

FUNDING AGREEMENT dated as of _____, 20__ (“**Agreement**”), between **The City of New York** (“**City**”), acting by and through the **DEPARTMENT OF DESIGN AND CONSTRUCTION** (“**DDC**”), with its principal office at 30-30 Thomson Avenue, Long Island City, New York 11101, and _____ the (“**Funding Recipient**”), a corporation formed pursuant to the Not-for-Profit Corporation Law of the State of New York having its principal office at _____.

WITNESSETH

WHEREAS, Funding Recipient operates a not-for-profit _____; and

WHEREAS, Funding Recipient proposes to purchase certain property consisting of [Insert Address(es)], New York, and also known as Block _____, Lot ____ in the Tax Map of the Borough of _____, City of New York and State of New York (hereinafter referred to collectively as the “**Premises**”); and; and

WHEREAS, Funding Recipient proposes to make use of the Premises to meet increased demand and expand its services in accordance with the City Purpose Covenant (as defined in Article 1 of this Agreement) and the Funding Recipient has spent approximately _____ Dollars (\$_____) its own private organizational funds to prepare the Premises for its intended use as detailed by the Funding Recipient in Exhibit C, which is attached hereto (the “**Project**”); and

WHEREAS, Funding Recipient has requested funding to purchase the Premises, and the **City**, through DDC, will provide funding at the time of closing to pay for Eligible Costs (as defined in Article 1 of this Agreement) for the purchase of the Premises and associated costs; and

WHEREAS, the City has determined that it is in the best interest of the people of the City that Funding Recipient undertake the Project and desires to provide Funding Recipient with the Eligible Costs to be paid by Funding Recipient for the purchase of the Premises and associated costs, in accordance with this Agreement; and

WHEREAS, the City has appropriated _____ Dollars (\$_____) (the “**Funding**”) in its Capital Budget to pay for Eligible Costs incurred by Funding Recipient strictly for the purchase of the Premises and associated costs; and

WHEREAS, simultaneously with the execution and delivery hereof, Funding Recipient shall, among other things, execute a Declaration of Restrictive Covenant (“**Declaration**”) in favor of the City that constitutes a first priority interest on the Premises, and shall cause such Declaration to be recorded in the Office of the City Register for the City of New York, _____ County and indexed against the Premises;

NOW, THEREFORE, the City and Funding Recipient agree as follows:

ARTICLE 1

CERTAIN DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings (all terms defined in this Article 1 or in other provisions of this Agreement in the singular to have the same meaning when used in the plural and vice versa. Defined terms utilized and not otherwise defined herein shall have the meaning assigned to such terms in the Declaration:

“**Affiliate**” means (a) any Person that is a principal of Funding Recipient by virtue of his/her/its membership in Funding Recipient’s governing body or participation in the management and/or operation of Funding Recipient, (b) any Person that controls, is controlled by, or is under common control with, Funding Recipient, and (c) any individual who is a member of the immediate family (whether by birth or marriage) of an individual who is an Affiliate, which includes for purposes of this definition a spouse, a brother or sister of such individual or his spouse, a lineal descendant or ancestor of any of the foregoing, or a trust for the benefit of any of the foregoing.

“**Business Day**” means any day other than a Saturday, Sunday, legal holiday, a day on which City offices are closed for business or a day on which banking institutions in New York City are authorized by law or executive order to close.

“**City Purpose Covenant**” has the meaning provided in the Declaration.

“**City**” has the meaning provided in the Preamble hereof.

“**Comptroller**” means the Comptroller of the City of New York.

“**DSBS**” has the meaning provided in Section 6.20(b) hereof.

“**Declaration**” has the meaning provided in the Preamble hereof.

“**Default**” means any condition or event, or failure of any condition or event to occur, which constitutes, or after the giving of notice or the passage of time, or both, would constitute an Event of Default.

“**DDC**” has the meaning provided in the Preamble hereof.

“**DDC Representative**” means any Person appointed by DDC, whether a DDC employee, agent, consultant or contractor, to supervise and monitor the Project on DDC’s behalf.

“**Eligible Costs**” means the purchase price of the Premises provided that the seller is an Eligible Seller, and provided further that the purchase price of the Premises is financeable by the City with the proceeds of tax exempt bonds pursuant to the New York State Local Finance Law, the Internal Revenue Code of 1986, as amended, the New York City Charter, the directives of the Comptroller and any other applicable rules or regulations. Eligible Costs shall not include (a) loans, extensions of credit and other financial accommodations incurred or secured by Funding Recipient for the purchase of the Premises unless such loans, extensions of credit and/or other financial accommodations were incurred after the date of the City appropriation of the Funding and otherwise constitute Eligible Costs, and (b) any fee to Funding Recipient or any

Affiliate or employee, any overhead of Funding Recipient or the salary or expenses related to any officer or employee of Funding Recipient or any Affiliate.

“**Eligible Seller**” means the seller of the Premises, provided that (a) seller is not a Prohibited Person, and, in the case of any seller that is not a natural person, none of its principals are Prohibited Persons, and (b) seller has been otherwise approved by DDC in its sole reasonable discretion based on such investigation as DDC may deem appropriate.

“**Event of Default**” has the meaning provided in Section 11.01 hereof.

“**Federal Courts**” has the meaning provided in Section 13.02 hereof.

“**Funding**” has the meaning provided in the Preamble hereof.

“**Funding Recipient**” has the meaning provided in the Preamble hereof.

“**Funding Recipient Representative**” means the Funding Recipient or such other Person as may be designated by Funding Recipient to represent it in connection with the Project or this Agreement, provided that DDC is advised in writing that such other Person has been designated to serve as Funding Recipient Representative and a specimen signature of such other Person is provided to DDC in a certificate executed by the Chief Financial Officer of Funding Recipient.

“**Governmental Authorities**” means the United States of America, the State of New York, the City and any agency, department, legislative body, commission, board, bureau, instrumentality or political subdivision of any of the foregoing, now existing or hereafter created, having or claiming jurisdiction over the Premises or any portion thereof or any street, road, avenue, sidewalk or water comprising a part of or immediately adjacent to the Premises, or any vault in or under the Premises.

“**Hazardous Substances**” means (a) any “hazardous waste” as defined under the Resource Conservation and Recovery Act, 42 U.S.C. Section 9601 et seq., (b) “hazardous substance” as defined under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 6901 et seq., (c) “hazardous materials” as defined under the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101 et seq., (d) “hazardous waste” as defined under New York Environmental Conservation Law Section 27-0901 et seq., (e) “hazardous substance” as defined under the Clean Water Act, 33 U.S.C. Section 1321 et seq., (f) any asbestos containing materials, petroleum products, byproducts or additives, radioactive materials, lead paint, hazardous air pollutants, polychlorinated biphenyls, or volatile organic compounds and the regulations adopted and publications promulgated pursuant to the above, and all other applicable laws, rules or regulations of all Federal, State and local authorities having jurisdiction over the Premises.

“**Indemnitees**” has the meaning provided in Section 9.02 hereof.

“**Late Charge Rate**” means the rate of interest charged by the City from time to time for delinquent real property taxes.

“**Lien**” means any lien (statutory or otherwise), including, but not limited to, mechanic’s, laborer’s, materialman’s and public improvement liens, security interest, mortgage,

deed of trust, priority, pledge, charge, conditional sale, title retention agreement, financing lease or other encumbrance or similar right of others, or any other agreement to give any of the foregoing.

“**Mortgagee Title Insurance Policy**” has the meaning provided in Section 4.01(d) hereof.

“**New York State Courts**” has the meaning provided in Section 13.02 hereof.

“**Obligations**” means the terms, covenants and conditions of this Agreement and the Declaration on the part of Funding Recipient to be performed, observed or satisfied.

“**Parties**” means the City, DDC and Funding Recipient.

“**Performance Term**” has the meaning provided in the Declaration.

“**Person**” means (except as otherwise indicated in this Agreement) an individual, corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association; any federal, state, county or municipal government or any bureau, department or agency thereof; and any fiduciary acting in such capacity on behalf of any of the foregoing.

“**Premises**” has the meaning provided in the Preamble hereof.

“**Prohibited Person**” means:

(a) Any Person (i) that is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with DDC or the City, or (ii) that directly or indirectly controls, is controlled by, or is under common control with a Person that is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with DDC or the City, unless such default or breach has been waived in writing by DDC or the City, as the case may be.

(b) Any Person (i) that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure, or (ii) that directly or indirectly controls, is controlled by, or is under common control with a Person that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure.

(c) Any government, or any Person that is directly or indirectly controlled (rather than only regulated) by a government, that is finally determined to be in violation of (including, but not limited to, any participant in an international boycott in violation of) the Export Administration Act of 1979, or its successor, or the regulations issued pursuant thereto, or any government that is, or any Person that, directly or indirectly, is controlled (rather than only regulated) by a government that is subject to the regulations or controls thereof.

(d) Any government, or any Person that, directly or indirectly, is controlled (rather than only regulated) by a government, the effects of the activities of which

are regulated or controlled pursuant to regulations of the United States Treasury Department or executive orders of the President of the United States of America issued pursuant to the Trading with the Enemy Act of 1917, as amended.

(e) Any Person that has received written notice of default in the payment to the City of any taxes, sewer rents or water charges, unless such default is then being contested with due diligence in proceedings in a court or other appropriate forum.

