

FIRST AMENDMENT TO AGREEMENT OF LEASE

This FIRST AMENDMENT TO AGREEMENT OF LEASE (this “**Amendment**”) dated as of December 30, 2021 (the “**date hereof**”) between BATTERY PARK CITY AUTHORITY d/b/a HUGH L. CAREY BATTERY PARK CITY AUTHORITY, a body corporate and politic constituting a public benefit corporation, having an office at 200 Liberty Street, 24th floor, New York, New York 10281-1802 (“**Landlord**”), and TRIBECA POINTE L.L.C. (formerly known as Tribeca Landing L.L.C.), a New York limited liability company, having an office at c/o Rockrose Development L.L.C., 15 East 26<sup>th</sup> Street, 7<sup>th</sup> Floor, New York, New York 10010-1503 (“**Tenant**”),

WITNESSETH:

WHEREAS:

A. Landlord and Tenant are landlord and tenant, respectively, under and pursuant to that certain Agreement of Lease dated as of November 20, 1997 (the “**Original Ground Lease**”), of which a Memorandum of Lease was recorded December 10, 1997 in the Office of the City Register, New York County, in Reel 2521, Page 1173, for property commonly known as “**Tribeca Pointe**”, **Site 21A** in Battery Park City, 399 Chambers Street / 41 River Terrace, New York, New York 10282-1113, and as **Block 16, Lot 210** on the New York County tax map. (All the property demised under the Original Ground Lease shall be referred to herein as the “**Property**”.)

B. Landlord and Tenant wish to amend certain provisions of the Original Ground Lease, effective from and after the date hereof, on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and for Ten Dollars and other good and valuable consideration exchanged between Landlord and Tenant, the mutual receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. Definitions and Construction.

1.1. As used in this Amendment and the Ground Lease, the following terms have the following meanings, and the following definitions are hereby added to the Ground Lease:

“**Amendment Date**” means December 30, 2021, being the date of that certain First Amendment to Agreement of Lease between Landlord and Tenant.

“**Amendment Term**” means the period from the Amendment Date through the Scheduled Expiration Date.

“**Amendment Year**” means the calendar year January 1, 2022 through December 31, 2022 and each succeeding calendar year or portion thereof through and including the Scheduled Expiration Date. For the avoidance of doubt, the “first” or “1<sup>st</sup>” Amendment Year is the calendar year January 1, 2022 through December 31, 2022, the “second” or “2<sup>nd</sup>” Amendment Year is the calendar year January 1, 2023 through December 31, 2023, and so on.

“**Ground Lease**” means the Original Ground Lease, as amended by the First Amendment to Agreement of Lease between Landlord and Tenant (being this Amendment).

“**Scheduled Expiration Date**” means June 17, 2069, being the stated expiration date of the Term.

“**Tenant’s Certifying Officer**” means (a) the chief financial officer or chief accounting officer of Tenant or of a controlling direct or indirect member of Tenant or (b) an officer or employee of Tenant or of a controlling direct or indirect member of Tenant who is familiar with the Property’s books and records and has responsibility for financial reporting for the Property to the Person described in the preceding clause (a).

1.2. The definition of “Unavoidable Delays” in Article 1 of the Original Ground Lease is hereby deleted and replaced by the following:

“**Unavoidable Delays**” shall mean (i) with respect to Tenant or its obligations hereunder, delays incurred by Tenant due to strikes, lockouts, work stoppages due to labor jurisdictional disputes, acts of God, inability to obtain labor or materials due to governmental restrictions (other than any governmental restrictions which Tenant is bound to observe pursuant to the terms of this Lease), enemy action, terrorist acts, civil commotion, fire, unavoidable casualty, pandemic, disease outbreak, government orders or mandates and national or regional emergency, breaches in cybersecurity, or other similar causes beyond the control of Tenant (but not including Tenant's insolvency or financial condition), construction activities of Landlord or Master Landlord, Landlord's failure to complete Landlord's Civic Facilities in accordance with Section 26.02, a work stoppage or slow-down requested by Landlord in order not to unreasonably interfere with the work of other developers within the Project Area, which for purposes hereof shall include the construction activities of Landlord under this Lease, and (ii) with respect to Landlord or its obligations hereunder, delays incurred by Landlord due to strikes, lockouts, work stoppages due to labor jurisdictional disputes, acts of God, inability to obtain labor or materials due to governmental restrictions (other than any governmental restrictions which Landlord is bound to observe pursuant to the terms of this Lease), enemy action, civil commotion, fire, unavoidable casualty or other similar causes beyond the control of Landlord (but not including Landlord's insolvency or financial condition); in each case provided such party shall have notified the other party not later than fourteen (14) days after such party knows or should have known of the occurrence of same and the occurrence shall be one of the effects of which a prudent Person in the position of the party asserting such delay could not have reasonably prevented.”

1.3. As used in this Amendment and the Ground Lease, the following terms have the meanings provided in the following respective Sections or other provisions of this Amendment:

<u>Defined Term</u>	<u>Section</u>
“Adjusted Sale Price”	8.1
“Affordability Requirements”	3.1
“Affordable Unit”	3.1
“Amended Regulatory Agreement”	3.1
“Amendment”	Initial Para.
“Amendment Date”	1.1
“Amendment Term”	1.1
“Amendment Year”	1.1
“Area Median Income”	3.1
“ASHRAE”	12.1
“Base Loan Amount”	5.1
“Building Emission”	12.1
“Building Emissions Limit”	12.1
“Commercially Reasonable Efforts”	12.1
“Current Tenant Owner”	8.1
“date hereof”	Initial Para.
“DOB”	12.1
“DOF”	7.5
“Effective Gross Income” or “EGI”	4.3
“EGI Overpayment Credit”	4.10
“Eligible 40% Households”	3.1
“Extended Use Period”	3.1
“fair market rental value”	2.2
“Financing”	5.1
“First Appraisal Date”	4.1

<u>Defined Term</u>	<u>Section</u>
“Gross Sale Consideration”	8.1
“Ground Lease”	1.1
“Ground Rent Floor”	4.3
“Interim Period”	4.3
“Interim Period Overpayment Credit”	4.5
“Interim Procedure Letter”	4.3
“Landlord”	Initial Para.
“LL97”	12.1
“Major Master Sublease”	8.8
“Master Sublease”	4.3
“Master Sublease Proportional Base Rent”	8.2(b)
“Master Subtenant”	4.3
“Mezzanine Financing”	5.1
“Minimum Property Improvement Amount”	11.1
“Mortgage Financing”	5.1
“Net New Proceeds”	5.1
“Noncompliance Rent”	3.4
“Noncomplying Units”	3.4
“NYC RPT”	8.1
“NYSHFA”	3.1
“NYS RET”	8.1
“Original Ground Lease”	Recital Para. A
“Ownership Chart”	5.4
“Property”	Recital Para. A

<u>Defined Term</u>	<u>Section</u>
“QCI Cost Payments”	6.1
“QCI Credit”	6.2
“Qualified Financing Earn-out”	5.1
“Qualified Sale Earn-out”	8.4
“Qualifying Capital Improvements”	6.1
“Recommissioning”	12.1
“Refinancing Fee”	5.2
“Sale”	8.1
“Scheduled Expiration Date”	1.1
“Second Period”	4.1
“Sustainability Reports”	12.5
“tCO <sub>2e</sub> ”	12.1

<u>Defined Term</u>	<u>Section</u>
“Tenant”	Initial Para.
“Tenant’s Certifying Officer”	1.1
“Tenant Credit Account”	7.1
“Tenant Rent Offset”	7.2
“Tenant Sustainability Contact”	12.1
“Trailing Monthly EGI Statement”	4.8
“Transfer Payment”	8.2
“Tribeca Pointe”	Recital Para. A
“True-Up Payment”	4.9(a)(ii)
“Unavoidable Delays”	1.2
“Unit Deficit”	3.4
“Waste Audit Report”	12.5(c)

1.4. All references in this Amendment to “**accountants**” of Tenant shall mean the Certified Public Accountants then approved by Landlord in accordance with Section 38.01(a) of the Original Ground Lease.

1.5. As used in this Amendment and the Ground Lease, the terms “**apartments**” and “**units**” are synonymous and also have the same meaning as “apartments” or “units” in the Amended Regulatory Agreement.

1.6. As used in this Amendment, the phrase “**date hereof**” has the meaning set forth in the initial paragraph of this Amendment.

1.7. The words “**including**”, “**includes**”, “**inclusive of**” and the like shall be deemed to be followed by the phrase “without limitation” unless expressly provided otherwise.

1.8. All terms used but not defined in this Amendment shall have the meanings provided in the Ground Lease.

## 2. Continued Operation as Rental Property.

2.1. During the Amendment Term, Tenant (a) shall not assign, convert or submit the Property, Tenant’s estate or interest in the Premises, the Property or the Ground Lease, or any portion thereof or interest therein, to a condominium or cooperative form of

ownership, and (b) shall operate the Property continuously and solely as a multifamily rental building with the affordable component set forth in this Amendment. Without limitation to the foregoing, Tenant shall not assign, convert or submit its estate or interest in the Premises, the Property or the Ground Lease (i) to an Apartment Corporation and/or pursuant to a Cooperative Plan or (ii) to a condominium board of managers and/or pursuant to a Condominium Plan. All of Section 10.01(f) of the Original Ground Lease and all portions of Section 10.01(g) of the Original Ground Lease after the phrase “may be withheld by Landlord in its sole discretion” in the first sentence of such Section 10.01(g) are hereby deleted from the Original Ground Lease. All references in the Original Ground Lease to assignment, conversion or submission of Tenant’s estate or leasehold interest in the Premises or Property (or any portion thereof) to a condominium or cooperative form of ownership or pursuant to a Condominium Plan or Cooperative Plan are hereby made subject to this Section 2.1.

2.2. Tenant shall at all times (a) exert commercially reasonable but diligent and continuous efforts to rent all apartments at the Property to Persons who are not Tenant or Affiliates or agents of Tenant and (b) neither “warehouse”, withhold or reserve apartments from the rental market nor otherwise maintain them as vacant when there is rental market demand, subject to (i) the obligation to provide and operate affordable apartments as set forth herein and (ii) vacancies of individual apartments for repair, restoration and upgrading of apartments, provided that Tenant shall expeditiously complete each such repair, restoration or upgrading, subject only to Unavoidable Delays. Notwithstanding the foregoing, (a) Tenant may rent no more than ten (10) apartments at the Property to individuals who are Affiliates, employees or agents of Tenant and who actually occupy and use the apartment if such rentals are at fair market rental value, and (b) because there will be no condominium or cooperative conversion, there will be no so-called “sponsor units”. Notwithstanding the preceding portions of this paragraph to the contrary, Tenant may rent one apartment to the superintendent of the Property. “**Fair market rental value**” as used in this Section 2.2 shall mean the rental which would be paid under a Sublease for an apartment that is not an Affordable Unit (commencing at the same time as Tenant’s or such Affiliate’s or agent’s use or occupancy) with a nonrelated Person leasing a similar-sized apartment in the same Building that is not an Affordable Unit, for the same term, for a residential purpose and in a generally similar location in the Building, and shall include, inter alia, all fixed and additional rents and other charges (if any) which would be included under such Sublease. Together with each financial statement of operation for the preceding fiscal year delivered pursuant to Section 38.01(a) of the Lease, Tenant shall deliver to Landlord a report of the apartments rented during such fiscal year to Affiliates, employees or agents of Tenant, identifying the apartments, the actual fixed and additional rents and other charges therefor and reasonable evidence that such actual fixed and additional rents and other charges are not materially less than such fair market rental value.

2.3. Tenant shall not operate or (to the extent set forth in the last sentence of this paragraph) permit to be operated any of the apartments at the Property as “AirBNB” or similar or other short-term rentals, whether directly by Tenant or an Affiliate or agent of Tenant or by a Subtenant or other Person. In addition (and without limitation to the other provisions of this Amendment), Tenant shall at all times comply with, and cause the Property to comply with, Section 4.1 of the Amended Regulatory Agreement. Tenant shall not (to the extent set forth in the last sentence of this paragraph) permit any Subtenant to sublease or enter into a license or occupancy agreement (whether written or verbal) for his, her or its apartment without Tenant’s

prior written consent, except to the extent required otherwise by applicable Requirements. Tenant shall (a) cause (i) all Subleases and (ii) all extensions, renewals or modifications of Subleases (in either case (i) or (ii) executed on or after the Amendment Date) to contain provisions binding upon each Subtenant similar to the foregoing and (b) make commercially reasonable but reasonably diligent and continuous efforts to monitor (without unreasonable intrusions) and enforce compliance with such provisions, provided that a court's denial of an order of eviction or similar relief against a Subtenant or other Person shall not by itself constitute a default by Tenant under this Section 2.3.

