

**FIRST AMENDMENT TO  
GROUND LEASE  
BETWEEN  
BATTERY PARK CITY AUTHORITY D/B/A  
THE HUGH L. CAREY BATTERY PARK CITY AUTHORITY  
AND  
BOP ONE NORTH END LLC**

THIS FIRST AMENDMENT TO GROUND LEASE (this "First Amendment") is made and entered into as of November 25, 2013, by and among Battery Park City Authority, d/b/a The Hugh L. Carey Battery Park City Authority, a public benefit corporation under the laws of the State of New York, having an office at One World Financial Center, 24<sup>th</sup> Floor, New York, New York 10281 ("Landlord"), and BOP One North End LLC, a Delaware limited liability company, having an office c/o Brookfield Office Properties, 250 Vesey Street, 15<sup>th</sup> Floor, New York, New York 10281 ("Tenant").

**WITNESSETH:**

WHEREAS, Landlord, as landlord, and New York Mercantile Exchange, a New York not-for-profit corporation ("Original Tenant"), as tenant, entered into that certain Ground Lease dated as of May 18, 1995 (the "Ground Lease") pursuant to which Landlord has leased to the tenant thereunder that certain parcel of land in Battery Park City and the buildings and improvements constructed or to be constructed on said parcel of land commonly known as One North End Avenue or Site 15 (the "Premises").

WHEREAS, immediately prior to entering into this First Amendment, New York Mercantile Exchange, Inc., a Delaware corporation ("NYMEX"), successor by merger to Original Tenant, assigned to Tenant all of its right, title and interest in, to and under the Ground Lease, and, accordingly, Tenant has become the "Tenant" under the Ground Lease.

WHEREAS, Landlord entered into the Ground Lease in its capacity as lessee under the Master Lease (as such term is defined in the Ground Lease). Landlord is currently both the landlord and the tenant under the Master Lease.

WHEREAS, Landlord and Tenant desire to amend the Ground Lease on the terms and conditions set forth herein, including to convert the Ground Lease into a direct lease from Landlord, as fee owner of the Premises.

NOW, THEREFORE, for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

Section 1. **Definitions.** Any capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Ground Lease.

Section 2. **Amendments to the Ground Lease.** The Ground Lease is hereby amended, effective as of the date hereof:

Section 2.01. **Base Rent.** A. Section 3.01(a)(ii) of the Ground Lease is hereby amended by adding the following at the end thereof:

“In addition to the foregoing, during the First Period the Base Rent shall increase by an annual amount equal to \$4.00 per gross square foot for each additional gross square foot of space that is added to the Premises by Tenant after the date of the First Amendment dated as of November <sup>25</sup>, 2013 (the “First Amendment”) and during the First Period (the “First Period Additional Floor Area”), such additional Base Rent to commence with respect to any First Period Additional Floor Area on the date construction of such First Period Additional Floor Area is substantially complete. No increase in Base Rent described above shall apply to Base Rent that becomes due after the end of the First Period.”

B. Section 3.01(a)(iii) of the Ground Lease is hereby amended by adding the following at the end thereof immediately following the language added thereto pursuant to Section 2.04 of this First Amendment:

“For avoidance of doubt, the Master Development Plan and the Design Guidelines, when considered as part of the determination of Fair Market Rent as described above, shall include, without limitation, the amendments of the Memorandum of Understanding and Large Scale Commercial Development Agreement providing for an additional 50,000 gross square feet for the Premises entered into in connection with the First Amendment. Notwithstanding anything to the contrary contained in the first sentence of this Section 3.01(a)(iii), the \$4,000,000.00 base amount set forth in such sentence shall be increased by \$8.00 per gross square foot for each additional gross square foot of space that is added to the Premises by Tenant after the date of this First Amendment and prior to the relevant Reappraisal Date and as to which construction is substantially complete as of such Reappraisal Date.”

Section 2.02. **Conversion to Direct Lease.** Landlord, in its capacity as tenant under the Master Lease, does hereby assign, convey and transfer to Landlord, in its capacity as landlord under the Master Lease, all of its right, title and interest in, to and under the Ground Lease. Landlord and Tenant agree that the Ground Lease is hereby converted to, and is from and after the date of this First Amendment, a direct lease from Landlord, in its capacity as fee owner of the Premises. Accordingly:

A. Landlord, as fee owner of the Premises, hereby consents, confirms and agrees to be directly bound by the demise of the Premises (as defined in the Ground Lease) under the Ground Lease to Tenant, its successors and assigns, for the remainder of the Term.

B. Section 2.01 of the Ground Lease is hereby amended and restated in its entirety to read as follows:

“Landlord does hereby demise and lease to Tenant, and Tenant does hereby hire and take from Landlord, the Premises, together with all easements, appurtenances and other rights and privileges now or hereafter belonging or appertaining to the Premises, subject to the Title Matters.”

C. Any references in the Ground Lease to the Lease constituting a sublease are hereby modified to reflect that the Lease is now a direct lease from Landlord, as fee owner of the Premises, and not a sublease.

D. Paragraph 1 of Exhibit B of the Lease is amended to add the words “(it being acknowledged that the same is subordinate to this Lease)” immediately after the reference to the Master Lease.

E. All references to the Master Lease in Sections 10.04, 10.05 and 10.09 of the Ground Lease are hereby deleted in their entirety.