(f) Any Person (i) that has owned at any time in the preceding three (3) years any property which, while in the ownership of such Person, was acquired by the City by in rem tax foreclosure, other than a property in which the City has released or is in the process of releasing its interest to such Person pursuant to the Administrative Code of the City, or (ii) that, directly or indirectly controls, is controlled by, or is under common control with a Person that has owned at any time in the preceding three (3) years any property which, while in the ownership of such Person, was acquired by the City by in rem tax foreclosure, other than a property in which the City has released or is in the process of releasing its interest to such Person pursuant to the Administrative Code of the City.

“**Project**” has the meaning provided in the Preamble hereof.

“**Project Budget**” has the meaning provided in Section 4.01(j) hereof.

“**Requirements**” means any and all laws, rules, regulations, orders, ordinances, statutes, codes, executive orders, resolutions and requirements of all Governmental Authorities currently in force or hereafter adopted applicable to the Premises and/or the Project, and any and all provisions and requirements of any property, casualty or other insurance policy required to be carried by this Agreement.

“**Requisition**” has the meaning provided in Section 4.01(k) hereof.

“**Reviewing Parties**” means DDC and its employees, designees, consultants and agents.

“**Term**” has the meaning provided in Section 2.01 hereof.

“**Title Insurance Company**” has the meaning provided in Section 4.01(d) hereof.

“**Transactional Documents**” means, collectively, each and every agreement, document or indenture by which Funding Recipient or any Affiliate is bound relating to or materially affecting the acquisition, construction, financing, leasing, possession, occupancy or operation of the Premises or the implementation of the Project.

“**VENDEX**” means the City’s Vendor Information Exchange System (NYC Admin. Code Section 6-116.2) and such other contractor review system(s) as may be utilized by the City during the Term of this Agreement.

“**VENDEX Questionnaires**” means, collectively, a Vendor Questionnaire, a Principal Questionnaire and such other questionnaires and/or certificates as may be required by VENDEX, each in a form determined by the City.

ARTICLE 2

TERM

Section 2.01. Term. The term of this Agreement (the “**Term**”) shall commence upon (a) the unconditional execution and delivery of this Agreement by both Parties and (b) registration of this Agreement by the Comptroller in accordance with City procedures; and shall expire, except as to those provisions that expressly survive the termination or expiration hereof, upon expiration of the Performance Term, unless sooner terminated by DDC as provided below.

Section 2.02. Extension of Term. At the request of Funding Recipient, DDC may, in its sole discretion, grant an extension of the Term. Any request by the Funding Recipient for such an extension must be in writing and state the period of time covered by the requested extension and the reason why an extension of the Term is required. The determination of DDC as to the allowance of an extension of the Term and the period of time allowed shall be final and binding.

ARTICLE 3

THE FUNDING

Section 3.01. Agreement to Fund. Subject to the terms, covenants and conditions of this Agreement and the Declaration, and in reliance upon the representations and warranties made by Funding Recipient in this Agreement, the Declaration and the other Transactional Documents, DDC agrees to disburse the Funding the Funding Recipient.

Section 3.02. Certain Terms and Conditions.

(a) The amount of the Funding comprises the maximum amount DDC shall be required to disburse to Funding Recipient under this Agreement.

(b) Funding Recipient acknowledges that neither DDC nor the City has represented or warranted that the Funding will be sufficient to pay the cost of acquiring the Premises, or that the Premises are adequate for the Project. Funding Recipient agrees that Funding Recipient will be solely responsible for any excess in the costs of acquiring the Premises over the amount of the Funding and for all other costs and expenses that may be necessary in order for Funding Recipient to undertake and complete the Project. Funding Recipient further acknowledges that the Funding is not a fee or other compensation earned by or paid to Funding Recipient.

(c) DDC may, in its sole discretion, (i) disburse the Funding to Funding Recipient to reimburse Funding Recipient for Eligible Costs incurred and paid by Funding Recipient in connection with the purchase of the Premises; (ii) pay the Funding Recipient’s mortgage bank directly in whole or in part on account of Eligible Costs related to the purchase price of the Premises; or (iii) make payment jointly to Funding Recipient and the Eligible Seller of the Premises on account of Eligible Costs related to the purchase price of the Premises.

(d) All disbursements shall be made at the principal office of DDC, or at such other place as DDC may designate. Disbursement requests shall be submitted within the time periods and in the manner provided therefor in this Article 3.

(e) DDC may, in its sole discretion, at the request of Funding Recipient, disburse the Funding in one (1) single disbursement. If DDC determines to disburse the Funding in multiple disbursements, disbursements of the Funding shall be made no more frequently than once every thirty (30) calendar days.

(f) Any excess in the Funding over the aggregate amount of Eligible Costs actually paid by Funding Recipient shall be returned promptly to DDC, unless DDC authorizes Funding Recipient to use such excess otherwise.

Section 3.03. Failure to Receive Funds from City. Funding Recipient understands and agrees that DDC anticipates that it will receive the Funding from the appropriation made by the City in its Capital Budget for the purposes of this Agreement. Accordingly, the agreement by DDC to disburse the Funding is subject to receipt of the Funding from the City (and the other terms, covenants and conditions of this Agreement) and, in the event that DDC fails to receive the Funding from the City for any reason whatsoever, DDC shall not be required to disburse any portion of the Funding not previously disbursed and may, in its sole discretion, terminate this Agreement immediately, upon notice to Funding Recipient. Thereupon, DDC shall have no obligation to disburse any amount of the Funding.

Section 3.04. DDC's Right to Terminate if Funding Recipient Lacks Sufficient Funds. DDC, in its sole discretion, may notify Funding Recipient that DDC or the City has determined that the cost of purchasing the Premises and undertaking the Project will likely exceed the funds available to Funding Recipient. If within sixty (60) days after receipt of such notice, Funding Recipient fails to provide DDC with sufficient evidence that the costs of purchasing the Premises and undertaking the Project will not exceed the funds available to Funding Recipient or that Funding Recipient has sufficient funds to purchase the Premises and undertake the Project to completion (including a contingency of at least fifteen percent (15%)) or if the evidence submitted by Funding Recipient is not satisfactory to DDC or the City, DDC may terminate this Agreement upon not less than thirty (30) days prior notice.

ARTICLE 4

CONDITIONS TO DISBURSEMENT OF THE FUNDING

Section 4.01. Conditions Precedent. DDC shall not be required to disburse any of the Funding to Funding Recipient unless each of the conditions precedent set forth below shall have been satisfied:

(a) VENDEX Questionnaires and Investigation Forms. Funding Recipient shall have delivered (i) VENDEX questionnaires properly completed by Funding Recipient and its principals to the Mayor's Office of Contracts, and (ii) two (2) Certificates of No Change to DDC in a form prescribed by the City; and the proposed seller shall have delivered to DDC properly completed investigation forms satisfactory to DDC in form and substance.

(b) Appraisal. Funding Recipient shall have delivered to DDC an appraisal of the fair market value for the highest and best use of the Premises taking into consideration all government regulatory restrictions, including, but not limited to, zoning, landmark designation and environmental regulations. The appraisal shall be satisfactory to DDC in form and substance and shall be performed by an appraiser having as a minimum a New York State professional certification and, at the discretion of DDC, an MAI designation from the Appraisal Institute.

(c) Contract of Sale. Funding Recipient shall have delivered to DDC a true and complete copy of the Contract of Sale for the purchase of the Premises.

(d) Acquisition of the Premises. If Funding Recipient has purchased the Premises with its own funds and seeks reimbursement from DDC, Funding Recipient shall have provided DDC with evidence that the purchase of the Premises by Funding Recipient has closed, the purchase price has been paid in full and that Funding Recipient holds all right, title and interest to the Premises in its name. If DDC agrees to disburse the Funding directly to the Eligible Seller of the Premises and the purchase price of the Premises exceeds the amount of the Funding, Funding Recipient shall have informed DDC in writing of the source of the additional funds that Funding Recipient proposes to utilize to purchase the Premises.

(e) Declaration. Funding Recipient shall have delivered to DDC at least three (3) executed and acknowledged counterparts of the Declaration in recordable form and, at Funding Recipient's sole cost and expense, Funding Recipient shall have caused one (1) counterpart of the Declaration to be recorded against the property records of the Premises in the Office of the Register of the City of New York for the County of Queens.

(f) Mortgagee Title Insurance Policy. A title insurance company satisfactory to DDC ("**Title Insurance Company**") shall have issued to DDC, at Funding Recipient's sole cost and expense, a Mortgagee Title Insurance Policy in the amount of the Funding and otherwise satisfactory to DDC in form and substance ("**Mortgagee Title Insurance Policy**") insuring that the Declaration constitutes a first priority interest against the Premises. If Funding Recipient has previously obtained a title insurance policy in connection with a mortgage on the Premises, such policy must be amended to reflect and protect the City's interest based on the Declaration of Restrictive Covenant, and proof supplied of same. Accordingly, unless otherwise agreed to by DDC, all Liens against the Premises shall have been removed of record or subordinated to the Declaration. Prior to the issuance of the Mortgagee Title Insurance Policy, Funding Recipient shall have caused the Title Insurance Company to deliver to DDC a true and complete title report with respect to

the Premises, including, without limitation, judgment, tax liens and Uniform Commercial Code financing statements filed against Funding Recipient or the Premises.

