demands, penalties, fines, settlements, damages, costs, expenses and judgments arising from any claims for a commission or other similar compensation brought by any broker or brokerage firm or other firm or individual relating to the transactions contemplated herein, arising in whole or in part from the actions or omissions of Developer or of any entity that is an affiliate of Developer or of the employees, officers, owners, directors, members, principals, representatives or agents of either party or any entity that is an affiliate thereof.
- 12. Confidentiality.** Developer has executed the attached Confidentiality Agreement (the “Confidentiality Agreement”), with respect to the transaction contemplated herein. Developer understands that BBP requires that Developer and its Representatives (as defined in the Confidentiality Agreement) comply with all of the terms, covenants, and provisions of the Confidentiality Agreement.
- 13. Expiration.** Developer must satisfy all of the conditions precedent contained in this Conditional Designation by XXX. Upon completion of all such conditions and the approval of BBP’s Board of Directors, the parties will execute the Lease. This Conditional Designation will terminate on the Expiration Date if Developer has failed to satisfy its obligations hereunder; provided however, that BBP, in its sole and absolute discretion, may extend the Term by one or more periods of a duration to be determined by BBP in its sole and absolute discretion, provided that any such extension must be in writing.

Please sign below and return your executed copy of this letter to David Lowin of BBP within one (1) business day of the date hereof. By signing below, Developer agrees to accept this Conditional Designation and agrees to all the terms and provisions herein

contained. If BBP does not receive a fully executed copy of this Conditional Designation Letter within one (1) business day of the date hereof, this Conditional Designation shall be null and void.

Very truly yours,

**BROOKLYN BRIDGE PARK
CORPORATION**

By: _____
Name: _____
Title: _____

ACCEPTED AND AGREED:

[DEVELOPER]

By: _____
Name: _____
Title: _____

Exhibit A: Development Parcel Sublease Agreement

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SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT (this "Lease"), made as of _____, 201[] (the "Commencement Date"), is entered into by and between **BROOKLYN BRIDGE PARK CORPORATION** d/b/a Brooklyn Bridge Park ("**BBP**" or "Landlord"), a not-for-profit corporation formed under the New York State Not-for-Profit Corporation Law having an office at 334 Furman Street, Brooklyn, New York 11201, and [], a [] corporation formed under the [] having an office at [], as tenant (" " or "Tenant").

RECITALS

WHEREAS, on May 2, 2002, the State of New York (the "State") and the City of New York (the "City") entered into a Memorandum of Understanding (the "MOU") to cooperate in the creation, development and operation of the Brooklyn Bridge Park Civic and Land Use Improvement Project (the "Park Project") on approximately 85 acres of land, and the piers appurtenant to the land, stretching along the East River for 1.3 miles from Atlantic Avenue to Jay Street north of the Manhattan Bridge.

WHEREAS, on July 26, 2005, New York State Urban Development Corporation d/b/a Empire State Development Corporation ("ESDC") and Brooklyn Bridge Park Development Corporation ("**BBPDC**") adopted that certain General Project Plan, which was affirmed as modified on January 18, 2006; on December 18, 2006, ESDC and BBPDC adopted that certain Modified General Project Plan; and on [June 15, 2010], ESDC and BBPDC further modified and adopted that certain Modified General Project Plan, a copy of which is annexed hereto as Exhibit A (the "MGPP") for the Project, all in accordance with the New York State Urban Development Corporation Act.

WHEREAS, the Park Project comprises the construction and development of (a) a park suitable for educational, cultural, recreational, community, municipal, public service or other civic purposes including outdoor public recreation, direct access to the waterfront, water recreation facilities, boardwalks, floating bridges, canals, passive recreational facilities, active recreational facilities, and spaces suitable for cultural, community, municipal, and public events, and facilities for water taxis (the "Park Improvements"), and (b) other residential, commercial and mixed use buildings on certain designated development parcels (all such buildings other than the Park Improvements, the "Development Building(s)").

WHEREAS, BBPDC is the owner of that certain real property and the building located thereon, identified and more specifically described on Schedule A attached hereto (the "Tobacco Warehouse").

WHEREAS, by Master Ground Lease Agreement made as of July 29, 2010 (the "Master Lease"), a copy of which is annexed hereto as Exhibit B. BBPDC leased to BBP certain real property located within the boundaries of the Park Project, including the Tobacco Warehouse.

WHEREAS, BBP has selected [Tenant] to undertake the redevelopment, rehabilitation, reuse, construction, operation and maintenance of the Tobacco Warehouse as an [arts, educational, cultural, community and/or civic center] (the "Project").

WHEREAS, Landlord desires to lease the Tobacco Warehouse, together with all improvements now or hereafter constructed thereon, all appurtenances and all the estate and rights of the Landlord thereto (collectively, the “**Premises**”) to Tenant, and Tenant desires to lease the Premises from Landlord, and Tenant will construct, operate, equip and maintain the Premises in accordance with the terms hereof.

WHEREAS, in order to effectuate the Development Project in accordance with the MGPP and the Master Lease, BBP has entered into a Development Parcel Ground Lease Agreement with BBPDC, as landlord dated as even date herewith and attached as Exhibit C hereto (the “**Ground Lease**”), and thereupon pursuant to the terms of the Master Lease, the Tobacco Warehouse was automatically severed and released from the Master Lease.

WHEREAS, in order to further effectuate the intent of the MGPP, this Lease shall be governed by and subordinate to the MGPP, the Master Lease and the Ground Lease.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and representations hereinafter contained, Landlord and Tenant hereby agree as follows:

ARTICLE I **DEFINITIONS**

1.1. **Definitions.** All capitalized terms used in this Lease shall have the meanings specified below:

“**Annual Plan**” shall have the meaning ascribed thereto in Section 5.3.

“**Approved Plans**” shall have the meaning ascribed thereto in Section 4.1(a).

“**BBPDC**” shall have the meaning ascribed thereto in the introductory paragraph.

“**Casualty**” shall have the meaning ascribed thereto in Section ____.

“**Certificate of Occupancy**” means a certificate of occupancy (temporary or permanent) issued by the Department of Buildings of the City allowing for the permitted uses in Article V hereof.

“**City**” shall have the meaning ascribed thereto in the Recitals.

“**Claims**” means all liabilities (statutory or otherwise), obligations, claims, demands, damages, penalties, causes of action, costs, expenses (including reasonable attorneys’ fees and expenses), losses and injuries in any manner relating to or arising with respect to the subject matter of any indemnity granted herein, including any enforcement of any such indemnity by the indemnified party; provided, however, “Claims” shall not include any of the foregoing to the extent arising directly from disputes between Landlord and Tenant under this Lease except to the extent that any dispute between Landlord and Tenant arises from enforcement of any such indemnity by the indemnified party.

“**City Register**” shall mean the Office of the Register of the City of New York, County of Kings.

“**Commencement Date**” shall have the meaning ascribed thereto in the introductory paragraph.

“**Condemnation Restoration**” shall have the meaning ascribed thereto in Section 9.2(a).

“**Date of Taking**” with respect to any Taking, means the earlier of (1) 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 Governmental Authority pursuant to the provisions of the applicable federal or New York State law or (2) the date on which title to the Premises or the aforesaid portion thereof shall have vested in any Governmental Authority pursuant to the provisions of the applicable federal or New York State law.

“**Default**” shall have the meaning ascribed thereto in Section 7.2(a).

“**Design Guidelines**” means the Design Guidelines for the Tobacco Warehouse dated as of the date hereof attached hereto as Exhibit C, as may hereafter be amended, modified or supplemented upon mutual agreement of the parties.

“**Development Building(s)**” shall have the meaning ascribed thereto in the Recitals.

“**Environmental Law**” or “**Environmental Statute**” means all federal, state and local laws (whether under common law, statute or otherwise), ordinances, orders, rules, regulations and guidance documents now or hereafter in force, as amended from time to time, in any way relating to or regulating human health or safety (pertaining to environmental conditions), industrial hygiene (pertaining to environmental conditions) or environmental conditions, protection of the environment, Hazardous Substances, pollution or contamination of the air, soil, surface water or groundwater, and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., the Clean Air Act, 42 U.S.C. Section 7401, et seq., the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Federal Water Pollution Control Act, 33 U.S.C. Section 1321, et seq., the Toxic Substances Control Act, 15 U.S.C. Section 2601, et seq., Safe Drinking Water Act, 42 U.S.C. §300(f) et seq.; Refuse Act, 33 U.S.C. §407 et seq.; The Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §1101 et seq.; the Occupational Safety and Health Act, 29 U.S.C. §651 et seq.; and the New York Environmental Conservation Law, §1-0101 et. seq.

“**ESDC**” shall have the meaning ascribed thereto in the Recitals.

“**Equipment**” means all fixtures incorporated in the Premises, including, without limitation (i) all machinery, dynamos, boilers, heating and lighting equipment, pumps, tanks, motors, air conditioning compressors, pipes, conduits, fittings, ventilating and communications apparatus, elevators, escalators, incinerators, garbage compactors, antennas, computers, sensors and (ii) laundry equipment and refrigerators, stoves, dishwashers and other major kitchen

appliances, except in either case to the extent any of the foregoing shall be owned by Subtenants, Unit Owners (hereinafter defined), concessionaires or contractors engaged in maintaining the same. “**Equipment**” shall not mean fixture or utilities owned by any utility company.

“**Event of Default**” shall have the meaning ascribed thereto in Section 6.1.

“**Expiration Date**” shall have the meaning ascribed thereto in Section 2.1.

“**Exterior Shell**” means, with respect to the Tobacco Warehouse, as applicable, collectively, but without duplications: (1) all portions of the exterior that are subject to the Design Guidelines, (2) the exterior structure of the Tobacco Warehouse, including the roof, exterior walls, including exterior storefronts, exterior doors, exterior windows, and any load-bearing member, including load-bearing columns and slabs of the building, and (3) the exterior site improvements including adjoining sidewalks and landscaping.

“**Final Plans**” has the meaning set forth in the Design Guidelines.

“**Full Insurable Value**” shall mean actual replacement cost of the improvements and betterments to the Premises (exclusive of the cost of non-insurable portions thereof, such as excavation, foundations and footings).

“**Governmental Authority**” means the United States of America, the State of New York, the City, and/or any political subdivision of any thereof, and/or any agency, department, commission, board or instrumentality of any thereof, now existing or hereafter created, having jurisdiction over the Premises or any portion thereof.

“**Ground Lease**” shall have the meaning ascribed thereto in the Recitals.

“**Hazardous Materials**” shall mean any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future Environmental Laws of the State of New York, the United States of American or under any other Legal Requirements, or that may have a negative impact on human health or the environment, including, but not limited to, petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, mold, radioactive materials, flammables and explosives.

“**Improvements**” means (A) the existing improvements and (B) any buildings and structures and any building machinery, equipment and fixtures (including Equipment) affixed to and forming a part of the building and structures, which may be erected or located wholly or partially on the land during the term of this Lease by or on behalf of Tenant, including the Project, but excluding any personal property owned or leased by Tenant.

“**Insurance Requirements**” means all the terms and conditions of all insurance policies covering, related to or applicable to the Premises, all requirements of the issuers of such policies and all rules, regulations, orders and other requirements or standards issued, promulgated or recommended by the National or Regional Board of Fire Underwriters, the National or Regional Fire Protective Association or any other national or regional body exercising similar functions

whose requirements or standards must be complied with in order to obtain any governmental approval or insurance policy required hereunder, and applicable to or affecting the Premises or the use and occupancy thereof.

“Landlord” shall have the meaning ascribed thereto in the introductory paragraph.

“Lease” means this Development Parcel Sublease Agreement and all amendments, restatements, modifications and supplements thereof.

“Lease Year” shall mean the twelve-month period beginning on the “Commencement Date” and each succeeding twelve-month period or portion thereof during the Term.

“Legal Requirements” has the meaning set forth in Section 15.01 hereof.

“Lending Institution” means (A) a savings bank, savings and loan association, commercial bank or trust company (whether acting individually or in a fiduciary capacity) or a control affiliate of the foregoing, (B) an insurance company, a mutual fund or other financial institution which invest in bank loans, (C) a real estate investment trust, a trustee or insurer of collateralized mortgage obligations, a loan conduit, or other similar investment entity which is listed on the New York, American Stock Exchange or other similar investment entity which is respective successors), (D) any fund (other than a mutual fund) which invests in bank loans and whose assets exceed \$100,000,000 (Adjusted for Inflation), (E) a federal, state, municipal or secular employee’s welfare, benefit, pension or retirement fund, a religious, educational or eleemosynary institution, any Governmental Authority or entity insured by a Governmental Authority, a credit union, trust or endowment, (F) any combination of the foregoing entities (G) any Person approved by Landlord, such approval not to be unreasonably withheld; provided that each of the above entities shall qualify as a Lending Institution within the provisions of this definition only if it (1) shall be subject to the jurisdiction of the courts of the State of New York, (2) shall be subject to the supervision of the Comptroller of the Currency of the United States, the federal Securities and Exchange Commission, the Insurance Department or the Banking Department or the Comptroller of the State of New York, the Board of Regents of the University of the State of New York, or the Comptroller of the City or any federal, state or municipal agency or public benefit corporation or public authority advancing or assuring mortgage loans or making payments which, in any manner, assist in the financing, development, operation and maintenance of improvements or in the case of a commercial bank, organized under the laws of any other country which is member of the Organization for Economic Cooperation and Development (the “**OECD**”), or a political subdivision of any such country provided that such bank is acting through a branch or agency located in the country in which it is organized or another country in which it is organized or another country which is also a member of the OECD, (3) shall have a combined capital and surplus (or in the case of an insurance company, mutual fund or other financial institution, has a net worth) of not less than One Hundred Million Dollars (\$100,000,000) (Adjusted for Inflation) provided however, in the case of a Person meeting the requirement of clause (B) such Person shall have a net worth of not less than Five Hundred Million Dollars (\$500,000,000) (Adjusted for Inflation) and in the case of any fund (other than a mutual fund), the loan shall be administered by a Qualified Agent (as such amounts shall be adjusted for Inflation on an annual basis from the Commencement Date) at the time of

the initial determination of its status as a Lending Institution, and (4) is not a Related Entity of Tenant, and (5) is not a Prohibited Person.

“**MGPP**” shall have the meaning ascribed thereto in the Recitals.

“**Mortgage**” means any mortgage which constitutes a lien on Tenant’s interest in this Lease and the leasehold estate created hereby.

“**MOU**” shall have the meaning ascribed thereto in the Recitals.

“**Park**” shall mean the Brooklyn Bridge Park as described in the MGPP.

“**Park Improvements**” shall have the meaning ascribed thereto in the Recitals.

“**Park Project**” shall have the meaning ascribed thereto in the Recitals.

“**Permitted Encumbrances**” shall mean those encumbrances listed on Exhibit D.

“**Person**” shall mean any individual, partnership, association, corporation, limited liability company or other entity.

“**PILOTS**” shall mean any “payments in-lieu-of taxes,” “payments in-lieu of sales tax” and/or “payments in-lieu of mortgage recording tax” payable (or which may become payable in the future) with respect to all or any portion of the Premises, the Development Project, the Improvement(s) to be constructed thereon, or with respect to any current or future activities or operations therein or thereon.

“**Premises**” shall have the meaning ascribed thereto in the Recitals.

“**Principal**” shall mean, with respect to any Person, (A) any director or the president, any vice president, the treasurer, or the secretary thereof if such Person is a corporation, (B) any general partner of a partnership or managing member of a limited liability company, or (C) any shareholder, limited partner, member or other Person having a direct or indirect economic interest in such Person, whether beneficially or of record, in excess of ten percent (10%) of all of the issued and outstanding shares, partnership interests, limited liability company interests or other ownership interests of such Person. In calculating the percentage interest of any shareholder, partner, member or other beneficially interested Person referred to in the prior sentence, the interest in the equity of any Affiliate of such shareholder, partner, member or beneficially interested Person shall be attributed to such shareholder, partner, member or beneficially interested Person.

“**Project**” shall have the meaning ascribed thereto in the Recitals.

“**Recognized Mortgage**” means a Mortgage (A) that is held by a Lending Institution, (B) complies with the terms of this Lease, (C) the proceeds of which are applied exclusively to the design, development, acquisition, construction and/or equipping of the Project and related Improvement(s), or, following completion thereof, to the reconstruction of the Improvement(s) built on the Premises or the construction of new Improvement(s) on the Premises in accordance

with the MGPP after a Casualty or a Partial Taking, or to any take-out of a loan the proceeds of which were applied exclusively to any such purposes, and (D) a copy of which has been delivered to Landlord, together with a certification by the Tenant and the mortgagee confirming that the copy is a true and complete copy of such Mortgage and giving the name and address of the mortgagee thereunder.

“**Recognized Mortgagee**” means the holder of a Recognized Mortgage.

“**Rent**” shall have the meaning ascribed thereto in Section 3.5.

“**Restoration Proceeds**” shall have the meaning ascribed thereto in Section 8.3.

“**Special Events**” shall have the meaning ascribed thereto in Section 11.4.

“**Substantial Completion**” means substantial completion of all construction work on the Project, including the exterior of the Tobacco Warehouse and delivery to Landlord of a temporary or permanent Certificate of Occupancy for the Project for the uses permitted in Article V hereof.

“**Substantial Taking**” shall mean any Taking of all or substantially all of the Premises.

“**Taking**” shall mean a taking 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 Landlord, Tenant and those authorized to exercise such right).

“**Taxes**” means the real property taxes assessed and levied against the Premises or any part thereof pursuant to the provision of Title 11, Chapter 2 of the Administration Code of The City of New York, as the same may now or hereafter be amended, or any statute or ordinance in lieu thereof in whole or in part and which either are payable, or would otherwise be payable if the Premises or the owner thereof were not exempt therefrom after taking into account the applicable reduction and/or abatement benefits of the J-51 and ICIP programs and all other real property tax reductions, abatements, and other similar real property tax programs for which the Premises would qualify.

“**Tax Year**” shall mean each July 1 – June 30.

“**Temporary Taking**” shall mean if the temporary use of the whole or any part of the Premises shall be taken at any time during the Term 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.

“**Term**” shall have the meaning ascribed thereto in Section 2.1.