F. Section 29.02 of the Ground Lease is hereby amended and restated in its entirety to read as follows:

“Notwithstanding any provision of this Lease or the Master Lease to the contrary, Tenant’s interest in this Lease, as the same may be modified, amended or renewed, shall not be subject or subordinate to any liens or encumbrances hereafter affecting Landlord’s interest in (i) the fee title to Battery Park City or any part thereof, (ii) this Lease, (iii) the Premises, or (iv) the Master Lease. Without limiting the foregoing, Battery Park City Authority, in its capacity as tenant under the Master Lease, acknowledges and agrees that the interest of the tenant under the Master Lease and the interest of any other Person in the Premises which interest arises by, through or under, or is otherwise derivative of, the Master Lease, including, without limitation, any possessory interest under the Master Lease, are and shall be subject and subordinate to the Tenant’s interest under this Lease and the interest of any other Person in the Premises or in this Lease which interest arises by, through or under, or is otherwise derivative of, Tenant’s interest under this Lease, including Subtenants, for so long as this Lease remains in effect.”

G. Section 41.16 of the Ground Lease is hereby amended by (x) replacing the words “as lessee under the Master Lease” wherever such words appear therein with the following words “as fee owner of the Premises” and (y) replacing the words “lessee’s interest in the Premises under the Master Lease, including, without limitation, the purchaser or transferee in any such sale, disposition or transfer, and any fee owner of the Premises upon termination of the Master Lease,” with the following words “fee estate in the Premises.”

Section 2.03. **Mortgagee Right to Consent to Section 2.03 Termination.** Section 2.03 of the Ground Lease is hereby amended by adding the following language immediately after the last sentence therein:

“Notwithstanding anything to the contrary contained above, no termination by Tenant under this Section 2.03 shall be deemed given to Landlord unless Tenant shall have also delivered to Landlord (or such notice of termination shall include) the prior written consent to such termination from each Mortgagee whose Mortgage is then outstanding and who has given notice to Landlord in accordance with Section 10.10(a) hereof. Any purported termination by Tenant in violation of the previous sentence shall be null and void and of no force or effect. Notwithstanding the foregoing, if at any given point in time there are multiple Mortgages then outstanding whose Mortgagees have each given notice to Landlord in accordance with Section 10.10(a) hereof, then the Mortgagees of the two Mortgages most senior in lien priority (determined as set forth in, and subject to the designation right set forth in, Section 10.11(d)) shall be the only Mortgagees whose consent would then be required under this Section 2.03. Any notice of termination from Tenant pursuant to this Section 2.03 shall include (if any Mortgages are then outstanding as to which notice has been given to Landlord in accordance with Section 10.10(a)) a reminder to Landlord that Mortgagees have approval rights pursuant to this Section 2.03 and certifying as to which Mortgagees are, at the time of such notice, entitled to consent thereto, provided that Tenant’s failure to include such reminder and certification (or Tenant’s failure to list a Mortgagee who is entitled at such time to consent to such termination) shall not impair the approval rights of any Mortgagee pursuant to this Section 2.03. If at any time, Landlord, in good faith, is uncertain whether any Person who on or after the date of the First Amendment has given notice to Landlord in accordance with Section 10.10(a) hereof is still a Mortgagee of an outstanding Mortgage and therefore needs to consent to a termination notice given by Tenant as described above, Landlord may for purposes of this Section 2.03 by prompt notice to Tenant treat such Mortgage as still being outstanding and held by such Mortgagee (even if it is not then outstanding or held by such Person) and require such Person’s consent unless Tenant shall provide to Landlord a certificate of title issued by a nationally recognized title insurance company licensed to do business in the State of New York or other evidence satisfactory to Landlord, that such Mortgage has been assigned to another Person or satisfied. Landlord shall be permitted to conclusively rely on any such title report for purposes of determining under this Section 2.03 that such Mortgage has been subsequently assigned or satisfied.”

Section 2.04. **Mortgagee Rights with Respect to Reset of Base Rent.** Section 3.01(a)(iii) of the Ground Lease is hereby amended by adding the following after the last sentence thereof:

“Notwithstanding anything to the contrary contained above, no agreement of Landlord and Tenant to set the Fair Market Rent with respect to the First Appraisal Date or on any Reappraisal Date, as the case may be, shall be effective