(g) Insurance Policies. Funding Recipient shall have delivered to DDC copies of certificates (or at the request of DDC, original certificates), in form and substance reasonably satisfactory to DDC, evidencing the insurance policies referred to in, and in accordance with, Exhibit A hereto and in the Declaration together with proof of payment of premiums. DDC shall be given certified copies, signed by an authorized representative of the insurer, of the policies evidenced by such certificates required by this Section, upon request therefor.

(h) Opinion of Counsel. Counsel to Funding Recipient for the matters contemplated by this Agreement, shall have issued to DDC an opinion of counsel substantially in the form of Exhibit C hereto.

(i) Certificate of Incorporation. Funding Recipient shall have delivered to DDC a true copy of Funding Recipient's certificate of incorporation filed with the State of New York, evidencing Funding Recipient's status as a New York not-for-profit corporation.

(j) Certificate of Incumbency. Funding Recipient shall have delivered to DDC a Certificate of Incumbency certified by the Chief Financial Officer of Funding Recipient that includes the specimen signature of the officer and/or director of Funding Recipient who will execute this Agreement on behalf of Funding Recipient and of Funding Recipient Representatives, the other officers and representatives of Funding Recipient authorized to submit Requisitions.

(k) Certificate of Chief Financial Officer. Funding Recipient shall have delivered to DDC a certificate signed by the Chief Financial Officer of Funding Recipient stating that the Funding Recipient has sufficient funds and/or firm commitments to fund (and that its Board of Directors has authorized expenditure of all amounts) necessary for the purchase of the Premises and the implementation of the Project.

(l) Project Budget. Funding Recipient shall have delivered to DDC a budget satisfactory to DDC (the "**Project Budget**") that estimates all costs of the purchase of the Premises and the implementation of the Project. The Project Budget shall be subject to DDC's approval and may be amended from time to time only with DDC's prior written consent. If the purchase price of the Premises exceeds the amount of the Funding such certificate shall also identify each of the sources for the additional funds to be utilized by Funding Recipient for the purchase of the Premises.

(m) Requisition. Funding Recipient shall have delivered to DDC a requisition ("**Requisition**") executed and certified by the Funding Recipient's Chief Financial Officer setting forth the amount of the requested disbursement; the name of the seller of the Premises and the purchase price of the Premises.

(n) Additional Information. Funding Recipient shall have delivered to DDC such additional documents or information as may have been requested by DDC with respect to the Premises and the Project or in support of the Requisition, including without limitation: (1)

documents as would customarily be required by lenders making a loan for the purchase of real estate and (2) statements identifying payments, if any, made to Affiliates.

Section 4.02. Requisition(s) Update Funding Recipient's Representations. Funding Recipient agrees that each Requisition presented to DDC shall constitute a representation, warranty and agreement that: (a) all of the representations and warranties made by Funding Recipient in this Agreement and the Declaration remain complete and correct on and as of the date of disbursement requested in such Requisition; (b) no Default in any of the terms, covenants or conditions on the part of Funding Recipient to perform or observe under this Agreement or the Declaration has occurred and is continuing; (c) no default has occurred and is continuing under any of the other Transactional Documents; (d) the Premises have not been materially damaged by fire or other casualty or subjected to condemnation; (e) Funding Recipient's certificate of incorporation has not been amended and Funding Recipient remains in good standing as a New York not-for-profit corporation.

Section 4.03. Release. By submitting a Requisition, Funding Recipient releases DDC and the City from all claims relating to the disbursement of the Funding, the purchase of the Premises and/or to the Project arising before the date of the disbursement, except any claims specifically made in writing on or before the date of the disbursement.

Section 4.04. Direction of Submissions. All Requisitions shall be submitted to DDC's Director of Funding Agreements, or to such other Person as DDC may instruct Funding Recipient.

Section 4.05. Applying Funding to Cure Defaults. DDC may apply the Funding in full or in part to cure any Defaults on the part of Funding Recipient under this Agreement or the Declaration provided that (a) DDC shall have delivered notice to Funding Recipient of its intention so to apply the Funding, and (b) Funding Recipient shall have failed prior to the expiration of any applicable grace period to cure such Default. Any portion of the Funding so applied by DDC shall be deemed a disbursement of the Funding under this Agreement.

ARTICLE 5

CERTAIN REPRESENTATIONS AND WARRANTIES OF FUNDING RECIPIENT

Funding Recipient hereby represents and warrants to DDC as follows:

Section 5.01. Incorporation, Good Standing and Due Qualification. Funding Recipient is a not-for-profit corporation duly organized, validly existing and in good standing under the laws of the State of New York, has the power and authority to own its assets and to transact the business in which it is now engaged or proposed to be engaged, and is duly qualified as a foreign corporation and in good standing under the laws of each other jurisdiction in which such qualification is required.

Section 5.02. Corporate Power and Authority; No Conflicts. The execution, delivery and performance by Funding Recipient of this Agreement and the Declaration have been duly authorized by all necessary corporate action and do not and will not: (a) require any consent or approval of its members; (b) contravene its charter or by-laws; (c) violate any provision of, or require any filing, registration, consent or approval under, any law, rule,

regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Funding Recipient, (d) result in a breach of, or constitute a default or require any consent under any indenture or loan or credit agreement or any other agreement, lease or instrument to which Funding Recipient is a party or by which it or its properties may be bound or affected; (e) result in, or require, the creation or imposition of any Lien, upon or with respect to any of the properties now owned or hereafter acquired by Funding Recipient; or (f) cause Funding Recipient to be in default under any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award or any such indenture, agreement, lease or instrument.

Section 5.03. Legally Enforceable Agreements. Each of this Agreement and the Declaration is a legal, valid and binding obligation of Funding Recipient enforceable against Funding Recipient in accordance with its terms, except to the extent that such enforcement may be limited by bankruptcy, insolvency and other similar laws affecting creditors' rights generally.

Section 5.04. Litigation. There are no actions, suits or proceedings pending or, to the knowledge of Funding Recipient, threatened against, or affecting Funding Recipient before any court, Governmental Authority or arbitrator, which may, in any one case or in the aggregate, materially adversely affect the financial condition, operations, properties or business of Funding Recipient, or the ability of Funding Recipient to perform its obligations under this Agreement and/or the Declaration.

Section 5.05. Taxes. Funding Recipient has filed all tax (federal, state and local) returns required to be filed and has paid all taxes, assessments and governmental charges and levies thereon to be due, including interest and penalties. Funding Recipient has no knowledge of any claims for taxes due and unpaid which might become a Lien upon any of its assets.

Section 5.06. No Default. Funding Recipient is not in default in the performance of any of its obligations under any of the Transactional Documents or under any order, award or decree of any court, arbitrator or Governmental Authority binding upon or affecting it or by which any of its assets may be bound or affected.

Section 5.07. Operation of Business; Compliance with Laws. Funding Recipient possesses all licenses, permits, franchises, patents, copyrights, trademarks and trade names, or rights thereto, to conduct its business substantially as now conducted and as presently proposed to be conducted, and Funding Recipient is not in violation of any valid rights of others with respect to any of the foregoing. Funding Recipient is in compliance in all respects with all Requirements.

Section 5.08. No Prohibited Persons. As of the date hereof, none of the members, shareholders (if any), partners (if any), principals or officers of Funding Recipient (or any entity having an ownership interest in Funding Recipient or in such other entity) is a Prohibited Person.

Section 5.09. Seller is not an Affiliate. Seller of the Premises is not an Affiliate of Funding Recipient.

Section 5.10. No Undue Influence. No officer, agent, employee or representative of DDC, or the City has received any payment or other consideration in connection with this Agreement, and no officer, agent, employee or representative of DDC, or

the City has any interest, direct or indirect in Funding Recipient, this Agreement, or the proceeds hereof.

Section 5.11. Documents Submitted to DDC. All information submitted to DDC in connection with the Funding is complete and correct and fairly presents the condition, operations and prospects of Funding Recipient as of the date hereof. Funding Recipient has not misstated, omitted or withheld any fact in connection with its application for the Funding upon which DDC may have relied in its decision to contribute the Funding to Funding Recipient. Each invoice, bill of sale, receipt, check or other document or instrument, heretofore or hereafter submitted to DDC by Funding Recipient in connection with the Funding, upon submission was or shall be complete and genuine and accurately reflect the transaction to which it relates.

Section 5.12. No Representations by the City or DDC. (a) No representations, warranties or statements, express or implied, have been made by, or on behalf of, DDC or the City with respect to the Project, the transactions contemplated by this Agreement or the Requirements applicable to the Project, and (b) Funding Recipient has relied on no such representations, warranties or statements in its determination to enter into this Agreement and assume its obligations hereunder.

Section 5.13. No Limitations on Performance of the City Purpose Covenant. The Premises are not subject to any restriction, reservation, limitation, covenant or agreement that may limit, prevent or impede the performance of the City Purpose Covenant by Funding Recipient, its successors and assigns.

ARTICLE 6

CERTAIN ADDITIONAL COVENANTS

Section 6.01. The Project. Funding Recipient agrees to purchase, maintain and use the Premises and undertake and complete the Project, including the completion of renovations required to obtain an appropriate Certificate of Occupancy and all New York State licenses necessary for the mandated uses of the Premises, in accordance with this Funding Agreement and the Declaration.