3. Affordable Units.

3.1. As used in this Amendment and the Ground Lease, the following terms have the following meanings, and the following definitions are hereby added to the Ground Lease:

**"Affordability Requirements"** shall mean the following: at all times, (i) Tenant shall cause no fewer than the greater of (y) seventy (70) units or (z) twenty percent (20%) of all the residential units within the Property to be (and to be used solely as) Affordable Units; (ii) Tenant shall cause all Affordable Units to be rented to households meeting the applicable income eligibility requirements of the Amended Regulatory Agreement; (iii) Tenant shall comply with Section 3.7 hereof; (iv) Tenant shall not change or permit a change in the dispersal of the Affordable Units within the Property and/or the distribution of the Affordable Units by unit type, in a manner that would not comply with (or that would cease to comply with) the requirements of the Amended Regulatory Agreement; and (v) for all Affordable Units (including those described in the preceding clause (iii) of this sentence), Tenant shall not charge rents, additional rents and/or other charges that exceed the applicable limited, restricted or regulated amounts determined as set forth in the Amended Regulatory Agreement.

**"Affordable Unit"** shall mean each unit within the Property that serves as rental housing for households earning at or below fifty percent (50%) of Area Median Income, as adjusted for family size, at initial occupancy of such household in such unit and whose rents and/or other charges are limited, restricted or regulated under the Amended Regulatory Agreement.

**"Amended Regulatory Agreement"** means that certain Second Amended and Restated Regulatory Agreement for Tribeca Landing (aka Tribeca Pointe) (River Terrace and Chambers Street) dated as of December 30, 2021 between NYSHFA and Tenant, which has been submitted for recording in the Office of the Register of the City of New York, as the same may be further amended from time to time with the prior written consent of Landlord and Tenant.

**"Area Median Income"** has the meaning set forth in the Amended Regulatory Agreement.

“**Eligible 40% Households**” means households earning not more than forty percent (40%) of Area Median Income, adjusted for family size, at initial occupancy of such household in its Affordable Unit.

“**Extended Use Period**” has the meaning set forth in the Amended Regulatory Agreement and expires on December 31, 2028.

“**NYSHFA**” means New York State Housing Finance Agency, a corporate governmental agency established pursuant to Article III of the New York State Private Housing Finance Law, constituting a public benefit corporation, and its successor government agencies from time to time.

3.2. Tenant shall, at all times, fully and timely perform and comply with the Affordability Requirements.

3.3. Tenant represents and warrants to Landlord that Schedule A attached hereto lists: all the Affordable Units as of the Amendment Date, the Affordable Units that are currently restricted and rented to Eligible 40% Households, and, for each Affordable Unit, its monthly rent and other charges as of the Amendment Date.

3.4. If, when and for so long as NYSHFA determines (whether or not NYSHFA shall declare or give notice of a default under the Amended Regulatory Agreement) that (a) fewer than the required number of units at the Property have been occupied and operated in compliance with the Affordability Requirements (such deficit in the number of complying units, the “**Unit Deficit**”) and/or (b) the rents, additional rents and/or other charges for one or more Affordable Units have exceeded the applicable limited, restricted or regulated amounts under the Amended Regulatory Agreement (such noncomplying units, the “**Noncomplying Units**”), Tenant shall pay to Landlord additional rent (the “**Noncompliance Rent**”) equal to the product of Fifty Thousand Dollars (\$50,000) per year multiplied by the sum of (i) the number of units in the Unit Deficit and (ii) the number of Noncomplying Units (but without double-counting units that are in both clauses (i) and (ii) of this sentence). The Noncompliance Rent shall be pro rated and computed on a per unit and *per diem* basis beginning on the date on which NYSHFA or Landlord shall notify Tenant of a Unit Deficit or any Noncomplying Units (whether or not such notification shall assert a default under the Amended Regulatory Agreement or the Ground Lease) and expiring on the date on which such Unit Deficit (if any) shall be eliminated and such Noncomplying Units (if any) shall be brought into compliance. Tenant shall pay the Noncompliance Rent in arrears on the first day of each calendar month. The Noncompliance Rent constitutes additional rent under the Ground Lease. The term “Rental” as defined and utilized in the Ground Lease is hereby modified also to include any and all Noncompliance Rent, including for the purposes of Section 24.01(a) of the Ground Lease and all references in the Ground Lease to such Section 24.01(a). Tenant agrees and acknowledges that Landlord has agreed to modify Base Rent as set forth in Section 4 below in consideration of, among other things, Tenant’s full and uninterrupted compliance with Section 3.2 hereof, and that, accordingly, the Noncompliance Rent, if and when payable, is (A) negotiated, agreed and reasonable partial compensation for the modification of Base Rent set forth below if and when there shall not be full compliance with Section 3.2 hereof, (B) material consideration for this Amendment without which Landlord would not enter into this

Amendment and (C) not a penalty. For the avoidance of doubt, the Unit Deficit is a positive number.

3.5. In addition to and without limitation to or by the Noncompliance Rent, any default by Tenant under Section 3.2 hereof that remains uncured for a period of one hundred eighty (180) days after Tenant receives written notice of such default from NYSHFA or Landlord (or written notice from NYSHFA of any noncompliance or failure with respect to the Amended Regulatory Agreement if, whether or not specified by NYSHFA, such noncompliance or failure also constitutes Tenant's noncompliance or failure with respect to any of the Affordability Requirements) shall constitute an Event of Default under the Ground Lease, for which Landlord shall retain and may exercise and enforce any and all of its rights and remedies for an Event of Default under the Ground Lease; provided, however that if such default cannot with commercially reasonable but diligent efforts be cured within such one hundred eighty (180) day period and Tenant has (within such one hundred eighty (180) day period) commenced and thereafter continues commercially reasonable but diligent efforts to cure such default, Tenant shall have such longer time period as is necessary to cure such default before the same shall constitute an Event of Default. The Event of Default described in this Section 3.5 is hereby added to the Events of Default listed in clause (ii) of Section 24.03(a) of the Ground Lease. For the avoidance of doubt, (a) the notice and cure period in this Section 3.5 does not apply to the Noncompliance Rent provided in Section 3.4 hereof, and (b) notwithstanding anything to the contrary in the Ground Lease, including Section 24.01(c) thereof, or this Amendment, any default by Tenant under Section 3.2 hereof shall constitute an Event of Default only pursuant to the first sentence of this Section 3.5 (subject to the proviso included therein).

3.6. Except as set forth in Section 3.7 hereof, Tenant shall not amend, modify or terminate the Amended Regulatory Agreement without Landlord's prior written consent, which consent Landlord may withhold in Landlord's sole and absolute discretion, and any modification or termination of the Amended Regulatory Agreement without Landlord's prior written consent shall be void and of no effect *ab initio*.

3.7. Without limitation to Section 3.2 hereof, Tenant shall at all times through the Scheduled Expiration Date cause at least thirty-one (31) of the Affordable Units to be rented to Eligible 40% Households. To the extent that, from time to time through the expiration of the Extended Use Period, the Amended Regulatory Agreement shall require a greater number of the Affordable Units to be rented to Eligible 40% Households, Tenant shall then and at all times through the expiration of the Extended Use Period cause at least such greater required number of Affordable Units to be rented to Eligible 40% Households. At all times from and after the expiration of the Extended Use Period through the Scheduled Expiration Date, Tenant shall cause to be rented to Eligible 40% Households the greater of (a) thirty-one (31) of the Affordable Units and (b) the number of Affordable Units required to be leased to Eligible 40% Households as of the date of the expiration of the Extended Use Period. For the avoidance of doubt, such number of units shall not be required to be further increased after the expiration of the Extended Use Period. Landlord shall consent to an amendment of the Amended Regulatory Agreement to the extent (and only to the extent) that such amendment would halt further increases to the required number of Affordable Units to be rented to Eligible 40% Households between the date of such amendment and the expiration of the Extended Use Period in accordance with Tenant and NYSHFA's mutual interpretation of applicable Requirements, including U.S. Internal Revenue Service Private Letter



Rulings, and the second sentence of this Section 3.7 shall be interpreted consistently with any such amendment. For the avoidance of doubt, this Section 3.7 is included within the Affordability Requirements, including for the purposes of Section 3.2 hereof.

3.8. Tenant hereby irrevocably authorizes Landlord to obtain and review any and all notices, determinations, reports, documents or other information by, of, to or from NYSHFA or other Governmental Authorities in connection with the Affordable Units or the Property or Tenant's compliance or non-compliance with this Section 3, and Tenant shall confirm such authorization in writing as and when requested by Landlord from time to time.

4. Revised Base Rent.

4.1. The following definitions in Article 1 of the Original Ground Lease are hereby amended to read as follows:

“**First Appraisal Date**” shall mean November 1, 2018.”

“**Second Period**” shall mean the period commencing on the First Appraisal Date and ending on the Scheduled Expiration Date.”

4.2. The following definitions, and all references to the following terms, are hereby deleted from the Original Ground Lease:

“Applicable Percentage”

“Fifth Period”

“Fourth Period”

“Reappraisal Date”

“Third Period”

4.3. As used in this Amendment and the Ground Lease, the following terms have the following meanings, and the following definitions are hereby added to the Ground Lease:

“**Effective Gross Income**” or “**EGI**” means all gross revenue of, paid to or for the benefit of Tenant (including all gross revenue paid to an Affiliate of Tenant or Tenant's property manager from or in connection with the Property), on a cash accounting basis, including all residential rental revenue and all commercial rental and other revenue, and including all retail revenue and laundry revenue. The terms “Effective Gross Income” and “EGI” shall exclude:

(a) tax refunds;

(b) insurance proceeds to the extent such proceeds are reserved for and (within three (3) years of receipt of such proceeds) actually utilized

by Tenant to pay for hard and soft out-of-pocket costs of restoration and repair of the insured casualty, provided that (i) if Tenant shall commence so to utilize such proceeds within such three (3) year period and proceed with reasonable diligence and continuity to complete such restoration and repair, then such three (3) year period shall be extended by two (2) years for the full utilization of such proceeds to pay such costs of restoration and repair, (ii) any such proceeds not so actually utilized within three (3) years of receipt thereof (subject to the extension of such three (3) year period pursuant to the preceding clause (i)) shall be treated as EGI, (iii) any such proceeds used to pay principal, interest or other amounts on a Financing shall be treated as EGI (provided that this clause (iii) does not constitute Landlord's consent to any such payment and does not modify the provisions of the Ground Lease regarding the use of such proceeds), and (iv) any proceeds of business interruption or rent insurance shall be treated as EGI;

(c) expense reimbursements from Subtenants which are both expressly provided for in their Subleases and specifically billed to such Subtenants (including as separate line items in their monthly rent bills), to the extent both (i) such reimbursements are actually utilized by Tenant to pay to unaffiliated third parties (excluding Landlord) the Property-related expenses so reimbursed and (ii) such reimbursement provisions are typical for such type of Subleases; and

(d) proceeds from condemnation or takings in eminent domain, provided that proceeds from temporary condemnations or temporary takings or that are based on loss or reduction of revenue shall be treated as EGI as and when paid.

For the avoidance of doubt, and notwithstanding the foregoing exclusions, (1) any revenue allocated to or applied against fees, administrative expenses, other expenses, overhead, profit or similar charges of Tenant or any Affiliate of Tenant shall be treated as EGI and not excluded from EGI pursuant to the preceding clauses, (2) any interest or other financial return earned by or for the benefit of Tenant from (or that is earned on or is otherwise derived from) any accounts, reserves or deposits shall be treated as EGI, and (3) to the extent any portion of the Property is subject to a Master Sublease, EGI from such portion of the Property for any relevant period shall include only the greater of (x) all rents, additional rents and other amounts paid by (and all gross revenue deriving from) the occupants (including as sub-subtenants at any level) of all or any part of such portion of the Property for such period, and the other components of EGI set forth above to the extent deriving from such portion of the Property for such period (other than the amounts paid by (or on account of) the Master Subtenant to Tenant for such period), whether or not any of the same is received or receivable by, or paid or payable to, Tenant, an Affiliate of Tenant, the Master Subtenant, or any other Person and (y) the amounts paid by (or on account of) the Master Subtenant to Tenant for such period (but EGI for the remainder of the Property shall be determined as set forth in this definition of EGI before this clause (3)).

**“Ground Rent Floor”** in each Amendment Year through the Scheduled Expiration Date (or portion thereof) means the respective annual amount specified in Schedule B attached hereto for such Amendment Year (or portion thereof), *provided that*,

if part of Tenant's interest in the Property is permanently taken in eminent domain and such part includes any portion or portions of the Property that are generating EGI, then Ground Rent Floor shall thereafter be reduced *pro rata* to the ratio of (a) the dollar amount of EGI so lost (on an annual basis) during the twelve (12) months following the date on which such taking occurs to (b) the total amount of EGI (on an annual basis) in the Amendment Year in which such taking occurs as determined immediately prior to such taking as if such taking had not occurred.

**"Interim Period"** means the period between November 1, 2018 (being the agreed first day of the Second Period) and December 31, 2021.

**"Interim Procedure Letter"** means the letter agreement dated November 20, 2018 between Landlord and Tenant with the caption starting "Agreement on interim procedure for determining Base Rent ...".

**"Master Sublease"** means (a) any Sublease (or sub-sublease at any level) of any portion of the Property if and when the Subtenant (or sub-subtenant) thereunder either (i) shall not be the actual occupant and user of all or substantially all of the portion of the Property that is demised by such Sublease or (ii) further subleases, or enters into licenses or other occupancy agreements for, at least 50% of the area of such demised portion of the Property and (b) any Sublease (or sub-sublease at any level) to Tenant or an Affiliate of Tenant. Notwithstanding the foregoing, sub-subleases, each of an individual unit, in which neither Tenant nor an Affiliate of Tenant is a party shall not constitute "Master Subleases", provided that any such sub-subleases in which the sub-sublandlords and/or the sub-subtenants are the same Person or Affiliates of each other shall constitute "Master Subleases".