without the prior written consent of each Mortgagee whose Mortgage is then outstanding and who has given notice to Landlord in accordance with Section 10.10(a) hereof, to the extent such Mortgagee's loan documents require its consent to such setting of the Fair Market Rent. Any purported agreement by Landlord and Tenant as to the Fair Market Rent (or a Base Rent based thereon) in violation of the provisions of this Section 10.12 shall be null and void and of no force or effect. If the Fair Market Rent is to be determined by appraisal or arbitration pursuant to Article 36, any Mortgagee shall have the right to fully participate in any such appraisal or arbitration either in lieu of Tenant (to the extent its loan documents so provide) or as an additional party, but only to the extent its loan documents allow it to so participate. Such right to participate shall include the right to receive copies of all notices given by Landlord or Tenant to the other party and the right to present its own evidence as to Fair Market Rent. No arbitration as to Fair Market Rent shall be deemed to have commenced unless each such Mortgagee has been given at least ten (10) business days prior notice of the commencement of such arbitration. In cases where this Section 3.01(a)(iii) gives a Mortgagee rights to the extent that its loan documents so provide, Landlord shall not be required to recognize such Mortgagee rights unless and until Tenant or such Mortgagee has delivered to Landlord a certificate of an authorized officer of Tenant or such Mortgagee, as applicable, to the effect that the applicable loan documents provide for the right in question. Landlord shall be entitled to conclusively rely upon, and shall be fully protected in relying upon, any such certification. Any notice from Tenant to Landlord pursuant to this Section 3.01(a)(iii) shall include (if any Mortgages are then outstanding as to which notice has been given to Landlord in accordance with Section 10.10(a) where the Mortgagee thereunder has a right to consent as provided in this Section 3.01(a)(iii)) a reminder to Landlord that Mortgagees have approval rights pursuant to this Section 3.01(a)(iii) and certifying as to which Mortgagees are, at the time of such notice, entitled to so participate in the determination of Fair Market Rent pursuant to this Section 3.01(a)(iii), provided that Tenant's failure to include such reminder and certification (or Tenant's failure to list a Mortgagee who is entitled at such time to so participate in the determination of Fair Market Rent pursuant to this Section 3.01(a)(iii)) shall not impair the approval rights of any Mortgagee pursuant to this Section 3.01(a)(iii). Notwithstanding the foregoing, if at any given point in time there are multiple Mortgages then outstanding whose Mortgagees have each given notice to Landlord in accordance with Section 10.10(a) hereof, then the Mortgagees of the two Mortgages most senior in lien priority (determined as set forth in, and subject to the designation right set forth in, Section 10.11(d)) shall be the only Mortgagees whose consent would then be required under this Section 2.03., and only the Mortgagee senior in lien priority (determined as set forth in, and subject to the designation right set forth in, Section 10.11(d)) shall be entitled to the rights to participate in an arbitration under this Section 3.01(a)(iii). In addition, if at any time, Landlord, in good faith, is uncertain whether any Person who on or after the date of the First Amendment has given notice to Landlord in accordance with Section 10.10(a) hereof is still a Mortgagee of an outstanding Mortgage and therefore needs to

consent to an agreement of Landlord and Tenant to set the Fair Market Rent with respect to the First Appraisal Date or any Reappraisal Date, as the case may be, as described above, Landlord may for purposes of this Section 3.01(a)(iii) by prompt notice to Tenant treat such Mortgage as still being outstanding and held by such Mortgagee (even if it is not then outstanding or held by such Person) and require such Person's consent unless Tenant shall provide to Landlord a certificate of title issued by a nationally recognized title insurance company licensed to do business in the State of New York or other evidence satisfactory to Landlord, that such Mortgage has been assigned to another Person or satisfied. Landlord shall be permitted to conclusively rely on any such title report for purposes of determining under this Section 3.01(a)(iii) that such Mortgage has been subsequently assigned or satisfied."

Section 2.05. **Condemnation – Total Taking.** Section 9.01(b) of the Ground Lease is hereby amended and restated in its entirety as follows:

"(b) The term "substantially all of the Premises" shall mean such portion of the Premises as when so taken would leave remaining a balance of the Premises which, due either to the area so taken or the location of the part so taken in relation to the part not so taken, would not under economic conditions, Requirements then existing, the Master Development Plan, Severance Tenants Agreement and Declaration of Restrictions, and after performance by Tenant of all covenants, agreements, terms and provisions contained herein, permit the Restoration of the Building so as to constitute a complete building or buildings capable of being used as a rental property producing proportionately (i.e., proportional to the number of square feet not so taken) fair and reasonable net annual rental income. If there be any dispute as to whether or not "substantially all of the Premises" has been taken such dispute shall be resolved by arbitration in accordance with the provisions of Article 36."

Section 2.06. **Modifications to Transfer Restrictions.**

A. The first two sentences of Section 10.01(a) of the Ground Lease are hereby deleted from the Ground Lease and replaced in their entirety as follows:

"Except as otherwise specifically provided in this Article 10, prior to the Lease Restrictions Expiration Date, neither (1) this Lease nor any interest of Tenant in this Lease, shall be sold, assigned, or otherwise transferred, whether by operation of law or otherwise, nor (2) shall any of the issued or outstanding capital stock of any corporation which is Tenant or has an indirect interest in Tenant, nor shall any of the membership, partnership or other ownership interests of any limited liability company, limited partnership, or any other Person which is Tenant or has an indirect interest in Tenant (any such direct or indirect stock, membership, partnership or other ownership interests in Tenant, and any general partner's and managing member interests (or equivalent) as described below, collectively, "Ownership Interests"), be (voluntarily or involuntarily) sold, assigned, transferred, pledged or encumbered, whether by operation of law or otherwise,