Section 6.02. Declaration. Funding Recipient agrees to perform and observe all terms, covenants and conditions on its part to be performed and/or observed under the Declaration, including, without limitation, the City Purpose Covenant.

Section 6.03. Proper Use of Funds. The Funding may be used exclusively to pay for Eligible Costs incurred in connection with the purchase of the Premises. If Funding Recipient is seeking a disbursement of the Funding to reimburse itself for Eligible Costs incurred and paid by it in connection with the purchase of the Premises, then Funding Recipient shall use the Funding as follows: (a) first, to repay in full and retire any and all loans, extensions of credit and other financial accommodations incurred or secured by Funding Recipient which are secured by a Lien on the Premises (provided that such loans, extensions of credit and/or other financial accommodations were incurred after the date of the City appropriation of the Funding), and (b) second, to the extent that after paying and retiring such loans, extensions of credit and financial accommodations there remains any balance of the Funding, to reimburse itself for Eligible Costs actually paid by it for the purchase of the Premises.

Section 6.04. Obligation to Comply with Requirements. Funding Recipient shall comply with all Requirements applicable to the acquisition, construction, maintenance, management, use and operation of the Premises, the performance of the Project, Funding Recipient's performance of its obligations hereunder and under the Declaration, and Funding Recipient's operation of the Premises for the purposes authorized by the City Purpose Covenant.

Section 6.05. Maintenance of Existence. Funding Recipient shall preserve and maintain its corporate existence and good standing in the jurisdiction of its incorporation, and qualify and remain qualified, as a foreign corporation in each jurisdiction in which such qualification is required.

Section 6.06. Conduct of Business. Funding Recipient shall continue to engage in its business in an efficient and economical manner substantially as conducted by it on the date of this Agreement.

Section 6.07. Maintenance of Properties. Funding Recipient shall maintain, keep and preserve, all of its properties (tangible and intangible) necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear and tear excepted.

Section 6.08. Transactions with Affiliates. Funding Recipient shall not enter into any transaction, including, without limitation, the purchase, sale or exchange of property or the rendering of any service, with any Affiliate, except in the ordinary course of and pursuant to the reasonable requirements of Funding Recipient's business and upon fair and reasonable terms no less favorable to Funding Recipient than would obtain in a comparable arm's length transaction with a Person who is not an Affiliate.

Section 6.09. Maintenance of and Compliance with Insurance Requirements. For the duration of the Performance Term Funding Recipient shall maintain or cause to be maintained at Funding Recipient's expense the insurance coverage referred to in the Declaration and Exhibit A hereto. Funding Recipient shall comply with all of the applicable provisions of such insurance policies. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

Section 6.10. Notice of Default. Funding Recipient will promptly furnish DDC with copies of any notice of default received by it with respect to any of the Transactional Documents.

Section 6.11. Other Information. Funding Recipient shall furnish and cause to be furnished to DDC from time to time such other information respecting the Premises and the Project or the condition or operations, financial or otherwise, of Funding Recipient relating thereto, as DDC or the City may from time to time reasonably request.

Section 6.12. Assignment.

(a) Funding Recipient's rights and obligations under this Agreement shall not be pledged, transferred or assigned without the prior written consent of DDC..

(b) DDC shall have the right to assign this Agreement and/or DDC's rights under this Agreement, without any further consent on the part of Funding Recipient, to the City.

Section 6.13. Liens. Without DDC's prior written consent or as otherwise permitted pursuant to the Declaration, Funding Recipient shall not create, permit or suffer to exist any Lien against the Premises or against Funding Recipient's interest therein, if any, or against any of the Funding.

Section 6.14. Evidence of Title. Funding Recipient shall deliver to DDC, on demand, certified copies of any deeds, contracts, bills of sale, statements, receipted vouchers or agreements, under which Funding Recipient claims title to the Premises.

Section 6.15. Conflict of Interests. No member, officer, director, servant or employee of DDC or the City, or any of their respective designees, consultants or agents; no member of the governing body of the City and no public official of the City who exercises or exercised any functions or responsibilities with respect to the subject matter of this Agreement during his tenure shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed, services to be rendered or goods to be purchased in connection with the acquisition of the Premises, Project or in any activity or benefit arising out of or in connection with the performance of the Project. Upon receiving notice or having knowledge of any such prohibited interest, Funding Recipient immediately shall advise DDC thereof and shall use its best efforts to terminate such prohibited interest. Funding Recipient shall require each of its vendors, contractors and subcontractors who may be paid in whole or in part with the proceeds of the Funding to warrant and represent in writing for themselves, and on behalf of their principals, employees and agents that there exist no conflict of interest prohibited under this Section, and to covenant to terminate any such prohibited interest immediately, upon demand by Funding Recipient.

Section 6.16. No Personal Liability. No officer, official, director, member, agent or employee, nor any other Person authorized to act on behalf of DDC or the City shall be charged personally with any liability, or held personally liable in connection with the Project, this Agreement or any breach or attempted or alleged breach thereof. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

Section 6.17. Anti-Boycott Provisions.

(a) Funding Recipient agrees that neither it nor any Affiliate is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of 1969, as amended, or the regulations promulgated thereunder.

(b) Upon the final determination by the United States Department of Commerce or any other agency of the United States convicting Funding Recipient or an Affiliate for participation in an international boycott in violation of the provisions of the Export Administration Act of 1969, as amended, or the regulations promulgated thereunder, DDC may, at its option, declare a default under this Agreement.

(c) Funding Recipient shall comply in all respects with the provisions of Section 6-114 of the Administrative Code of the City and the rules and regulations issued by the Comptroller of the City thereunder.

Section 6.18. Equal Opportunity and Affirmative Action. Funding Recipient

shall comply with the applicable provisions of City and State of New York equal opportunity and affirmative action laws applicable to Funding Recipient.

Section 6.19. Sale of Assets, Mergers, Etc. Funding Recipient shall not merge or consolidate with any Person, or sell, assign, lease or otherwise dispose (whether in one transaction or in a series of transactions) of all or substantially all of its assets (whether now owned or hereafter acquired) to any Person, or acquire all or substantially all of the assets or the business of any Person without the prior written consent of DDC, which consent shall not be unreasonably withheld.

ARTICLE 7

BOOKS AND RECORDS, INSPECTIONS AND AUDIT

Section 7.01. Maintenance of Books and Records. Funding Recipient shall keep and maintain at the Premises complete and accurate books and records of the acquisition of the Premises and operations of the Premises and the use of the Funding, and Funding Recipient shall preserve such records for a period of at least six (6) years from the date of the initial disbursement of the Funding. However, if, at the expiration of such six (6) year period, DDC is seeking to contest or is contesting any matter relating to such records or any matter to which such records may be relevant, Funding Recipient shall preserve such records until one (1) year after the final adjudication, settlement or other disposition of any such contest.

Section 7.02. Inspection and Audits of Books and Records. DDC, the Comptroller and their agents or representatives shall have the right from time to time during regular business hours, upon twenty four (24) hours notice, to inspect and audit Funding Recipient's books and records, and all other papers and files of Funding Recipient, relating in any manner to the Funding or Funding Recipient's conformance with any provision of this Agreement or any other agreement related to the Premises. Funding Recipient shall produce all such books, records, papers and files, upon request of DDC, the Comptroller or their agents and representatives for inspection at the Premises. Subject to applicable law, all information obtained from Funding Recipient's books, records, papers and files shall be held in confidence, except as may be necessary for the enforcement of DDC's rights under this Agreement.

Section 7.03. Inspections of the Premises. Funding Recipient shall permit DDC and its designees to make inspections of the Premises, from time to time, during normal business hours as DDC or its designees deems necessary to observe compliance with and performance under this Agreement. Funding Recipient shall also permit inspections to be made by the City and its designees as are normally made by the City and its agencies, including without limitation the Comptroller, in the course of a project of similar in nature and magnitude to this Project. The omission or failure of DDC and its designees or the City or any representative thereof to make such inspections, to identify any defects or to notify Funding Recipient of any observable defects or any non-compliance with the terms of this Agreement, shall in no way relieve Funding Recipient of its obligations under this Agreement or impose any liability upon the DDC, its designees or the City and its designees.

Section 7.04. Survival. The obligations of Funding Recipient under this Article shall survive the expiration of the Term.

ARTICLE 8

LIMITATION ON LIABILITY

Section 8.01. Limited Liability of DDC and the City. Neither DDC nor the City shall be liable to Funding Recipient, the seller of the Premises, any vendor or to any other Person for any matter arising out of or in connection with the acquisition, financing, development or construction of the Premises or the implementation of the Project, except for the failure to make disbursements of the Funding to Funding Recipient in accordance with the terms of this Agreement. In the event that there shall be a final determination by a court of competent jurisdiction that DDC has failed to make a required disbursement of the Funding, the only remedy available to Funding Recipient or any other Person claiming damage by reason of DDC's failure to make such disbursement, shall be to obtain the requisite disbursement from DDC. In no event shall either the City or DDC be liable for any other damages, including, without limitation, consequential damages, due to any such failure.