**"Master Subtenant"** means the Subtenant (or sub-subtenant) under a Master Sublease.

4.4. Landlord and Tenant agree that both the First Appraisal Date and the first day of the Second Period are November 1, 2018. Base Rent from and after November 1, 2018 through and including the Scheduled Expiration Date is hereby modified to be only as set forth in the following provisions of this Section 4.

4.5. During each Lease Year (or portion thereof) during the Interim Period (and with retroactive effect), Base Rent shall be five (5.00%) percent of EGI for such Lease Year (or portion thereof). Simultaneously with execution of this Amendment, Tenant has paid Landlord \$1,098,343.68, being the amount by which such Base Rent for the Interim Period (as certified by Tenant's Certifying Officer) exceeds the amounts actually paid by Tenant to Landlord on account of Base Rent for the Interim Period. Such certification by Tenant's Certifying Officer is consistent with the annual financial statements and reports and opinions of the accountants described in Section 38.01(a) of the Ground Lease for calendar years 2018, 2019 and 2020 and, for calendar year 2021, includes and is based on a good faith estimate of EGI for such calendar year. Simultaneously with the financial statements described in Section 38.01(a) of the Ground Lease for calendar year 2021, Tenant shall (a) deliver to Landlord (i) such accountants' reports of EGI on a cash basis for each of the period November 1, 2018 through December 31, 2018 and each

of calendar years 2019 and 2020, with reconciliations to their annual financial statements and reports and opinions for calendar years 2018, 2019 and 2020, and (ii) an audited report from such accountants of actual EGI for calendar year 2021 on a cash basis, with a reconciliation to their annual financial statements and report and opinion for calendar year 2021, and (b) pay to Landlord the amount, if any, by which five (5.00%) percent of such actual EGI (per such audited reports and reconciliations) exceeds the Base Rent that Tenant actually paid for the Interim Period, including Tenant's payment pursuant to the second sentence of this Section 4.5, provided that if the Base Rent that Tenant actually paid for the Interim Period, including Tenant's payment pursuant to the second sentence of this Section 4.5, exceeds five (5.00%) percent of such actual EGI (per such audited reports and reconciliations), then the aggregate amount of such overpayment (the "**Interim Period Overpayment Credit**") will be credited to the Tenant Credit Account as set forth in Section 7.1 hereof, and such Tenant Credit Account may be utilized to offset subsequent payments of Base Rent and True-Up Payment as and to the extent provided in Section 7 hereof.

4.6. From and after the commencement of the First Amendment Year, Tenant shall pay an annual Base Rent that, determined separately for each Amendment Year (or portion thereof), shall equal the greater of (a) the respective Ground Rent Floor for such Amendment Year and (b) the following respective percentage of EGI in such Amendment Year:

- The 1st through and including 5th Amendment Years: five percent (5%) of EGI in each such Amendment Year or portion thereof;
- The 6th through and including 10th Amendment Years: eight percent (8%) of EGI in each such Amendment Year;
- The 11th through and including 20th Amendment Years: nine percent (9%) of EGI in each such Amendment Year
- The 21st through and including 30th Amendment Years: ten percent (10%) of EGI in each such Amendment Year;
- The 31st through and including 40th Amendment Years: eleven percent (11%) of EGI in each such Amendment Year; and
- The 41st Amendment Year through and including the Scheduled Expiration Date: twelve percent (12%) of EGI in each such Amendment Year or portion thereof.

4.7. Notwithstanding references herein to "annual" or "per annum" amounts, Base Rent shall continue to be payable monthly, in advance, on the first day of each calendar month.

4.8. On the first day of the first calendar month of the first Amendment Year and on the first day of each calendar month thereafter, (a) Tenant shall deliver to Landlord Tenant's report of EGI for the third (3<sup>rd</sup>) preceding calendar month (the "**Trailing Monthly EGI Statement**"), which shall (i) be on a cash basis, (ii) set forth in reasonable detail the components of such third (3<sup>rd</sup>) preceding calendar month's EGI and (iii) be certified by Tenant's Certifying Officer as being true, correct and complete in all material respects as of such date, and (b) Tenant shall pay estimated Base Rent as set forth in Sections 4.6 and 4.7 hereof, with the computation in

clause (b) of Section 4.6 hereof based on such third (3<sup>rd</sup>) preceding calendar month's EGI as set forth in the Trailing Monthly EGI Statement. As an example of the foregoing, on March 1, 2022, Tenant shall deliver to Landlord a Trailing Monthly EGI Statement that provides a report of EGI for the month of December, 2021 and is so certified by Tenant's Certifying Officer, and Tenant shall make a payment to Landlord of estimated Base Rent for the month of March, 2022 that is the higher of (x) \$37,500, which is one-twelfth of the Ground Rent Floor for the first Amendment Year, and (y) five percent (5%) of such reported EGI for the month of December, 2021. All payments of estimated Base Rent during each Amendment Year shall be subject to the subsequent True-Up Payment set forth below.

4.9. Tenant agrees that the "Fiscal Year" or "fiscal year" (as defined in the Ground Lease) is the calendar year. Together with the annual financial statements and report and opinion of the accountants described in Section 38.01(a) of the Ground Lease, starting with the annual financial statements, report and opinion that cover the 2022 calendar year (which is the first Amendment Year) and continuing with the annual financial statements, reports and opinions that cover each subsequent Amendment Year (or the portion of the Amendment Year that includes the Scheduled Expiration Date), but in all cases not later than one hundred fifty (150) days after the end of each Amendment Year:

(a) Tenant shall deliver to Landlord an audited special-purpose statement and opinion from such accountants of:

(i) actual EGI for the entire such Amendment Year (*i.e.*, actual EGI during the January 1 – December 31 Amendment Year without reference to the amounts in the Trailing Monthly EGI Statements), and

(ii) the amount, if any (the "**True-Up Payment**"), by which

(A) Base Rent computed pursuant to Section 4.6 hereof for all of such Amendment Year (but, for the purposes of clause (b) of Section 4.6 hereof, with reference to such accountants' statement of actual EGI in the preceding clause 4.9(a)(i) and not to the Trailing Monthly EGI Statements) exceeds

(B) the Base Rent that Tenant actually paid for such Amendment Year, and

(b) Simultaneously with the delivery of the above statement and opinion, Tenant shall pay the True-up Payment to Landlord.

All such computations, reports, statements and opinions shall be on a cash accounting basis consistently applied as converted from Tenant's accountants' certified financial statements prepared in accordance with generally accepted accounting principles (or such other accounting principles as Landlord and Tenant may agree upon from time to time for such financial statements), with a reconciliation between the two systems and supported by appropriate details and documentation. Tenant's accountants' reports, statements and opinions, described above shall be accompanied by a statement by such accountants that an examination of Tenant's books and

records has been conducted by such accountants in accordance with generally accepted auditing standards and that the statements described in the preceding clause (a) of this Section 4.9 have been prepared on a cash accounting basis. Without limitation to the foregoing, such reports and statements shall include information regarding the amounts received, applications of, and unapplied balances of, insurance and condemnation proceeds (if any) in such detail as Landlord may reasonably require for the purpose of determining which portions thereof are included in or excluded from EGI pursuant to the definition herein of “EGI”.

4.10. The term “Rental” as defined and utilized in the Ground Lease is hereby modified also to include Tenant’s obligation to pay the True-Up Payment, including for the purposes of Section 24.01(a) of the Ground Lease and all references in the Ground Lease to such Section 24.01(a). However, if the True-Up Payment is a negative number (because the amount in the preceding clause 4.9(a)(ii)(B) is greater than the amount in the preceding clause 4.9(a)(ii)(A)), then the aggregate amount of such negative number (the “**EGI Overpayment Credit**”) will be credited to the Tenant Credit Account as set forth in Section 7.1 hereof, and such Tenant Credit Account may be utilized to offset subsequent payments of Base Rent and True-Up Payment as and to the extent provided in Section 7 hereof.

4.11. Section 3.09(d) of the Original Ground Lease shall remain in effect provided that the reference therein to “Gross Non-Residential Revenue” shall be deemed to be a reference to EGI.

4.12. This Section 4 of this Amendment replaces Sections 3.01(a)(ii) though (v), 3.01(c) and 3.07(a) of the Original Ground Lease, which Sections 3.01(a)(ii) though (v), 3.01(c) and 3.07(a) shall be deemed deleted from the Original Ground Lease.

4.13. For the avoidance of doubt, Base Rent (and all portions thereof) and all other amounts (if any) computed and payable pursuant to this Section 4 are included in the term “Rental” as defined and utilized in the Ground Lease, including for the purposes of Section 24.01(a) of the Ground Lease and all references in the Ground Lease to such Section 24.01(a).

## 5. Refinancing Fee.

5.1. As used in this Amendment and the Ground Lease, the following terms have the following meanings and the following definitions are hereby added to the Ground Lease:

“**Base Loan Amount**”, for each new Financing, shall mean (a) an initial amount of \$56,500,000 on account of all Financings existing as of the Amendment Date (there being a Mortgage Financing and no Mezzanine Financing on the Amendment Date) plus (b) any net aggregate increases (on or after the Amendment Date but before the closing of such new Financing) to the aggregate principal amounts of the then-existing Financings (whether through aggregate increases to the existing loans or refinancings thereof at a higher aggregate amount); provided, however, that, in calculating the Base Loan Amount, the principal amount of each then-existing Financing shall be deemed (i) to be its original principal amount and (ii) neither to be reduced by any amortization or repayment of such

Financing nor to be increased by any addition or capitalization of unpaid interest or other amounts to principal balance.

**“Financing”** means each Mortgage Financing and/or Mezzanine Financing.

**“Mezzanine Financing”** means each financing or refinancing occurring on or after the Amendment Date to, of or guaranteed and/or for which collateral is provided in whole or in part by any direct or indirect owner of Tenant or of the Master Subtenant under any Major Master Sublease (whether on a recourse or non-recourse basis), in each case if and only if the security or collateral therefor includes (in whole or in part) a new, continuing and/or amended pledge of or security interest in (a) any membership or other ownership interests in Tenant or in a Master Subtenant under any Major Master Sublease or (b) any membership or other ownership interest in a direct or indirect member or owner of Tenant or such a Master Subtenant if all or substantially all the assets of such member or owner are direct or indirect membership or ownership interests in Tenant or such a Master Subtenant. (For the avoidance of doubt, “ownership interest” includes a member interest in a limited liability company, partnership interest in a general or limited partnership, stock in a corporation or an equity or other ownership interest in a Person, and “financing or refinancing” includes a loan.). Any financing or refinancing that is secured in whole or in part (including by assignment, pledge, control or possession) directly or indirectly by any distributions or other payments by or on behalf of (i) Tenant and/or (ii) any Master Subtenant under any Major Master Sublease shall also constitute a “Mezzanine Financing” for the purposes of this Amendment. For the avoidance of doubt, (a) no financing or refinancing secured by the membership or other ownership interests in a Person shall be a Mezzanine Financing except as set forth above, and (b) a Sale shall not be considered to be a Mezzanine Financing.

**“Mortgage Financing”** means each financing or refinancing occurring on or after the Amendment Date to, of or guaranteed and/or for which collateral is provided in whole or in part by Tenant and/or the Master Subtenant under any Major Master Sublease (whether on a recourse or non-recourse basis) that (in any such case) includes as security or collateral (in whole or in part) a new, continuing and/or amended mortgage lien on, security interest in and/or assignment or pledge of all or any part of the Property, the leasehold under a Major Master Sublease and/or the interest of (a) Tenant in the Ground Lease and/or any Subleases or any portion of or interest in the same, (b) the Master Subtenant under any Major Master Sublease and/or any sub-subleases at any level and/or any portion of or interest in any of the same. Any financing or refinancing that is secured in whole or in part (including by assignment, pledge, control or possession) directly or indirectly by (i) any revenue of (or received on behalf of) (x) Tenant and/or (y) any Master Subtenant under any Major Master Sublease and/or (ii) any rents or additional rents payable to or for the benefit of (x) Tenant and/or (y) any Master Subtenant under any Major Master Sublease shall also constitute a “Mortgage Financing” for the purposes of this Amendment. For the avoidance of doubt, a Sale shall not be considered to be a Mortgage Financing.