“**Unavoidable Delays**” shall mean delays due to (i) weather conditions, fire, casualty, any strike, lock-out or other labor trouble, governmental preemption of priorities or other controls in connection with a national or other public emergency or shortages of fuel, supplies or labor resulting therefrom, community board and other governmental hearings and processes in the construction of a building, injunctions, litigation (including third-party injunctions and

litigation), (ii) provided that Tenant has diligently prosecuted obtaining same, issuing governmental permits, approvals and inspection reports, (iii) acts of God, and (iv) any other cause, whether similar or dissimilar, beyond Landlord's or Tenant's reasonable control, as the case may be.

1.2. **Rules of Construction.** The following rules of construction shall be applicable for all purposes of this Lease and all agreements supplemental hereto, unless expressly provided otherwise or the context otherwise requires:

(a) The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms shall refer to this Lease, and "hereafter" shall mean after, and "heretofore" shall mean before the Commencement Date of this Lease.

(b) Words of the masculine, feminine or neuter gender shall mean and include the correlative words of the other genders and words importing the singular number shall mean and include the plural number and vice versa.

(c) The terms "include", "including" and similar terms shall be construed as if followed by the phrase "without being limited to".

(d) Whenever a party hereto "shall" perform (or cause to be performed) any obligations hereunder, such performance shall be at such party's sole cost and expense, unless otherwise expressly provided.

(e) Except as otherwise expressly provided herein, any reference in this Ground Lease to any document, instrument, certificate or agreement shall mean such document, instrument, certificate or agreement as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

(f) This Lease shall be governed by and construed in accordance with the laws of the State of New York.

1.3. **Captions/Table of Contents.** The captions and the table of contents of this Lease are for convenience and reference only and in no way define, limit or describe the scope or intent of this Lease.

ARTICLE II **DEMISE OF PREMISES AND TERM**

2.1. **Demise of Premises.** In consideration of the mutual covenants, agreements, terms and conditions herein contained, Landlord does hereby lease and demise to Tenant, and Tenant hereby hires and takes from Landlord, the Premises, in its "as is" condition and on a net basis, for the Term herein provided and for the uses described in Sections 4.1 and 4.3 hereof.

2.2. **Delivery of Premises "As Is".** Simultaneously with the execution and delivery of this Lease, Landlord shall deliver possession of the Premises to Tenant in its "as is" condition. Tenant specifically acknowledges and agrees that Landlord has not made any representation or

warranty whatsoever as to the condition of Tobacco Warehouse or its suitability for any particular purpose.

2.3. **Term**. The term of this Lease (the “Term”) shall commence on the Commencement Date and end upon the sooner to occur of (a) the last day of the calendar month in which the thirtieth (30th) anniversary of the Commencement Date occurs, and (b) such earlier date upon which this Lease may be terminated as hereafter provided (the “Expiration Date”).

2.4. **Right to Renew**. If this Lease is in full force and effect, and Tenant is not in default of its obligations hereunder, Tenant shall have two (2) options to extend the Term of this Lease (each, an “**Extended Term**”), each for a term of ten (10) years. Any Extended Term shall be on the same terms and conditions of this Lease, except there shall be no right to any Extended Term other than up to the two (2) consecutive Extended Terms as set forth in this Section 2.4. Tenant may exercise its option to extend the Term by delivering a notice of extension to Landlord at least sixty (60) days prior to the Expiration Date. An Extended Term shall commence upon the expiration of the initial Term or the immediately preceding Extended Term, as the case may be.

ARTICLE III **RENT AND ADDITIONAL RENT**

3.1. **Base Rent**. The rental payable by Tenant to Landlord hereunder shall be the sum of [XXXXXX dollars] per annum.

3.2. **Utilities**. Tenant shall be responsible for all charges for all utilities and the installation of all equipment necessary to provide utilities to the Premises. 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 or repair to the Premises. Tenant shall contract directly with the utility providers for such services.

3.3. **Taxes**. Pursuant to BBPDC’s statutory exemption from the payment of Taxes, the Premises are exempt from Taxes. If requested by Tenant, Landlord shall cooperate with Tenant to arrange for any necessary documentation to be entered into with the City or any applicable City agency and Tenant, or take any other action reasonably necessary, in order to ensure that the Premises remain exempt from Taxes for the duration of the Term.

[Payments in Lieu of Taxes]

3.5. **“Rent” Generally**. All amounts required to be paid by Tenant pursuant to this Lease shall constitute “**Rent**” under this Lease. Rent shall be absolutely net to Landlord without any abatement, deduction, counterclaim, set-off or offset whatsoever, except as specifically set forth in this Lease. Tenant shall pay all costs, expenses and charges of every kind and nature relating to the Premises which may arise or become due or payable during the Term.

ARTICLE IV **USE OF PREMISES**

4.1. **Use of Premises**. The Premises shall be used, maintained, occupied and operated in accordance with the requirements set forth herein and in the Design Guidelines annexed hereto

as Exhibit E. Tenant shall continuously use the Premises for the purposes of offering [public art/community facility], and for such other uses as are ancillary to the foregoing or otherwise set forth in Tenant's charter and allowable pursuant to Section 501(c)(3) of the Internal Revenue Code.

4.2. **No Other Use**. The Premises shall not be used for any purpose other than those purposes set forth in Paragraph 4.1.

4.3. **Artistic and Programmatic Control**. Subject to the terms and conditions of this Lease and the BBP's right to oversee Tenant's performance of its obligations hereunder, Tenant shall have artistic, programmatic and administrative control over the events and activities conducted within and on the Premises, so long as such events and activities shall be in conformance with the purposes set forth in this Lease and are held in accordance with all public safety and security directives issued by Governmental Authorities and the rules and regulations of the Park.

4.4. **Prohibited Use**. Tenant shall not use or occupy the Premises, or permit or suffer the Premises or any part thereof to be used or occupied for (1) any unlawful, illegal, or hazardous business, (2) any unlawful, unlicensed or unregulated transmission or broadcast, (3) use or purpose that in any way violates any requirement of this Lease, or (4) in such manner as may make void or voidable any insurance then in force with respect to the Premises. Immediately, upon the discovery of any of the foregoing, Tenant shall take all necessary steps, legal and equitable, to compel the discontinuance thereof. Tenant shall not keep, or permit to be kept, on the Premises any article, object, item, substance or thing that may cause, in the BBPC's sole discretion, damage to the Premises or any part thereof, or that may constitute a public or private nuisance.

4.5. **Rules and Regulations**. Tenant shall operate and use the Premises in compliance with the MGPP, the Master Lease, the Ground Lease, this Lease and all legal Requirements then in effect.

ARTICLE V IMPROVEMENTS BY TENANT

5.1. **Construction and Development**. Tenant hereby covenants and agrees that it will design, construct, maintain, use and equip the Premises in accordance with the terms hereof, and the MGPP, the Master Lease and the Ground Lease, and will observe and perform all of the other terms, provisions, covenants and conditions contained herein.

(a) Within [x] days from the Commencement Date, Tenant shall commence rehabilitation and redevelopment of the Tobacco Warehouse in accordance with the plans and specifications dated [], which have been approved by Landlord ("Approved Plans"). Tenant, within [six (6)] months of the Commencement Date shall have completed such redevelopment so as to allow Tenant to obtain a Certificate of Occupancy for the use of the Tobacco Warehouse as a [cultural/community facility.]

5.2. **Approval of Tenant Improvements.**

(a) **Prerequisites.** Tenant may construct Capital Improvements at the Premises, provided that Tenant shall submit each of the following to Landlord:

- (i) Plans and Specifications;
- (ii) A schedule for the construction of such Capital Improvements;
- (iii) Assurance of the ability to complete the proposed Capital Improvement, such as available cash, a letter of credit, loan commitment, or surety bond or other guaranty of completion by a reputable third party willing and financially able to satisfy such guaranty; and
- (iv) Any other information related to such construction that Landlord may reasonably request.

(b) **Landlord Review.** Each proposed Capital Improvement shall be subject to the prior written approval of Landlord, which shall not be unreasonably withheld or delayed.

(c) **Submission and Review of Plans and Specifications.** Prior to making any Capital Improvement, Tenant shall submit preliminary Plans and Specifications to Landlord for its review and approval. If Landlord reasonably determines that the Plans and Specifications are inconsistent or noncompliant with the requirements, or has reasonable objections thereto, Landlord shall so notify Tenant, specifying the objection. Tenant shall revise them to so conform and shall resubmit the Plans and Specifications to Landlord for review. Tenant shall use commercially reasonable efforts to cause each resubmission by Tenant to be made within (30) Business Days of the date of Landlord's notice to Tenant stating that the Plans and Specifications do not comply with Requirements or the terms and conditions of this Lease Agreement.

(i) "Plans and Specifications" means the progress or completed final drawings and plans and specifications, as the case may be, prepared by an architect approved by Landlord, and as such drawing Plans and Specifications may be modified from time to time in accordance with the provisions of this Article 5.

(d) **Modifications of Approved Plans and Specifications.** If Tenant desires to materially modify the Plans and Specifications after they have been approved by Landlord, Tenant shall submit the proposed modification to Landlord. Landlord shall review the proposed changes to determine whether they materially conform to Requirements, or if there are any objectionable changes. If Landlord reasonably determines that they are not objectionable, Landlord shall so notify Tenant. If Landlord reasonably determines that the Plans and Specifications, as so revised do not materially comply with Requirements, so if there are any reasonable objectionable changes, Landlord shall so notify Tenant, specifying in what respects they do not so conform. Tenant shall either (i) withdraw the proposed modifications, in which case the Construction Work shall proceed on the basis of the Plans and Specifications previously approved by Landlord, or (ii) revise the proposed modifications to so comply and resubmit them to Landlord for review. Each review by Landlord shall be carried out within thirty (30) Business Days of the date of submission of the proposed modifications to the Plans and Specifications. If

Landlord has not notified Tenant of its determination within the thirty (30) Business Day period, Landlord shall be deemed to have waived any objection to the Plans and Specifications submitted. Tenant shall use commercially reasonable efforts to cause each resubmission by Tenant to be made within thirty (30) Business Days of the date of Landlord's notice to Tenant they do not so conform.

(e) Compliance Requirements, etc. The Plans and Specifications shall comply with the Requirements, including any requirements imposed by the State Historical Preservation Office ("SHPO"). Prior to commencing construction work, Tenant shall submit to Landlord copies of the required building permits, and if applicable, approvals from SHPO and/or Landlord's approval of the Plans and Specifications shall not be, nor shall be construed as being, or relied upon as, a determination that the Plans and Specifications comply with the Requirements.

(f) Commencement and Completion of All Construction Work. All Construction Work, once commenced, shall be (i) completed promptly (subject to Unavoidable Delay), (ii) in a good and workmanlike manner, (iii) if applicable, substantially in accordance with the approved and/or modified Plans and Specifications therefor (to the extent approval may be required), and (iv) in accordance with all applicable Requirements.

(g) Supervision of Architect. All Construction Work involving structural or building systems work or work having a total cost in excess of five hundred thousand dollars (\$500,000) (subject to CPI Adjustment) performed by Tenant shall be carried out under the supervision of the architect.

5.3. Conditions Precedent to Tenant's Commencement of All Construction Work.

(a) Permits and Insurance. Tenant shall not commence any Construction Work unless and until (i) Tenant shall have obtained and delivered to Landlord copies of all necessary permits, consents, certificates and approvals of all Governmental Authorities with regard to the particular phase of the work to be performed, certified by the Architect and (ii) Tenant shall have delivered to Landlord certified copies, certificates or memoranda of the policies of insurance required to be carried pursuant to the provision of Article IX.

(b) Cooperation of Landlord in Obtaining Permits. Landlord shall cooperate with Tenant in obtaining the permit, consents, certificates and approvals required by Section 6.2, and shall sign any application made by Tenant required to obtain such permits, consents, certificates and approvals. Tenant shall reimburse Landlord within thirty (30) days after Landlord's demand for any reasonable out-of-pocket cost or expense paid by Landlord in cooperating with Tenant in obtaining the permits, certificates and approvals required by Section 10.02(a).

(c) Approval Plans and Specification. Tenant shall not commence any phase of Construction Work unless and until Landlord shall, if required hereunder, have approved or be deemed to have approved the proposed Plans and Specifications for such phase of Construction Work in the manner provided herein, in each case as provided in Section 6.1.

(d) Substantial Completion of Construction Work. Upon substantial completion of any Construction Work which required Landlord's consent and supervision of the Architect,

Tenant shall furnish Landlord with (i) a certification of the Architect to Landlord that it has examined the applicable Plans and Specifications and that, in its best professional judgment, after diligent inquiry, to its best knowledge and belief, the Construction Work has been completed substantially in accordance with the Plans and Specifications applicable thereto and that, as constructed, the Capital Improvements comply with the Building Code of New York City and other Requirements, (ii) if required by Requirements and available at the stage of completion of construction, a copy or copies of a new or amended temporary or permanent certificate(s) of occupancy for the Improvements issued by the New York City Department of Buildings, and (iii) two (2) complete sets of the as-built drawings and specifications. Landlord shall have an unrestricted non-exclusive license to retain such “as built” drawings and specifications for any purpose related to the Park without paying any additional cost or compensation therefore, which license shall be subject to the rights of the parties preparing such drawings and specifications under copyright and other applicable laws.

(e) Title to Materials and Equipment. Title to all materials and Equipment incorporated or to be incorporated in the Premises, shall vest in Landlord. Tenant shall execute, deliver and record or file all instruments necessary or appropriate to so vest title to Landlord and shall take all action necessary or appropriate to protect such title against claims of any third persons. Materials incorporated or to be incorporated in the Premises, constitute the property of Landlord, and upon Substantial Completion or the incorporation of such materials and/or Equipment, title thereto shall continue in Landlord. However, (a) neither Owner nor Landlord shall be liable in any manner for payment or for damage or risk of loss or otherwise to any contractor, subcontractor, laborer or supplier of such materials and/or Equipment in connection with the purchase or installation of any such materials, and (b) neither Owner nor Landlord shall have any obligation to pay any compensation to Tenant by reason of its acquisition of title to any such materials and/or Equipment. Title to and tax ownership of all Improvements shall be and vest in Landlord.

(f) Names of Contractors, Materialmen, Etc. Tenant shall furnish to Landlord, a list of all Contractors performing any labor, or supplying any materials, in connection with any Construction Work. Such list shall state the name and address of each Contractor and in what capacity each Contractor is performing work at the Premises. All persons employed by Tenant with respect to Construction Work shall be paid, without subsequent deduction or debate unless expressly authorized by law not less than the minimum hourly rate required by law.

5.4. Development Risks. Landlord shall have no obligation whatsoever to make or pay for any Improvements, capital repairs, replacements or any other improvements to the Premises. All Improvements shall be undertaken by or on behalf of Tenant. Landlord shall have no design, development or construction risks associated with any Improvement.

5.5. Conditional Assignment. Upon the occurrence and during the continuance of any Event of Default for failure to complete any Improvement, irrespective of whether Landlord has exercised its right to terminate this Lease, Landlord shall have the right (but not the obligation), in Landlord’s sole discretion, to assume any and all professional design contracts, any construction agreements and agreements (such as, without limitation, owner’s representative, expeditors and consultants) made by or on behalf of Tenant relating to the Improvement and to take over and use all or any part or parts of the labor, materials, supplies and equipment

contracted for, by, or on behalf of Tenant, whether or not previously incorporated into the Premises. For this purpose, Tenant hereby collaterally assigns to Landlord all professional design contracts, construction agreements and other agreements relating to Improvements and the work product of all professional design contracts, whether presently existing or hereafter created, and agrees, irrespective of whether Landlord has exercised its right to terminate this Lease, to execute any additional documents that may be reasonably requested by Landlord to evidence or effectuate the foregoing.

ARTICLE VI

OPERATION AND MAINTENANCE

6.1. **Maintenance of the Premises.** From the Commencement Date and through the Term of this Lease, Tenant, at its sole cost and expense, shall take good care of the Premises and the property contained therein, and shall (1) keep the Premises in good, clean and orderly condition, (2) make all repairs, structural and non-structural, that are required to keep the Premises in good condition, and (3) take such measures as are necessary to adequately secure the Premises.

6.2. **Tenant's Maintenance and Repair Obligations.**

(a) Tenant shall be solely responsible for all maintenance and repair of the Premises, including all structures, areas, utility systems, sewer systems, equipment, and fixtures existing at the Premises. Tenant shall perform all maintenance and repair that is reasonably necessary to cause the Premises to be in compliance with all Requirements, to keep and maintain the Premises in good working order and condition.

(b) Tenant shall be responsible for all costs and expenses incurred for or in connection with its maintenance and repair obligations hereunder, and for providing all personnel, supplies, materials, parts, labor and equipment therefore.

6.3. **No Landlord Obligations.** Landlord shall not be responsible for any maintenance or repair of the Premises or any structures, areas, utilities, equipment, or fixtures existing thereat at any time during the Term.

6.4. **Inspection Relating to Maintenance and Repair and the Condition of the Premises.**

(a) Tenant shall give Landlord prompt notice of any fire or other casualty event causing material loss, material damage or dangerous or defective condition at the Premises.

(b) Landlord shall have the right to inspect the Premises and any and all maintenance and repair work performed by Tenant at the Premises on reasonable notice and at reasonable times for the purpose of ensuring that Tenant is complying with its maintenance and repair obligations under this Lease. However, no such inspection or any failure to do so by Landlord shall relieve Tenant of any of its obligations hereunder, or impose upon Landlord any obligations or responsibilities with respect to Tenant's maintenance and repair obligations. While on the Premises, Landlord shall use commercially reasonable efforts to minimize interference with Tenant's business operations.

(c) Any conditions presenting a threat to public health or safety, or any legal nuisance, or which are inconsistent with the good and proper operation of the Premises that are identified by Landlord and of which Landlord provides notice to Tenant, shall be promptly remediated by Tenant. Landlord's failure to identify and notify Tenant of such a condition, shall not relieve Tenant of its obligation to remedy any conditions that present a threat to public health or safety, or a legal nuisance, or violate Regulations, or which are inconsistent with a good and proper operation of the Premises.

6.5. **Failure to Make Repairs.** If Tenant shall fail to maintain the Premises, and such failure continues for ten (10) days after written notice from the Landlord, or if after commencing such repairs, Tenant shall fail to make and complete them with reasonable diligence, then, Landlord may at the its option perform the necessary repairs at Tenant's expense, and charge such costs to Tenant as Rent.