ARTICLE 9

INDEMNIFICATION

Section 9.01. Obligation to Preserve the City and DDC against Liability. Funding Recipient is solely responsible for the security of the Premises and Funding Recipient's operations on, above or about the Premises so as to avoid bodily injury and/or property damage. Funding Recipient shall not perform any act, or do anything, or permit that any act be performed or thing done at the Premises, or any portion thereof, that subjects or may subject the City or DDC to any liability for injury to any Person or damage to property for any reason whatsoever, including, without limitation, by reason of any violation of any Requirement, and Funding Recipient shall exercise such control over the Premises so as to fully defend, preserve and protect the City or DDC against any such liability.

Section 9.02. Obligation to Indemnify. Funding Recipient shall defend, indemnify and save the City and DDC, and their respective directors, officers, employees, agents and servants (collectively, the "**Indemnitees**") harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, court costs and reasonable attorneys' fees and disbursements, that may be imposed upon, or incurred by, or asserted against, any of the Indemnitees by reason of any of the following, except that no Indemnitee shall be so indemnified and saved harmless to the extent that such liabilities, etc., are caused by the gross negligence or intentional tortious acts of such Indemnitee:

(a) Construction Work. Any construction work or act done in, on, or about the Premises or any part thereof by or on behalf of Funding Recipient;

(b) Control. The control or use, non-use, possession, occupation, alteration, condition, operation, maintenance or management of the Premises, or any part thereof, or of any street, plaza, sidewalk, curb, vault, body of water, or space comprising a part thereof or adjacent thereto, including, without limitation, any violations imposed by any Governmental Authorities in respect of any of the foregoing;

(c) Acts or Failure to Act of Funding Recipient. Any act or failure to act on the part of Funding Recipient or any of its respective partners, joint venturers, officers, shareholders, directors, agents, contractors, servants, employees, licensees or invitees;

(d) 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, any sidewalk, comprising a part thereof or immediately adjacent thereto;

(e) Lien, Encumbrance or Claim Against the Premises. Any Lien, encumbrance or claim that may be alleged to have been imposed or arisen against or on the Premises, or any Lien, encumbrance or claim created or permitted to be created by Funding Recipient or any of its partners, joint venturers, officers, shareholders, directors, agents, contractors, servants, employees, licensees or invitees against any assets of, or funds appropriated to, the City or DDC, or any liability that may be asserted against the City or DDC with respect thereto;

(f) Default of Funding Recipient. Any failure on the part of Funding Recipient to keep, observe and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in this Agreement, the Declaration and/or, any other contracts and agreements affecting the Premises or the Project, on Funding Recipient's part to be kept, observed or performed; and/or

(g) Hazardous Substances. Any claim arising out of or in any way related to Hazardous Substances at or affecting the Premises or the soil, water, vegetation, buildings, personal property, persons, animals or otherwise and any personal injury (including wrongful death) or property damage arising out of or related to any Hazardous Substances.

Section 9.03. Contractual Liability. The obligations of Funding Recipient under this Article shall not 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 to be performed under insurance policies affecting the Premises.

Section 9.04. Defense of Claim, Etc. If any claim, action or proceeding is made or brought against any of the Indemnitees in connection with any event referred to in Section 9.02 hereof, then upon demand of the City or DDC, Funding Recipient shall either resist, defend or satisfy such claim, action or proceeding in such Indemnitee's name, by the attorneys for, or approved by, Funding Recipient's insurance carrier (if such claim, action or proceeding is covered by insurance), or by such other attorneys as DDC shall reasonably approve. The foregoing notwithstanding, any such Indemnitee may engage its own attorneys to defend such Indemnitee, or to assist such Indemnitee in such Indemnitee's defense of such claim, action or proceeding, as the case may be, at such Indemnitee's sole cost and expense.

Section 9.05. Notification and Payment. Promptly, upon having actual knowledge thereof, an Indemnitee shall notify Funding Recipient of any cost, liability or expense incurred by, asserted against, or imposed on, such Indemnitee, as to which cost, liability or expense Funding Recipient has agreed to indemnify such Indemnitee pursuant to this Article. Funding Recipient agrees to pay such Indemnitee all amounts due under this Article within fifteen (15) business days after the City's or DDC's request therefor, if Funding Recipient is obligated to make such payment pursuant to the terms of this Agreement, and any non-payment thereof by Funding Recipient shall constitute a Default for which DDC may declare an Event of Default.

Section 9.06. Survival. The provisions of this Article shall survive the expiration or earlier termination of this Agreement.

ARTICLE 10

INVESTIGATIONS; REFUSAL TO TESTIFY

Section 10.01. Cooperation. Funding Recipient shall cooperate fully with any investigation, audit, or inquiry conducted by a New York State or City Governmental Authority or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a Governmental Authority that is a party in interest to the transaction, submitted bid, submitted proposal, contract, permit, lease or license that is the subject of the investigation, audit or inquiry.

Section 10.02. Hearings.

(a) If any person has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding and still refuses to testify before a grand jury or other Governmental Authority or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract or license entered into with DDC, the State or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, DDC or any local development organization, or any public

benefit corporation organized under the laws of the State; or

(b) If any person refuses to testify for a reason other than the assertion of his or her privilege against self incrimination in an investigation, audit or inquiry conducted by a Governmental Authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the Governmental Authority that is a party in interest in, and is seeking testimony concerning the award of, or the performance under, any transaction, agreement, lease, permit, contract or license entered into with the City, the State, or any political subdivision thereof, DDC or any local development corporation;

Then, the Commissioner of the Department of Business Services (“**Commissioner**”), or the agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit or license may convene a hearing, upon not less than five (5) days’ written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

Section 10.03. Adjournments of Hearing, Etc. If any non-governmental party to the hearing requests an adjournment, the Commissioner or the agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit or license pending the final determination pursuant to Section 10.05 below without DDC incurring any penalty or damages for delay or otherwise.

Section 10.04. Penalties. The penalties that may attach after the final determination by the Commissioner or agency head may include, but shall not exceed:

(a) The disqualification for a period not to exceed five (5) years from the date of any adverse determination for any Person or any entity of which such Person was a member, shareholder, officer, director, employee or agent at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from DDC; and/or

(b) The cancellation or termination of any and all existing City or DDC contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Agreement, nor the proceeds of which pledged to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City or DDC incurring any penalty or damages on account of such cancellation or termination.

Section 10.05. Criteria for Determination. The Commissioner or agency head shall consider or address in reaching his or her other determination and in assessing an appropriate penalty the factors in paragraphs (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (c) and (d) below, in addition to any other information which may be relevant and appropriate.

(a)The party’s good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit including, but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

(b) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the Person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

(c)The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.

(d) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in a party or entity subject to penalties under Section 10.04 above, provided that the party or entity has given actual notice to the Commissioner or agency head upon the acquisition of the interest, or at the hearing called for in Section 10.02 above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the adverse impact such a penalty would have on such person or entity.

Section 10.06. Definitions. For the purposes of this Article 10, the following terms will have the meanings set forth below. Capitalized terms utilized, but not otherwise defined below, will have the meanings assigned to such terms elsewhere in this Agreement.

(a)The term “**license**” or “**permit**” as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

(b) The term “**person**” as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

(c)The term “**entity**” as used herein shall be defined as any firm, partnership, corporation, association or person that receives monies, benefits, licenses, leases or permits from or through the City or otherwise transacts business with the City.

(d) The term “**member**” as used herein shall be defined as any person associated with any other person or entity as a partner, director, officer, principal or employee.

Section 10.07. Failure to Report Solicitations. In addition to, and notwithstanding any other provision of this Agreement, the Commissioner or the agency head may, at his or her discretion, terminate this Agreement upon twenty-four (24) hours’ written notice in the event Funding Recipient fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or DDC or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Agreement by Funding Recipient, or affecting the performance of this Agreement.

ARTICLE 11

EVENTS OF DEFAULT AND CERTAIN REMEDIES

Section 11.01. Events of Default. Each of the following shall constitute an event of Default (“**Event of Default**”):

(a) Funding Recipient shall have used or applied all or any portion of the Funding in violation of any of the terms, covenants and conditions of this Agreement that relate to the permitted uses of the Funding.

(b) Funding Recipient shall fail to perform or observe any of the terms, covenants or conditions on its part to be performed or observed pursuant to this Agreement (except any of the terms, covenants and conditions that pertain to the permitted uses of the Funding) and such failure continues for ten (10) Business Days after written notice to Funding Recipient specifying such Default (unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed within such ten (10) Business Day period, in which case no Event of Default shall be deemed to exist as long as Funding Recipient shall commence the requisite performance or observance within such ten (10) Business Day period and shall diligently and continuously prosecute the same to completion within a reasonable period); or

(c) Funding Recipient shall fail to perform or observe any term, covenant or condition on its part to be performed or observed under the Declaration when required to be performed or observed.

(d) Funding Recipient shall fail to perform or observe any term, covenant or condition on its part to be performed or observed under any of the Transactional Documents (other than the Declaration) when required to be performed or observed.

(e) Any representation or warranty made or deemed made by Funding Recipient in this Agreement, the Declaration, or any of the other Transactional Documents shall be false, incomplete or misleading as of when made or deemed made.

(f) To the extent permitted by law, if Funding Recipient shall admit, in writing, that it is unable to pay its debts as such become due.

(g) To the extent permitted by law, if Funding Recipient shall make an assignment for the benefit of creditors.