**“Net New Proceeds”** means the aggregate principal amount of a new Financing (together with the principal amount of any existing Financing that shall not then be paid or refinanced but shall continue after such new Financing) less (a) the then Base

Loan Amount immediately prior to the closing of such new Financing, (b) any mortgage recording or similar tax paid or payable on such new Financing, (c) lender fees and discounts limited to one percent (1%) of the principal amount of the new Financing, (d) the actual out-of-pocket cost to the borrower of lender's title insurance (if any), appraisal fees, property condition reports, environmental reports and insurance reviews, (e) reasonable legal fees, (f) prepayment fees or penalties incurred on the existing Financing being increased or refinanced by the Financing and (g) commercially reasonable loan brokerage fees for the new Financing. The principal amount of each new Financing shall be deemed to include the entire maximum principal amount that may under any contingencies be advanced or disbursed under such Financing, whether at or after closing thereof, whether or not subject to conditions to such advances or disbursements, and including the amounts of any optional increases to the principal amount of such new Financing provided that if one or more portions of such new Financing will not be disbursed or advanced until the future satisfaction of future conditions where there is a risk that such future conditions will not be satisfied, then such portions of such new Financing (each, a "**Qualified Financing Earn-out**") shall be included in Net New Proceeds or in the increased Base Loan Amount generated by Net New Proceeds when and to the extent that each such Qualified Financing Earn-out shall be disbursed or advanced, at which time Tenant shall pay to Landlord a Refinancing Fee on such actual disbursements and advances and such actual disbursements and advances shall thereupon be included in the increased Base Loan Amount, provided further, however, that (and for the avoidance of doubt) any and all future disbursements or advances of a Financing with primarily ministerial conditions to disbursements or advances (including a building loan and/or a so-called "project" loan and/or lender reserves or holdbacks for building improvements, building repairs, tenant improvements and leasing commissions) shall not be deemed to constitute Qualified Financing Earn-outs and shall be deemed to be included in Net New Proceeds (with payment of the Refinancing Fee thereon) at the initial closing of such Financing. For the avoidance of doubt, Qualified Financing Earn-outs include the portions of a loan to be disbursed upon the future attainment of discretionary zoning entitlements and/or a minimum debt service coverage ratio that is dependent upon increased net operating income or similar financial conditions. Further, and notwithstanding the second preceding sentence, if the disbursement of a post-completion portion of a building and/or so-called "project" loan is contingent upon the future attainment of a minimum debt service coverage ratio that is dependent upon increased net operating income or a similar financial condition, then the disbursement of such portion of such loan shall be treated as a Qualified Financing Earn-out for the purposes of this paragraph.) If the Financing is or includes a Mortgage Financing and the security and collateral for such Mortgage Financing includes liens on real property other than the Property, then, for purposes of computing the Net New Proceeds, the aggregate principal amount of such Financing and the deductions in the preceding clauses (a) through (g) shall be determined and computed on a proportional basis in the ratio of (A) the value of the Property and any other collateral described in the definition of "Mortgage Financing" that constitutes security or collateral for such Mortgage Financing to (B) the value of all the assets that constitute security or collateral for such Mortgage Financing. If the Financing is or includes a Mezzanine Financing and the security and collateral for such Mezzanine Financing includes assets in addition to direct or indirect interests in Tenant and/or the other collateral described in the definition of "Mezzanine Financing", then, for purposes of



computing the Net New Proceeds, the aggregate principal amount of such Financing and the deductions in the preceding clauses (a) through (g) shall be determined and computed on a proportional basis in the ratio of (A) the value of such direct or indirect interests in Tenant and any other collateral described in the definition of "Mezzanine Financing" that constitute security or collateral for such Mezzanine Financing to (B) the value of all the assets that constitute security or collateral for such Mezzanine Financing.

5.2. During the Amendment Term, Tenant shall pay to Landlord, as additional rent, a fee ("**Refinancing Fee**") equal to three percent (3.00%) of the Net New Proceeds of each Financing, at the time or times provided below.

5.3. Tenant shall pay (or cause to be paid) the entire Refinancing Fee to Landlord upon the closing of each Financing whether or not any or all funds from the Financing are advanced or disbursed at such closing, provided that Refinancing Fee on any portion of a Financing that is a Qualified Financing Earn-out shall be paid when and to the extent that such Qualified Financing Earn-out shall be disbursed or advanced. Without limitation to the foregoing, Tenant shall cause to be included in each settlement statement and/or disbursement schedule for such closing the payment of such Refinancing Fee to Landlord pursuant to Landlord's wiring instructions or in such other manner as Landlord may request. Tenant shall deliver to Landlord at such closing copies of all relevant documents for the Financing (including any and all loan commitments, loan agreements, notes, mortgages, pledge agreements, assignments of rents or other revenue, guaranties, settlement statements and disbursement schedules). Notwithstanding the preceding provisions to the contrary, if a Mortgage Financing or Mezzanine Financing by a Master Subtenant or a direct or indirect owner of a Master Subtenant is undertaken without the actual knowledge of Tenant, then the Refinancing Fee shall be paid to Landlord within thirty (30) days after Tenant obtains actual knowledge of such Financing. Tenant shall cause each Major Master Sublease to contain (a) a provision that the Master Subtenant will not enter into, permit or suffer a Financing without giving at least thirty (30) days advance written notice thereof to both Tenant and Landlord, and (b) provisions substantially similar to the first three sentences of this Section 5.3 and the following Section 5.4 and requiring delivery to both Tenant and Landlord of the documents and information described therein.

5.4. To assist Landlord in determining the Net New Proceeds and Refinancing Fee, at least thirty (30) days before the closing of each Financing, Tenant shall deliver to Landlord (a) a term sheet and/or commitment for the Financing (or, if such term sheet and/or commitment are not yet available or do not accurately represent the current terms of the financing, a reasonably detailed summary of the financing similar to the level of detail that would be provided in a term sheet or commitment), (b) an ownership chart of Tenant showing all its direct and indirect owners with percentage ownership interests, as the same shall exist both before and after such closing (an "**Ownership Chart**"), and (c) other documentation reasonably necessary for Landlord to determine the Net New Proceeds and Refinancing Fee, including, if applicable, valuations of all assets mortgaged, pledged or otherwise constituting collateral, as set forth in the last two sentences of the definition of "Net New Proceeds" herein. Also to assist Landlord in determining the Net New Proceeds and Refinancing Fee, Tenant shall, no earlier than ten (10) Business Days and no later than five (5) Business Days before the then-scheduled closing of such Financing, deliver to Landlord (to the extent of and based on information then available to Tenant) (i) updates of the preceding materials (including an initial term sheet or commitment for the Financing to the extent

not previously delivered) to the extent there has been any change to the terms and conditions (including the amount) of such Financing that would affect the calculation of the Refinancing Fee, including any change to the information in the preceding clause (b) or, if applicable, any valuations, (ii) reasonably detailed information about any portions of such Financing that will constitute Qualified Earn-outs, and (iii) an estimate and computation of the Net New Proceeds and Refinancing Fee to be paid at such closing, it being acknowledged by Landlord and Tenant that such information may thereafter change through the actual closing of the Financing. For the avoidance of doubt, an adjournment of the closing of such Financing shall not require Tenant to resubmit materials previously delivered to Landlord pursuant to this Section, provided that Tenant shall promptly apprise Landlord of each such adjournment. Within five (5) Business Days after the closing of each Financing, Tenant shall deliver to Landlord (A) a copy of the settlement or closing statement for such Financing, with all exhibits to the extent such exhibits would affect the calculation or timing of payment of the Refinancing Fee, and a further update of the information described in the preceding provisions of this Section 5.4 to the extent related to the final computations of Net New Proceeds and Refinancing Fee for such Financing, and (B) payment of any portion of the Refinancing Fee that was not paid to Landlord at the closing of the Financing (including to the extent the materials described in this sentence change the computations of Net New Proceeds and/or Refinancing Fee from the prior computations thereof).

5.5. The Refinancing Fee shall constitute additional rent under the Ground Lease. The term "Rental" as defined and utilized in the Ground Lease is hereby modified also to include any and all Refinancing Fee, including for the purposes of Section 24.01(a) of the Ground Lease and all references in the Ground Lease to such Section 24.01(a).

5.6. Schedule C attached hereto contains hypothetical examples of Net New Proceeds from and Refinancing Fee payable upon certain mortgage or mezzanine financings and/or refinancings.

5.7. In addition to and in support of the foregoing, Tenant shall deliver to Landlord within ten (10) days after request by Landlord from time to time, an updated Ownership Chart.

5.8. If, upon its execution, a Master Sublease is not a Major Master Sublease but, as a result of Section 8.8 hereof, shall thereafter satisfy the definition of "Major Master Sublease", then such Master Sublease shall thereupon and thereafter be deemed to be a Major Master Sublease for all purposes of this Section 5 (and with retroactive effect to the original closing of any then-existing Financing) and Refinancing Fee shall be paid (with respect to any then-existing Financing) and thereafter payable in connection therewith pursuant to this Section 5, provided that, if such Master Sublease shall satisfy the definition of "Major Master Sublease" in whole or in part as a result of Section 8.8(a) hereof, then such Master Sublease shall be deemed to have been a Major Master Sublease *ab initio* at all times from and after its execution, and any and all Refinancing Fee on account of such Major Master Sublease shall then be paid pursuant to this Section 5, based on all Net New Proceeds determined and computed with retroactive effect from and after the date of execution of the original or initial Master Sublease (or the original or initial date of any existing or prior Master Sublease as referenced in such Section 8.8(a)). Without limitation to the foregoing, and for the avoidance of doubt, if a Financing is secured by (i) a pledge of direct or indirect interests in the Master Subtenant under a Master Sublease that is not a Major

Master Sublease or by a mortgage lien on the leasehold under a Master Sublease that is not a Major Master Sublease, and also (whether then or thereafter) by (ii) any other collateral described in clauses (a) and/or (b) and/or the second-to-last sentence of each of the definitions of “Mezzanine Financing” and/or “Mortgage Financing” in Section 5.1 hereof, then a Refinancing Fee shall (and with retroactive effect to the original closing of such Financing) be paid in connection with such Financing as set forth in this Section 5.

6. Limited Credit against Base Rent for Qualifying Capital Improvements.

6.1. As used in this Amendment and the Ground Lease, the following terms have the following meanings, and the following definitions are hereby added to the Ground Lease:

“**QCI Cost Payments**” means payments by Tenant for the actual out-of-pocket costs of Qualifying Capital Improvements.

“**Qualifying Capital Improvements**” means capital improvements to the Building (including hard and soft costs) if and to the extent Tenant’s Certifying Officer certifies in writing to Landlord that such payments constitute capital improvements as defined in both (a) New York State Department of Taxation and Finance Tax Bulletin ST-104 (TB-ST-104) in effect on the Amendment Date (of which a copy is annexed hereto as Exhibit 1), and (b) New York State Department of Taxation and Finance Publication 862 in effect on the Amendment Date (of which a copy is annexed hereto as Exhibit 2).

Expenditures made by Tenant pursuant to Section 11 hereof may be included in QCI Cost Payments, if and when made, but only if and to the extent that such expenditures are for Qualifying Capital Improvements that satisfy the requirements of this Section 6.

6.2. After each Financing for which a Refinancing Fee shall have been paid to Landlord, Landlord will provide to Tenant a credit against future payments of Base Rent, which credit will be in the amount of three percent (3%) of the QCI Cost Payments for Qualifying Capital Improvements that are commenced, completed and paid for by Tenant within the period from two (2) years before through five (5) years after such Financing, subject to the following further conditions and limitations in this Section 6 (such credit, “**QCI Credit**”).

6.3. The aggregate amount of QCI Credit shall not exceed the amount of Refinancing Fee received by Landlord on account of such Financing. For the avoidance of doubt, any QCI Credit attributable to Qualifying Capital Improvements commenced, completed and paid for in the two (2) years before the Financing that generated such Refinancing Fee shall (to the extent set forth in Section 7 hereof) be usable against payments of Base Rent after (and only after) the closing of such Financing, subject to the other conditions of this Section 6.

6.4. As a condition to any QCI Credit, Tenant shall give Landlord notice no later than the later of (a) sixty (60) days after completion of the related Qualifying Capital improvements and (b) sixty (60) days after the applicable Financing. Together with such notice, Tenant shall deliver to Landlord a reconciliation of QCI Cost Payments prepared by Tenant, Tenant’s general contractor, Tenant’s architect or Tenant’s managing agent (which shall include

cumulative totals and reports of completion and otherwise be in such detail and provide such source documentation as Landlord shall reasonably require).

6.5. Any and all QCI Credit will be credited to the Tenant Credit Account as set forth in Section 7.1 hereof, and such Tenant Credit Account shall be utilized to offset subsequent payments of Base Rent and/or the True-Up Payment as and to the extent (and only to the extent) provided in Section 7 hereof.

6.6. This Section 6 shall be deemed neither to constitute an exception to, nor to waive or modify, the requirements of Section 8.01 or Articles 12 and 13 of the Original Ground Lease or any other provisions of the Original Ground Lease that are relevant to repairs, restorations, construction, additions, alterations or work in or at the Property, and Tenant shall comply with the same.

7. Use of Tenant Credit Account to Offset Base Rent and/or True-Up Payments.

7.1. Pursuant to Sections 4.5, 4.10 and 6.5 hereof, any and all Interim Period Overpayment Credit, EGI Overpayment Credit and QCI Credit will be credited to a Tenant ledger account (the “**Tenant Credit Account**”), and Tenant may and shall use (and debit) the balance thereof to offset the subsequent required payments of Base Rent on a monthly basis and/or the subsequent True-Up Payments, provided that the aggregate amounts utilized from the Tenant Credit Account to offset Base Rent in each month or any True-Up Payment will be limited so that, in each Amendment Year, the aggregate net amount payable of Base Rent less such offsets shall not be less than the Ground Rent Floor for such Amendment Year.