6.6. **Expenses of Operation of the Premises.** Tenant shall be solely responsible for all costs incurred for, in connection with, or associated with the operation and maintenance of the Premises.

ARTICLE VII CAPITAL RESERVE FUND

7.1. **Annual Plan.** On or before the end of each calendar year, Tenant shall submit to Landlord, Tenant's annual plan for maintenance, repair, public programming and risk management for the coming year ("Annual Plan"). The Annual Plan shall include:

(a) a detailed report of the actual maintenance and repairs undertaken during the year; and with respect to the coming year: (i) all planned, necessary and anticipated repairs and preventive maintenance on the Premises and (ii) an outline of programming and Special Events that involve a concentration of visitors on the Premises including the frequency of such events and the security and risk management plans to be undertaken by Tenant to safeguard Tenant's visitors, personnel, contents, and Premises, and emergency response planning for security breaches and emergencies. Tenant shall provide supplements to Landlord regarding programming and Special Events that are added following the submission of the Annual Plan no later than 30 days before such program or Special Event; and

(b) an itemized budget, including a description of, and schedule for, the activities which will constitute each item of such maintenance and repairs, and the source of funding for each maintenance and repair item.

7.2. **Capital Reserve Fund.** On or before the date of issuance of a certificate of occupancy or temporary certificate of occupancy for the Tobacco Warehouse, which shall occur within six months of the Commencement Date as provided in Section 5.2 and (unless Tenant is already making such deposits in conformance with the requirements of a Recognized Mortgage), and annually thereafter, on the first day of each Lease Year, Tenant shall deposit into an interest-bearing segregated account (the "Capital Reserve Fund") the amounts set forth in Schedule []. The amount of the annual deposit shall be subject to adjustment as provided in Section 7.6 below.

7.3. **Use of Fund.** The Capital Reserve Fund shall be maintained by Tenant and used to pay for the cost of the repair or replacement of any structural components of the building or Equipment and for no other purpose. In no event shall the Capital Reserve Fund be used to pay for such replacements (i) to the extent that the Tenant receives insurance proceeds for the same, either as a named insured or as a conditional insured under a policy covering the Equipment, among other things, or (ii) expenditures in excess of \$25,000, unless specifically approved in writing by Landlord. Tenant shall be responsible for the costs of all capital repairs to the Premises, regardless of whether there are sufficient funds in the Capital Reserve Fund to pay for such repairs.

7.4. **Reporting.** Tenant may make withdrawals from the Capital Reserve Fund only in accordance with the express provisions of this Lease, and annually shall submit to Landlord within 90 days of the commencement of each Lease Year a report setting forth the amounts and dates of every withdrawal and the payee and purpose of the expenditure for which a particular withdrawal was made.

7.5. **Interest.** Interest earned on amounts maintained in the Capital Reserve Fund shall be retained in the Capital Reserve Fund.

7.6. **Adjustment to Annual Deposits.** At any time after the fifth anniversary of the commencement of the first Lease Year following Substantial Completion, and every fifth year thereafter, Landlord, may upon sixty (60) days' notice to Tenant, require Tenant to increase or decrease the amount required under Section 5.1 to be deposited in the Capital Reserve Fund, after taking into account the then-current Replacement Value, the then-current balance in the Capital Reserve Fund, the projected capital needs of the improvements, Tenant's performance of its maintenance obligations under the Lease and feasibility of Tenant's financial capacity.

7.7. **Termination.** At the Expiration Date, Tenant shall be entitled to any funds or interest accruals remaining in the Capital Reserve Fund, except that if this Lease is terminated by Landlord upon an Event of Default, any funds or interest accruals remaining in the Capital Reserve Fund shall be disbursed to Landlord.

ARTICLE VIII **INSURANCE**

8.1. **Insurance.**

(a) Tenant shall provide Landlord with certificates of insurance evidencing compliance with all insurance requirements contained in this Section 9.1. Such certificates of insurance shall be in form and substance acceptable to Landlord. Acceptance and/or approval of a certificate of insurance by Landlord does not and shall not be construed to relieve Tenant of any obligations, responsibilities or liabilities under this Lease.

(b) All insurance required by this Lease shall be obtained at the sole cost and expense of Tenant; shall be maintained with insurance carriers licensed to do business in New York State, and acceptable to Landlord; shall be primary and non-contributing to any insurance maintained by Landlord; shall be endorsed to provide that written notice be given to Landlord, at least (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice

evidenced by return receipt of United States Certified Mail, shall be sent, together with a cover letter referencing this Lease, to Landlord at the addresses set forth in Section 12 below; and shall name Landlord, BBPDC, ESDC, the City and their respective officers, agents, employees, successors and assigns as additional insureds thereunder.

(c) Each insurance carrier must be rated at least “A-” Class “VII” in the most recently published Best’s Insurance Report. If, during the term of a policy, a carrier’s rating falls below “A-” Class “VII”, the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to Landlord and rated at least “A-” Class “VII” in the most recently published Best’s Insurance Report.

(d) Tenant shall cause all insurance to be in full force and effect as of the Commencement Date and to remain in full force and effect throughout the term of this Lease and as further required by this Lease. Tenant shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect. Not less than thirty (30) days prior to the expiration date or renewal date of any policy, Tenant shall supply Landlord with updated replacement certificates of insurance, and mandatory endorsements.

(e) Tenant, throughout the term of this Lease, or as otherwise required by this Lease, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by the terms of this Lease, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

(i) Commercial General Liability Insurance with a limit of not less than \$2,000,000 per each occurrence. Such liability shall be written on the Insurance Service Office’s (“ISO”) occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal and advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage. If such insurance contains an aggregate limit, it shall apply separately to the Premises;

(ii) Workers Compensation, Employers Liability, and Disability Benefits as required by New York State;

(iii) Comprehensive Business Automobile Liability Insurance with a limit of not less than \$1,000,000 each occurrence. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles;

(iv) Commercial Property Insurance on the improvements and betterments to the Premises covering at a minimum, the perils insured under the ISO Special Causes of Loss Form (CP 10 30), or a substitute form providing equivalent coverages, including debris removal, demolition and increased cost of construction that are caused by requirements regulating the construction or repair of damaged facilities, including an ordinance and law endorsement, in an

amount of not less than the Full Insurable Value of the improvements and betterments to the Premises;

(v) If any of the improvements to the Premises contain boilers or other heating or cooling mechanical equipment, then Tenant shall maintain Boiler and Machinery Insurance covering all of the boilers, fired or unfired pressure vessels, heating ventilating and air conditioning units and any other mechanical equipment which services the Premises and which may malfunction or cause damage to property or injury to persons, in an amount of not less than \$1,000,000. Tenant shall be responsible for ensuring that any such boilers or mechanical equipment are regularly inspected;

(vi) If any of the improvements to the Premises contain plate glass, then Tenant shall maintain Plate Glass Insurance on forms and in amounts acceptable to Landlord;

(vii) If Tenant uses, stores, handles, processes or disposes of Hazardous Materials, then Tenant shall maintain in full force and effect through the Term, Environmental Impairment Liability insurance with limits of not less than \$1,000,000 providing coverage for bodily injury, property damage or damage as a result of actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including loss, cost or expenses incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit, or proceedings against Landlord, arising from Tenant's use, storage, handling, processing or disposal of Hazardous Materials;

(viii) If Tenant sells, distributes, serves or furnishes alcoholic beverages, then Tenant shall maintain in full force and effect through the Term, Liquor Liability Insurance with limits of not less than \$1,000,000; and

(ix) During the performance of any construction work, restoration or alteration, Tenant shall maintain or cause to be maintained builder's risk completed value form covering the perils insured under the ISO special causes of loss form, including collapse, building materials, water damage, and transit and theft of building materials with deductible reasonably approved by the Landlord, in non-reporting form, covering the total value of work performed and equipment, supplies and materials at the location of the job as well as at any off-site storage location used with respect to the Project. The policy shall cover the cost of demolition and debris removal as may be legally necessary by the operation of any law, ordinance or regulation.

(x) during the performance of any construction work, Restoration, Condemnation Restoration or alteration, commercial general liability insurance, as required in Section 8.1(e) hereof, in an amount of not less than \$1,000,000 per occurrence and in the aggregate, which shall include coverage for independent contractors and completed operations;

(xi) flood insurance, if the Premises or any part thereof is located in an area identified by the Secretary of Housing and Urban Development, or any successor thereto, as an area having special flood hazards and in which flood insurance has been made available and to the maximum extent available under the national Flood Insurance Act of 1968, as amended;

(xii) Tenant shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurers right of subrogation against Landlord, or, if such waiver is unobtainable, (i) an express agreement that such policy shall not be invalidated if Tenant waives or has waived before the casualty, the right of recovery against Landlord, or (ii) other form of permission for the release of Landlord.

(f) The insurance required to be carried by Tenant pursuant to the provisions of this Section 8.1 is subject to modification by Landlord from time to time on notice to Tenant in respect of the required types and required amounts of insurance coverage for the purposes of conforming the same to the types of insurance and insured amounts which are reasonably and customarily obtained by net lessees of properties similar to the Premises located in New York City.

(g) Tenant shall require occupants, sublessee, concessionaire, permittee, licensee, contractor and subcontractor to carry insurance with the same limits and provisions as provided herein, or with lesser coverages and/or at lower limits as Tenant deems appropriate, without Landlord's consent.

8.2. Treatment of Proceeds.

(a) Payment. All insurance proceeds paid pursuant to any property insurance required to be carried pursuant to this Lease or carried in connection with this Lease, excluding only proceeds paid in respect of any loss of the personal property of Tenant, shall be paid to Tenant to be held for purposes of a Casualty Restoration. If and to the extent any such proceeds shall be received by Landlord, Landlord shall deposit same in an interest-bearing account and pay over such proceeds in accordance with the provisions of this Section 8.2 and [Article 13] of this Lease.

(b) Cooperation in Collection of Proceeds. Tenant and Landlord shall cooperate in connection with the collection of any insurance moneys that may be due in the event of loss, and Tenant and Landlord shall promptly execute and deliver such proofs of loss and other instruments which may be required of Tenant and Landlord, respectively, for the purpose of obtaining the recovery of any such insurance moneys.

8.3. Notice. Tenant shall comply with the provisions of all insurance policies required hereunder and shall give both the insurer and Landlord notice of any claim, accident and loss promptly upon its acquiring knowledge of the same.

ARTICLE IX **DAMAGE AND DESTRUCTION**

9.1. Notice to Landlord. Tenant shall promptly notify Landlord if the Improvements are damaged or destroyed in whole or in part by fire or other casualty.

9.2. Obligation to Restore. If all or any portion of the Premises or the Improvement(s) constructed thereon is damaged or destroyed by fire or other casualty, ordinary or extraordinary, foreseen or unforeseen, (each, a "Casualty") Tenant will restore the Premises

to the condition in which it existed immediately before such Casualty as nearly as possible (a **Casualty Restoration**”).

(a) Prior to commencement of a Casualty Restoration, plans and specifications shall be submitted to Landlord for its prior written approval, which approval shall not be unreasonably withheld, delayed or conditioned.

(b) In such event, Tenant shall (i) file all required documents and instruments with its insurers, and make such claims with its insurers as shall be necessary or advisable, and (ii) take such steps as shall be necessary or advisable to preserve any undamaged portion of the Premises and to insure that the portions of the Premises that are accessible to the public shall be safe and free from conditions hazardous to life and property

9.3. **Commencement of Casualty Restoration.** If Tenant is obligated to restore pursuant to Section 9.2 hereof, Tenant will commence the Casualty Restoration within sixty (60) days after adjustment of the insurance claim relating to the damages or destruction, subject to Unavoidable Delays, and thereafter will perform the Casualty Restoration as continuously and diligently as possible. Tenant’s failure to diligently perform such Casualty Restoration in accordance with the terms of this Lease shall be a default of Tenant hereunder.

(a) Tenant shall, whether or not such Casualty shall have been insured, and whether or not insurance proceeds, if any, shall be sufficient for the purpose of such Restoration, diligently and with continuity (subject to extensions for such periods as Tenant may be delayed as a result of Unavoidable Delays and subject to commercially reasonable standards) repair, alter, restore, replace and rebuild (collectively, **“Restore”**) the Exterior Shell of the Premises as nearly as possible to the condition, quality and class of the Exterior Shell of the Premises existing immediately prior to such occurrence (using materials, equipment and construction techniques which are common at the time of the damage or destruction), with such alterations as Tenant, with the consent of Landlord, to the extent required by, and in accordance with the standards of review set forth in the Design Guidelines, shall elect to make, provided that after Restoration, the Exterior Shell of the Premises is in substantial conformity with the Final Plans and in compliance with the Design Guidelines.

(b) Non-Conforming Restoration. If Tenant proposes a Restoration which does not conform to the condition, quality or class of the Exterior Shell of the Premises as it existed immediately prior to the damage or destruction or which affects a structural component or the Design Guidelines, Tenant shall give Landlord notice of any proposed nonconformity or the portion thereof affecting the Design Guidelines and Landlord shall review and approve or disapprove the proposed nonconformity or the portion thereof affecting the Design Guidelines in accordance with and subject to the standard of review and time periods applicable under the Design Guidelines.

(c) Restoration Estimate. Tenant shall, within ninety (90) days after the occurrence of damage or destruction to the Premises, deliver to Landlord a statement (the “Initial Restoration Estimate”) prepared by an Architect (subject to approval by Landlord if required by the Design Guidelines) or by an Approved Engineer selected by Tenant setting forth such Person’s estimate as to the time required to perform the Restoration and the estimated cost of the

Restoration. Landlord, at Tenant's expense, may, within twenty (20) business days of receipt of the Initial Restoration Estimate engage a registered architect or a licensed professional engineer to prepare its own Initial Restoration Estimate, and Tenant shall reimburse Landlord for such expense within ten (10) business days after demand therefor by Landlord.

(d) Landlord's Rights. Landlord in no event shall be obligated to Restore the Premises or any portion thereof or to pay any of the costs or expenses thereof. Subject to the rights of any Recognized Mortgagees, if Tenant shall fail or neglect to diligently Restore (subject to extensions for such periods as Tenant may be delayed as a result of Unavoidable Delays) the Exterior Shell of the Premises or the portion thereof so damaged or destroyed, or having so commenced such Restoration, shall fail to diligently and continuously complete the same in accordance with the terms of this Lease and any such failure shall continue for twenty (20) business days after written notice to Tenant and all Recognized Mortgagees specifying such failure in reasonable detail, Landlord may elect to Restore the Exterior Shell of the Premises by written notice to Tenant and all Recognized Mortgagees, in which event the Depository shall pay any Restoration Funds to Landlord, to the extent necessary to be applied by Landlord to the cost of the Restoration.

9.4. Application of Restoration Funds.

(a) All insurance proceeds (excluding "contents" insurance policies carried by Tenant separate and apart from the policies required under this Lease) with respect to any Casualty occurring during the Term (such insurance proceeds, together with any and all funds available to Tenant from any source, the "Restoration Funds") shall be held in trust in an interest-bearing account for application in accordance with the terms of this Article 9, and other applicable provisions of this Lease.

(b) If Tenant is required to perform a Casualty Restoration pursuant to Section 9.2, Tenant shall cause the Restoration Funds to be applied toward the cost of the Casualty Restoration, provided that any Restoration Funds, together with any interest earned thereon, remaining after the completion of a Casualty Restoration may be retained by Tenant for its own account.

9.5. Effect of Casualty on This Lease. This Lease shall neither terminate, be forfeited, nor be affected in any manner by reason of damage to, or total, substantial or partial destruction of, the Premises or Improvement(s) constructed thereon, or by reason of the untenability of the Premises or any part thereof, or for any reason or cause whatsoever. Landlord's and Tenant's obligations hereunder shall continue as though the Premises and/or Improvements constructed thereon had not been damaged or destroyed and shall continue without abatement, suspension, diminution or reduction.

9.6. Restoration Fund Deficiency. If the estimated cost of any Casualty Restoration exceeds the aggregate amount of the Restoration Funds available to pay for such Casualty Restoration, then Tenant shall have the obligation to furnish its own funds for the difference.

9.7. Waiver of Rights Under Statute. The existence of any present or future law or statute notwithstanding, Tenant waives all rights to quit or surrender the Premises or any part

thereof by reason of any casualty to the Premises or Improvements constructed thereon. It is the intention of Landlord and Tenant that the provisions of this Article VII are an “express agreement to the contrary” as provided in Section 227 of the Real Property Law of the State of New York.

ARTICLE X
CONDEMNATION

10.1. **Notice of Taking.** Tenant and Landlord shall promptly notify each other of any Taking.

10.2. **Substantial Taking.**

(a) If there shall be a Substantial Taking (other than a Temporary Taking) during the Term, this Lease and the Term shall terminate and expire on the Date of Taking, and the Rent payable by Tenant hereunder shall be equitably apportioned as of the date of such taking.

(b) If the whole or substantially all of the Premises shall be taken or condemned, the award, awards or damages in respect thereof shall be divided between Landlord and Tenant as follows: (1) to Landlord, so much of the balance of the award as is for or attributable to the value of Landlord's reversionary interest in the Improvements, which shall be deemed to be the amount of the award for the Improvements, multiplied by a fraction, the numerator of which is the number of full or partial Lease Years which have elapsed since the Commencement Date to the Date of Taking (pro rated for a partial year) (assuming the exercise of all Extended Term Options), and the denominator of which is 50, as of the date of the award, (2) to Tenant, so much of the balance of the award for the Improvements that is attributable to Tenant's remaining interest in this Lease Agreement, which shall be deemed to be the amount of the award, multiplied by a fraction, the numerator of which is the number of full or partial Lease Years remaining in this Lease Agreement from the Date of Taking (pro rated for a partial year) (assuming the exercise of all Extended Term Options), and the denominator of which is 50 as of the date of the award.

(c) Tenant shall be entitled to make a separate claim in the condemnation proceeding for the amount of the loss of value or utility of Tenant's personal property, including office furniture and equipment, moveable partitions, communications equipment and other articles of moveable equipment owned or leased by Tenant and located at the Premises.