(h) To the extent permitted by law, if Funding Recipient shall file a voluntary petition under the present or any future Federal Bankruptcy Act or any other present or future Federal, state or other bankruptcy or insolvency statute or law or if such petition shall be filed against Funding Recipient and an order for relief shall be entered, or if Funding Recipient 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 Act or any other present or future 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 Funding Recipient, or of all or any substantial part of its properties, or of the Premises or any interest of Funding Recipient therein, or if Funding Recipient shall take any partnership or corporate action in furtherance of any action described in Sections 11.01(f) or 11.01(g) hereof or this Section 11.01(h);

(i) To the extent permitted by law, if within sixty (60) days after the commencement of a proceeding against Funding Recipient 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 twenty (120) days after the appointment, without the consent or acquiescence of Funding Recipient, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Funding Recipient, or of all or any substantial part of its properties, or of the Premises or any interest of Funding Recipient therein, such appointment shall not be vacated or stayed on appeal or otherwise, or if, within one hundred twenty (120) days after the expiration of any such stay, such appointment shall not be vacated.

(j) Unless necessitated by a casualty or taking by eminent domain, Funding Recipient shall vacate or abandon the Premises, or any portion thereof (the fact that any of Funding Recipient's property remains in the Premises shall not be evidence that Funding Recipient has not abandoned the Premises) for a period exceeding twenty (20) consecutive Business Days, or such shorter period as would cause the property or liability insurance coverage required to be maintained pursuant to Section 6.09, and Exhibit A hereof to be subject to, or in jeopardy of, cancellation or unenforceability of coverage for breach of or default in the terms of such insurance coverage.

Section 11.02. Certain Remedies. Upon the occurrence of an Event of Default, DDC may exercise any right, power or remedy permitted to it by law, in equity, under this Agreement and/or the Declaration, including, without limitation:

(a) terminating this Agreement, immediately upon notice to Funding Recipient (reserving, however, all remedies available to DDC at law and/or equity, or provided to DDC under this Agreement and/or the Declaration) in which event DDC shall not be required to make further disbursements of the Funding;

(b) obtaining restitution of any portion of the Funding that was used or applied in violation of any of the terms, covenants or conditions of this Agreement that relate to the permitted uses of the Funding, with interest from the date of DDC's disbursement thereof at the Late Charge Rate; and

(c) seeking enforcement of Funding Recipient's Obligations under this Agreement and/or the Declaration administratively or by equitable remedies of specific performance, declaratory judgment or injunction.

Section 11.03. Survival. The provisions of Section 11.02 shall survive the expiration or earlier termination of the Term of this Agreement.

ARTICLE 12

NOTICES

Section 12.01. Notices. All notices and communication to the parties hereunder will be delivered by hand or sent by registered or certified mail, return receipt requested, or by Federal Express, Airborne Express, Express Mail or other overnight mail service that provides a receipt to the sender. Receipt of a notice by the party to whom the notice is transmitted will be deemed to have occurred: (a) upon receipt, if hand delivered; (b) five days from the date of mailing, if mailed; or (c) the next business day after delivery by Airborne Express, Express Mail or other overnight delivery service that provides a receipt to the sender.

(a) All notices and correspondence to DDC must be delivered to the following addresses and addressees or to such other addresses or addressees as DDC may notify Funding Recipient of from time to time:

with copies to:

Title: General Counsel
Address: New York City Department of Design and Construction
30-30 Thomson Avenue
Long Island City, New York 11101

and

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

(b) All notices and correspondence to Funding Recipient will be delivered to the following address(es) and addressee(s) or to such other address(es) or addressee(s) as Funding Recipient may notify DDC of:

Name: _____
Title: Chief Financial Officer
Address: _____

with a copy to:

Name: _____, Esq.
Address: _____

ARTICLE 13

CLAIMS, JURISDICTION, IMMUNITIES, PROCESS

Section 13.01. Waiver of Trial by Jury. DDC and Funding Recipient hereby waive, for the benefit of DDC, trial by jury in any action, proceeding or counterclaim brought by any of the foregoing against the other on any matters whatsoever arising out of or in any way connected with this Agreement, the Declaration, the relationship of DDC and Funding Recipient, Funding Recipient's acquisition of the Premises, use or occupancy of the Premises, and/or any claim for injury or damages. In the event that DDC commences any proceeding on account of any Default or Event of Default on the part of Funding Recipient under the terms of this Agreement, Funding Recipient will not interpose any counterclaim of any nature or description whatever in any such proceedings.

Section 13.02. Jurisdiction. Any and all claims asserted by or against DDC arising under this Agreement or related thereto shall be heard and determined either in the courts of the United States located in New York City ("**Federal Courts**") or in the courts of the State of New York ("**New York State Courts**") located in the City and County of New York. To this effect Funding Recipient agrees as follows:

(a) With respect to any action between DDC and Funding Recipient in New York State Court, Funding Recipient hereby expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens, (ii) to remove to Federal Court; and (iii) to move for a change of venue to a New York State Court outside New York County.

(b) With respect to any action between DDC and Funding Recipient in Federal Court located in New York City, Funding Recipient expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a Federal Court outside the City of New York.

(c) Funding Recipient agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(d) If Funding Recipient commences any action against DDC in a court located other than in the City, County and State of New York, upon request of DDC, Funding Recipient shall either consent to a transfer of the action to a court of competent jurisdiction located in the City, County and State of New York, or if the court where the action is initially brought will not or cannot transfer the action, Funding Recipient shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in the City, County and State of New York.

(e) Nothing herein shall limit the right of DDC to bring any action or proceeding against Funding Recipient or its property in the courts of any other jurisdictions.

Section 13.03. Process. Funding Recipient irrevocably consents to the service of any and all process in any action or proceeding instituted against Funding Recipient by the mailing of copies of such process to Funding Recipient to its address, and in the manner, set

forth in Article 12 hereof. Nothing in this Section shall affect the right of DDC to serve legal process in any other manner permitted by law.

ARTICLE 14

MISCELLANEOUS

Section 14.01. Headings, Captions and Table of Contents. The descriptive headings and captions used in this Agreement are for the purposes of convenience only and do not constitute a part of this Agreement. The Table of Contents hereof is for the purpose of convenience of reference only, and is not to be deemed or construed in any way as part of this Agreement.

Section 14.02. Governing Law. This Agreement and its performance shall be governed by and construed in accordance with the laws of the State of New York, excluding New York's rules regarding conflict of laws and any rule requiring construction against the party drafting this Agreement.

Section 14.03. Amendments; Waiver. This Agreement may not be amended except by an instrument in writing signed by both parties. The failure by either party to exercise in any respect any right provided for herein will not be deemed a waiver of any rights hereunder.

Section 14.04. Entire Agreement. This Agreement, including the Exhibits hereto, the Declaration and the other Transactional Documents contain all of the promises, agreements, conditions, inducements and understandings between DDC and Funding Recipient concerning the Premises, the Premises and the Project and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, expressed or implied, between them concerning the Premises or the Project other than as expressly set forth herein, the Declaration or any of the other Transactional Documents or as may be expressly contained in any enforceable written agreements or instruments executed simultaneously herewith or hereafter by the parties hereto.

Section 14.05. Invalidity of Certain Provisions. The provisions of this Agreement are intended to be severable. If any term or provision of this Agreement or the application thereof to any Person or circumstances shall, to any extent, be invalid and unenforceable, the remainder of this Agreement, and the application of such term or provision to Persons or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 14.06. No Agency. Neither Funding Recipient nor any of its employees, contractors or subcontractors is, shall be or shall represent that he, she or it is an agent, servant or employee of DDC or the City by virtue of this Agreement or by virtue of any approval, permit, license, grant, right or authorization given by the DDC or the City or any of their officers, agents or employees. Funding Recipient shall be solely responsible for the work, direction, compensation and personal conduct of its officers, agents, employees, contractors and subcontractors.

Section 14.07. Maximum Interest Rate. In the event that any interest payable

under this Agreement shall be deemed to exceed the maximum rate permitted by law, then the amount of interest to be paid shall be the maximum rate so permitted.

Section 14.08. No Partnership or Joint Venture. Nothing herein contained shall be construed in any manner to create any partnership or joint venture between DDC and Funding Recipient, and DDC and Funding Recipient will not be considered partners or co-venturers for any purpose.

Section 14.09. Consents and Approvals.

(a)Effect of Granting or Failure to Grant Approvals or Consents. All consents and approvals which may be given under this Agreement shall, as a condition of their effectiveness, be in writing. The granting of any consent or approval by a party to perform any act requiring consent or approval under the terms of this Agreement, or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not, except where expressly stated otherwise, be deemed a waiver by the party whose consent was required of its right to require such consent or approval for any further similar act. The foregoing shall not limit the effect of any provision of this Agreement by which consent is deemed granted, if objection is not made within a specified period.

(b) Remedy for Refusal to Grant Consent or Approval. If, pursuant to the terms of this Agreement, any consent or approval by DDC or Funding Recipient is not to be unreasonably withheld or is subject to a specified standard, then in the event there shall be a final determination that the consent or approval was unreasonably withheld or that such specified standard has been met so that the consent or approval should have been granted, the consent or approval shall be deemed granted and such granting of the consent or approval shall be the only remedy to the party requesting or requiring the consent or approval.