7.2. For the avoidance of doubt, Base Rent less such offsets shall continue to be payable monthly, and not less in each month than the amount needed to pay one twelfth (1/12) of the Ground Rent Floor for the respective Amendment Year. (The actual utilization of the Tenant Credit Account to offset Base Rent in each month or any True-Up Payment, as so limited, is the “**Tenant Rent Offset**”.) If the Tenant Credit Account exceeds the Tenant Rent Offset for any month or when applied to a True-Up Payment, then, after deducting such Tenant Rent Offset from the Tenant Credit Account, the remaining balance of the Tenant Credit Account will be available in the following month for utilization (and shall be utilized) to offset such following month’s and subsequent months’ payments of Base Rent pursuant to this Section 7 and/or subsequent True-Up Payments.

7.3. Tenant shall utilize the Tenant Credit Account to offset Base Rent and True-Up Payments as and when such offsets are available (and subject to the limitations) in the preceding provisions of this Section 7. Notwithstanding the foregoing provisions to the contrary, if (a) Tenant shall comply with the preceding sentence and (b) on the Scheduled Expiration Date there remains an unapplied balance in the Tenant Credit Account, then Landlord shall pay such unapplied balance to Tenant less any and all Rental, additional rent and other amounts then due under this Lease (including any and all costs that Landlord may have incurred or may subsequently incur to cure any then-outstanding Defaults, as reasonably estimated by Landlord).

7.4. There shall be no credit against or offset or reduction of Base Rent or any other Rental due to EGI Overpayment Credit or QCI Credit (and there shall be no payment by Landlord to Tenant on account thereof) except as set forth in this Section 7.

7.5. Together with the annual financial statements and report and opinion of the accountants described in Section 38.01(a) of the Ground Lease for the 2022 calendar year and each subsequent calendar year, Tenant shall provide a report of any and all EGI Overpayment Credit, QCI Credit, increases to the Tenant Credit Account, and utilization of the Tenant Credit Account for Tenant Rent Offset during such calendar year, and the start and ending balance of the Tenant Credit Account at the start and end of such calendar year.

7.6. If and to the extent that Tenant shall enter the costs of a Qualifying Capital Improvement on any Real Property Income & Expense form that Tenant shall submit to the New York City Department of Finance (“DOF”), Tenant shall add any and all Tenant Rent Offset deriving from such Qualifying Capital Improvement as other or additional income, including on Line 11 of Section J of Part II of the related worksheet (or in any equivalent or similar line as such form or worksheet may be modified from time to time). Tenant shall deliver to Landlord a copy of each Real Property Income & Expense form (including a printout of each electronic submittal) within ten (10) days after its submittal to DOF, together with its worksheet and the certification of Tenant’s Certifying Officer to Landlord that all such Tenant Rent Credit (if any) for the reporting period of such RPIE has been added thereto as other or additional income.

8. Transfer Payment.

8.1. As used in this Amendment and the Ground Lease, the following terms have the following meanings:

“**Adjusted Sale Price**” means the Gross Sale Consideration in connection with a Sale less each of the following in connection with such Sale to the extent paid solely by the seller: (a) any New York State real estate transfer tax (being the tax imposed under Section 1402 of the New York Tax Law or any other amended or future law regarding real property transfer taxes payable to the State of New York (the “**NYS RET**”)), (b) any New York City real property transfer tax (being the tax imposed under Chapter 21 of Title 11 of the New York City Administrative Code or any other amended or future law regarding real estate transfer taxes payable to the City of New York (the “**NYC RPT**”)), (c) any third-party broker sale commissions (such broker commissions not to exceed 3% of the Gross Sale Consideration), and (d) reasonable legal expenses (such legal expenses not to exceed 0.75% of the Gross Sale Consideration).

“**Current Tenant Owner**” means an individual who is a direct or indirect owner of Tenant as of the Amendment Date and who is shown on the Ownership Chart (as hereinafter defined) attached hereto as Schedule D.

“**Gross Sale Consideration**” means all amounts, value or consideration paid or payable by or on behalf of the purchaser or paid or payable to or received or receivable by the seller (or for the benefit of the seller) in connection with a Sale, including (a) all cash or cash equivalent proceeds, (b) the principal amount of any note or other

payment obligation given by or on behalf of the purchaser to or for the benefit of the seller, whether or not secured, (c) the outstanding principal amount of any debt, and any interest accrued but not then paid thereon, assumed by the purchaser in such Sale or to which such Sale is made subject (including, if the Sale is of a direct or indirect interest in Tenant, any debt (i) on (A) the Property or Tenant's interest in the Ground Lease and/or (B) any direct or indirect interests in Tenant that are directly or indirectly conveyed in such Sale or (ii) payable (A) by Tenant and/or (B) by any direct or indirect owners of Tenant to the extent direct or indirect interests in such owners is included in the Sale, (d) the fair market value of any property received by or on behalf of the seller as consideration, (e) the amount of any installments payable subsequent to the closing of the Sale, whether pursuant to a purchase money promissory note or otherwise, and (f) the award or other proceeds in or of any permanent taking in eminent domain of all or a portion of Tenant's interest in the Property. Without limitation to or duplication of the foregoing, Gross Sale Consideration includes all amounts defined or treated as "consideration" under the NYS RET or the NYC RPT or the regulations thereunder. If both (x) the Sale includes an incidental identified payment to the seller at par for cash and/or identified cash bank accounts being transferred to the purchaser as part of the Sale and (y) such incidental identified payment is not included in "consideration" under the NYS RET or NYC RPT or the regulations thereunder (and is also not included in the consideration set forth in the NYS RET and NYC RPT transfer tax returns for the Sale), then such incidental identified payment shall not be included in Gross Sale Consideration. In the case of a Sale that also includes the sale, conveyance, assignment or other transfer of material assets (including direct or indirect interests in Persons) that are unrelated to the Property and direct and indirect interests in Tenant, the total amount of value or consideration shall be equitably apportioned (based on independent appraisals conducted by appraisers and in a manner that shall be reasonably satisfactory to Landlord). In the case of the execution of a Major Master Sublease described in clause (x) of the definition of "Sale" below, for purposes of the monthly payments set forth in Section 8.2(b) hereof, "Gross Sale Consideration" shall be determined on a monthly basis for each calendar month and all consideration, rent, additional rent and other amounts or value paid or payable by or on behalf of the Master Subtenant or paid or payable to or received or receivable by Tenant (or for the benefit of Tenant) during such month for, under, pursuant to or in consideration of any such Major Master Sublease shall be included in Gross Sale Consideration for such month.

**"Sale"** means each sale, conveyance, assignment or other transfer (excluding any of the same to the extent solely creating collateral, a lien or a security interest for a Financing) of all or part of (i) the Property or Tenant's interest in the Ground Lease or any interest in the foregoing or (ii) any direct or indirect interest in Tenant, in each case other than to:

(a) a Current Tenant Owner and/or any then-current spouse, former spouse, parent, child (including stepchild), grandchild (including step-grandchild), nephew, niece or sibling (whether by whole or half-blood), or lineal descendants by birth or adoption of a Current Tenant Owner;

(b) Persons wholly owned by the individuals described in the preceding clause (a);

(c) trusts for the benefit of solely the individuals described in the preceding clause (a); and/or

(d) Affiliates of Tenant that are wholly owned, directly or indirectly, by the Persons described in the preceding clauses (a), (b) and/or (c).

A “Sale” shall also include: (v) each conveyance of real property or interest therein as described in the NYS RET or the regulations thereunder; (w) each deed and each instrument or transaction whereby any economic interest in real property is transferred as described in the NYC RPT or the regulations thereunder; (x) the execution of a Major Master Sublease; (y) the sale, conveyance, assignment or other transfer of any Major Master Sublease, of the interest of the Master Subtenant in any Major Master Sublease or of any direct or indirect interest in any such Master Subtenant; and (z) any permanent taking in eminent domain of all or a portion of Tenant’s interest in the Property. For the avoidance of doubt, if any single transaction constitutes a “Sale” under more than one of the foregoing clauses (v) – (z), it shall be considered only a single “Sale”.

8.2. The parties agree as follows:

(a) During the Amendment Term, upon each Sale, Tenant shall pay to Landlord, as additional rent, a fee (“**Transfer Payment**”) equal to two percent (2%) of the Adjusted Sale Price of such Sale.

(b) Notwithstanding the foregoing, if the Sale is the execution of a Major Master Sublease, Tenant shall pay the Transfer Payment to Landlord monthly, in arrears, ten (10) days after each calendar month, computed as two percent (2%) of the amount by which Gross Sale Consideration for such Major Master Sublease for such calendar month exceeds the amount paid by Tenant (and not by the Master Subtenant or any other Person) to Landlord in such calendar month on account of Master Sublease Proportional Base Rent for the portion of the Property leased or demised by such Major Master Sublease. “**Master Sublease Proportional Base Rent**” for any Master Sublease shall mean Base Rent computed pursuant to Section 4.6 hereof provided that, for such computation, clause (a) of such Section 4.6 shall be a *pro rata* portion of the then-applicable Ground Rent Floor in proportion to (i) the area of the portion of the apartments and commercial space in the Building leased or demised by the Master Sublease to (ii) the area of all the apartments and commercial space in the Building, and the references to EGI in clause (b) of such Section 4.6 shall be determined consistently with clause (3) of the definition of “EGI” herein.

8.3. Except as set forth in Section 8.4 hereof, Tenant shall pay (or cause to be paid) the entire Transfer Payment to Landlord upon and as part of the closing of each Sale. Without limitation to the foregoing, Tenant shall cause to be included in each settlement statement and/or disbursement schedule for such closing the payment of such Transfer Payment to Landlord pursuant to Landlord’s wiring instructions or in such other manner as Landlord may request. At least five (5) Business Days before the closing of each such Sale, Tenant shall deliver to Landlord copies of the contract of sale and then then-existing draft settlement statement showing all payments to be made in connections with such Sale. In addition, within ten (10) days after the

initial closing of each Sale, Tenant shall deliver to Landlord copies of all relevant documents for such Sale (including each contract of sale, deed, note, mortgage, transfer tax return, settlement statement and disbursement schedule).

8.4. If one or more portions of the amounts, value or consideration in connection with a Sale will not be paid to or for the benefit of the seller until the future satisfaction of future conditions where there is a risk that such future conditions will not be satisfied, then such portions of such amounts, value or consideration (each, a “**Qualified Sale Earn-out**”) shall be included in Gross Sale Consideration when and to the extent that such Qualified Sale Earn-out shall be paid to or for the benefit of the seller, at which time Tenant shall pay to Landlord a Transfer Payment on such portions of such amounts, value or consideration, provided further, however, that (and for the avoidance of doubt) all future such amounts, value or consideration with primarily ministerial conditions to payment (including in all cases (a) the principal amount of any note or mortgage and/or (b) the aggregate amount of any agreed installment payments given, payable or to be payable to or for the benefit of the seller in connection with the Sale) shall not be deemed to constitute Qualified Sale Earn-outs and shall be deemed to be included in Gross Sale Consideration (with payment of the Transfer Payment thereon) at the initial closing of such Sale. For the avoidance of doubt, Qualified Sale Earn-outs include the portions of Gross Sale Consideration to be paid to or for the benefit of the seller upon the future attainment of discretionary zoning entitlements.

8.5. To assist Landlord in determining the Gross Sale Consideration, Adjusted Sale Price and Transfer Payment in the case of a Sale of direct or indirect interests in Tenant, at least five (5) Business Days before the closing thereof, (a) Tenant shall deliver to Landlord an Ownership Chart (as the same shall exist both before and after such closing), and (b) if the Sale includes any property other than direct or indirect interests in Tenant, Tenant shall provide a statement certified by Tenant’s Certifying Officer showing the types and values of all the assets of such owner or owners and of their direct and/or indirect interests in Tenant, together with reasonable evidence of valuations supporting such statement (including copies of any appraisals obtained by or delivered to Tenant). To assist Landlord in determining the Gross Sale Consideration, Adjusted Sale Price and Transfer Payment in the case of the execution of each Master Sublease (whether or not it is a Major Master Sublease), at least five (5) Business Days before the execution thereof, Tenant shall deliver to Landlord a true, correct and complete copy of the draft of such Master Sublease last prepared by Tenant. Within five (5) Business Days after either such closing or execution, Tenant shall deliver to Landlord updates of the preceding information and documents or a statement that there was no change thereto through closing that would affect the computation of Gross Sale Consideration, Adjusted Sale Price or Transfer Payment (as appropriate). together with (in all cases) (i) a copy of the settlement statement for such closing showing all payments (including all Gross Sale Consideration paid) at such closing and (ii) a true, correct and complete copy of any executed Master Sublease.

8.6. The Transfer Payment shall constitute additional rent under the Ground Lease. The term “Rental” as defined and utilized in the Ground Lease is hereby modified also to include any and all Transfer Payment, including for the purposes of Section 24.01(a) of the Ground Lease and all references in the Ground Lease to such Section 24.01(a).

8.7. [Intentionally omitted.]