(d) Each of the parties shall execute any and all documents that may be reasonably required in order to facilitate collection of the award(s).

10.3. **Partial Taking.**

(a) **Restoration.** If there shall be a Taking that is less than a Substantial Taking (other than a Temporary Taking), this Lease and the Term shall continue without abatement of the Rent or diminution of any of Tenant's obligations hereunder, Tenant will restore the Premises to the condition in which it existed immediately before such Taking as nearly as possible (a "**Condemnation Restoration**").

(b) 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 locations of the part so taken in relation to the part not so taken, would not under economic conditions, applicable zoning laws, or building regulations then existing or prevailing, and after performance by Tenant of all covenants, agreements, terms and provisions

contained herein or by law required to be observed or performed by Tenant, readily accommodate a new building or buildings of a nature similar to the Premises and capable of producing a proportionately (i.e., proportional to such portion of the Premises not so taken) fair and reasonable net annual income or capable of supporting substantially similar activities as the Premises.

(c) If the whole or substantially all of the Premises shall be take or condemned as provided in Section 10.2, the award, awards or damages in respect thereof shall be paid as provided in Section 9.4 as if such Taking were a Casualty.

(d) Each of the parties shall execute any and all documents that may be reasonably required in order to facilitate collection of the awards.

(e) Commencement of Condemnation Restoration. Tenant will commence the Condemnation Restoration within sixty (60) days after payment by the Authority exercising eminent domain of the condemnation award, subject to Unavoidable Delays, and thereafter will perform the Condemnation Restoration as continuously and diligently as possible. Any proceeds remaining after Condemnation Restoration shall be divided in accordance with the formula set forth in Section 9.4.

10.4. **Temporary Taking.** If there shall be a Temporary Taking during the Term, this Lease and the Term shall continue. In the event of a Temporary Taking, Landlord covenants to assign to Tenant any award it receives in respect of such Temporary Taking. The terms and provisions of the Development Parcel Sublease will govern the allocation of any award received by Tenant (including any amounts assigned to Tenant in accordance with this Section 10.4).

10.5. **Collection of Awards.** Each of the parties shall execute documents that are reasonably required to facilitate collection of any awards made in connection with any condemnation referred to in this Article 10 and shall cooperate with each other to permit collection of the award.

10.6. **Tenant's Appearance at Condemnation Proceedings.** Tenant shall have the right to appear in any condemnation proceedings and to participate in any and all hearings, trials and appeals in connection with the exercise of its rights under this Article X.

10.7. **Waiver of Rights under Statute.** The existence of any present or future law or statute notwithstanding, Tenant waives all rights to quit or surrender the Premises or any part thereof by reason of any Taking that is less than a Substantial Taking. It is the intention of Landlord and Tenant that the provisions of this Article X shall constitute an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York.

10.8. **Separate Claims.** Notwithstanding anything to the contrary contained in this Article X, in the event of any permanent or temporary taking of all or any part of the Premises, Tenant shall have the exclusive right to assert claims for any equipment, trade fixtures and personal property so taken that were the property of Tenant and for relocation expenses of Tenant and all awards and damages in respect thereof shall belong to Tenant, and Landlord hereby waives any and all claims to any part thereof.

10.9. **Lease Controlling.** Tenant, by entering into this Lease acknowledges and agrees that its rights with respect to any award, awards or damages in respect of any condemnation of the Premises or any part thereof shall derive solely from, and shall be governed solely by, the terms of this Lease.

10.10. **Participation or Appearance in Proceedings.** A Recognized Mortgagee shall have the right (but not the obligation) to participate in the adjustment of insurance claims and to appear in any and all condemnation proceedings with respect to the Project and to participate in any and all hearings, trials and appeals in connection therewith.

10.11. **Application of Proceeds from Insurance or Condemnation Awards.** A Recognized Mortgagee that receives the proceeds of insurance or condemnation awards to which the Tenant would have otherwise been entitled to in accordance with this Lease shall use and apply or dispose of such proceeds or awards in accordance with the terms of the Lease.

10.12. **Rights of Recognized Mortgagees.** The rights granted to a Recognized Mortgagee under the provisions of this Lease shall not apply in the case of any Mortgagee that is not a Recognized Mortgagee.

10.13. **Third Party Beneficiaries.** Each Recognized Mortgagee shall be a third party beneficiary of Article X hereof.

ARTICLE XI **EVENTS OF DEFAULT**

11.1. **Events of Default.**

(a) The occurrence of any of the following shall constitute an event of default on the part of Tenant hereunder (each an “**Event of Default**”):

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

(ii) if Tenant shall fail to perform or comply with any of the agreements, terms, covenants or conditions in this Lease, other than the failure to pay Rent, and if such default shall continue for a period of thirty (30) days after Landlord serves a notice to cure on Tenant specifying the default or in the case of a default that cannot with due diligence reasonably be cured within such thirty (30) day period, if Tenant fails to proceed to cure such default within such thirty (30) day period, and thereafter diligently prosecute to completion within a reasonable time after the date of such notice (it being intended that in connection with a default not capable of being cured within thirty days that Tenant’s time to cure shall be extended for such period as may be necessary to complete the same with all due diligence);

(iii) if this Lease or the estate of Tenant hereunder shall be assigned, subleased, transferred, mortgaged or encumbered, or there shall be a transfer, 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 notice thereof from Landlord to Tenant;

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

(v) to the extent permitted by law, if Tenant shall file a voluntary petition under Title 11 of the United States Code or if a petition under Title 11 of the United States Code shall be filed against Tenant and an order for relief shall be entered, or if Tenant shall file a petition or an answer seeking, consenting to or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, or 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 of Tenant therein, or if Tenant shall take any partnership, joint venture or corporate action in furtherance of any action described in Section 8.1(iii), 8.1(iv) or this Section 8.1(v);

(vi) to the extent permitted by law, if within ninety (90) days after the commencement of a proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, such proceeding shall not be dismissed, or if, within one hundred eighty (180) 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 of Tenant therein, such appointment shall not be vacated or stayed on appeal or otherwise, or if, within one hundred eighty (180) days after the expiration of any such stay, such appointment shall not be vacated;

(vii) if any of the representations made by Tenant herein is or shall become false or incorrect, provided that, if such misrepresentation was unintentionally made, and the underlying condition is susceptible to being corrected, Tenant shall have a period of thirty (30) days after Landlord's notice of such misrepresentation to correct the underlying condition;

(viii) if a levy under execution or attachment shall be made against the Premises or any part thereof, the income therefrom, this Lease or the leasehold estate created hereby and such execution or attachment shall not be vacated or removed by court order, bonding or otherwise within a period of ninety (90) days;

(ix) if Tenant shall fail to obtain and maintain any insurance policy required hereunder in accordance with the terms hereof and such failure shall continue for a period of thirty (30) days after notice thereof to Tenant;

(x) if Tenant, or any Affiliate or any Principal of Tenant, is in violation of any representations or warranties made herein, and the condition giving rise to such status is not cured within thirty (30) days after notice thereof to Tenant.

11.2. **Right of Recognized Mortgagee to Cure.** Landlord shall provide any Recognized Mortgagee with a copy of any default notice sent to Tenant hereunder at the same time as it gives such notice to the Tenant.

(i) Subject to the provisions of Section 7.2(c) hereof, the Recognized Mortgagee shall have a period of [thirty (30)] days more than is given to the Tenant under the provisions of this Lease to remedy the Default or to cause it to be remedied (or to commence and diligently pursue remedies); provided that any such Recognized Mortgagee delivers to Landlord, within ten (10) days after the expiration of the time given to the Tenant pursuant to the provisions of this Lease to remedy the event or condition which would otherwise constitute a Default hereunder, notice that the Recognized Mortgagee intends to take the action described in this Section 6.2. If a Recognized Mortgagee does not give such notice within such ten (10) day period, Landlord shall have the unrestricted right to take any action it deems appropriate, subject to the terms of this Lease, by reason of any Default which occurred prior to Landlord's delivery of a notice of Default.

(ii) No Default shall be deemed to have occurred if, within the period set forth in Section 6.2(i) hereof, the Recognized Mortgagee shall have commenced in good faith to cure such Default and is prosecuting such cure to completion with reasonable diligence and continuity, subject to Unavoidable Delays.

(iii) Landlord shall accept performance by any Recognized Mortgagee of any covenant, condition or agreement on the Tenant's part to be performed hereunder with the same force and effect as though performed by the Tenant.

(iv) A Recognized Mortgagee shall each be a third party beneficiary of this Section 6.2.

ARTICLE XII **NOTICES**

12.1. **All Notices, Communications, Etc. in Writing.** Whenever it is provided herein that notice, demand, request, consent, approval or other communication shall or may be given to, or served upon, either of the parties, by either of the parties, or whenever either of the parties desires to give or serve upon the other party, any notice, demand, request, consent, approval or other communication with respect hereto, each such notice, demand, request, consent, approval or other communication shall be in writing and, unless otherwise expressly permitted to the contrary herein, shall be effective for any purpose only if given or served as follows (unless a specific form of delivery is expressly required by the provisions of this Lease, in which event notice delivered only in such form shall be effective):

(a) If to Landlord, (i) by hand with proof of delivery, (ii) by mailing the same to Landlord by express or certified mail, postage prepaid, return receipt requested or (iii) by recognized national overnight courier, addressed to:

Brooklyn Bridge Park Corporation
334 Furman Street
Brooklyn, New York 11201
Attention: President

With a copy to:

Brooklyn Bridge Park Corporation
334 Furman Street
Brooklyn, New York 11201
Attention: General Counsel

With a copy to:

New York City Law Department
100 Church Street
New York, New York 10007
Attention: Chief, Economic Development Division

or to such other address(es) and attorneys as Landlord may from time to time designate by notice given to Tenant, as above provided.

(b) If to Tenant, (i) by hand with proof of delivery, (ii) by mailing the same to Tenant by express or certified mail, postage prepaid, return receipt requested, or (iii) by recognized national overnight courier addressed to:

[_____]
[_____]
[_____]
[_____]

with a copy to:

[_____]
[_____]
[_____]
[_____]

or to such other address(es) and attorneys as Tenant may from time to time designate by notice given to Landlord, as above provided.

(c) If to the any Recognized Mortgage, (i) by hand with proof of delivery, (ii) by mailing the same to the Recognized Mortgagee by express or certified mail, postage prepaid, return receipt requested, or (iii) by recognized national overnight courier addressed to such address as the Recognized Mortgagee may from time to time designate by notice given to Landlord and Tenant, as above provided.

12.2. **Service.** Every notice, demand, request, consent, approval or other communication hereunder (i) by express or certified mail, return receipt requested, shall be deemed effective on receipt, (ii) by hand shall be effective upon delivery, as evidenced by a signed receipt, and (iii) by nationally recognized overnight courier shall be deemed effective on the next business day following receipt.

ARTICLE XIII
SUBLEASES/ASSIGNMENT

13.1. **Successors and Assigns.** The terms of this Lease are and shall be binding upon and inure to the benefit of Landlord and Tenant and their respective successors and permitted assigns.

13.2. **Transfers Generally.**

(a) **Transfer by Tenant.** Except as otherwise provided herein, Tenant shall not, assign, mortgage, encumber, or otherwise transfer its interest in this Lease or any of Tenant's rights or Obligations hereunder, by Tenant's action, by operation of law or otherwise, nor sublet, or permit the subletting of, the Premises or any portion thereof, nor enter into any franchise, concession, license or other occupancy agreement, or grant any franchise, concession, license or other occupancy rights with respect to the Premises or any portion thereof (any of the foregoing, a "**Transfer**"). Notwithstanding the foregoing, Tenant may, without Landlord's consent, but upon ten (10) days notice to Landlord, and subject to the provisions of this Article XIII:

(i) mortgage its interest in the Lease and the leasehold estate in the Premises created hereby to one or more Recognized Mortgagees in accordance with Article XIII hereof;

(ii) Transfer interests in Tenant for the purpose of obtaining financing for the Project from any Recognized Mortgagee or Lending Institution; and

(b) **Equity Interest Transfers.** For purposes of this Section 13.1: (i) the issuance, assignment, transfer or other disposition of any direct or indirect equity interest in Tenant (whether stock, partnership interests, interests in a limited liability company or otherwise) to any Person or group of related Persons whether in a single transaction or a series of related or unrelated transactions, in such quantities that after such issuance, assignment, transfer or other disposition, Control of Tenant directly or indirectly, shall have changed (each, a "**Disposition**" and, collectively, the "**Dispositions**"), shall be deemed a Transfer, (ii) the entering into by Tenant of a take-over agreement shall be deemed a Transfer; and (iii) any Person or legal representative of Tenant to whom Tenant's interest under this Lease passes by operation of law, or otherwise, shall be bound by the provisions of this Article X.

(c) **Transfers Void.** Any Transfer by Tenant or other party in contravention of this Article XI shall be void and of no effect.

13.3. **No Relief.** Notwithstanding any provision to the contrary in this Lease and except as set forth in Section 13.3(b) hereof, the making of any Transfer, in whole or in part, whether or not with the consent of Landlord, shall not operate to relieve Tenant herein named from its obligations under this Lease. In the event of any such permitted Transfer, except as provided in Section 13.3(b) hereof, Tenant herein named shall remain fully responsible and liable for the prompt payment of all Rent and other sums due hereunder and for the due performance and observance of all of Tenant's obligations under this Lease, through the Expiration Date, whether or not there shall have been any prior termination of this Lease by summary proceedings or otherwise. Each permitted Sublease shall expressly be made subject to the provisions of this Lease and no permitted Transfer shall in any manner affect or reduce any

of the obligations of Tenant hereunder unless expressly set forth herein or consented to by Landlord in writing.

13.4. **Consent.** Any consent by Landlord herein contained or hereafter given to any Transfer shall be held to apply only to the specific Transfer hereby or thereby approved. No such consent shall be construed as a waiver of the duty of Tenant, or its successors or assigns, to obtain from Landlord a consent to any other or subsequent Transfer or as a modification or limitation of the right of Landlord with respect to the foregoing covenant by Tenant.

13.5. **Costs and Expenses.** Tenant covenants and agrees to pay all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees and disbursements) incurred in connection with or arising out of the making of any Transfer, including costs related to Landlord's review of any proposed Transfer and the documentation in connection therewith. Tenant agrees to pay any federal, state or local excise, transfer, recording or other tax or fee imposed upon or applicable to any such Transfer, and to indemnify Landlord from and against any such cost or expense. Tenant further agrees that any consent of Landlord required hereunder may be conditioned upon receipt by Landlord of reasonable evidence of the payment of any such cost or expense. The Obligations of Tenant under this Section 13.5 (and all other obligations expressly stated to survive this Lease) shall survive the expiration or earlier termination of this Lease.

13.6. **Permitted Uses.** This Article XIII shall not be deemed to prohibit Tenant from granting to any Person, the right to use the Premises for purposes intended to implement Tenant's use of the Premises as set forth in Article IV of this Lease, to charge admission therefor or to collect from any such Person fees or rentals for such use of the Premises. Tenant shall reinvest all net revenues received by it from the permitted uses referenced in this Section 13.6 to its maintenance and operation of the Premises.

13.7. **Concessions.** Tenant shall not operate, or permit the operation of, any concession on the Premises, or permit others to use all or a portion of the Premises for commercial events, except pursuant to applicable City procedures and with the prior written approval of Landlord. Notwithstanding the foregoing, unless Tenant is otherwise notified in writing by the Landlord, the approval of the Landlord shall not be required for conducting receptions or special events ("Special Events") of limited duration on the Premises, which events are intended to provide revenues to support Tenant's operation of the Premises, provided, however, that all net revenues received by Tenant from such Special Events shall be reinvested in its maintenance and operation of the Premises.

ARTICLE XIV
LIMITATION OF LIABILITY; INDEMNITY

14.1. **No Recourse Against Landlord.** All covenants, stipulations, promises, agreements and obligations of Landlord, under this Lease, shall be deemed to be the covenants, stipulations, promises, agreements and obligations of Landlord acting in its proprietary capacity and not of any official, officer, employee or agent of Landlord in his or her individual capacity, and no recourse shall be had for the payment of any amounts hereunder against any official, officer, employee, agent or instrumentality of Landlord.

14.2. **No Recourse Against Tenant.** All covenants, stipulations, promises, agreements and obligations of Tenant, as the tenant under this Lease, shall be deemed to be the covenants, stipulations, promises, agreements and obligations of Tenant and not of any officer, member, employee, agent or director of Tenant in his or her individual capacity, and no recourse shall be had for the payment of any amounts hereunder against any officer, member, employee, agent or director of Tenant.

14.3. **Indemnification.**

(a) To the fullest extent permitted by law, Tenant agrees to protect, indemnify, defend and save harmless Landlord, BBPDC, ESDC, the State and the City and their respective directors, officers, commissioners, shareholders, partners, members, managers, agents, affiliates, employees, successors and assigns (hereafter collectively the “Indemnitees” or individually an “Indemnitee”) from and against any and all foreseeable or unforeseeable liability, expense, loss, costs, deficiency, fine, penalty, or damage (including, without limitation, punitive or consequential damages) of any kind or nature, including reasonable attorneys’ fees, from any suits, claims or demands regardless of the merits of any such alleged suit, claim or demand, on account of any matter or thing, action or failure to act arising out of or in connection with this Lease, the Premises, or the operations of Tenant on any portion of the Premises. Upon receiving knowledge of any suit, claim or demand asserted by a third party that Landlord believes is covered by this indemnity, Landlord shall give Tenant notice of the matter. Tenant shall defend the Indemnitees against all matters covered by this indemnity at Tenant’s sole cost and expense (including, without limitation, attorneys’ fees and costs) with legal counsel satisfactory to Landlord. An Indemnitee may elect to defend the matter with its own counsel at its own expense; provided, however, an Indemnitee shall be entitled to appoint counsel at Tenant’s expense (i) if the claim involves remedies that, if awarded to the adverse party, are reasonably likely to have an adverse effect on such Indemnitee; (ii) if such Indemnitee has available to it one or more defenses or counterclaims that are inconsistent with the defenses or counterclaims asserted by Tenant; or (iii) the defense and counterclaims available to Indemnitee may not be asserted by Tenant. Notwithstanding anything to the contrary in this Lease, Tenant shall not be required to indemnify any Indemnitee pursuant to this Section 14.3 to the extent that the subject claim results from the gross negligence or willful misconduct of such Indemnitee, or occurred prior to the commencement of the Term of this Lease or following expiration or early termination of the Term of this Lease.