(c)No Unreasonable Delay; Reasonable Satisfaction; Discretion. Wherever this Agreement provides that DDC's or Funding Recipient's consent or approval is not to be unreasonably withheld, such consent or approval also shall not be unreasonably delayed. Any matter required to be done satisfactorily or to the satisfaction of a party need only be done reasonably satisfactorily or to the reasonable satisfaction of that party. Unless specifically stated otherwise, all consents of DDC required under this Agreement shall be granted in DDC's sole discretion, and granted, may be subject to such conditions as DDC may impose in its sole discretion.

(d) No Fees, Etc. Except as specifically provided herein, no fees or charges of any kind or amount shall be required by either party hereto as a condition of the grant of any consent or approval which may be required under this Agreement.

Section 14.10. “Including”. **“Including”** as used in this Agreement, shall be deemed to mean “including, without limitation.”

Section 14.11. Remedies Not Exclusive. No right or remedy conferred upon DDC in this Agreement, the Declaration or the other Transactional Documents is intended to be exclusive of any other right or remedy contained in this Agreement, the Declaration or the other Transactional Documents. Every such right or remedy shall be cumulative and shall be in addition to each other right and remedy contained in this Agreement, the Declaration or the other Transactional Documents or now or hereafter available to DDC at law, in equity, by statute or otherwise.

Section 14.12. Required Provisions of Law Controlling. It is the intention and understanding of the parties hereto that each and every provision of law required to be inserted in this Agreement should be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is deemed to be inserted and if, through mistake or otherwise, any such provision is not inserted herein or is not inserted in correct form, then this Agreement shall forthwith, upon the application of either party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party.

Section 14.13. Successors and Assigns. The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of, DDC and Funding Recipient and, except as otherwise provided herein, their respective successors and assigns.

Section 14.14. No Warranty by DDC. It is understood and agreed that any approval by DDC of any plans and specifications, or any inspection by DDC, of any construction on the Premises shall not be construed as a warranty by any of the foregoing of the design of any such drawings and specifications, or workmanship or materials contained in such construction.

Section 14.15. Construction of Terms and Words. All terms and words used in this Agreement regardless of the number and gender in which they are used shall be deemed and construed to include any other gender, masculine, feminine or neuter, as the context or sense may require, with the same effect as if such numbers and words had been fully and properly written in the required number and gender.

Section 14.16. Counterparts. This Agreement may be executed in one or more counterparts which, when taken together, shall constitute one and the same.

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

NEW YORK CITY DEPARTMENT OF
DESIGN AND CONSTRUCTION

By: _____
Name:
Title:

[ORGANIZATION'S NAME]

By: _____
Name:
Title:

APPROVED AS TO FORM
CERTIFIED AS TO LEGAL AUTHORITY

Acting Corporation Counsel

STATE OF NEW YORK)
 SS.:
COUNTY OF QUEENS)

On the _____ day of _____, 20__, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that s/he is the Commissioner of the NEW YORK CITY DEPARTMENT OF DESIGN AND CONSTRUCTION, the corporation described in and which executed the foregoing instrument; and that s/he signed her/his name thereto by authority of the board of directors of such corporation.

Notary Public

STATE OF NEW YORK)
 SS.:
COUNTY OF _____)

On the _____ day of _____, 20__, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that s/he resides at _____; that s/he is the _____ of the _____ the corporation described in and which executed the foregoing instrument; and that s/he signed her/his name thereto by authority of the board of directors of such corporation on behalf of such corporation.

Notary Public

EXHIBIT A

INSURANCE REQUIREMENTS

(SEPARATE ATTACHMENT)

INSURANCE REQUIREMENTS

From and after the date hereof Funding Recipient, at its sole cost and expense, shall carry and maintain (or shall cause to be carried and maintained) insurance coverage of the following types, in the minimum limits and for the periods set forth below, and shall otherwise comply with the requirements of this Exhibit. Unless the context otherwise requires, defined terms utilized and not otherwise defined herein shall have the meanings assigned to such terms in the Agreement to which this Exhibit is attached and is a part of.

Section 1.01. Liability Insurance. At all times during the Term, Funding Recipient shall carry and maintain Commercial General Liability insurance, written on an occurrence basis and not on a claims made basis, protecting against all liability with respect to the Premises and the operations related thereto, whether conducted on or off the Premises, for bodily injury, death, personal injury and property damage, in an amount not less than Five Million Dollars (\$5,000,000) per occurrence, and Six Million Dollars (\$6,000,000) in the aggregate, with a per project aggregate endorsement, and designating the Funding Recipient as “named insured,” and the City and DDC as “additional insureds” on a primary and non-contributory basis. If during any year, it appears that the amount of liability resulting from insured occurrences may exceed any annual aggregate applicable to the insurance required by this Section, Funding Recipient shall procure and maintain for the remainder of such year insurance against future-arising claims that satisfy the requirements of this Section in all respects, including required amounts. The Commercial General Liability Insurance required hereby shall include the following coverages and clauses:

- (a) Products Liability/Completed Operations coverage;
- (b) a broad form property damage liability endorsement with fire legal liability limit subject to adjustment for inflation;
- (c) blanket contractual liability insurance covering written and oral contractual liability, and specifically covering the Funding Recipient’s indemnification obligations under this Agreement;
- (d) independent contractors coverage;
- (e) a notice of occurrence clause;
- (f) to the extent available on a commercially reasonable basis, a thirty (30) day notice of cancellation or non-renewal clause, specifically requiring notice of cancellation or non-renewal for non-payment of premium and for any material reduction in coverage;
- (g) an unintentional errors and omissions clause;
- (h) coverage for suits arising from the use of reasonable force to protect persons and property;
- (i) a cross liability endorsement;

(j) contain no exclusion for Water Damage or Sprinkler Leakage Legal Liability or any other hazard customarily covered by such insurance;

(k) contain no exclusions, except those specifically authorized by DDC and such exclusions as may be reasonable and customary in similar policies covering similar risks; and

(l) contain no deductibles except those specifically approved in each instance by DDC and such deductions as may be reasonable and customary in similar policies covering similar risks.

Section 1.02. Property and Other Insurance. At all times during the Performance Term, Funding Recipient shall carry and maintain insurance protecting Funding Recipient against loss of or damage to the Premises by fire and all other risks of physical loss or damage now or hereafter embraced by extended coverage and an "All Risk" endorsement in the broadest form available, in the amount of the full Replacement Value (as defined below) of the Premises (without depreciation or obsolescence clause). Such insurance shall designate DDC and the City as loss payee and named insureds, as their interests may appear, and shall include the following coverages and clauses:

(a) if not otherwise included within the "All Risk" coverage specified above, coverage against damage by explosion caused by steam pressure-fired vessels, by earthquake, flood and/or by hurricane;

(b) if not otherwise included within the "All Risk" coverage specified above, containing a personal property endorsement;

(c) contingent liability from operation of building laws;

(d) demolition cost for undamaged portion coverage;

(e) provision for a deductible of not more than Ten Thousand Dollars (\$10,000) per loss, unless a greater deductible is typically provided in casualty policies covering property similar to the Premises in location, construction and use;

(f) increased cost of construction coverage specifying that the proceeds of such insurance shall be available to pay all costs of demolition, including the costs of debris removal, grading and fencing and all increased costs of construction in the event that any insured hazard results in a loss;

(g) an agreed or stipulated amount endorsement negating any co-insurance requirements;

(h) if the Premises are located in a flood zone, flood coverage to the maximum extent available under the National Flood Insurance Act of 1968, as amended, with a sublimit of not less than ten percent (10%) of the value of the Improvements; and

(i) containing no exclusion (including, without limitation, exclusion for

For the purposes hereof, the following terms have the following meanings:

“**Replacement Value**” means the full costs of replacing the Premises including, without limitation, the costs of post-casualty debris removal and soft costs, to the extent that such costs can be covered by an “All Risk” insurance policy. The Replacement Value of the Premises shall be adjusted on each anniversary of the Effective Date throughout the Performance Term by a percentage equal to the percentage change in the Index (as defined below) in effect on such anniversary date as compared to the Index in effect on the prior anniversary of the Effective Date.

“**Index**” means the Dodge Building Cost Index or such other published index of construction costs which shall be selected from time to time by the City or DDC, but not more often than once every three years, provided that such Index shall be a widely recognized measure of construction costs in the insurance industry and appropriate to the type and location of the Improvements to the Premises.

Section 1.03. Statutory Coverages. At all times during the Term, Funding Recipient shall carry and maintain Statutory Workers’ Compensation Insurance and New York State Disability Benefits Insurance in statutorily required amounts covering Funding Recipient with respect to all persons employed by Funding Recipient and all of Funding Recipient’s contractors and subcontractors in connection with the operations of Funding Recipient conducted at, or in connection with, any portion of the Premises, or by Funding Recipient or others in connection with construction thereon.

Section 1.04. Collection of Proceeds. Funding Recipient and DDC shall cooperate in connection with the collection of any insurance moneys that may be due in the event of loss, and Funding Recipient and DDC shall, as soon as practicable, execute and deliver such proofs of loss and other instruments as may be required of Funding Recipient or DDC, respectively, for the purpose of obtaining the recovery of any such insurance moneys. The parties agree that the proceeds of such insurance shall be paid to, and held by, Funding Recipient to be applied to the repair and reconstruction of the Premises. However, if after a fire or casualty the Premises cannot be repaired or restored so that the Premises can continue to be used in accordance with the requirements of the City Purpose Covenant, the insurance proceeds shall be allocated between Funding Recipient and DDC as follows: (a) to DDC, an amount equal to the amount of the Funding actually disbursed to Funding Recipient; and (b) the balance, if any, to Funding Recipient.