8.8. Notwithstanding the preceding provisions to the contrary, but subject to the following subsections (a) through (d), the execution, sale, assignment, conveyance or other transfer of a Master Sublease shall require the payment of a Transfer Payment only if the Master Sublease is a Major Master Sublease. **“Major Master Sublease”** means a Master Sublease (i) that both (1) has a term (including any aggregated terms set forth in the following subsection 8.8(a)) that exceeds fifteen (15) years and (2) subleases or demises, together with all other Master Subleases whose terms have not then expired or terminated (whether previously, simultaneously or thereafter executed) more than twenty-five (25) apartments in the aggregate, **or** (ii) in which the Master Subtenant thereunder is either Tenant or an Affiliate of Tenant. The foregoing is subject to the following:

(a) For the purposes of clause (i)(1) of the above definition of “Major Master Sublease”, (x) upon each extension or renewal of a Master Sublease, the term of the original Master Sublease and the term of such extension or renewal shall be aggregated as fully as if the term of such extension or renewal had been added to the originally stated term of such original Master Sublease as of its original date, (y) upon each execution of a new Master Sublease by the Master Subtenant under any existing or prior Master Sublease or by any of its Affiliates (if such new Master Sublease shall be executed at any time on or before the third (3<sup>rd</sup>) anniversary of the expiration or termination of the term of the existing or prior Master Sublease, as such existing or prior Master Sublease may have been extended or renewed), the term of the existing or prior Master Sublease and the term of the new Master Sublease shall be aggregated as fully as if the term of such new Master Sublease had been added to the originally stated term of such existing or prior Master Sublease as of its original date, and (z) if the preceding clause (x) or (y) causes such Master Sublease or Master Subleases to satisfy the definition of “Major Master Sublease”, then Gross Sale Consideration shall be computed for all terms of such Master Sublease or Master Subleases (as of, from and after the original date of the original, or existing or prior, Master Sublease) and all Transfer Payment shall then be paid thereon. The preceding sentence shall be effective whether or not the original, or existing or prior, Master Sublease or any other agreement provided an option or right to obtain such extension or renewal or such new Master Sublease. If, as a result of an aggregation as set forth in the preceding provisions of this subsection 8.8(a), a Master Sublease shall satisfy the definition of “Major Master Sublease”, Transfer Payment shall then be paid thereon based on all Gross Sale Consideration determined and computed with retroactive effect as of, from and after the original date of the original, existing or prior Master Sublease. As two hypothetical examples of the foregoing:

(i) If a Master Sublease of more than twenty-five (25) apartments has an initial term of ten (10) years and such term is renewed or extended for three (3) years on each of two (2) occasions, then (for the purposes of clause (i)(1) of the above definition of “Major Master Sublease”) upon the execution or exercise of the second such renewal or extension, the term of the original Master Sublease and the terms of both such extensions shall be aggregated so that the term of the original Master Sublease shall be deemed always to have been an aggregate of sixteen (16) years (effective as of, from and after the original date of the original Master Sublease) and Transfer Payments shall then be paid to Landlord for the original execution of such Master Sublease (including with respect

to all rent and other Gross Sale Consideration paid or received from and after the original date of the original Master Sublease), and for any and all sales, assignments, conveyances and other transfers of the original Master Sublease that had occurred after its original date.

(ii) Further, if a Master Sublease of more than twenty-five (25) apartments has a stated term of ten (10) years and (on or before the third (3rd) anniversary of the expiration or termination of the term of the such Master Sublease) the Master Subtenant thereunder or its Affiliate enter into a new Master Sublease for a term of six (6) years, then (for the purposes of clause (i)(1) of the above definition of "Major Master Sublease") upon the execution of such new Master Sublease, the term of the original Master Sublease and the term of the new Master Sublease shall be aggregated so that the term of the original Master Sublease shall be deemed always to have been an aggregate of sixteen (16) years (effective from the original date of the original Master Sublease) and Transfer Payments shall then be paid to Landlord for the original execution of such Master Sublease (including with respect to all rent and other Gross Sale Consideration paid or received from and after the original date of the original Master Sublease), and for any and all sales, assignments, conveyances and other transfers of the original Master Sublease that had occurred after its original date.

For the avoidance of doubt, an option or right to extend or renew the term of a Master Sublease (or to enter into a new Master Sublease) shall not be deemed to add to the term of the original (or initial) Master Sublease unless and until it is exercised. Further, and for the avoidance of doubt, if a new Master Sublease by the Master Subtenant under any existing or prior Master Sublease or by any of its Affiliates is executed after the expiration or termination of the term of such existing or prior Master Sublease (as such existing or prior Master Sublease may have been extended or renewed) and such existing or prior and new Master Subleases are then determined (as set forth above) to be Major Master Subleases, then there will be no Transfer Payment for the period between the expiration or termination of the term of the existing or prior Master Sublease and the execution of the new Master Sublease unless, in fact, there is Gross Sale Consideration for either such Master Sublease allocable to such period.

(b) For the purposes of clause (i)(2) of the above definition of "Major Master Sublease" (and subject to the following Subsection 8.8(c)), if existing Master Subleases (whether or not they are Major Master Subleases) sublease or otherwise demise not more than twenty-five (25) apartments in the aggregate, and a new Master Sublease is executed and thereupon more than twenty-five (25) apartments in the aggregate are subleased or otherwise demised by the existing Master Subleases and such new Master Sublease, then all of such new Master Sublease shall be deemed to sublease and demise more than twenty-five (25) apartments for the purposes of clause (i)(2) of the above definition of "Major Master Sublease", not only the portion thereof that exceeds that aggregate threshold of twenty-five (25) apartments. As a hypothetical example of the foregoing:

If existing Master Subleases (whether or not they are Major Master Subleases) sublease or otherwise demise twenty (20) apartments in the aggregate and a new Master Sublease is executed that subleases or otherwise demises ten (10) apartments in the aggregate, then all of such new Master Sublease shall be deemed to sublease and demise more than twenty-five (25) apartments for the purposes of clause (i)(2) of the above definition of "Major Master Sublease", not only a portion thereof.

For the avoidance of doubt, but subject to the following Subsection 8.8(c), if a new Master Sublease is entered into at a time when fewer than twenty-five (25) apartments are demised or subleased under all existing Master Subleases not then expired or terminated, such new Master Sublease shall not be deemed to give rise to an obligation to pay Transfer Payments or Refinancing Fees with respect to such existing Master Subleases (*e.g.*, the existing Master Subleases subleasing or demising twenty (20) apartments in the previous sentence) and Transfer Payments or Refinancing Fees shall be due only with respect to the new Master Sublease that causes the total number of apartments demised or leased under Master Leases to exceed the twenty-five (25) apartment threshold in the aggregate (*e.g.*, the new Master Sublease leasing ten (10) apartments in the preceding sentence), provided that Transfer Payments and Refinancing Fees shall be due with respect to all of such new Master Sublease (*e.g.*, with respect to all ten (10) apartments in the preceding sentence), and not just part of such new Master Sublease.

(c) In the case of the preceding subsection 8.8(b), if (i) the Master Subtenant under the new Master Sublease is the same as or an Affiliate of one or more of the Master Subtenants under the existing Master Subleases and (ii) such new Master Sublease is executed within three (3) years after the execution of the last executed existing Master Sublease with such same existing Master Subtenant or its Affiliates, then, upon the execution of the new Master Sublease, both the new Master Sublease and all the existing Master Subleases with the same Master Subtenants or its Affiliates not yet expired or terminated shall be aggregated and deemed to sublease and demise more than twenty-five (25) apartments for the purposes of clause (i)(2) of the above definition of "Major Master Sublease" and (to the extent clause (i)(1) of such definition is also applicable) shall all be deemed to be Major Master Subleases on which Transfer Payment and Refinancing Fee are due..

(d) In addition to Section 8.5 hereof, within five (5) days after each extension, renewal, amendment, modification, sale, conveyance, assignment or other transfer of or agreement affecting a Master Sublease (whether or not it is a Major Master Sublease), Tenant shall send a copy thereof to Landlord.

## 9. Deletion of Percentage Rent and Incremental Rent; Status of Other Additional Rents.

9.1. In consideration of this Amendment's revision to Base Rent and addition of Refinancing Fee and Transfer Payment, it is agreed that Tenant shall have no obligation to pay Percentage Rent, Incremental Rent (if not already expired) or Corrected Incremental Rent with respect to periods (or that would accrue) from and after the first day of the first Amendment

Year provided that Tenant shall remain liable to pay any and all Percentage Rent, Incremental Rent and Corrected Incremental Rent with respect to periods (or that accrued) before the first day of the first Amendment Year and shall continue to maintain and provide for review and audit any and all books and records with respect to the same pursuant to the Original Ground Lease.

9.2. Except as expressly modified or deleted pursuant to the provisions of this Amendment, all rent, additional rent, Rental and other payments provided in the Original Ground Lease, including PILOT and Civic Facilities Payment, shall remain unmodified and in full force and effect and due and payable as, when and pursuant to the provisions of the Ground Lease for the entire Term.

10. Restructuring Fee. Simultaneously with the execution and delivery of this Amendment, Tenant has paid Landlord a fee of Three Million Dollars (\$3,000,000) as consideration for the transaction described in this Amendment. Such payment is exclusively independent consideration for this Amendment (and funds for reimbursement of Landlord's costs in connection with this Amendment) and shall not be credited against any Base Rent, additional rent, Rental or other amounts paid or owed under this Amendment, the Ground Lease or otherwise. Tenant agrees that such \$3,000,000.00 fee is fully and irrevocably earned by Landlord upon the execution and delivery of this Amendment regardless of any future amendment, termination of expiration of the Ground Lease.

11. Minimum Property Investment.

11.1. As used in this Amendment and the Ground Lease, the following term has the following meaning:

**“Minimum Property Improvement Amount”** shall mean the per apartment annual amount specified in Schedule E attached hereto for each Amendment Year through the Scheduled Expiration Date (or portion thereof that ends on the Scheduled Expiration Date).

11.2. Tenant agrees to maintain the Property in good condition and (in addition to and not included in Tenant's other obligations in this Amendment or the Ground Lease) to budget and expend (in aggregate amount) at least the Minimum Property Improvement Amount per apartment per annum, as measured during (and averaged over) each running five-year period, solely for capital and non-capital improvements to the Property (including improvements outside the apartments and building-wide improvements) and apartment upgrades or renovations.

11.3. Within thirty (30) days after each Amendment Year, Tenant shall provide to Landlord a report certified by Tenant's Certifying Officer as to Tenant's compliance or non-compliance with this Section 11 (which report shall be in such detail and provide such source documentation as Landlord shall reasonably require).

12. Sustainability and Sustainability Reports and Investments.

12.1. As used in this Amendment and the Ground Lease, the following terms have the following meanings, and the following definitions are hereby added to the Ground Lease:

**“Building Emissions”** means, as defined by Local Law 97 of the Local Laws of the City of New York for the Year 2019 and any amendment, modification, supplement or replacement thereof, and all rules and regulations promulgated by the Department of Buildings (“**DOB**”) pursuant thereto (“**LL97**”), greenhouse gas emissions as expressed in metric tons of carbon dioxide equivalent emitted as a result of operating a covered building and calculated in accordance with rules promulgated by the DOB. The term “Building Emissions” shall not include greenhouse gas emissions emitted during a local state of emergency declared by the mayor or a state of emergency declared by the governor, where such local or state emergency has an impact on building emissions.

**“Building Emissions Limit”** means the annual building emissions limit for the Property expressed in tons of carbon dioxide equivalent (“**tCO<sub>2e</sub>**”) established under and pursuant to LL97.

**“Commercially Reasonable Efforts”** means reasonable, good faith efforts regarded as standard in Tenant’s business community.

**“Recommissioning”** means the process of ensuring that the Property’s operating systems, including mechanical, electrical, and HVAC, are performing effectively, and identifying and rectifying underperforming facilities through repairs, replacements, and resets. Tenant shall operate all facilities as designed in compliance with guidelines promulgated by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (“**ASHRAE**”), available at <https://www.ashrae.org/technical-resources/standards-and-guidelines>, as further set forth in Section 12.7 herein.

**“Tenant Sustainability Contact”** means an employee of Tenant who has primary responsibility for, and is knowledgeable about, building sustainability management, including energy use, waste generation, and water use.

12.2. Tenant shall at all times designate a Tenant Sustainability Contact. Within five (5) days after Landlord’s request from time to time, Tenant shall identify and provide Landlord with the name, telephone number, email address and mailing address of its Tenant Sustainability Contact.

12.3. Within thirty (30) days after each submission to any Governmental Authority of New York City, Tenant shall provide to Landlord a complete copy of any substantive filing made in accordance with Local Law 84 of 2009 as amended, including filings with respect to energy use data submitted via the United States Environmental Protection Agency’s online benchmarking tool. Tenant’s failure to timely submit filings to any Governmental Authority of New York City as and when required by Local Law 84 of 2009, and/or any failure to provide Landlord a complete copy of the same within thirty (30) days after submission, shall constitute a Default under the Ground Lease as described (and subject to the notice and cure periods) in Section

24.01(c) of the Ground Lease, for which Landlord shall retain and may exercise and enforce any and all of its rights and remedies for such a Default under the Ground Lease.

12.4. Within thirty (30) days after each submission to any Governmental Authority of New York City, Tenant shall provide to Landlord a complete copy of any substantive filing made in accordance with Local Law 87 of 2009, as amended, including energy efficiency reports. Tenant's failure to timely submit filings to any Governmental Authority of New York City required by Local Law 87 of 2009, and/or any failure to provide Landlord a complete copy of the same within thirty (30) days of submission, shall constitute a Default under the Ground Lease as described (and subject to the notice and cure periods) in Section 24.01(c) of the Ground Lease, for which Landlord shall retain and may exercise and enforce any and all of its rights and remedies for such a Default under the Ground Lease.