(b) Tenant shall not do or permit any act or thing to be done upon the Premises, or any portion thereof, during its period of use of the Premises, or in connection with or as its

obligations under this Lease, which subjects an Indemnitee to any liability or responsibility for injury or damage to Persons or property or to any liability by reason of any violation of Requirements, but shall exercise such control over the Premises as to the foregoing matters so as to protect such other parties against any such liability. Tenant's obligation to indemnify and save the Indemnitees harmless shall include, but not be limited to the following:

(i) Control. The control or use, non-use, possession, occupation, alteration, condition, operation, maintenance, repair, replacement, improvement, or management of the Premises or any part thereof or of any street, plaza, sidewalk, curb, vault, or space comprising a part thereof or adjacent thereto, including any violations imposed by any Governmental Authorities in respect of any of the foregoing.

(ii) Acts or Failure to Act. Any act or failure to act on the part of Tenant or its partners, joint venturers, officers, directors, shareholders, trustees, employees, agents, servants or contractors.

(iii) Agreement Obligations. Tenant's failure to make any payment or to perform or comply with any other of its obligations, representations or covenants under this Lease Agreement.

(iv) Accidents, Injury to Person or Property. Any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in, on, or about the Premises or any part thereof, or in, on, or about any street, plaza, sidewalk, curb, vault, or space comprising a part thereof and arising in connection with the use, occupancy or operation of the Premises but excluding any common area of the park.

(v) Claim Against Premises. Any claim that may be alleged to have arisen during the Term against or on the Premises, or any claim created or permitted to be created during the Term by Tenant or any of its subtenants, or their respective officials, members, partners, joint venturers, officers, shareholders, directors, agents, contractors, servants or employees, or invitees against any assets of, or funds appropriated to, Landlord or any liability that may be asserted against Landlord with respect thereto.

(vi) Hazardous Materials. The presence, storage, transportation, disposal, release or threatened release of any Hazardous Materials over, under, in, on, from or affecting the Premises or any persons, real property, personal property, or natural substances thereon or affected thereby, except that Tenant shall not indemnify and save harmless the Indemnitees to the extent that such Hazardous Materials were present, stored, disposed of, or released at the Premises prior to the date of physical possession by Tenant of the Premises (but the foregoing shall not release Tenant from its obligation to indemnify the Indemnitees for damages arising from any disposal or release occurring after the date of physical possession of the Premises due to the acts or omissions of Tenant with respect to any Hazardous Materials preexisting such date of Tenant's physical possession). "Hazardous Materials" means (i) any "hazardous waste" as defined under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., or (ii) "hazardous substance" as defined under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq., or (iii) "hazardous materials" as defined under the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq., or

(iv) “hazardous waste” as defined under New York Environmental Conservation Law Section 27-0901 et seq., or (v) “hazardous substance” as defined under the Clean Water Act, 33 U.S.C. Section 1321 et seq.

(vii) Notwithstanding the above, no Indemnitee shall be so indemnified and saved harmless to the extent by which such liabilities, etc., are caused by the negligence or wrongful acts or omissions of such Indemnitee, or its respective directors, officers, members, trustees, officials, employees, agents, invitees or contractors (contractors shall not include Tenant or any of its contractors or subcontractors doing construction-related work).

14.4. **Contractual Liability.** Neither party’s obligations under this Article 14 shall be affected in any way by the absence of insurance coverage, or by the failure or refusal of any insurance carrier to perform an obligation on its part under insurance policies affecting the Premises.

14.5. **Notification and Payment.** Landlord shall notify Tenant of the incurrence by or assertion against an Indemnitee, or the imposition of any cost or expense as to which Tenant has agreed to indemnify the Indemnitees pursuant to any of the provisions of this Article 14. Provided that Landlord has afforded reasonable notice to Tenant to enable Tenant to appropriately defend a claim, action or proceeding, Tenant shall pay Landlord all amounts due under this Article 14 within ninety (90) days after such payment is determined to be Tenant’s obligation, and any non-payment thereof by Tenant after such determination shall constitute a default.

14.6. **Survival Clause.** The provisions of this Article 14 shall survive the Expiration Date.

ARTICLE XV

REPRESENTATIONS AND WARRANTIES

15.1. **No Representations as to Fitness.** Landlord makes no representations concerning the condition of the Premises nor the suitability of the Premises for any particular purpose, nor with respect to the existence of any easements or other encumbrances affecting the Premises whether or not of record. Tenant has inspected and is thoroughly acquainted with the condition of the Premises, agrees to take same “as is” in the condition existing as of the Commencement Date, and acknowledges that the taking of possession of the Premises shall be conclusive evidence that the Premises are in satisfactory condition.

15.2. **No Brokers.** Tenant represents to Landlord that it has not dealt with any broker, finder or like entity in connection with this Lease or the transactions contemplated hereby, and agrees to indemnify and hold harmless Landlord for any claim for brokerage commissions, fees or other compensation by any such broker, finder or like entity claiming to have acted or dealt with it in connection with this Lease or the transactions contemplated hereby.

15.3. **Duly Authorized.** Tenant represents and warrants that:

(a) it is and will continue to be a [not-for-profit corporation] duly organized, validly existing, and in good standing under the laws of the State of New York, [it has received and will do all things necessary to maintain a determination from the Internal Revenue Service that it meets the requirements of Section 501(c)(3) of the Internal Revenue Code], and it has all requisite power and authority to execute, deliver and perform this Lease.

(b) this Lease has been duly authorized by all necessary corporate action on the part of Tenant and has been duly executed and delivered by Tenant, and assuming due execution and delivery by Landlord, constitutes a legal, valid, binding and enforceable obligation of Tenant.

(c) the execution and delivery of this Lease, and compliance with the provisions hereof does not and will not conflict with or constitute a violation or default under Tenant's Certificate of Incorporation, its by-laws, or any indenture, mortgage, deed of trust or other agreement or instrument to which Tenant is bound, or to the knowledge of Tenant, any statute or order, rule or regulation of any court or governmental agency or body having jurisdiction over Tenant or any of its activities or properties.

(d) No trustee of Tenant shall receive any salary or other compensation for serving as such trustee, and no officer of Tenant shall receive any salary or other compensation except for compensation in a reasonable amount for services actually rendered, and Tenant's net profits from the operation of the Premises shall not inure to the benefit of any individual trustee or officer, or to any other individual or entity other than Tenant.

(e) Tenant warrants and represents that, to its knowledge, no officer, agent, employee or representative of the City or Landlord has received any payment or other consideration for the making of this Lease and that no officer, agent, employee or representative of the Landlord or the City has any personal interest, directly or indirectly, in Tenant, this Lease or the proceeds thereof.

(f) Neither Tenant nor any Person that is a Principal of Tenant:

(i) is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with BBPDC, ESDC, BBP, or the City, unless such default or breach has been waived in writing by BBPDC, ESDC, BBP, or the City, as the case may be;

(ii) has been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) years;

(iii) has been convicted of a felony in the past (10) years;

(iv) has received formal written notice from a federal, state or local governmental agency or body that such Person is currently under investigation for a felony criminal offense; or

(v) has received notice of default in the payment of any Taxes, sewer rents or water charges, which have not been paid, unless such default is currently being contested with due diligence in proceedings in court or other appropriate forum.

ARTICLE XVI
REQUIRED APPROVALS

16.1. **Required Approvals.** Tenant, at its sole cost and expense, shall obtain, or cause to be obtained, all approvals, permits, licenses, grants, rights or other authorizations required by any law, rule, regulation or order in connection with any activity to be carried out in or about the Premises (“Required Approvals”). Required Approvals shall be obtained prior to the commencement of the activity requiring such approval, and copies thereof maintained in readily accessible files, and given to Landlord, if requested.

16.2. **Legal Requirements.** Tenant, at its sole cost and expense, shall comply on a timely basis with all Legal Requirements, (including any Legal Requirements that mandate any alterations or physical changes to the Premises or the Improvements), all Board of Fire Underwriters Requirements, any direction made pursuant to law by any public officer or officers, and all orders, rules and regulations of any similar body which shall impose any violation, order or duty upon the Landlord or Tenant with respect to the Premises or the Improvements.

16.3. **Certificate of Occupancy.** Tenant’s use of the Premises shall be in complete conformity with the Certificate of Occupancy then currently in effect for the Premises and any other applicable laws and regulations.

ARTICLE XVII
[RIGHT TO AUDIT]

ARTICLE XVIII
MISCELLANEOUS

18.1. **[Recordation of Memorandum of Lease.** A memorandum of this Lease shall be recorded by Tenant in the City Register, at Tenant’s expense, which memorandum shall include a specific reference to the City’s indefeasibly vested remainder interest in the Premises pursuant to the provisions of Section 2.2 hereof.]

18.2. **Modifications, Amendments or Termination of Lease.** This Lease may not be modified, amended or terminated in whole or in part, and no oral or executory agreement shall be effective to modify, amend or terminate in whole or in part this Lease or any obligations hereunder, unless such agreement is set forth in a written instrument executed by Landlord and Tenant.

18.3. **Use of Premises.** The use of the Premises and all other rights, duties, liabilities and obligations of Landlord and Tenant with respect thereto, including, without limitation, the design, development, planning, acquisition, construction, equipping, leasing, operation,

maintenance, repair and restoration of the Premises, not fixed in this Lease, shall be as set forth in the MGPP and the Master Lease.

18.4. **Consents and Approvals.** No consent or approval of Landlord shall be deemed to have been given or to be effective for any purpose unless such consent or approval is set forth in a written instrument executed by Landlord.

18.5. **Governing Law.** This Lease shall be governed by, and construed in accordance with, the laws of the State of New York, without reference to any conflicts of laws provisions thereof, except Section 5-1401 and Section 5-1402 of the General Obligations Law of the State of New York.

18.6. **Consent to Jurisdiction and Venue.** Each party hereto agrees that all actions or proceedings arising directly or indirectly out of this Ground Lease shall be litigated in the Supreme Court of the State of New York, Kings County, or the United States District Court for the Eastern District of New York. Each party hereto hereby expressly submits and consents in advance to such jurisdiction and waives any claim that Brooklyn, New York or the Eastern District of New York is an inconvenient forum or an improper forum based on improper venue. Each party hereto agrees to service of process by certified mail, return receipt requested, postage prepaid, addressed to it as set forth in Section 12.1 of this Lease. Each party hereto agrees not to institute any suit arising out of this Lease against the other party hereto in a court in any jurisdiction, except as stated above, without the consent of the other party. Each party hereto agrees that a true, correct and complete copy of this Lease kept in Landlord's or Tenant's course of business may be admitted into evidence as an original.

18.7. **Counterparts.** This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which, when taken together, shall constitute but one and the same instrument.

18.8. **Invalid or Unenforceable Provision.** If any one or more of the provisions of this Lease shall be determined to be invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such provision(s) shall not affect any of the remaining provisions hereof, but this Lease shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

18.9. **No Partnership.** Notwithstanding anything in this Lease to the contrary, it is expressly understood that Landlord shall not be construed or held to be a partner or associate of Tenant in the conduct of Tenant's business and that the relationship between the parties hereto is and shall at all times remain that of landlord and tenant.

18.10. **No Merger of Interests.** It is the explicit intent of the parties, and is hereby agreed, that (i) the fee title to the Premises to be vested in BBPDC, (ii) the leasehold estate in the Premises created by the Ground Lease to be vested in BBP, and (iii) the subleasehold estate in the Premises created by this Lease to be vested in Tenant, shall not merge but shall always be kept separate and distinct, notwithstanding any union of such estates in BBPDC (or its successors and assigns), BBP (or its successors and assigns), Tenant (or its successors and assigns) or any third party (including, without limitation, any Recognized Mortgagee (as a result of the transactions contemplated in this Lease or otherwise).

[NO FURTHER TEXT ON THIS PAGE; SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Landlord has caused its name to be subscribed hereto by its authorized officer, and Tenant has caused its name to be hereunto subscribed by its duly authorized officer, all being done as of the year and day first above written.

LANDLORD:

**BROOKLYN BRIDGE PARK
CORPORATION** (d/b/a Brooklyn Bridge
Park)

By: _____
Name:
Title:

TENANT:

NFP [_____] CORPORATION

By: _____
Name:
Title:

ACKNOWLEDGMENT

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

On the ___ day of _____, 201_, 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 whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted executed the instrument.

Notary Public/Commissioner of Deeds

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

On the ___ day of _____, 201_, 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 whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted executed the instrument.

Notary Public/Commissioner of Deeds

SCHEDULE A

Description of Development Parcel

EXHIBIT A

Modified General Project Plan

EXHIBIT B

Letter of Resolution

EXHIBIT C
Letters Patent

EXHIBIT D

Master Lease

EXHIBIT E

Ground Lease

EXHIBIT F

[intentionally omitted]

EXHIBIT G

Design Guidelines

Exhibit B: License

REVOCABLE LICENSE AGREEMENT

Licensor and Licensee agree as follows:

I. Definitions:

A. Licensor: Brooklyn Bridge Park Corporation (“BBP”), with an office at 334 Furman Street, Brooklyn, New York 11201.

B. Licensee: [Developer] – A [New York Limited Liability Co], with an address: .

C. Property: The Tobacco Warehouse, Brooklyn Bridge Park (the “Property”).

II. The term of this License shall commence on [DATE] (“Effective Date”) and continue until the earlier to occur of (a) execution of the Lease (as defined in that certain Conditional Designation Letter (the “CDL”) of even date herewith between BBP and Licensee) and (b) termination of the CDL (the “Term”); or (c) as provided below.

THIS IS A SHORT-TERM REVOCABLE LICENSE, TERMINABLE AT WILL AT LICENSOR’S OPTION. LICENSEE AGREES TO PROMPTLY VACATE THE PROPERTY UPON SEVEN (7) DAYS WRITTEN NOTICE OF TERMINATION FROM LICENSOR. NO OWNERSHIP, LEASEHOLD OR OTHER PROPERTY INTEREST SHALL VEST IN LICENSEE BY VIRTUE OF THIS LICENSE.

III. This License is not assignable, but any or all of the actions permitted to be taken by Licensee hereunder may be taken by [Licensee’s contractor] on behalf of Developer so long as [contractor and/or Developer] is in compliance with all other terms and conditions of this License.

IV. This License will grant access only for the activities permitted by the CDL, including for the purposes of soil borings and/or environmental testing, surveying, locating surface and subsurface utilities, facilities and systems, structural or other investigation of the Property necessary for the preparation of schematic documents, creation of a construction cost estimate based on schematic design documents, creation of a stabilization plan for significantly deteriorated areas of the building situated on the Property (the “Building”), and inspection of the façade and other exterior walls of the Building (the “Work”) between the hours of 8:00 a.m. and 6:00 p.m., Monday through Friday, which shall be done in a manner that does not interfere with other operations on the Property and the Brooklyn Bridge Park. BBP will inform construction crews working in the Park of the need for Licensee’s access and arrange such access at the times hereinabove set forth. Any structural and/or destructive testing of the Property shall be supervised by a third party engineer selected by BBP, the cost of which shall be paid out of the Down Payment (as defined and described in the CDL). No work other than that expressly authorized by this License may be conducted on the Property. In the event that Licensee is delayed in the performance of the Work by circumstances beyond the control of

Licensee, including, any act of God, terrorism, war, riot, strike, labor problem, or severe weather condition, then Licensee may request an extension of the Term for the same period of time that the Licensee is delayed, and Licensor may grant said request in its sole discretion.

V. All Work shall be performed in accordance with any requirements contained in the Letter of Resolution executed in 2006, as amended on or about February 28, 2009 and February 26, 2010, or as may be hereafter amended (“Letter of Resolution”), and any governmental authority having jurisdiction over the Property.

VI. Licensee shall cause its contractor to promptly provide BBP with complete results of such Work when same become available. The Work, and any results thereof, shall become property of Licensor and Licensor shall have an unrestricted right to use such Work for any purposes whatsoever, without paying any compensation therefor. Notwithstanding the foregoing, Licensee shall also have an unrestricted right to use such Work for any purposes whatsoever, without paying any additional compensation therefore to Licensor.

VII. Licensee shall submit to the Licensor a copy of an insurance certificate(s) demonstrating that adequate liability coverage in the amounts listed below is in effect during the Term. Licensee shall obtain and maintain or cause to be obtained and maintained the following insurance:

1. A Commercial General Liability insurance policy, written on ISO form CG0001 or its equivalent, issued by a company duly authorized to do business in the State of New York, for not less than \$5,000,000 per occurrence, and not less than \$5,000,000 annual aggregate, for death, personal or bodily injury and property damage, and shall include coverage for contractual liability (designating all indemnity provisions of any agreements related to the Work or any aspect thereof), and shall cover independent contractors and shall contain an endorsement that underground operations are covered and shall state that the “XCU Exclusions” have been deleted. The required limits of liability may be provided through a combination of commercial general liability and umbrella policies;

2. Comprehensive Automobile Liability Insurance, for all vehicles that are used in connection with this License, whether owned or not owned, with \$1,000,000 per occurrence combined single limit for death, personal or bodily injury and property damage;

3. Workers’ Compensation and Employer’s Liability Insurance in such amounts as are legally required by statute;

4. Pollution/Environmental Liability Insurance written on an occurrence basis for not less than \$5,000,000 per occurrence, covering bodily injury and property damage including loss of use of damaged property and property that has not been physically injured, and shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit or proceeding against the Licensor and/or Administrator arising in connection with this License. Such insurance shall designate Licensee “named insured” and the Licensor, Brooklyn Bridge Park Development Corporation

("BBPDC"), Empire State Development Corporation ("ESDC"), The State of New York ("State") and The City of New York ("City") "additional insureds" as more specifically provided in Section C below; and

5. Professional Liability Insurance, covering actual or alleged negligent acts, errors or omissions committed by Licensee, its contractors and its consultants, and their respective agents or employees, arising out of the Work, with a limit of not less than \$5,000,000.