nor (3) shall any voting trust or similar agreement be entered into with respect to such Ownership Interests, nor (4) any reclassification or modification of the terms of such Ownership Interests take place, nor (5) shall there be any merger or consolidation of such Person into or with another Person nor (6) shall additional Ownership Interests (or any warrants, options or debt securities convertible, directly or indirectly, into such Ownership Interests) in any such Person be issued, nor (7) shall any general partner's interest in a partnership which is Tenant be (voluntarily or involuntarily) sold, assigned or transferred, nor (8) shall any manager's or managing member's interest (or equivalent) in a limited liability company which is Tenant be (voluntarily or involuntarily) sold, assigned or transferred (each of the foregoing transactions described in clauses (2) - (8) above being herein referred to as a "Transfer"; it being understood and agreed that in no event (x) shall any transfer of Ownership Interests or other transaction described in clauses (2) - (8) above constitute a "Transfer" hereunder unless it results in a Change of Control, or (y) shall a transfer of (or other transaction described above with respect to) Ownership Interests held through a Public Entity constitute a "Transfer" hereunder, without, however, limiting the provisions of Section 10.01(c) with respect to interests in Public Entities); nor (9) shall Tenant sublet the Premises as an entirety or substantially as an entirety (except for occupancy by the Subtenant thereunder); without, in each case, the consent of Landlord and the delivery to Landlord of the documents and information specified in Section 10.01(d) hereof. Notwithstanding the foregoing, the buying or selling of seats on an Exchange in the normal course of business shall not constitute a "Transfer".

As used herein, the term "Change of Control" shall mean a transaction that results in the Person that ultimately has Control of Tenant (the "Controlling Principal") prior to giving effect to such transaction no longer being the Controlling Principal after giving effect to such transaction.

"Control" of a person shall exist when either of the following criteria are met: (i) the power to direct or cause the direction of the decision-making, management and policies, directly or indirectly, whether through the ownership of voting securities, by contract, relation to individuals or otherwise (subject to the rights of third parties to veto or approve customary major decisions) or (ii) the ownership, either direct or indirect, of more than 50% of the stock or other equity interests of such person. As used in this definition, Control by reason of relation of individuals shall not be deemed to exist merely by reason of a familial or social relationship between two individuals; for Control to exist in this context, in addition to such relationship there must be an actual exertion of control through the closeness of the relationship or otherwise. In addition a non-managing member, director or officer of a Person shall not be deemed to Control such entity simply by virtue of such non-managing member's, officer's or director's position; in addition, for Control to exist in this context, in addition to such position, it must be shown that the non-managing member, director or officer actually controls such Person.

Tenant represents that Tenant on the date hereof is owned by a direct or indirect subsidiary of Telegraph Holdings Inc., which owns its interest in Tenant as an accommodation (the "1031 Accommodation") to the effectuation of a reverse 1031 like-kind exchange by subsidiaries of Brookfield Properties, Inc. (together with its successors by merger, consolidation, reorganization or sale of all or substantially all of its assets, "BPI"), and that, simultaneously with the entering into of the First Amendment, the Premises are being master leased to BOP One North End Landlord LLC, a Delaware limited liability company (the "BOP Master Lessee"), which is directly or indirectly owned by, and controlled by, BPI. Within seven months after the date hereof (the "Outside Date"), a direct or indirect subsidiary of BPI will acquire the ownership of Tenant and the BOP Master Lessee will be merged into Tenant (the "1031 Back End Transfers"). Accordingly, Landlord and Tenant hereby agree as follows: (i) from the date hereof until the earlier of the Outside Date and the date the 1031 Back End Transfers are effectuated, so long as ownership interests in Tenant continue to be held and transferred as part of the 1031 Accommodation, transfers of direct or indirect ownership interests in Tenant to BPI resulting in a Change of Control of Tenant shall not be deemed "Transfers" hereunder, (ii) the 1031 Back End Transfers shall not be considered to be a Transfer hereunder so long as immediately after such 1031 Back End Transfers Tenant is directly or indirectly controlled by BPI, subject, if applicable, to the rights of third parties to veto or approve customary major decisions, and (iii) BPI constitutes the Controlling Principal as of the date hereof and will continue to constitute the Controlling Principal after the transactions described in clause (ii) above.

Each of Tenant and, by way of the joinder hereto, BPI jointly and severally, hereby agree to indemnify, defend and hold Landlord harmless from and against any loss, cost or damage to or sustained by Landlord (including reasonable attorneys fees and disbursements) (collectively, "Losses") incurred by Landlord as a result of any proceeding or petition by or against Telegraph Holdings, Inc. and/or any of its subsidiaries or affiliates seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other statute or law to the extent the same affects the Lease. The foregoing indemnity agreement of BPI (this "Indemnity") is given by BPI in consideration of Landlord consenting to the assignment of the Ground Lease and related 1031 Accommodation, which are expected to accrue to the benefit of BPI as an indirect owner of Tenant. BPI shall reimburse Landlord for any Losses not later than five (5) Business Days after Landlord's demand therefor. It shall not be necessary for Landlord to enforce this Indemnity, first to institute suit or exhaust its remedies against Tenant or any other persons obligated to pay such Losses.

Tenant represents and warrants to Landlord that true, correct and complete copies of all material documents relating to the 1031 Accommodation have been provided to Landlord, including, without limitation, the master sublease. The BOP Master Sublease is and shall at all times remain subject and subordinate to the



Ground Lease, and shall not be amended or otherwise modified (except for a termination at the end thereof to effectuate the 1031 Back End Transfers) without Landlord's prior written consent.

As used herein, the term "Public Entity" shall mean a corporation or other Person (a) whose common stock or other ownership or voting interests are listed on the NASDAQ National Market or traded over the New York Stock Exchange, the American Stock Exchange or another stock exchange registered as a "national securities exchange" pursuant to the Securities Exchange Act of 1934 or the rules promulgated thereunder or (b) whose common stock or other ownership or voting interests are freely tradable and are registered under the Securities Act of 1933 or the Securities Exchange Act of 1934 if such Person files periodic reports under the Securities Exchange Act of 1934."