Section 1.05. General Requirements Applicable to Policies.

(a) Insurance Companies. All of the insurance policies required by this Exhibit shall be procured from companies licensed or authorized to do business in the State of New York that have a rating in the latest edition of “Bests Key Rating Guide” of “A-:VII” or better with a policy holder surplus of Fifty Million Dollars (\$50,000,000) or another comparable rating reasonably acceptable to the City or DDC.

(b) Term. Funding Recipient shall procure policies for all insurance required by this Agreement for periods of not less than one (1) year and shall procure renewals thereof from time to time at least thirty (30) days before the expiration thereof.

(c) Waiver of Subrogation. All policies of property insurance required under this Agreement shall include a waiver of the right of subrogation with respect to all the named insureds and additional insureds.

(d) Required Insurance Policy Clauses. Each policy of insurance required to be carried and maintained or caused to be carried and maintained or caused to be carried and maintained by the Funding Recipient pursuant to this Exhibit shall contain the following provisions and agreements, from and after the date such insurance policy is required to be carried pursuant to this Exhibit: (1) a provision that no act or omission of the Funding Recipient and/or of the named insured, including, without limitation, any use or occupation of the Premises for any purpose or purposes more hazardous than those permitted by the policy, shall invalidate the policy or affect or limit the obligation of the insurance company to pay the amount of any loss sustained by the City or DDC, (2) to the extent available on a commercially reasonable basis, an agreement by the insurer that such policy shall not be cancelled, materially modified in a manner that would compromise the coverage theretofore provided under the policy, or denied renewal without at least thirty (30) days' prior written notice to the City and DDC, including, without limitation, cancellation or non-renewal for non-payment of premium, and (3) a provision that notice of accident or claim to the insurer by Funding Recipient, the City or DDC shall be deemed notice by all insureds under the policy. Notices from the insurer to the City and DDC shall be delivered by hand or sent by registered or certified mail, return receipt requested, or by Airborne Express, Federal Express, Express Mail or other overnight mail service that provides a receipt to the sender. All notices and correspondences from the insurer to the City and to DDC must be delivered to the following addresses or to such other addresses as the City or DDC may notify the insurer of from time to time:

To the City:

Deputy Mayor for Economic Development and Rebuilding
City Hall
New York, New York 10007

And a copy to:

New York City Department of Design and Construction
30-30 Thomson Avenue
Long Island City, New York 11101
Attention: ACCO

(e) Primary Protection. All insurance policies required by this Exhibit shall be primary protection. Neither the City nor DDC shall be called upon to contribute to any loss.

(f) Adjustments for Claims. All property insurance policies required to be carried and maintained or caused to be carried and maintained by Funding Recipient pursuant to this Exhibit shall provide, from and after the date when the City and/or DDC become additional

Exhibit, that DDC shall be afforded the opportunity to participate in any negotiations regarding adjustments for claims with the insurers. All other insurance policies required by this Exhibit shall provide that all adjustments for claims with the insurers be made with both DDC and Funding Recipient, each of which shall act reasonably.

Section 1.06. Evidence of Insurance. To the extent available on a commercially reasonable basis, prior to the commencement of the Term and at least sixty (60) days prior to the expiration of any of the policies to be maintained or caused to be maintained by Funding Recipient, Funding Recipient shall deliver or cause to be delivered to DDC certificates of insurance, in form reasonably satisfactory to DDC, providing for thirty (30) days' prior written notice to the City and DDC by the insurance company of cancellation or non-renewal of a policy or replacement or renewal of any policies expiring during the Term. At DDC's request, Funding Recipient shall deliver a copy of each entire original policy required hereby.

Section 1.07. Compliance With Policy Requirements. Funding Recipient shall not violate or permit to be violated any of the conditions, provisions or requirements of any insurance policy required by this Exhibit. Funding Recipient shall perform, satisfy and comply with all conditions, provisions and requirements of all such insurance policies, and shall give and cause its contractors to give the insurer, the City and DDC notice of all claims, accidents and losses promptly, but in any event no later than five (5) business days after Funding Recipient or any of its contractors acquires actual knowledge of the same.

Section 1.08. Separate Insurance. From and after the date that the City and/or DDC become additional insured and/or loss payees in the liability insurance policies required to be carried and maintained or caused to be carried and maintained by Funding Recipient hereunder, Funding Recipient shall not carry separate liability or property insurance concurrent in form or contributing in the event of loss with that required by this Agreement to be furnished by the Funding Recipient unless the City and DDC are included therein as additional insureds and loss payees, as the case may be, with respect to such liability. Funding Recipient shall immediately notify DDC that it carries any such separate insurance and shall cause copies of the policies thereof to be delivered to DDC.

Section 1.09. Increases in Coverage and Additional Insurance. DDC shall have the right, at any time and from time to time, to modify, increase or supplement the insurance coverages, limits, sublimits, minimums and standards required by this Exhibit to conform such requirements to the insurance coverages, limits, sublimits, minimums and standards that at the time are commonly carried by owners of premises comparable to the Premises, or are commonly carried by businesses of the size and nature of the business conducted at the Premises. From time to time, DDC may require Funding Recipient to increase or cause to be increased the amount of coverage provided under the policies of insurance required hereunder, or change the types of insurance required hereunder, provided that in any such event, unless DDC reasonably demonstrates the need for such increase of coverage, the amount of any such increased coverage shall not exceed the amount of similar coverage that are commonly carried by owners of comparable property or in connection with similar businesses.

Section 1.10. No Representation as to Adequacy of Coverage. The requirements set forth herein with respect to the nature and amount of insurance coverage to be maintained or caused to be maintained by the Funding Recipient hereunder shall not constitute a representation or warranty by the City or DDC that such insurance is adequate or sufficient in any respect.

Section 1.11. Blanket, Umbrella, Primary and Excess Policies.

(a) Blanket and Umbrella Policies. The insurance required by the provisions of this Exhibit may, at the Funding Recipient's option, be effected by blanket and/or umbrella policies issued to Funding Recipient covering the Premises and other properties owned or leased by Funding Recipient, provided such policies otherwise comply with the provisions of this Agreement and allocate to the Premises the specified coverage, including, without limitation, the specified coverage for all insureds required to be named as "named insureds" or "additional insureds" hereunder, without possibility of reduction or coinsurance by reason of, or because of damage to, any other properties named therein. If the insurance required by this Agreement shall be effected by any such blanket or umbrella policies, Funding Recipient shall furnish to DDC certified copies of such policies together with schedules annexed thereto setting forth the amount of insurance applicable to the Premises and proof reasonably satisfactory to DDC that the premiums for at least the first (1st) year of the term of each of such policies (or installment payments then required to have been paid on account of such premiums) shall have been paid.

(b) Primary and Excess Policies. The liability insurance required to be carried by Funding Recipient pursuant to this Agreement may, at the option of Funding Recipient, be effected through any combination of layers of primary and excess coverages, provided that such policies otherwise comply with the provisions of this Agreement and afford the amounts of coverage required by this Agreement for all insureds required to be named as insureds hereunder.

Section 1.12. Annual Aggregates. If there is imposed under any liability insurance policy required hereunder an annual aggregate which is applicable to claims other than products liability and completed operations, such an annual aggregate shall not be less than Four Million Dollars (\$4,000,000) or two (2) times the per occurrence limit required for such insurance, whichever is greater.

Section 1.13. Other Insurance Not Required Under this Agreement. Funding Recipient may effect for its own respective account any insurance not required under the provisions of this Agreement, provided same shall not directly or indirectly result in a diminution of the insurance coverage specified in this Exhibit. If any such insurance, as permitted above, shall affect the City's and/or DDC's insurance coverage, prior to purchase thereof Funding Recipient shall provide a copy of the policy to the City and DDC for their respective approval.

Section 1.14. Modification by Insurer. Without limiting any of the Obligations of Funding Recipient, or the City's or DDC's rights under this Exhibit, in the event that an insurer modifies, in any material respect, any insurance policy that Funding Recipient is required to carry and maintain in accordance with this Agreement, Funding Recipient shall give notice to DDC of such modification within thirty (30) days after the Funding Recipient's receipt of notice thereof.

Section 1.15. Interpretation. All insurance terms used in this Exhibit shall have the meanings ascribed by the Insurance Services Offices.

Section 1.16. Survival. The requirements of Section 1.02 of this Exhibit shall survive the expiration or earlier termination of this Agreement.

EXHIBIT B

OPINION OF COUNSEL

(SEPARATE ATTACHMENT)

EXHIBIT C

PRIVATELY FUNDED SCOPE OF WORK REQUIRED AS PART OF THE PROJECT

(SEPARATE ATTACHMENT)

FUNDING AGREEMENT

between

NEW YORK CITY DEPARTMENT OF DESIGN AND CONSTRUCTION

and

[FULL LEGAL NAME OF ORGANIZATION]

Dated as of

Relative to the Purchase of Real Property

at

Street Address:

City or Town:

County:

Lots:

Block:

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