A. All policies of insurance required by this article shall contain the terms and conditions of policies and endorsements generally available from insurance companies with ratings as set forth in paragraph "B" below for such risks and a written waiver of the right of subrogation with respect to all of the named insureds and additional insureds. Licensee shall maintain such other insurance in such amounts as from time to time reasonably may be required by Licensor against such other insurable hazards as at the time are commonly insured against in the case of premises similarly situated to the Property. Licensee further agrees to execute and deliver any additional instruments and to do or cause to be done all acts and things that may be requested by Licensor properly and fully to insure Licensor and additional insureds against all damage and loss as herein provided for and to effectuate and carry out the intents and purposes of this License.

B. Policies providing for applicable insurance shall be issued only by insurance companies that are licensed or authorized to do business in the State of New York and that have a rating in the latest edition of "Bests Key Rating Guide" of "A:VII" or better, or another comparable rating reasonably acceptable to Licensor. Certificates of Insurance evidencing the issuance of all insurance required herein, and guaranteeing at least thirty (30) days prior notice to Licensor of cancellation or non-renewal, shall be delivered to Licensor prior to execution of this License, or, in the case of new or renewal policies replacing any policies expiring during the Term, no later than the expiration dates of such policies. At Licensor's request, Licensee shall submit the entire original policy.

C. Brooklyn Bridge Park Corporation, Brooklyn Bridge Park Development Corporation, Empire State Development Corporation, The State of New York and The City of New York shall be named as additional insureds on all required insurance policies as evidenced by such insurance certificate except for workers' compensation and employers liability coverage. Any deductibles or self-insured retentions in excess of \$100,000 are subject to the prior written approval of Licensor.

D. Licensee, however, shall be, continue and remain liable for any uninsured destruction, loss or damage from any cause arising from breach of the covenants of the several articles of this License by Licensee. In the event of any such loss or damage for which Licensee becomes liable as aforesaid, Licensee shall, at its sole cost and expense, promptly repair or replace the property so lost or damaged in accordance with plans and specifications approved by Licensor. Notwithstanding the foregoing, Licensor, may elect to receive in cash the value of repairs or rebuilding by Licensee in lieu of performance of such repairs to or rebuilding of the Property.

E. Licensee shall not violate any of the conditions, provisions or requirements of any insurance policy required by this Article V, and Licensee shall perform, satisfy and comply with all conditions, provisions, and requirements of all such insurance policies.

F. All policies shall be primary protection and Licensor will not be called upon to contribute to a loss that would otherwise be paid by Licensee's insurer.

VIII. Licensee assumes all risk of, and shall be fully responsible for and reimburse fully Licensor, for any loss, cost or expense arising out of any personal or bodily injury, death, or loss or damage to any property arising out of this License or Licensee's operations hereunder or any of the acts, omissions, events, conditions, occurrences or causes described in the next sentence. Licensee shall forever defend, indemnify and hold harmless Licensor, BBPDC, ESDC, State and City, and their respective directors, members, officials, officers, agents, representatives and employees from and against any and all liabilities, claims, demands, penalties, fines, settlements, damages, costs, expenses and judgments of whatever kind or nature, known or unknown, contingent or otherwise (a) arising from personal or bodily injury to any person or persons, including death, or any damage to property of any nature, occasioned wholly or in part by any act(s) or omission(s) of Licensee or of the employees, guests, invitees, contractors, subcontractors, representatives, officials, officers, servants or agents of Licensee, occurring on or in proximity to the Property during the Term, or arising out of or as a result of this License, including, without limitation, any personal or bodily injury, including death, or property damage related to any collapse or failure of all or any part of the Property, or (b) relating to or arising from any and all liens and encumbrances which may be filed or recorded against the Property or any public improvement lien filed against any funds of Licensor as a result of actions taken by or on behalf of Licensee, its contractors, subcontractors, agents, representatives, employees, guests or invitees arising out of or as a result of this License, or (c) arising out of, or in any way related to the storage, transportation, disposal, release or threatened release of any Hazardous Materials (as hereinafter defined) arising out of or as a result of this License, over, under, in, on, from or affecting the Property or any persons, real property, personal property, or natural substances thereon or affected thereby in connection with Licensee's use of the Property or any work performed on the Property by or on behalf of Licensee during the Term, except that Licensee shall not be liable for any claim, demand, penalty, fine, settlement, damage, cost, expense or judgment arising from a condition existing on the Property prior to the Effective Date of this License provided, however, that Licensee shall be liable to the extent any acts or omissions on its part worsens any condition existing on the Property. For purposes of this License "Hazardous Materials" means (i) any "hazardous waste" as defined under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., or (ii) "hazardous substance" as defined under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq., or (iii) "hazardous materials" as defined under the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101 et seq., or (iv) "hazardous waste" as defined under New York Environmental Conservation Law Section 27-0901 et seq., or (v) "hazardous substance" as defined under the Clean Water Act, 33 U.S.C. Section 1321 et seq., or (vi) petroleum or petroleum products, crude oil or any by-products thereof, natural gas or synthetic gas used for fuel; any asbestos, asbestos-containing material or polychlorinated biphenyl; and any additional substances or materials which from time to time are classified or considered to be hazardous or toxic or a pollutant or contaminant under the laws of the State of New York, the United States of America, or regulated under any other Requirements. For the purposes of this License, the term "Requirements" means: (i) the zoning Resolution of the City of New York (as the same may be amended and/or replaced) (the "Zoning Resolution") and any and all laws, rules, regulations, orders, ordinances, statutes codes, executive orders, resolutions

and requirements of all Governmental Authorities (currently in force and hereafter adopted) applicable to the Property or any street, road, avenue, service area, sidewalk or other area comprising a part of, or lying in front of, the Property, or any vault in or under the Property (including, without limitation, the Building Code of New York City, and any applicable equivalent, and the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of any applicable Fire Rating Bureau or other body exercising similar functions) and (ii) any and all provisions and requirements of any property, casualty or other insurance policy required to be carried by Licensee under this License. The provisions of this Article shall survive the termination of this License.

- IX. Licensee shall comply with 24-201 et seq. of the Administrative Code of the City of New York (the “Noise Control Code”). Licensee shall not operate, construct or cause to be operated, conducted or constructed on the Property devices and/or activities which would cause a violation of the Noise Control Code. Any such devices and activities shall incorporate advances in the art of noise control developed for the kind and level of noise emitted or produced by such devices or activities in accordance with the regulations issued by the New York City Department of Environmental Protection of the City, or its successor.
- X. Licensee agrees that, upon the expiration of the Term, if Licensee has not entered into the Lease and if Licensee has done any Work that was not permitted under the CDL and/or this License, Licensee shall, at its own expense, repair such non-permitted Work so as to restore the portion of the Property affected by such non-permitted Work to the original, same or better condition that it was in before said non-permitted Work was conducted. Notwithstanding the foregoing, if, while performing the Work, the Work results in a condition that poses an immediate threat to the public or to the Tobacco Warehouse Building, Licensee must promptly remedy such dangerous condition. If, while performing the Work, Licensee uncovers a pre-existing condition at the Property that poses an immediate threat to the public or to the Tobacco Warehouse Building, Licensor will provide, at its sole discretion, an interim measure to alleviate the dangerous condition.
- XI. Licensee agrees to comply, at its own expense, with all applicable Requirements in conducting the Work and in its operations on the Property. Licensee must obtain all necessary permits and approvals from any public or private party for the performance of any construction work or any other operation or use. If required, Licensee must obtain any such authorization, permit or approval at its sole cost and expense. Such compliance includes, but is not limited to, any required review, permit or approval by Licensor, and/or any other applicable governmental entity.
- XII. Licensee shall determine or cause to be determined whether there are any utilities located where it desires to do the Work. Licensee shall be liable for damage, if any, done to any such utilities. This License shall not be construed in any manner as a representation by Licensor as to the part of the Property where the Work may be done without damaging such utilities.

[Remainder of page intentionally left blank; signature page to follow]

Please indicate your acceptance and agreement to the terms set forth above by having an authorized person sign this License where indicated below and returning such signed copy to Brooklyn Bridge Park Corporation, 334 Furman Street, Brooklyn, New York 11201, Attn: David Lowin.

LICENSOR:
Brooklyn Bridge Park Corporation

LICENSEE:
[DEVELOPER]

Name:
Title:

Signature of Authorized Representative

Date: _____

Name of Authorized Representative

Title of Authorized Representative

Date: _____

Exhibit C: Confidentiality Agreement

DATE 2010

Brooklyn Bridge Park Corporation
Brooklyn Bridge Park
334 Furman Street
Brooklyn, New York 11201

Attention: David Lowin, Vice President

Re: Conditional Designation regarding the Request for Proposals issued by the Brooklyn Bridge Park Corporation (“BBP”) on August 23, 2010 (“RFP”) and the response to such RFP by the [Selected Developer] dated [October XX, 2010] for the proposed project located at The Tobacco Warehouse, Brooklyn Bridge Park (the “Project”)

Ladies and Gentlemen:

In connection with our submission of a proposal with regard to the Project in response to the RFP issued by BBP and the Conditional Designation Letter dated [October __, 2010] (“CDL”), we have been furnished certain information with respect to the Project. We hereby agree to treat confidentially, in accordance with the terms and conditions of this agreement, such information and other information concerning the Project that BBP has or will furnish to us (such information being collectively referred to as the “Confidential Information”).

We further agree that the Confidential Information has and will be used by us solely for the purpose of evaluating and developing the Project. We further agree that we will not use the Confidential Information in any way detrimental to, or to the competitive disadvantage of, BBP, Brooklyn Bridge Park Development Corporation (“BBPDC”), Empire State Development Corporation (“ESDC”), The State of New York (“State”), The City of New York (“City”) or any of the aforementioned agencies or subsidiaries, and that such information will be kept confidential by us and by any and all of our partners, directors, officers, officials, employees, affiliates, agents, advisors, counsel and other representatives and representatives of any of the above (all such persons and entities being collectively referred to as “Representatives”) and that neither we nor our Representatives will use, publish, divulge, disclose or allow to be disclosed the

Confidential Information to any person, firm or entity whatsoever unless BBP consents in writing to the disclosure of such information.

In addition, without the prior written consent of BBP, we will not, and we will direct and cause our Representatives not to, disclose to any person or entity any of the terms, conditions or other facts with respect thereto, including the status thereof or the fact that the Confidential Information has been made available to us.

We agree that all press and other inquiries concerning the Project will be referred, without further comment, to BBP. BBP will be responsible for coordinating and issuing all press, intergovernmental and public announcements, as well as arranging all press conferences and ceremonies, unless BBP agrees otherwise in writing. On behalf of ourselves and our Representatives, we agree not to discuss any Confidential Information or negotiations concerning the Project with the press or other media without the prior written consent of BBP.

If the foregoing agreements are not complied with, BBP in its sole and absolute discretion may, terminate our designation and withdraw from negotiations with us regarding the Project.

We agree that, neither BBP, the City of New York, the State of New York, Brooklyn Bridge Park Development Corporation or the Empire State Development Corporation, nor we, will be under any legal obligation of any kind whatsoever with respect to the Project or the Project's site, except as expressly set forth in the Conditional Designation Letter, by virtue of this agreement.

We agree that money damages would not be a sufficient remedy for any breach of this agreement by us or our Representatives and that, in addition to all other remedies which may be available, the BBP or any affected governmental or public entity shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach.

It is further understood and agreed that no failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or of any other right, power or privilege hereunder.

We hereby represent that the individual signing this letter agreement is duly authorized to execute and deliver this letter agreement on our behalf.

This agreement shall be governed by and construed in accordance with the law of the State of New York without giving effect to its conflicts of law principles or rules.

We enter into this agreement as part of the Conditional Designation Letter dated on or about [October __, 2010] and understand and agree that it is a condition of the aforesaid letter that we enter into and comply with this agreement.

Very truly yours,

[DEVELOPER]

By: _____

Name:

Title:

APPENDIX 4: GREEN BUILDING INFORMATION

Background Information for High Performance/Green Building Development

Please refer to the following list of Internet resource sites to facilitate with high performance/green building research. In addition, please refer to LEED and the New York State Green Building Tax Credit guidelines.

Green Building Funding Sources:

New York State Green Building Tax Credit

New York State Department of Taxation and Finance

Business Tax Hotline:

1-800-972-1233

General Tax Information Hotline:

1-800-225-5829

New York State Energy Research and Development Authority

Craig Kneeland, Project Manager

(518) 862-1090 ext. 3311

e-mail: cek@nyserda.org

New York State Department of Environmental Conservation

James Austin, Assistant Commissioner

Phone: (518) 485-8437

e-mail: jdaustin@gw.dec.state.ny.us

web-site: <http://www.dec.state.ny.us>

Green Building Program Information:

New York State Energy and Research Development Authority

For more information about NYSERDA's building Programs, contact:

NYSERDA

Technical Communications Unit

Corporate Plaza West

286 Washington Avenue Extension

Albany, NY 12203-6399

Phone: (518) 862-1090 ext 3250

web-site: <http://www.nyserda.org>

United States Department of Energy

For more information about USDOE building programs, contact:

Dru Crawley

1000 Independence Avenue, SW

Washington, DC 20585

Phone: (202) 586-2344

Fax: (202) 586-1628

e-mail: drury.crawley@ee.doe.gov

web-site: <http://www.doe.gov>

Green Building Resources:

American Council for an Energy-Efficient Economy

<http://www.aceee.org>

Energy Efficiency and Renewable Energy Network (EREN)

<http://www.eren.doe.gov>

Energy Star Program (U.S. EPA)
<http://www.energystar.gov>

Environmental Building News
<http://www.ebuild.com>

Environmental Defense Fund
<http://www.edf.org>

National Resources Defense Council
<http://www.nrdc.org>

New York State Energy and Research Development Authority
<http://www.nyserda.org>

Rocky Mountain Institute
<http://www.rmi.org>

Southface Energy Institute
<http://www.southface.org>

US Department of Energy
<http://www.doe.gov>

US Environmental Protection Agency
<http://www.epa.gov>

US Green Building Council
<http://www.usgbc.org>

APPENDIX 5: CONDITIONS, TERMS, AND LIMITATIONS

BBP is issuing this Request for Proposals (“RFP”). In addition to those stated elsewhere, this RFP and any transaction resulting from this RFP are subject to the conditions, terms and limitations stated below:

- A. The Site is to be disposed of in “as is” condition and is to be conveyed subject to all applicable title matters.
- B. BBP, and its respective officers, employees, and agents, make no representation or warranty and assume no responsibility for the accuracy of the information set forth in this RFP, the physical condition of the Site, the status of title thereto, its suitability for any specific use, the absence of hazardous waste, or any other matter. All due diligence is the responsibility of the Respondent and Respondents are urged to satisfy themselves with respect to the physical condition of the Site, the information contained herein, and all limitations or other arrangements affecting the Site. BBP will not be responsible for any injury or damage arising out of or occurring during any visit to the Site.
- C. The proposed development shall conform to, and be subject to all applicable laws, regulations, and ordinances of all Federal, State and City authorities having jurisdiction, and any applicable urban design guidelines or similar development limitations, as all of the foregoing may be amended from time to time. Without limiting the foregoing, closing on a proposed transaction shall be subject to successful completion of the State Environmental Quality Review Act (“SEQRA”) and the MGPP modification, as necessary. BBP will cooperate with the Selected Respondent in obtaining necessary approvals.
- D. A Respondent submitting a proposal in response to this RFP may be rejected if it or, if the Respondent is a business entity, any of its principal shareholders, principals, partners or members is determined, in BBP’s sole discretion, to be not responsible as defined by the City. Respondent and all officers and principals thereof must complete a background questionnaire and shall be subject to investigation by BBP, and the City’s Department of Investigation. Any designation may be revoked in BBP’s sole discretion in the event any derogatory information is revealed by such investigation.
- E. BBP is not obligated to pay and shall not pay any costs incurred by any Respondent at any time unless BBP has expressly agreed to do so in writing.
- F. BBP invites the participation of real estate brokers acting on behalf of and with the authorization of identified principals, provided that the broker arranges for the payment of its commission or other compensation exclusively by the Selected Respondent of the premises. It shall be a condition to the designation of a developer of the project that the Selected Respondent agrees to pay any commission or other compensation due to any broker in connection with the development of the Site, and to indemnify and hold harmless BBP from any obligation, commission, compensation or claim brought by any broker by reason of the project or the development of the Site. BBP warrants and represents that it has not retained any broker in connection with the proposed development of the Site.,
- G. Only proposals from principals will be considered responsive. Individuals in representative, agency or consultant status may submit proposals only at the direction of identified principals, where the principals are solely responsible for paying for such services.
- H. This is a Request for Proposals **not** a Request for Bids. BBP shall judge each response’s conformance with the requirements of this RFP and of the merits of the individual proposals. BBP

reserves the right to waive any condition or modify any provision of this RFP with respect to one or more Respondents, to negotiate with one or more of the Respondents with respect to all or any portion of the Site, to require supplemental statements and information from any Respondents, to establish additional terms and conditions, to encourage Respondents to work together, or to reject any or all responses, if in its judgment it is in the best interest of BBP to do so. If all proposals are rejected, this RFP may be withdrawn and the Site may be retained, and re-offered under the same or different terms and conditions, or disposed of by another method, such as auction or negotiated disposition. In all cases, BBP shall judge the acceptability of the proposals. BBP will enforce the submission deadline stated in the RFP. The timing of the conditional selection may differ depending upon the degree to which further information on individual proposals must be obtained or due to other factors that BBP may consider pertinent. All proposals become the property of BBP.

I. All terms in this RFP related to the permitted use and bulk of the Site shall be as defined in the Modified General Project Plan, or similar development limitations and controls.

J. Except as specifically provided herein, the Selected Respondent will pay all applicable taxes due with respect to the project, including transfer and mortgage recording taxes. Selected Respondent will be required to pay the New York City Real Property Transfer Tax and New York State Real Estate Transfer Tax, notwithstanding any exemption from sale on account of the BBP's involvement in the transaction.

K. This transaction will be structured as a "net" lease, with the Selected Respondent being responsible for all fees relating to the project and all costs incurred by BBP including, but not limited to, costs for outside legal counsel, if any, studies, and outside consultants.

L. All proposals and other materials submitted to BBP in response to this RFP may be disclosed in accordance with the standards specified in the Freedom of Information Law, Article 6 of the Public Officers Law ("FOIL"). The entity submitting a proposal may provide in writing, at the time of submission, a detailed description of the specific information contained in its submission, which it has determined is a trade secret and which, if disclosed, would substantially harm such entity's competitive position. This characterization shall not be determinative, but will be considered by BBP when evaluating the applicability of any exemptions in response to a FOIL request.