B. Section 10.01(b) of the Ground Lease is hereby amended by adding the word "noticed" immediately before the word "Default" wherever it appears therein. For purposes of Section 10.01(b) of the Ground Lease, a "noticed Default" shall mean a Default as to which Tenant has received written notice which either expressly includes the word "Default" or states that it is delivered under Article 24 of the Ground Lease (or any section thereof).

C. Section 10.01(c) of the Ground Lease is hereby amended and restated in its entirety to read as follows:

"In no event, whether before or after the Lease Restrictions Expiration Date, shall Tenant make a Transfer, assign this Lease or any portion of its interest hereunder (whether by operation of law or otherwise, and including, without limitation, pursuant to a foreclosure or similar sale) or sublet the Premises as an entirety or substantially as an entirety (whether or not for occupancy by the Subtenant thereunder): (i) to any Person (hereinafter, a "Prohibited Person") (w) who has ever been convicted of a felony, (x) against whom any action or proceeding is pending to enforce rights of the State of New York or any agency, department, public authority or public benefit corporation thereof arising out of a mortgage obligation to the State of New York or to any such agency, department, public authority or public benefit corporation, (y) with respect to whom any notice of substantial monetary default which remains uncured has been given by the State of New York or any agency, department, public authority or any public benefit corporation thereof arising out of a mortgage obligation to the State of New York or to any such agency, department, public authority or public benefit corporation or (z) on the most current list of "Specifically Designated National and Blocked Persons" or on any other similarly designated lists promulgated from time to time by any agency of the U.S. government and with whom the conduct of business is prohibited or who is a "designated national," "specially designated national," "specially designated terrorist," "specially designated global terrorist," "foreign terrorist organization," or "blocked person" within the definitions set forth in the Foreign Assets Control Regulations of the United States Treasury Department, 31 C.F.R., Subtitle B, Chapter V, as amended from time to time; (ii) to any Person in

which a Prohibited Person owns a five percent (5%) or greater interest (other than through a Public Entity) at the time of such Transfer; or (iii) to any Person Controlled, directly or indirectly, by a Prohibited Person. Solely for purposes of the application of the foregoing clause (iii) to a Public Entity, the following shall apply as a supplement to the definition of Control set forth herein: a Public Entity shall not be deemed to be Controlled by a Prohibited Person that owns publicly or freely traded capital stock or other direct or indirect ownership interests in such Public Entity unless (x) such Prohibited Person owns twenty-five percent (25%) or more of such ownership interests, and (y) the Prohibited Person is a Prohibited Person pursuant to clause (z) of the definition thereof. The determination by Landlord whether or not a person is a Prohibited Person shall be made within twenty (20) days after receipt of all requisite information and documentation required for such determination. If Landlord shall not have notified Tenant of such determination within such period, it shall be deemed to have determined that such Person is not a Prohibited Person.

The provisions of subsections (i) and (ii) of this Section 10.01(c) shall not apply to a direct or indirect ownership interest in a Public Entity and no Person shall be deemed a "Prohibited Person" hereunder by reason of an individual whose ownership interest in such Person is through a direct or indirect ownership in a Public Entity (but if such Person has ownership interests in Tenant not through a Public Entity, this provision would still apply to the extent such non Public Entity interests alone would trigger the requirements of this Section 10.01(c))."

Section 2.07. **Consent of Mortgagee to Amendment or Termination of Ground Lease.** Section 10.10 of the Ground Lease is hereby amended as follows:

A. Section 10.10(c) of the Ground Lease is hereby amended by deleting the last sentence thereof (i.e., "In the event that a Mortgagee shall become the owner of such leasehold estate, such Mortgagee shall not be bound by any modification or amendment of this Lease made subsequent to the date of the Mortgage and delivery to Landlord of the notice provided in Section 10.10(a) hereof and prior to its acquisition of such interest unless the Mortgagee shall have consented to such modification or amendment at the time it was made or at the time of such acquisition.")

B. Section 10.10 of the Ground Lease is hereby amended by adding Section 10.10(d) as follows:

"(d) Landlord and Tenant agree that, from and after the date upon which Landlord receives the notice and documents mentioned in clause (a) of this Section 10.10, neither Landlord nor Tenant, as applicable, shall modify or amend this Lease or cancel or terminate this Lease in any respect other than as expressly provided herein without the prior written consent of each Mortgagee whose Mortgage is outstanding at the time of such amendment, modification, cancellation or termination and who shall have given such notice. Notwithstanding the foregoing, if at any given point in time there are multiple Mortgages then outstanding whose Mortgagees have each given notice to