12.5. Within three (3) years after the Amendment Date and every five (5) years thereafter, Tenant shall conduct and submit to Landlord the following assessments, studies and/or reports (collectively, the "**Sustainability Reports**"), each of which shall be signed and certified as accurate by the Tenant Sustainability Contact and shall specifically identify Commercially Reasonable Efforts that can be undertaken to increase the efficiency and/or sustainability of the Building and that is consistent with the Requirements in effect as of the date the Sustainability Reports are submitted to Landlord:

- (a) An assessment of onsite power generation and battery storage potential;
- (b) A building electrification feasibility study, inclusive of heating, domestic hot water, and cooking systems;
- (c) A report ("**Waste Audit Report**") analyzing all building waste streams, including types and quantities of waste (paper, plastic, food, etc.) produced on the Property within a given timeframe; how much is recycled, reused, composted, or disposed of; and the effectiveness of the waste management strategies currently in place on the Property; and
- (d) A resiliency assessment that evaluates flood risk and provides a detailed explanation of mitigation and/or adaptation strategies.

12.6. Tenant shall use Commercially Reasonable Efforts to implement the measures identified in each set of Sustainability Reports before the next submission of a set of Sustainability Reports (every five (5) years beginning after the first Sustainability Report, as stated in Section 12.5 hereof). Simultaneously with the next submission of each set of Sustainability Reports, Tenant shall provide a report to Landlord that (i) identifies the measures implemented, and (ii) explains, for any measures not implemented, why implementing such measure(s) would be commercially unreasonable.

12.7. Tenant shall Recommission building systems every five (5) Amendment Years in compliance with ASHRAE guidelines and/or Requirements and provide proof to Landlord of completion of the Recommissioning (as certified by a qualified engineer or other technical expert) within thirty (30) days after completion of each Recommissioning. Tenant

shall use Commercially Reasonable Efforts to promptly undertake and complete the recommendations of each Recommissioning.

12.8. Tenant shall ensure that the Property's Building Emissions comply with the annual Building Emissions Limit set forth in or established under LL97. Accordingly, Tenant shall ensure that Building Emissions do not exceed the Building Emissions Limit. Within thirty (30) days after the end of each calendar year, Tenant shall furnish to Landlord a report, certified by a registered design professional, prepared in a form and manner and containing such information as is required by LL97, that for the previous calendar year the Property is either (i) in compliance with the Building Emissions Limit, or (ii) not in compliance with the Building Emissions Limit, along with the amount by which the Property exceeds such Building Emissions Limit, if applicable. Payment of penalties is not (and shall not be deemed to be) compliance with LL97. Tenant's compliance with the Building Emissions Limit may be achieved by any means identified in or permitted by DOB under LL97 and its implementing regulations, including energy efficiency or other retrofits; deductions from annual Building Emissions arising from clean distributed energy resources, renewable energy credits or greenhouse gas offsets recognized under LL97; or application of any credits or allowances recognized pursuant to a carbon trading system established under LL97. Tenant's compliance also may include any adjustments to its annual Building Emissions that are approved by DOB. Tenant's non-compliance with LL97 and/or the requirements set forth herein shall constitute a Default under the Ground Lease as described (and subject to the notice and cure periods) in Section 24.01(c) of the Ground Lease, for which Landlord shall retain and may exercise and enforce any and all of its rights and remedies for a Default under the Ground Lease.

12.9. Tenant shall, in a manner that is consistent with the Requirements, maintain battery storage and/or emergency generators on-site at the Property sufficient to maintain building operations and safety in case of grid blackouts and/or failures. Tenant shall locate the batteries and emergency generators as high as practicable in order to protect vital equipment during and after a flood event. Tenant shall complete the installation of the foregoing no later than two (2) years after the Amendment Date, provided that, if Tenant has timely commenced such installation and thereafter is diligently pursuing its completion in a commercially reasonable manner, Tenant may request a reasonable extension of such deadline, and Landlord shall not unreasonably withhold, delay or condition its consent thereto.

13. Review or Audit by Landlord; Involuntary Rate.

13.1. With respect to all matters provided in this Amendment (including Tenant's covenants provided in Sections 3, 4, 5, 6, 7, 8, 11 and 12 hereof), Landlord shall have the right to review and audit (directly or by accountants or other professionals) Tenant's relevant books, records and supporting documents (including copies of all Subleases, sub-subleases (at all levels), Master Subleases, rent rolls, rent reports, rent invoices, rent receipts, reports and notices of defaults by Subtenants and/or cures thereof, all reports, certifications, verifications and other materials presented to or provided by NYSHFA (and notices and determinations by, to or from NYSHFA) under or with respect to the Amended Regulatory Agreement, all reports and supporting documentation related to EGI and its components, bank records, loan documents of or for Tenant or its direct and indirect owners, contracts, subcontracts, work orders and revisions, invoices and payments, reports, submissions, filings, notices and communications (including to or

from Governmental Authorities, including NYSHFA), contracts and other materials described in Section 8 hereof regarding Sales, reports as to the components of any QCI Cost Payments or the Tenant Credit Account, and modifications, replacements or supplements to any of the foregoing, and any other materials expressly provided in this Amendment or the Ground Lease or otherwise reasonably required by Landlord), at any time and from time to time, for the purpose of determining Tenant's compliance or non-compliance with this Amendment or the Ground Lease (including whether computed or reported monetary amounts for any one or more periods are correct and whether and to what degree Tenant has performed or satisfied required covenants), and Tenant shall, at Tenant's expense, make available during normal business hours all materials reasonably requested by Landlord for each such review or audit within twenty (20) days after each such request, provided that, if and to the extent such materials cannot (after commercially reasonable efforts) be made available within such twenty (20) day period, then Tenant may have an extension of such period for up to an additional forty (40) days to the extent reasonably needed to make the same available. In addition to the foregoing, Section 38.03 of the Original Ground Lease shall apply to all of the foregoing. Tenant shall make available to such reviewers or auditors a dedicated office or similar space at the management and records office for the Property for each such review or audit, with a facility for such reviewers or auditors to make copies of any such relevant books, records and supporting documents. The foregoing is in addition to, and not in limitation of, Landlord's rights to conduct reviews and audits as set forth in the Original Ground Lease.

13.2. If any such review or audit determines that any monetary amount for any period was previously estimated, reported or computed incorrectly or otherwise recomputes such monetary amount, Landlord shall so notify Tenant. Tenant shall pay any related deficiency in Base Rent, PILOT, Impositions, Civic Facilities Payments, Refinancing Fee, Transaction Payment, Noncompliance Rent, or other Rental, additional rent or other amount due under the Ground Lease or this Amendment within twenty (20) days after Landlord's demand therefor together with interest at the Involuntary Rate from the date upon which such amount was originally due to the date of actual payment, it being agreed that Section 24.01(a) shall apply to any failure of Tenant to pay the same. If any such review or audit determines that any non-monetary covenant or obligation of Tenant has not been fully and timely performed, Landlord shall so notify Tenant, and Tenant shall fully perform the same within thirty (30) days after Landlord's demand therefor, it being agreed that Section 24.01(c) of the Ground Lease shall apply to any failure of Tenant to perform its covenants or obligations under this sentence. If any such review or audit by Landlord determines that Tenant overpaid any amount due hereunder or under the Ground Lease, the amount of such overpayment shall be credited to the Tenant Credit Account and applied to offset Base Rent or True-Up Payment in accordance with Section 7 hereof. Without limitation to the foregoing, within twenty (20) days after each request by Landlord, Tenant shall provide reasonably detailed reports of all applications of insurance proceeds and costs of restoration and repair described in clause (b) of the definition of "Effective Gross Income" or "EGI" in Section 4.3 hereof, together with the backup documentation therefor.

13.3. The cost of each such review or audit shall be borne by Landlord, provided that if either (a) such review or audit results in a recomputation of any Base Rent, PILOT, Impositions, Civic Facilities Payments, Refinancing Fee, Transaction Payment, Noncompliance Rent for a one-year period such that both (i) such recomputed amount differs from the originally reported amount by more than three and one half percent (3.5%) of the originally reported amount



and (ii) after such recomputation a greater amount of Base Rent, PILOT, Impositions, Civic Facilities Payments, Refinancing Fee, Transaction Payment or Noncompliance Rent is owed to Landlord or any other Person than had been previously paid, *or* (b) such review or audit determines that any material non-monetary obligation of Tenant was not fully and timely performed to a material extent (as reasonably determined by Landlord), then Tenant shall pay the reasonable costs and expenses of such review or audit within thirty (30) days after Landlord's demand therefor, which payment obligation shall constitute additional rent and Rental for all purposes of the Ground Lease.

14. Master Subleases as Qualifying Subleases.

14.1. In addition to the requirements of (and notwithstanding) Section 10.09 and the other provisions of the Ground Lease, a Master Sublease (in which the Master Subtenant is neither Tenant nor an Affiliate of Tenant) shall not be a Qualifying Sublease, and neither the Master Sublease nor the Master Subtenant shall receive or have the benefits of a Non-disturbance and Attornment Agreement, unless the Master Sublease expressly provides that, notwithstanding any provisions of the Master Sublease or any other agreement to the contrary and effective upon and at all times after any termination of the Ground Lease, (a) the rent, additional rent and other amounts payable under the Master Sublease (including to Landlord and/or to third parties, such as Impositions) shall at all times include (and shall not at any time be less than) all items of Rental, additional rent and other amounts that are then and/or would thereafter become due and payable by Tenant under the Ground Lease if the Ground Lease had not been terminated, but (if the Master Sublease is for only a portion of the Building) subject to the last two sentences of this Section 14.1, and Master Subtenant shall pay the same, (b) the Master Subtenant shall perform all the obligations of Tenant under the Ground Lease that are then outstanding and/or that Tenant would thereafter become obligated to perform under the Ground Lease if the Ground Lease had not been terminated, with respect to the portion of the Property leased or demised by the Master Sublease and including payment of a pro rata portion of the costs of the obligations of Tenant that affect the Property generally, such as maintenance of boilers, HVAC plant and other infrastructure servicing the Property generally, as reasonably determined by Landlord, and (c) Landlord shall also (without limitation) have all rights and remedies, with respect to the Master Sublease and Master Subtenant, for any failure or default by the Master Subtenant under the terms and conditions of the Master Sublease and/or the preceding clauses (a) and (b) as Landlord would have under the Ground Lease (including under Article 24 of the Ground Lease) if the Ground Lease had not been terminated. If such Master Sublease subleases or demises only a portion of the Building, then the Rental that must be included in the rent, additional rent and other amounts payable under such Master Sublease shall be a *pro rata* portion of the Rental, additional rent and other amounts payable under the Ground Lease in the proportion of the area of the portion of the Building subleased or demised under the Master Sublease to the area of the entire Building, provided that the Base Rent component of the portion of Rental to be included in the amounts payable by the Master Subtenant shall be the Master Sublease Proportional Base Rent. If, at any time or from time to time, the portion of the Building subleased or demised by the Master Sublease changes, then the Rental (and its Base Rent component) to be included in the amounts that must be payable by the Master Subtenant pursuant to the preceding sentence shall then change accordingly as a condition to the Master Sublease having and retaining the benefits of a Non-disturbance and Attornment Agreement.

14.2. It is agreed that a Master Sublease in which the Master Subtenant is an Affiliate of Tenant shall not be a Qualifying Sublease, and neither the Master Sublease nor the Master Subtenant thereunder shall receive or have the benefits of a Non-disturbance and Attornment Agreement.

15. Transfer Taxes. If any NYS RET and/or NYC RPT shall become due and payable as a result of or in connection with the execution, delivery, recording, payment or performance of this Amendment (or the memorandum of this Amendment that shall be submitted for recording), Tenant shall fully and timely pay the same.

16. Updated Notice Addresses.

16.1. The notice addresses for Tenant in Section 25.01(a) of the Original Ground Lease are hereby revised and updated to be Tribeca Pointe, L.L.C, c/o Rockrose Development L.L.C., 15 East 26<sup>th</sup> Street, 7<sup>th</sup> Floor, New York, NY 10010, Attention: Richard Brancato, with a copy to Tribeca Pointe, L.L.C, c/o Rockrose Development L.L.C., 15 East 26<sup>th</sup> Street, 7<sup>th</sup> Floor, New York, NY 10010, Attention: General Counsel.

16.2. The notice addresses for Landlord in Section 25.01(b) of the Original Ground Lease are hereby revised and updated to be Battery Park City Authority, 200 Liberty Street, 24th floor, New York, New York 10281-1802, Attention: Chief Executive Officer, with a copy to Battery Park City Authority, 200 Liberty Street, 24th floor, New York, New York 10281-1802, Attention: General Counsel.

17. Ground Lease Covenants and Defaults.

17.1. All agreements and covenants of Tenant in this Amendment constitute agreements and covenants of Tenant in the Ground Lease.