M. In furtherance of BBP's mission, the disposition of the Site will be subject to BBP's standard provisions for similar transactions. The lease conveying the Site to the Selected Respondent shall contain redevelopment obligations as well as restrictions on use and transfer of the Site. Failure to comply with these restrictions will result in a default and a right by BBP to terminate the lease, re-enter and re-acquire the Site or such other remedies as BBP deems appropriate.

APPENDIX 6: ECONOMIC DEVELOPMENT BENEFITS

The following are economic development benefits that may be available to certain types of projects if the project meets eligibility requirements, including but not limited to factors such as site use and location. The descriptions are for general informational purposes only. The potential benefits and incentives described herein are subject to approval by the appropriate government agencies. Accordingly, neither the RFP respondents nor any third party should view the contents of this section as a final offer from, or commitment of, the City, EDC or other agencies. For more information on these and other economic development benefits, please refer to www.nycedc.com.

New York City Industrial Development Agency (“IDA”)

NYCEDC administers the programs of the New York City Industrial Development Agency. The IDA issues double and triple tax-exempt industrial development revenue bonds to assist eligible commercial, industrial, and nonprofit corporations to finance capital expansion projects within the City’s five boroughs. These organizations may also qualify for abatements on their sales, real estate and mortgage recording taxes (if applicable). An eligible project must create or retain permanent jobs in New York City and must need IDA financing in order to move forward. Bond proceeds must be used for acquiring land and/or equipment.

For more information regarding the programs’ eligibility requirements and restrictions, contact New York City Economic Development Corporation
Financial Services Division
110 William Street
New York, NY 10038
(212) 312-3600/(888) NYC-0100
www.nycedc.com/nycida

New York City Capital Resource Corporation (“CRC”)

The New York City Capital Resource Corporation (CRC) encourages community and economic development and job creation and retention throughout New York City by providing lower-cost financing programs to qualified not-for-profit institutions and manufacturing, industrial, and other businesses for their eligible capital projects. Currently, through its Loan Enhanced Assistance Program (LEAP), CRC can make direct loans to not-for-profits that are expanding or improving services in New York City. Eligible projects may include acquisition, construction, renovation and equipping of facilities primarily for the nonprofit’s own use located within New York City, and/or, under certain circumstances, reimbursement or refinancing of existing debt used to fund a capital expense.

For more information, including eligibility requirements, please visit:
http://www.nycedc.com/Business_Incentives/Financing/leap.html or email LEAP@nycedc.com

Energy Cost Savings Program (“ECSP”)

The energy cost savings program reduces electricity and natural gas bills. Qualifying businesses must either (1) relocate to the Site from outside of New York City or from Manhattan below 96th Street; or (2) make an investment that is greater than 10 percent of the Site’s Assessed Value. Retailers, hotels, personal-service providers, and public-benefit corporations are not eligible

For more information regarding these requirements, contact:
Energy Cost Savings Program
New York City Department of Small Business Services
110 William Street

New York, NY 10038
(212) 513-6415
www.nyc.gov/html/sbs

In addition to ECSP, other energy discount programs may be available. For more information, contact:

New York City Economic Development Corporation
Energy Department
110 William Street
New York, NY 10038
(212) 312-3600/(888) NYC-0100

New Markets Tax Credit Program (“NMTC Program”)

The New Markets Tax Credit (NMTC) Program permits taxpayers to receive a credit against Federal income taxes for making qualified equity investments in designated Community Development Entities (CDEs). Substantially all of the qualified equity investment must in turn be used by the CDE to provide investments in low-income communities. The credit provided to the investor totals 39% of the cost of the investment and is claimed over a seven-year credit allowance period.

The NMTC Program is administered by the federal Community Development Financial Institutions (CDFI) Fund. For more information regarding the program’s eligibility requirements and restrictions, as well as a complete listing of CDEs with an allocation of the tax credits that may be used in the financing of projects and businesses located in low-income areas of New York City please visit:
<http://www.cdfifund.gov>

For further information, contact:
NYC Department of Small Business Services
NYC Business Solutions
311 or 212-NEW-YORK
www.nyc.gov/smallbiz

APPENDIX 7: REQUIRED SUBMITTAL FORMS

Form #1:	Statement of Agreement
Form #2:	Project Description Questionnaire
Form #3:	Respondent Description Questionnaire
Form #4:	Schedule of Contributions to the Capital Reserve Fund
Form #5:	Proposed Project Operating Budget
Form #6:	Proposed Project Capital Budget
Form #7:	Operating Budget – Existing Facility
Form #8:	Subtenant Questionnaire

Form #1: Statement of Agreement

(On company letterhead)

Date:

Brooklyn Bridge Park
334 Furman Street
Brooklyn, NY 11201
Attn: David Lowin, Vice President

Dear Mr. Lowin:

This letter hereby certifies that (RESPONDENT) has read the Tobacco Warehouse RFP, the Appendices and any addenda to the RFP, and agrees to the terms and conditions set forth in therein.

Sincerely,

Respondent

Respondent Title (must be an authorized principal or officer of Respondent)

Form #2: Project Description Questionnaire

- 1) Describe the proposed project and rationale for the project in detail:

- 2) Describe how the physical design of the site will be integrated into the surrounding neighborhood, the Park, and the historic surrounding context:

- 3) Does the proposed project (a) exceed the height of the existing walls of the Tobacco Warehouse (b) extend outside of the footprint of the existing structure, and (c) leave a portion of the existing shell in its current outdoor uncovered state?

- 4) Is the proposed project a relocation or an expansion? If it is an expansion, describe how the proposed facility compares to the existing facility, in terms of the facility itself, required staffing levels, other expenses, and projected revenues:

- 5) Describe the space program including square footages required for each program element:

- 6) Describe how the project will provide access to multiple cultural, educational, or community groups. Have any community partners been identified?

- 7) Describe how the project will provide public access to the Site.

- 8) Describe the extent and nature of the programming planned to take place at the facility. Include the number of events, anticipated attendance, anticipated ticket costs and anticipated visitor profile:

- 9) Describe how the project will provide free public programming on an annual basis either at the Site or at other locations in the Park:

10) Is there anything else you would like to tell us about the proposed project?

Form #3: Respondent Description Questionnaire

- 1) Describe the Respondent Team. Identify the lead entity as well as all consultants and other affiliated organizations. Identify a contact person for every organization or consultant on the team and provide mailing address, phone number and email address for each contact person. Include design, construction, finance, legal, and any other consultants on the team. If possible, provide an organizational chart showing the relationship between the entities on the Respondent Team. Provide background information on all members of the Respondent Team, including relevant experience. List all principals and provide their EIN:

- 2) Briefly describe the lead entity's organizational history and mission:

- 3) Briefly describe the lead entity's principal activities:

- 4) How long has your organization been located in its present community?

- 5) Describe your organization's current staffing. Include full time, part time and volunteer numbers. Provide titles for all full time staff:

- 6) Describe your Board of Directors. List any committees of the Board. List all Board members. How many times a year does the Board meet? Describe your Board's involvement in fund raising:

- 7) Describe your team's relevant experience with similar capital projects in terms of design, construction, financing and operations:

- 8) Describe your organization's current facilities. Do you own them or rent? What is the size of the total facility? How is the space allocated? Provide floor plans if possible. Describe your plans for your current facilities if your proposal is selected:

- 9) Describe the extent and nature of the programming your organization has provided over the past 5 years. Include the number of events, attendance history, ticket costs, visitor profile, tuition programs and memberships:

- 10) Describe your organization's experience with community outreach and educational programs:

- 11) Is there anything else you would like to tell us about your organization?

Form #4: Schedule of Contributions to the Capital Reserve Fund

Total Project Cost:	\$	-	
	Annual Contribution	% of Total Project Cost	Total Funds
Year 1	\$	-	\$ -
Year 2	\$	-	\$ -
Year 3	\$	-	\$ -
Year 4	\$	-	\$ -
Year 5	\$	-	\$ -
Year 6	\$	-	\$ -
Year 7	\$	-	\$ -
Year 8	\$	-	\$ -
Year 9	\$	-	\$ -
Year 10	\$	-	\$ -
Year 11	\$	-	\$ -
Year 12	\$	-	\$ -
Year 13	\$	-	\$ -
Year 14	\$	-	\$ -
Year 15	\$	-	\$ -
Year 16	\$	-	\$ -
Year 17	\$	-	\$ -
Year 18	\$	-	\$ -
Year 19	\$	-	\$ -
Year 20	\$	-	\$ -
Year 21	\$	-	\$ -
Year 22	\$	-	\$ -
Year 23	\$	-	\$ -
Year 24	\$	-	\$ -
Year 25	\$	-	\$ -
Year 26	\$	-	\$ -
Year 27	\$	-	\$ -
Year 28	\$	-	\$ -
Year 29	\$	-	\$ -
Year 30	\$	-	\$ -
Year 31	\$	-	\$ -
Year 32	\$	-	\$ -
Year 33	\$	-	\$ -
Year 34	\$	-	\$ -
Year 35	\$	-	\$ -
Year 36	\$	-	\$ -
Year 37	\$	-	\$ -
Year 38	\$	-	\$ -
Year 39	\$	-	\$ -
Year 40	\$	-	\$ -
Year 41	\$	-	\$ -
Year 42	\$	-	\$ -
Year 43	\$	-	\$ -
Year 44	\$	-	\$ -
Year 45	\$	-	\$ -
Year 46	\$	-	\$ -
Year 47	\$	-	\$ -
Year 48	\$	-	\$ -
Year 49	\$	-	\$ -
Year 50	\$	-	\$ -

Form #5: Proposed Project Operating Budget

FORM 5: OPERATING BUDGET - PROPOSED PROJECT					
NAME OF ORGANIZATION:					
	<i>Move in to new facility</i>				
	2012	2013	2014	2015	2016
EARNED INCOME					
ADMISSIONS/BOX OFFICE					
TUITION/CLASS/WORKSHOP FEES					
CONCESSIONS					
FUND-RAISING EVENTS					
RENTAL FEES					
OTHER (SPECIFY BELOW)					
TOTAL EARNED INCOME	\$ -	\$ -	\$ -	\$ -	\$ -
UNEARNED/NON-GOVERNMENT INCOME					
CORPORATE SUPPORT					
FOUNDATION SUPPORT					
PRIVATE INDIVIDUAL SUPPORT					
OTHER (SPECIFY BELOW)					
UNEARNED / NON -GOV TOTAL	\$ -	\$ -	\$ -	\$ -	\$ -
UNEARNED/GOVERNMENT INCOME					
NEA					
NYSOA					
OTHER FEDERAL/STATE (SPECIFY BELOW)					
NYC DCA					
OTHER CITY (SPECIFY BELOW)					
LOCAL ARTS COUNCILS (SPECIFY BELOW)					
UNEARNED/GOV TOTAL	\$ -	\$ -	\$ -	\$ -	\$ -
TOTAL INCOME	\$ -	\$ -	\$ -	\$ -	\$ -
PROGRAMMING EXPENSES					
PERSONNEL					
ADMINISTRATIVE PERSONNEL					
ARTISTIC PERSONNEL					
TECHNICAL PERSONNEL					
EQUIPMENT/SUPPLIES					
OUTSIDE PROFESSIONAL SERVICES					
TRAVEL/TRANSPORTATION					
ADVERTISING/PROMOTION					
OTHER (PLEASE SPECIFY BELOW)					
FACILITY EXPENSES					
RENT (IF APPLICABLE)					
DEBT SERVICE (IF APPLICABLE)					
UTILITIES					
INSURANCE					
CAPITAL RESERVES (IF APPLICABLE)					
OTHER (PLEASE SPECIFY BELOW)					
TOTAL EXPENSES	\$ -	\$ -	\$ -	\$ -	\$ -
SURPLUS/(DEFICIT)	\$ -	\$ -	\$ -	\$ -	\$ -
OTHER INCOME:					
OTHER EXPENSES:					

FORM 5: OPERATING BUDGET - PROPOSED PROJECT (CONTINUED)					
NAME OF ORGANIZATION:					
	2017	2018	2019	2020	2021
EARNED INCOME					
ADMISSIONS/BOX OFFICE					
TUITION/CLASS/WORKSHOP FEES					
CONCESSIONS					
FUND-RAISING EVENTS					
RENTAL FEES					
OTHER (SPECIFY BELOW)					
TOTAL EARNED INCOME	\$ -	\$ -	\$ -	\$ -	\$ -
UNEARNED/NON-GOVERNMENT INCOME					
CORPORATE SUPPORT					
FOUNDATION SUPPORT					
PRIVATE INDIVIDUAL SUPPORT					
OTHER (SPECIFY BELOW)					
UNEARNED / NON -GOV TOTAL	\$ -	\$ -	\$ -	\$ -	\$ -
UNEARNED/GOVERNMENT INCOME					
NEA					
NYS CA					
OTHER FEDERAL/STATE (SPECIFY BELOW)					
NYC DCA					
OTHER CITY (SPECIFY BELOW)					
LOCAL ARTS COUNCILS (SPECIFY BELOW)					
UNEARNED/GOV TOTAL	\$ -	\$ -	\$ -	\$ -	\$ -
TOTAL INCOME	\$ -	\$ -	\$ -	\$ -	\$ -
PROGRAMMING EXPENSES					
PERSONNEL					
ADMINISTRATIVE PERSONNEL					
ARTISTIC PERSONNEL					
TECHNICAL PERSONNEL					
EQUIPMENT/SUPPLIES					
OUTSIDE PROFESSIONAL SERVICES					
TRAVEL/TRANSPORTATION					
ADVERTISING/PROMOTION					
OTHER (PLEASE SPECIFY BELOW)					
FACILITY EXPENSES					
RENT (IF APPLICABLE)					
DEBT SERVICE (IF APPLICABLE)					
UTILITIES					
INSURANCE					
CAPITAL RESERVES (IF APPLICABLE)					
OTHER (PLEASE SPECIFY BELOW)					
TOTAL EXPENSES	\$ -	\$ -	\$ -	\$ -	\$ -
SURPLUS/(DEFICIT)	\$ -	\$ -	\$ -	\$ -	\$ -
OTHER INCOME:					
OTHER EXPENSES:					

Form #6: Proposed Project Capital Budget

FORM 6: PROPOSED PROJECT CAPITAL BUDGET		
ORGANIZATION NAME:		
SOURCES		
	AMOUNT	
EQUITY		
CASH		
TRANSFER FROM ENDOWMENT		
CAPITAL CAMPAIGN		
FUNDRAISING EVENTS		
CORPORATE SUPPORT		
FOUNDATION SUPPORT		
PRIVATE/INDIVIDUAL SUPPORT		
FEDERAL SUPPORT		
STATE SUPPORT		
CITY SUPPORT		
DEBT		
BOND FINANCING		
BANK LOAN		
CDFI		
OTHER (PLEASE SPECIFY BELOW)		
TOTAL SOURCES		
USES		
	TOTAL COST	\$PSF
PROPERTY ACQUISITION (IF APPLICABLE)		
HARD COSTS		
FINISHES (FIT-OUT)		
EQUIPMENT		
OTHER (PLEASE SPECIFY BELOW)		
SOFT COSTS		
CAPITAL PLANNING FEES		
ARCHITECTURAL AND OTHER DESIGN FEES		
PROJECT MANAGEMENT FEES		
FINANCING FEES		
ATTORNEY FEES		
CAPITAL CAMPAIGN CONSULTANT		
ADMINISTRATIVE OVERHEAD		
OTHER (PLEASE SPECIFY BELOW)		
SUBTOTAL		
CONTINGENCY (10% OF SUBTOTAL)		
TOTAL PROJECT COST		
OTHER SOURCES:		

Form #7: Operating Budget – Existing Facility

FORM 7: OPERATING BUDGET - EXISTING FACILITY						
NAME OF ORGANIZATION:						
	FY 2006 (Actual)	FY 2007 (Actual)	FY 2008 (Actual)	FY 2009 (Actual)	FY 2010 (Projected)	FY 2011 (Projected)
EARNED INCOME						
ADMISSIONS/BOX OFFICE						
TUITION/CLASS/WORKSHOP FEES						
CONCESSIONS						
FUND-RAISING EVENTS						
RENTAL FEES						
OTHER (SPECIFY BELOW)						
TOTAL EARNED INCOME	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
UNEARNED/NON-GOVERNMENT INCOME						
CORPORATE SUPPORT						
FOUNDATION SUPPORT						
PRIVATE INDIVIDUAL SUPPORT						
OTHER (SPECIFY BELOW)						
UNEARNED / NON -GOV TOTAL	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
UNEARNED/GOVERNMENT INCOME						
NEA						
NYSCA						
OTHER FEDERAL/STATE (SPECIFY BELOW)						
NYC DCA						
OTHER CITY (SPECIFY BELOW)						
LOCAL ARTS COUNCILS (SPECIFY BELOW)						
UNEARNED/GOV TOTAL	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
TOTAL INCOME	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
EXPENSES						
PERSONNEL						
ADMINISTRATIVE PERSONNEL						
ARTISTIC PERSONNEL						
TECHNICAL PERSONNEL						
EQUIPMENT/SUPPLIES						
OUTSIDE PROFESSIONAL SERVICES						
RENT						
UTILITIES						
INSURANCE						
TRAVEL/TRANSPORTATION						
ADVERTISING/PROMOTION						
OTHER (PLEASE SPECIFY BELOW)						
TOTAL EXPENSES	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
SURPLUS/(DEFICIT)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
OTHER EXPENSES:						

Form #8: Subtenant Questionnaire

- 1) Briefly describe your organization's history, mission and principal activities:

- 2) How long has your organization been located in its present community?