Landlord in accordance with Section 10.10(a) hereof, then the Mortgagees of the two Mortgages most senior in lien priority (determined as set forth in, and subject to the designation right set forth in, Section 10.11(d)) shall be the only Mortgagees whose consent would then be required under this Section 10.10(d). Any notice to Landlord from Tenant pursuant to this Section 10.10(d) requesting an amendment or modification of this Lease shall include (if any Mortgages are then outstanding as to which notice has been given to Landlord in accordance with Section 10.10(a)) a reminder to Landlord that Mortgagees have approval rights pursuant to this Section 10.10(d) and certifying as to which Mortgagees are, at the time of such notice, entitled to consent thereto, provided that Tenant's failure to include such reminder and certification (or Tenant's failure to list a Mortgagee who is entitled at such time to so consent) shall not impair the approval rights of any Mortgagee pursuant to this Section 10.10(d). If at any time, Landlord, in good faith, is uncertain whether any Person who on or after the date of the First Amendment has given notice to Landlord in accordance with Section 10.10(a) hereof is still a Mortgagee of an outstanding Mortgage and therefore needs to consent to an amendment, modification, cancellation or termination of this Lease as described above, Landlord may for purposes of this Section 10.10(d) by prompt notice to Tenant treat such Mortgage as still being outstanding and held by such Mortgagee (even if it is not then outstanding or held by such Person) and require such Person's consent unless Tenant shall provide to Landlord a certificate of title issued by a nationally recognized title insurance company licensed to do business in the State of New York or other evidence satisfactory to Landlord, that such Mortgage has been assigned to another Person or satisfied. Landlord shall be permitted to conclusively rely on any such title report for purposes of determining under this Section 10.10(d) that such Mortgage has been subsequently assigned or satisfied."

**Section 2.08. Modification to Capital Improvements Section.**

A. Section 13.02(a) of the Ground Lease is hereby amended by inserting after the words "If the estimated cost of any proposed Capital Improvement" on the first line thereof, the following parenthetical "(exclusive of any non-structural interior work performed to prepare, alter or renovate any portion of the Building for or in connection with the occupancy thereof by a Tenant or a Subtenant)".

B. Section 13.02(a)(ii)(w) of the Ground Lease is hereby amended by replacing the words "forty-five (45) Business Days" with "30 days".

C. Section 13.02(a)(ii)(x) of the Ground Lease is hereby amended by adding at the end thereof the following language:

"Any payment and performance bonds provided pursuant to this Section 13.02(a)(ii)(x) shall include, without limitation, a guaranty of prompt payment of moneys due to the contractor, his or her subcontractors and to all persons furnishing labor or materials to the contractor or his or her subcontractors in the prosecution of the Capital Improvement. Notwithstanding the provisions of

Section 13.02(a)(ii), Tenant shall have the right to include, along with its delivery of plans and specifications to Landlord pursuant to 13.02(a)(ii)(w) the following notice to Landlord: "PLEASE ADVISE TENANT BY NOT LATER THAN FIFTEEN (15) BUSINESS DAYS AFTER YOUR RECEIPT OF THIS NOTICE IF LANDLORD WILL REQUIRE PAYMENT AND PERFORMANCE BONDS FOR THIS CAPITAL IMPROVEMENT PURSUANT TO SECTION 13.02(A)(II) OF THE LEASE. IF LANDLORD DOES NOT NOTIFY TENANT OF SUCH REQUIREMENT WITHIN SUCH TIME PERIOD, SUCH REQUIREMENT SHALL BE DEEMED WAIVED WITH RESPECT TO THIS CAPITAL IMPROVEMENT". If Tenant includes such notification, and Landlord does not notify Tenant in writing that Landlord shall require payment and performance bonds, then Tenant shall not be required to obtain any such payment or performance bond referenced above in connection with the applicable Capital Improvement. In addition, the following shall apply to all Capital Improvement projects described under this Section 13.02 as to which Tenant has not posted payment and performance bonds or other security satisfying clause (ii)(x)(2) above and the estimated cost of which exceeds \$250,000.00:

In such event, either Subparagraph (I) or (II) below shall be satisfied with respect to each such Capital Improvement project:

(I) the contract or construction management agreement referenced in clause (I) of Section 13.02(a)(ii)(x) of this Ground Lease (or an ancillary agreement with the contractor or construction manager (the "Contractor") who is party to such contract or construction management agreement) contains a guaranty from Brookfield Properties, Inc. or other financially responsible party ("Guarantor") in the form set forth below (with such immaterial changes thereto as may be required by the form of such contract or construction management agreement) and shall be executed by the Guarantor solely for the purpose of acknowledging and agreeing to provide such guaranty:

"For value received, \_\_\_\_\_, a \_\_\_\_\_ [*Fill in name and organizational status of Guarantor*] (the "Guarantor"), an affiliate of Owner, hereby guarantees to Contractor that Guarantor will make prompt payments to Contractor, as and when due, of all monies which are properly requisitioned and due and payable to Contractor by Owner in accordance with, and subject to, the terms and conditions of this Agreement, including any such monies properly requisitioned by and due and payable to Contractor's subcontractors and all persons furnishing labor or materials to Contractor or its subcontractors in the prosecution of the Project, subject to the terms and conditions of the applicable agreements relating thereto between Contractor, its subcontractors and such persons furnishing labor or materials, as applicable. This guaranty is one of payment and not of collection. This guaranty is being provided in satisfaction of Section 5 of the Lien Law of the State of New York and may be cancelled or otherwise terminated by Guarantor at any time in

Guarantor's sole discretion, provided that it is replaced with a bond or other form of undertaking in satisfaction of Section 5 of the Lien Law of New York." or

(II) Tenant provides another type of undertaking guaranteeing prompt payment of the balance of the monies then due to the general contractor, its subcontractors and all persons furnishing labor or materials to either of them in the prosecution of the construction of the applicable Capital Improvement project, in each case subject to the terms of the applicable agreements governing the payment of such monies, in form and substance sufficient to comply with Section 5 of the Lien Law of the State of New York and reasonably satisfactory to Landlord.

Landlord hereby acknowledges that the form of guaranty referenced in subparagraph (I) above shall satisfy the requirements of Section 5 of the Lien Law of the State of New York. At any time prior to the completion of the Capital Improvement work, the Guarantor may cancel or otherwise terminate the guaranty described in subparagraph (I) above, provided that it is replaced with a bond or other form of undertaking guaranteeing prompt payment of the balance of the monies then due to the general contractor, its subcontractors and all persons furnishing labor or materials to either of them in the prosecution of the construction of the applicable Capital Improvement project, in each case subject to the terms of the applicable agreements governing the payment of such monies, in form and substance sufficient to comply with Section 5 of the Lien Law of the State of New York and reasonably satisfactory to Landlord."

D. Section 13.02(a)(ii)(y) of the Ground Lease is hereby amended by adding at the beginning thereof before the words "at least ten (10) Business Days" the following language: "upon request made by Landlord".

E. Section 13.03 of the Ground Lease is hereby amended by replacing the words "an architect selected by Tenant and approved by Landlord, such approval not to be unreasonably withheld" at the end of the first sentence thereof with the words "a reputable and qualified licensed professional engineer or registered architect".

Section 2.09. **Mortgagee Right to New Lease.** i) Section 10.11(a) of the Ground Lease is hereby amended by inserting the phrase "or for any other reason (including as a result of a cancellation, surrender or rejection in a bankruptcy proceeding), other than a termination in accordance with the terms of this Lease by reason of a condemnation or casualty" immediately after "by reason of any Event of Default" contained in the first (1<sup>st</sup>) and second (2<sup>nd</sup>) lines of such Section 10.11(a).

A. Section 10.11(b) of the Ground Lease is hereby amended by inserting the phrase "and, in the case of bankruptcy, where the Ground Lease is rejected (on the same terms and conditions as the rejected Ground Lease)" between the words "Lease," and "continue".

B. Section 10.11(d) of the Ground Lease is hereby amended and restated in its entirety to read as follows:

“If there is more than one Mortgage, and more than one Mortgagee has attempted to exercise any of the rights afforded by this Section 10.11 or Section 10.10 within the time periods set forth herein or therein, only that Mortgagee, to the exclusion of all other Mortgagees, whose Mortgage is most senior in lien priority shall have, and shall be recognized by Landlord as having, the right to exercise such rights, for so long as such Mortgagee shall be exercising its rights under this Lease with respect thereto, and thereafter, successively, the Mortgagees whose Mortgages are next most senior in lien priority shall be recognized by Landlord, in order of seniority; *provided, however, that*, except as otherwise provided in Section 10.10(b)(ii), no such Mortgagee shall be entitled to any extension of the initial thirty (30) day period provided for in Section 10.11(a). If the parties shall not agree on which Mortgagee is prior in lien, such dispute shall be determined by a then current certificate of title obtained by Landlord at the sole expense of the tenant under the new lease, issued by a nationally recognized title insurance company licensed to do business in the State of New York chosen by Landlord, and such determination shall bind the parties (including for this purpose each Mortgagee). Notwithstanding the foregoing, (i) one or more Mortgagees may designate, by notice to Landlord, a Mortgagee holding a lien that is junior in priority to the liens held by the designating Mortgagees as the Mortgagee which shall have the right to exercise any or all of the rights afforded by this Section 10.11 and by Section 10.10 in lieu of such senior Mortgagee(s) (in which event the Mortgagee so designated shall have, and shall be recognized by Landlord as having, such rights) and (ii) a Mortgagee shall be entitled to the rights afforded by this Section 10.11 and by Section 10.10 only if either Tenant or such Mortgagee shall have given Landlord notice of such Mortgage in compliance with the provisions of Section 10.10(a).” The provisions of the immediately preceding two sentences shall also apply when determining the priority of lien of Mortgagees under Sections 2.03 and 3.01(a)(iii) of this Ground Lease as if such provision were contained in Section 10.10.

Section 2.10. **Liability for Equipment**. Notwithstanding anything to the contrary contained in the Ground Lease, in no event shall Tenant be required to comply with any covenants, terms or conditions in the Ground Lease with respect to the Equipment or the Sales Tax Benefits. The New York Mercantile Exchange, Inc., Landlord and Tenant have entered into on the date hereof a a Ground Landlord Non-Disturbance, Recognition and Attornment Agreement, which includes a ratification of its continuing obligations with respect to the Equipment and Sales Tax Benefits, notwithstanding the fact that the Tenant under the Ground Lease from time to time shall not be liable for such obligations from and after the date hereof.

Section 3. **Amendment to Design Guidelines**. Section F1(a) of the Design Guidelines is hereby amended and restated in its entirety as follows:

“The maximum floor area of the Building is 550,000 gross square feet.”