- 3) Identify a contact person for your organization, providing mailing address, phone number and email information for each contact person. Include contact information for any design, construction, finance, legal, and any other consultants on the team. If possible, provide an organizational chart showing the relationship between the entities on the Respondent Team. Provide background information on all members of the Respondent Team, including relevant experience. List all principals and provide their EIN:

- 4) Describe your Board of Directors. List any committees of the Board. List all Board members. How many times a year does the Board meet? Describe your Board's involvement in fund raising:

- 5) Describe your organization's current staffing. Include full time, part time and volunteer numbers. Provide titles for all full time staff:

- 6) Describe the extent and nature of the programming your organization has provided over the past 5 years. Include the number of events, attendance history, ticket costs, visitor profile, tuition programs and memberships:

- 7) Describe the extent and nature of the programming planned to take place at the facility. Include the number of events, anticipated attendance, anticipated ticket costs and anticipated visitor profile:

- 8) Describe how the project will provide free public programming on an annual basis either at the Site or at other locations in the Park:

- 9) Describe your organization's experience with community outreach and educational programs:

- 10) Describe your organization's current facilities. Do you own them or rent? What is the size of the total facility? How is the space allocated? Provide floor plans if possible. Describe your plans for your current facilities if your proposal is selected:

- 11) Describe your space requirements for the new facility including square footages required for each type of space:

- 12) Is there anything else you would like to tell us about your organization or team?

APPENDIX 8: ESDC'S MWBE POLICY

ESD NON-DISCRIMINATION AND AFFIRMATIVE ACTION CONSTRUCTION CONTRACT PROVISIONS

I. Policy

It is the policy of the State of New York and ESD, to comply with all federal, State and local law, policy, orders, rules and regulations which prohibit unlawful discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, and to take affirmative action to ensure that Minority and Women-owned Business Enterprises (M/WBEs), Minority Group Members and women share in the economic opportunities generated by ESD's participation in projects or initiatives, and/or the use of ESD funds.

- 1) The Contracting Party represents that its equal employment opportunity policy statement incorporates, at a minimum, the policies and practices set forth below:
 - (a) Contracting Party shall (i) not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, (ii) undertake or continue existing programs of affirmative action to insure that Minority Group Members and women are afforded equal employment opportunities without discrimination, and (iii) make and document its conscientious and active efforts to employ and utilize Minority Group Members and women in its workforce on Contracts. Such action shall be taken with reference to, but not limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.
 - (b) At the request of the AAO, the Contracting Party shall request each employment agency, labor union, or authorized representative of workers with whom it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative does not unlawfully discriminate, and that such union or representative will affirmatively cooperate in the implementation of the Contracting Party's obligations herein.
- (2) Commencing not more than 30 days after (i) execution of the Contract, or (ii) start of construction, the Contracting Party shall submit to the AAO a Monthly Employment Utilization Report (Schedule F-1) of the workforce actually utilized on the Contract, itemized by ethnic background, gender, and Federal Occupational Categories or other appropriate categories specified by the AAO.

The Contracting Party shall include, or cause to be included, the provisions of clauses (1) and (2) in every Contract or purchase order that it enters into in order to fulfill its obligations under the Contract, in such a manner that such provisions will be binding upon each and every Contracting Party with respect to any Contract or Subcontract.

II. Goals for Minority and Women-Owned Business Enterprise Participation

- (a) The Contracting Party is required to use its best efforts to achieve an overall M/WBE participation goal of 20% of the total dollar value of the Contract.
- (b) The goal for M/WBE participation in the performance of the work is expressed as a percentage of the contract price.

- (c) The total dollar value of the work performed by M/WBEs will be determined as: (i) the dollar value of the work subcontracted to M/WBEs; (ii) where the Contracting Party is a joint venture, association, partnership or other similar entity including one or more M/WBEs -- the contract price multiplied by the percentage of the entity's profits/losses which are to accrue to the M/WBE(s) under the Contracting Party's agreement; or (iii) where the M/WBE is the Contracting Party -- the contract price.
- (d) The Contracting Party shall include, or cause to be included, the provisions of clauses (a) through (c) in every Contract or purchase order that it enters into in order to fulfill its obligations under the Contract, in such a manner that such provisions will be binding upon each and every Contracting Party with respect to any Contract or Subcontract.

III. Goals for Minority and Female Workforce Participation

- (a) Contracting Party is required to use its best efforts to achieve the overall goal of 25 % minority and female workforce (M/FWF) participation in the work performed pursuant to Contracts entered into in connection with the project or initiative.
- (b) The M/FWF participation goals are expressed as a percentage equal to the person hours of training and employment of minority or female workers, as the case may be, used by any Contracting Party, divided by the total person hours of training and employment of all workers (including supervisory personnel).
- (c) The required participation for minority and female employment and training must be substantially uniform throughout the work.
- (d) Contracting Party shall not participate in the transfer of minority or female employees or trainees from employer-to-employer or from project-to-project for the sole purpose of meeting the Contracting Party's obligations herein.
- (e) In striving to achieve the goals for M/FWF participation, Contracting Party shall use its best efforts to identify and employ qualified minority and female supervisory personnel and journey persons.
- (f) The non-working hours of trainees or apprentices may not be considered in meeting the goals for M/FWF participation contained herein unless: (i) such trainees or apprentices are employed by Contracting Party during the training period; (ii) the Contracting Party has made a commitment to employ the trainees or apprentices at the completion of their training, subject to the availability of employment opportunities; and (iii) the trainees are trained pursuant to an approved training program.
- (g) The Contracting Party shall include, or cause to be included, the provisions of clauses (a) through (f) in every Contract or purchase order that it enters into in order to fulfill its obligations under the Contract, in such a manner that such provisions will be binding upon each and every Contracting Party with respect to any Contract or Subcontract.

IV. Reporting Requirements

The Contracting Party will permit access to its books, records and accounts, with respect to the Contract, by the AAO for purposes of investigation to ascertain compliance with the provisions herein. Upon request, the Contracting Party shall periodically file, or cause to be filed, reports, substantially in the format attached hereto as Schedule F-1 and F-2 (MBE/WBE Compliance Report to be filed monthly), with the AAO detailing compliance with the provisions of these non-discrimination and affirmative action clauses. Accuracy of the information contained in the reporting documentation shall be certified to by an owner or officer of the Contracting Party.

V. Non-Compliance and Sanctions

In the event that any Contracting Party violates any of the provisions herein, the ESD may require that the following sanctions and remedies for non-compliance be imposed:

- (a) Summon the Contracting Party for a hearing with the AAO.
- (b) After any such hearing, and a determination by the AAO that the Contracting Party has failed to comply with any of these provisions, and the passage of time in which to remedy such failure has transpired, this Contract may be canceled, terminated or suspended, in whole or in part. Alternatively, the AAO, in his/her sole discretion, may assess liquidated damages against the Contracting Party for failure to demonstrate its best efforts in complying with the affirmative action program. Liquidated damages may be assessed in an amount equal to the dollar value of Contracts that would have been realized by M/WBEs if the goals had been achieved.
- (c) If such an award is assessed against any Contracting Party, (i) the amount of such assessment may be withheld from any monies due to the Contracting Party by the ESD or; (ii) may be paid to the ESD by the Contracting Party that has been found to fail to comply with the affirmative action program. Any liquidated damages collected hereunder shall be paid into one or more M/WBE technical assistance funds administered by the ESD.
- (d) Such sanctions that may be imposed and remedies invoked hereunder, shall be considered independent of, or in addition to, sanctions and remedies otherwise provided by law.

ESD NON-DISCRIMINATION AND AFFIRMATIVE ACTION DEFINITIONS

Affirmative Action

Shall mean the actions to be undertaken by the Borrower, Grantee and any Contracting Party in connection with any project or initiative to ensure non-discrimination and Minority/Women-owned Business Enterprise and minority/female workforce participation, as set forth in Sections II and III herein, and developed by ESD.

Affirmative Action Officer (“AAO”)

Shall mean ESD’s Affirmative Action Officer or his/her designee, managing the affirmative action program for ESD.

Contract

Shall mean (i) a written agreement or purchase order instrument, or amendment thereto, executed by or on behalf of a **Contracting Party**, providing for a total expenditure in excess of \$5,000 for labor, services, supplies, equipment, materials or any combination of the foregoing funded in whole or in part with ESD funds and (ii) any loan or grant agreement funded in whole or in part with ESD funds.

Contracting Party

Shall mean (i) any contractor, subcontractor, consultant, subconsultant or vendor supplying goods or services, pursuant to a contract or purchase order in excess of \$1,500, in connection with any projects or initiatives funded in whole or in part by the ESD and (ii) **any borrower or grantee** receiving funds from the ESD pursuant to a loan or grant document.

Subcontract

Shall mean an agreement providing for a total expenditure in excess of \$1,500 between a **Contracting Party** and any individual or business enterprise, for goods or services rendered in connection with any project or initiative funded in whole or in part with ESD funds.

Minority Business Enterprise (“MBE”)

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent (51%) owned by one or more Minority Group Members; (ii) an enterprise in which such minority ownership is real, substantial and continuing; (iii) an enterprise in which such minority ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; (iv) an enterprise authorized to do business in the State of New York and is independently owned and operated; and (v) an enterprise certified by New York State as a minority business.

Minority Group Member

Shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (i) Black persons having origins in any of the Black African racial groups; (ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race; (iii) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands; and (iv) Native American or Alaskan native persons having origins in any of the original peoples of North America.

Women-owned Business Enterprise (“WBE”)

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent (51%) owned by one or more citizens or permanent resident aliens who are women; (ii) an enterprise in which the ownership interest of such women is real, substantial and continuing; (iii) an enterprise in which such women ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; (iv) an enterprise authorized to do business in the State of New York and is independently owned and operated; and (v) an enterprise certified by New York State as woman-owned.

ESD NON-DISCRIMINATION AND AFFIRMATIVE ACTION DEFINITIONS

Best Efforts - Minority and Women-owned Business Enterprise Participation

Best efforts are not limited to the efforts specified herein, and the role of M/WBE firms are not restricted to that of a subcontractor/subconsultant. Where applicable, M/WBE firms should be considered for roles as prime contractors. Such best efforts shall include at least the following:

- (a) Dividing the contract work into smaller portions in such a manner as to permit subcontracting to the extent that it is economically and technically feasible to do so;
- (b) Actively and affirmatively soliciting bids from qualified M/WBEs, including circulation of solicitations to minority and women's trade associations. Each Contracting Party shall maintain records detailing the efforts made to provide for meaningful M/WBE participation in the work. Such record keeping must include the names and addresses of all M/WBEs contacted and, if an M/WBE is the low bidder and is not selected for such work or portion thereof, the reasons for such decision;
- (c) Making plans and specifications for prospective work available to M/WBEs in sufficient time for review;
- (d) Utilizing the services and cooperating with those organizations providing technical assistance to the Contracting Party in connection with potential M/WBE participation on the Contract;
- (e) Utilizing the resources of the AAO to identify New York State certified M/WBE firms for the purpose of soliciting bids and subcontracts; and
- (f) Encouraging the formation of joint ventures, associations, partnerships, or other similar entities, where appropriate, to ensure that the Contracting Party will meet its obligations herein.
- (g) The Contracting Party shall remit payment in a timely fashion.

Best Efforts - Minority Group Member and Female Workforce Participation

Best efforts to provide for meaningful Minority Group Member and female workforce participation shall include at least the following in connection with the work:

- (a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at the premises. The Contracting Party shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the obligation to maintain such a working environment, with specific attention to Minority Group Member or female individuals working at the premises;
- (b) State in all solicitations or advertisement for employees that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, sexual orientation, age disability or marital status;
- (c) Send to each labor union or representative of workers with which a collective bargaining agreement or understanding is in place, a notice advising the said labor union or workers representative of commitments under this Section, and post copies of the notice in conspicuous places available to employees and applicants for employment;
- (d) Establish and maintain a current list of Minority Group Member and female recruitment sources and community organizations, and provide written notification to them when employment opportunities are available. Maintain a record of the organizations' responses;

ESD NON-DISCRIMINATION AND AFFIRMATIVE ACTION DEFINITIONS

- (e) Maintain a current file of the name, address and telephone number of each Minority Group Member and female applicant and any referrals from a union, recruitment source or community organization, and of the action taken with respect to each individual. If such individual was sent to the union hiring hall for referral and was not referred back by the union or, if referred, was not employed, this shall be documented in writing in the file with the reasons therefor; along with whatever additional actions the Contracting Party may have taken;
- (f) Disseminate the Contracting Party's equal employment opportunity policy by providing notice of the policy to unions and training programs and requesting their cooperation in meeting its Equal Employment Opportunity obligations, by including it in any policy manual and collective bargaining agreement, by publicizing it in the company newspaper, annual report, and other similar items, by specific review of the policy with all management personnel and with all Minority Group Member and female employees at least once a year, and by posting the company Equal Employment Opportunity policy on bulletin boards accessible to all employees at each location where work is performed under this Contract;
- (g) Disseminate the Contracting Party's Equal Employment Opportunity policy externally by including it in any advertising in the news media, specifically including Minority Group Member and female news media, and providing written notification to and discussing the Equal Employment Opportunity policy with any contractor with whom the Contracting Party does or anticipates doing business; and,
- (h) Ensure that all facilities and company activities are non-segregated except that separate or single-user toilets and necessary changing facilities shall be provided to assure privacy between the sexes.

SCHEDULE F-2
CONSTRUCTION

MBE/WBE COMPLIANCE REPORT

(to be filed monthly)

PROJECT SPONSOR/DEVELOPER: _____ ESD AA REPRESENTATIVE: HELEN DANIELS
 ADDRESS: _____ PROJECT NAME: _____
 TELEPHONE: _____ PROJECT START DATE: _____ PERCENT COMPLETE: _____
 CONTACT PERSON: _____ ACTUAL COMPLETION: _____

Attach M/WBE contract documentation, i.e. executed contracts, final lien waivers, signed purchase orders or checks. This report should be completed by an officer of the reporting company, and forwarded to the ESD AA Representative with the appropriate documentation. canceled

PRIME CONTRACTOR (Name, Address, Contact Person and Phone)	CONTRACT AMOUNT	MBE/WBE SUBCONTRACTOR (Name, Address, Contact Person and Phone)	SCOPE OF SERVICES	MBE/WBE CONTRACT AMOUNT	MBE/WBE PAYMENT PREVIOUS REPORT	MBE/WBE PAYMENT CURRENT REPORT	MBE/WBE AMOUNT PAID TO DATE

CERTIFICATION: I, _____ (Title), do certify that (1) I have read this Compliance Report and (2) to the best of my knowledge, information and belief the information contained herein is complete and accurate.
 SIGNATURE _____ DATE _____

Forward to: Empire State Development
 Affirmative Action Unit - HELEN DANIELS
 633 Third Avenue
 New York, NY 10017-6754
 Office: (212) 803-3225 Fax: (212) 803-3223

Schedule F-1

MONTHLY EMPLOYMENT UTILIZATION REPORT

(See reverse side for instructions)

COMPANY NAME: ADDRESS: TELEPHONE NUMBER: FEDERAL ID NO.: CHECK IF NOT-FOR-PROFIT <input type="checkbox"/>	PROJECT NAME: PROJECT LOCATION: COUNTY: _____ ZIP: _____ REPORTING PERIOD: Month _____ Year _____	CONTRACTOR START DATE: ESTIMATED COMPLETION DATE: PERCENT OF JOB COMPLETED (for reporting period): _____ CONTRACT NO.: _____ CONTRACT AMOUNT: ___\$
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CLASSIFICATION	1. WORKER HOURS OF EMPLOYMENT										2. NO. OF WORKERS		3. CONSTRUCTION TRADES				
	1a. ALL WORKER HOURS		1b. BLACK (Not of Hispanic Origin)		1c. HISPANIC		1d. ASIAN or PACIFIC ISLANDER		1e. NATIVE AMERICAN/ ALASKANATIVE		2a. ALL			2b. MINORITY			
	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE		MALE	FEMALE		
Supervisory																	
Journey Worker																	
Apprentice																	
Trainee																	
Subtotal																	
Journey Worker																	
Apprentice																	
Trainee																	
Subtotal																	
Journey Worker																	
Apprentice																	
Trainee																	
Subtotal																	
TOTAL SUPERVISORS																	
TOTAL JOURNEY WORKERS																	
TOTAL APPRENTICES																	
TOTAL TRAINEES																	
GRAND TOTAL																	

CERTIFICATION: I, _____ (Print Name), the _____ (Title), do certify that (i) I have read this Monthly Employment Utilization Report and (ii) to the best of my knowledge, information and belief the information contained herein is complete and accurate.

SIGNATURE _____ DATE _____

MONTHLY EMPLOYMENT UTILIZATION REPORT

Instructions for Completion

The Monthly Employment Utilization Report ("MEUR") is to be completed by each subject contractor (both Prime and Sub) and signed by a responsible official of the company. The reports are to be filed by the 5th day of each month during the term of the project, and they shall include the total work-hours for each employee classification in each trade in the covered area for the monthly reporting period. The prime contractor is responsible for submitting its subcontractors report, along with its own. Additional copies of this form may be obtained from Empire State Development ("ESD").

Minority: Includes Blacks, Hispanics, Native Americans, Alaskan Natives, and Asian and Pacific Islanders, both men and women.

1. Worker Hours of Employment (a-e):
 - a) All Worker Hours: The total number of male hours, the total number of female hours, and the total of both male and female hours worked under each classification.
 - b) through e) Minority Worker Hours The total number of male hours and the total number of female hours worked by each specified group of minority worker in each classification.

2. Number of Workers (a-b):
 - a) All Workers Total number of males and total number of females working in each classification of each trade in the contractor's aggregate workforce during reporting period.
 - b) Minority Workers Total number of male minorities and total number of female minorities working in each classification, in each trade in the contractor's aggregate workforce during reporting period.

3. Construction Trade: Only those construction crafts which contractor employs in the covered area.
Construction Trades include: Field Office Staff (Professionals and Office/Clerical), Laborers, Equipment Operators, Surveyors, Truck Drivers, Iron Workers, Carpenters, Cement Masons, Painters, Electricians, Plumbers and Other.

Note: ESD may demand payroll records to substantiate work hours listed on the Monthly Employment Utilization Report, if discrepancies should arise.

OCCUPATIONAL CODES

Officials/Administrators	100
Professionals	110
Technicians	120
Sales Workers	130
Office & Clerical	140
Craft Workers	150
Operatives	160

Laborers	170
Service Workers	180

FORWARD TO:

Empire State Development
Affirmative Action Unit – Helen Daniels
633 Third Avenue
New York, NY 10017 Office: (212) 803-3225 FAX: (212) 803-3223