Section 4. **Notices.** Section 25.01(a) of the Ground Lease is hereby amended and restated in its entirety to read as follows:

“(a) if by Landlord, by delivery or by mailing the same to Tenant by registered or certified mail, postage prepaid, return receipt requested, addressed to Tenant as follows:

BOP One North End LLC  
c/o Brookfield Office Properties  
250 Vesey Street, 15th Floor  
New York, New York 10281  
Attention: Mitchell E. Rudin, President  
and Chief Executive Officer,  
U.S. Commercial Operations

with copies to:

Brookfield Office Properties  
250 Vesey Street, 15th Floor  
New York, New York 10281  
Attention: General Counsel

and

Fried, Frank, Harris, Shriver & Jacobson LLP  
One New York Plaza  
New York, New York 10004  
Attention: Joshua Mermelstein, Esq.

or to such other address(es) and attorneys as Tenant may from time to time designate by notice given to Landlord as aforesaid and, in the case of any notice required to be given to any Mortgagee pursuant to this Lease, to each such Mortgagee at the address of such Mortgagee set forth in the notice mentioned in the first sentence of Section 10.10(a) hereof; and”

Section 5. **Miscellaneous.**

Section 5.01. **Landlord Representations.** Landlord represents and warrants that (i) it has the requisite power and authority necessary to enter into and perform its obligations under this First Amendment, including the conversion of the Ground Lease to a direct lease from Landlord and subordination of the Master Lease to the Ground Lease, (ii) the Ground Lease, as amended, constitutes a Basic Sublease under the Master Lease, and (iii) this First Amendment constitutes Landlord’s legal, valid and binding obligation enforceable against Landlord in accordance with its terms.

Section 5.02. **Tenant Representations.** Tenant represents and warrants that (i) it has the requisite power and authority necessary to enter into and perform its obligations under this First Amendment, including the conversion of the Ground Lease to a direct lease from Landlord, (ii) this First Amendment constitutes Tenant's legal, valid and binding obligation enforceable against Tenant in accordance with its terms, (iii) Tenant is not a Prohibited Person, and (iv) all required Mortgagee consents to this First Amendment have been obtained.

Section 5.03. **Severability.** The provisions of this First Amendment are severable, and if any clause or provision shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision in this First Amendment in any jurisdiction.

Section 5.04. **Counterparts.** This First Amendment may be executed in any number of counterparts, each of which counterparts when executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. Delivery of an executed counterpart of this First Amendment by PDF or fax shall be equally effective as delivery of a manually executed counterpart.

Section 5.05. **Section Headings.** The Section headings used in this First Amendment are for convenience only, and are not to be used in determining the meaning of this First Amendment or any part thereof.

Section 5.06. **Integration.** This First Amendment contains the sole and entire understanding and agreement of the parties with respect to its entire subject matter and all prior negotiations, discussions, representations, agreements and understandings heretofore had among the parties with respect thereto are merged herein.

Section 5.07. **Successors and Assigns.** This First Amendment shall bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns under the Ground Lease.

Section 5.08. **Memorandum.** A memorandum of this First Amendment in form suitable for recording (and any other instruments required to record such memorandum) and reasonably acceptable to both Landlord and Tenant, shall be executed and filed at the request of Tenant, at Tenant's sole cost and expense.

Section 5.09. **Broker.** Tenant and Landlord represent and warrant to each other that neither party dealt with a broker in connection with this First Amendment. Tenant and Landlord shall each indemnify and hold harmless the other party from and against any and all claims, damages and costs (including reasonable attorneys' fees and disbursements) incurred by such other party in connection with a breach or alleged breach of the indemnifying party's representation and warranty contained in this Section 5.09.

Section 5.10. **Ratification.** As modified by the foregoing provisions of this First Amendment, the Ground Lease is hereby ratified and confirmed in all respects. Upon execution and delivery of this First Amendment, this First Amendment shall become part of the



Ground Lease and all references in the Ground Lease to “this Lease” and phrases of similar import shall hereinafter refer to the Lease, as modified by this First Amendment.

Section 5.11. **Governing Law**. This First Amendment shall be governed by the laws of the State of New York.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed by their respective officers thereunto duly authorized, as of the date first above written.

LANDLORD:

BATTERY PARK CITY AUTHORITY,  
d/b/a The Hugh L. Carey Battery Park City Authority, a  
public benefit corporation under the laws of the State of  
New York

By: RM Serpico  
Name: Robert M. Serpico  
Title: CFO

TENANT:

BOP ONE NORTH END LLC, a Delaware limited  
liability company

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

SOLELY FOR PURPOSES OF ACKNOWLEDGING AND AGREEING TO THE  
PROVISIONS OF THE FIFTH (5<sup>TH</sup>) PARAGRAPH OF SECTION 2.06(A):

BROOKFIELD PROPERTIES, INC.

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

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed by their respective officers thereunto duly authorized, as of the date first above written.

LANDLORD:

BATTERY PARK CITY AUTHORITY,  
d/b/a The Hugh L. Carey Battery Park City Authority, a  
public benefit corporation under the laws of the State of  
New York

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

Name:

Title:

TENANT:

BOP ONE NORTH END LLC, a Delaware limited  
liability company

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

Name:

Title:

Michael McNamara  
Head of Acquisitions & Dispositions  
U.S. Commercial Operations

SOLELY FOR PURPOSES OF ACKNOWLEDGING AND AGREEING TO THE  
PROVISIONS OF THE FIFTH (5<sup>TH</sup>) PARAGRAPH OF SECTION 2.06(A):

BROOKFIELD PROPERTIES, INC.

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

Name:

Title:

Michael McNamara  
Head of Acquisitions & Dispositions  
U.S. Commercial Operations