17.2. For the avoidance of doubt, any breach of this Amendment by Tenant shall constitute a default by Tenant under and as described in (a) Section 24.01(a) of the Ground Lease (subject to the notice and cure period provided therein) if such breach is Tenant's failure to pay any Rental or other amount due hereunder, or (b) Section 24.01(c) of the Ground Lease (subject to the notice and cure period provided therein) with respect to any other breach of this Amendment by Tenant, and Landlord shall have all rights and remedies provided in the Ground Lease with respect thereto, provided that solely Section 3.5 hereof shall apply to a default as described in such Section 3.5.

18. Tenant's Cost and Expense. For the avoidance of doubt, Tenant's payment and performance of all its covenants and obligations under the Ground Lease and/or this Amendment shall be at Tenant's sole cost and expense, except only if, as and when expressly provided otherwise in this Amendment.

19. References to Lease; Conflicts; Remainder of Ground Lease Unmodified.

19.1. All references in the Original Ground Lease or any other document to the Original Ground Lease (including references in the Original Ground Lease to “this Lease”, “hereunder” or similar) shall be deemed to refer to the Original Ground Lease as modified by this Amendment, and to this Amendment.

19.2. Any conflicts between the provisions of the Original Ground Lease and the provisions of this Amendment shall be resolved in favor of the provisions of this Amendment.

19.3. Except as modified or supplemented by this Amendment, all provisions, terms and conditions of the Original Ground Lease remain unmodified and in full force and effect and are hereby ratified and confirmed.

20. Representations. Tenant represents and warrants as follows to Landlord:

20.1. All the direct and indirect owners of Tenant as of the Amendment Date are shown on the Ownership Chart attached hereto as Schedule D.

20.2. All current Mortgages are described on Schedule F attached hereto.

20.3. Tenant’s execution and delivery of, and Tenant’s payment and performance of its obligations set forth in, this Amendment and the Ground Lease (a) have been duly authorized by all necessary action on the part of Tenant and by all Mortgagees and (b) do not and will not conflict with or constitute a breach of or default under any agreement, instrument, law or regulation (including any loan document, mortgage, pledge or security instrument) which is binding on or applicable to Tenant or any of its direct or indirect owners or the Property. The individual signing this Amendment on behalf of Tenant is duly authorized to sign this Amendment, and Tenant is bound hereby.

20.4. All currently existing Mortgages have, by written instruments duly executed by their respective Mortgagees and presented for recording, been made subject and subordinate to this Amendment and to the Ground Lease.

21. Supersedes. This Amendment replaces and supersedes in their entirety any and all communications, proposals, drafts, term sheets and prior agreements regarding the subject matter hereof, all of which are merged into and modified and replaced by this Amendment.

22. Successors and Assigns. This Amendment shall be binding upon and (subject to limitations in the Ground Lease with respect to assignments by Tenant) inure to the benefit of the parties hereto and their respective successors and assigns.

23. New York Law. This Amendment shall be governed by and construed in accordance with the laws of the State of New York, without regard to principles of conflicts of laws that would result in the application of the laws of another jurisdiction.

24. Miscellaneous. The following provisions of Article 41 of the Original Ground Lease are incorporated herein by this reference as fully as if they were restated herein in full, provided that references therein to “this Lease” or “hereunder” shall, as incorporated herein, be deemed to be references to “this Amendment and the Ground Lease”: Sections 41.01, 41.03, 41.05, 41.06, 41.09, 41.10 and 41.19.

25. Counterparts. This Amendment may be signed in any number of counterparts, each of which shall be deemed to be an original, with the same effect as if the signatures thereto and hereto were on the same instrument. Any executed counterpart delivered by scan and email shall be deemed to be an executed original thereof.

*[Signatures are on next page.]*

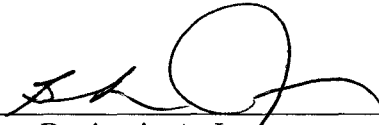
*[Signatures to First Amendment to Agreement of Lease]*

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Amendment as of the day and year first above written.

Landlord

BATTERY PARK CITY AUTHORITY d/b/a HUGH L.  
CAREY BATTERY PARK CITY AUTHORITY

By:

  
\_\_\_\_\_  
Name: Benjamin A. Jones  
Title: President & CEO

Tenant

TRIBECA POINTE L.L.C. (formerly known as Tribeca  
Landing L.L.C.)

By:

\_\_\_\_\_  
Name: Richard A. Brancato  
Title:

*[Signatures to First Amendment to Agreement of Lease]*

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Amendment as of the day and year first above written.

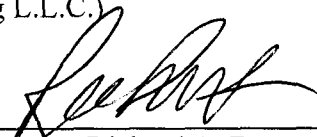
Landlord

BATTERY PARK CITY AUTHORITY d/b/a HUGH L.  
CAREY BATTERY PARK CITY AUTHORITY

By: \_\_\_\_\_  
Name: Benjamin J. Jones  
Title: President & CEO

Tenant

TRIBECA POINTE L.L.C. (formerly known as Tribeca  
Landing L.L.C.)

By:  \_\_\_\_\_  
Name: Richard A. Brancato  
Title: COO

## Schedule A

All Affordable Units as of the Amendment Date

<b>Apt #</b>	<b>40% AMI<sup>1</sup></b>	<b>Rent</b>	<b>2.2% Charge</b>	<b>Total Rent</b>
205		\$ 737.32	\$ 145.20	\$ 882.52
206		\$ 754.74	\$ 121.23	\$ 875.97
207		\$ 754.74	\$ 121.23	\$ 875.97
208		\$ 677.48	\$ -	\$ 677.48
309	40% AMI	\$ 623.00	\$ -	\$ 623.00
310		\$ 754.74	\$ 121.23	\$ 875.97
311		\$ 702.93	\$ 112.95	\$ 815.88
409		\$ 754.74	\$ 121.23	\$ 875.97
410	40% AMI	\$ 576.00	\$ 102.06	\$ 678.06
411	40% AMI	\$ 526.37	\$ 104.60	\$ 630.97
509		\$ 714.15	\$ -	\$ 714.15
510	40% AMI	\$ 473.04	\$ -	\$ 473.04
511	40% AMI	\$ 694.99	\$ 77.01	\$ 772.00
603	40% AMI	\$ 586.53	\$ 96.47	\$ 683.00
609	40% AMI	\$ 592.40	\$ 95.22	\$ 687.62
610	40% AMI	\$ 743.69	\$ 126.99	\$ 870.68
611		\$ 681.25	\$ 116.37	\$ 797.62
706		\$ 847.34	\$ 160.80	\$ 1,008.14
707		\$ 754.74	\$ 121.23	\$ 875.97
801	40% AMI	\$ 700.80	\$ 138.00	\$ 838.80
802		\$ 561.33	\$ -	\$ 561.33
806	40% AMI	\$ 697.60	\$ 127.00	\$ 824.60
807		\$ 445.74	\$ -	\$ 445.74

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<sup>1</sup> Each Affordable Unit currently restricted and rented to Eligible 40% Households is indicated in this column as "40% AMI".

Tribeca Pointe -- First Amendment to Agreement of Lease

<b>Apt #</b>	<b>40% AMI<sup>1</sup></b>	<b>Rent</b>	<b>2.2% Charge</b>	<b>Total Rent</b>
901	40% AMI	\$ 761.33	\$ -	\$ 761.33
902	40% AMI	\$ 708.09	\$ -	\$ 708.09
906		\$ 906.73	\$ 145.71	\$ 1,052.44
907	40% AMI	\$ 634.50	\$ 93.50	\$ 728.00
1001	40% AMI	\$ 729.33	\$ 114.30	\$ 843.63
1002		\$ 754.74	\$ 121.23	\$ 875.97
1006		\$ 906.73	\$ 145.71	\$ 1,052.44
1007	40% AMI	\$ 716.60	\$ -	\$ 716.60
1101		\$ 871.53	\$ 171.60	\$ 1,043.13
1102		\$ 773.60	\$ 121.23	\$ 894.83
1106		\$ 725.76	\$ -	\$ 725.76
1107	40% AMI	\$ 417.40	\$ -	\$ 417.40
1201		\$ 906.73	\$ 145.71	\$ 1,052.44
1202	40% AMI	\$ 607.21	\$ 95.22	\$ 702.43
1206	40% AMI	\$ 735.85	\$ 125.37	\$ 861.22
1207		\$ 501.39	\$ -	\$ 501.39
1401		\$ 890.81	\$ 157.86	\$ 1,048.67
1402	40% AMI	\$ 716.49	\$ 122.31	\$ 838.80
1406	40% AMI	\$ 780.44	\$ 129.60	\$ 910.04
1407		\$ 724.04	\$ -	\$ 724.04
1506	40% AMI	\$ 744.72	\$ 119.70	\$ 864.42
1507		\$ 854.12	\$ 168.20	\$ 1,022.32
1601		\$ 859.52	\$ 146.79	\$ 1,006.31
1602	40% AMI	\$ 711.55	\$ 144.30	\$ 855.85
1603		\$ 834.67	\$ 147.96	\$ 982.63
1701	40% AMI	\$ 823.00	\$ -	\$ 823.00
1703		\$ 906.73	\$ 145.71	\$ 1,052.44
1801		\$ 752.84	\$ 120.96	\$ 873.80
1803		\$ 884.62	\$ 145.71	\$ 1,030.33



Tribeca Pointe -- First Amendment to Agreement of Lease

<b>Apt #</b>	<b>40% AMI<sup>1</sup></b>	<b>Rent</b>	<b>2.2% Charge</b>	<b>Total Rent</b>
1901	40% AMI	\$ 728.00	\$ -	\$ 728.00
1903		\$ 881.60	\$ 145.71	\$ 1,027.31
2001	40% AMI	\$ 612.23	\$ 109.53	\$ 721.76
2003	40% AMI	\$ 754.85	\$ 114.30	\$ 869.15
2101		\$ 754.74	\$ 121.23	\$ 875.97
2103		\$ 854.12	\$ 151.38	\$ 1,005.50
2201	40% AMI	\$ 712.34	\$ 15.66	\$ 728.00
2203	40% AMI	\$ 769.93	\$ 98.07	\$ 868.00
2301		\$ 754.74	\$ 121.23	\$ 875.97
2303		\$ 906.73	\$ 145.71	\$ 1,052.44
2401	40% AMI	\$ 780.00	\$ -	\$ 780.00
2403		\$ 906.73	\$ 145.71	\$ 1,052.44
2501	40% AMI	\$ 428.84	\$ -	\$ 428.84
2503		\$ 676.97	\$ 122.04	\$ 799.01
2601		\$ 728.88	\$ 124.47	\$ 853.35
2603		\$ 871.53	\$ 154.44	\$ 1,025.97
2701		\$ 695.03	\$ -	\$ 695.03
2703	40% AMI	\$ 769.93	\$ 98.07	\$ 868.00

Schedule B

Ground Rent Floor in Each Amendment Year

Amendment Year	Ground Rent Floor (annual amount)
1st	\$ 450,000.00
2nd	\$ 459,000.00
3rd	\$ 468,180.00
4th	\$ 477,543.60
5th	\$ 487,094.47
6th	\$ 1,091,000.00
7th	\$ 1,112,820.00
8th	\$ 1,135,076.40
9th	\$ 1,157,777.93
10th	\$ 1,180,933.49
11th	\$ 1,390,000.00
12th	\$ 1,417,800.00
13th	\$ 1,446,156.00
14th	\$ 1,475,079.12
15th	\$ 1,504,580.70
16th	\$ 1,534,672.32
17th	\$ 1,565,365.76
18th	\$ 1,596,673.08
19th	\$ 1,628,606.54
20th	\$ 1,661,178.67
21st	\$ 2,070,000.00
22nd	\$ 2,111,400.00
23rd	\$ 2,153,628.00
24th	\$ 2,196,700.56

Amendment Year	Ground Rent Floor (annual amount)
25th	\$ 2,240,634.57
26th	\$ 2,285,447.26
27th	\$ 2,331,156.21
28th	\$ 2,377,779.33
29th	\$ 2,425,334.92
30th	\$ 2,473,841.62
31st	\$ 3,040,000.00
32nd	\$ 3,100,800.00
33rd	\$ 3,162,816.00
34th	\$ 3,226,072.32
35th	\$ 3,290,593.77
36th	\$ 3,356,405.64
37th	\$ 3,423,533.75
38th	\$ 3,492,004.43
39th	\$ 3,561,844.52
40th	\$ 3,633,081.41
41st	\$ 4,330,000.00
42nd	\$ 4,416,600.00
43rd	\$ 4,504,932.00
44th	\$ 4,595,030.64
45th	\$ 4,686,931.25
46th	\$ 4,780,669.88
47th	\$ 4,876,283.28
48th	\$ 4,973,808.94

## Schedule C

Hypothetical Examples of Net New Proceeds and Refinancing Fee<sup>2</sup>

**Initial Hypothetical:** Assume the first Financing occurs one year after the Amendment Date and is a Mortgage Financing only (without a Mezzanine Financing) in the aggregate principal amount of \$70,000,000 (when the Base Loan Amount is still \$56,500,000), which Financing fully refinances the current Mortgages as of the Amendment Date, and for purposes of this hypothetical, assume the following are true:

- (a) a mortgage recording tax of \$378,000 [ $= 2.8\% \times (\$70,000,000 - \$56,500,000)$ ] is paid, assuming an assignment of the prior existing mortgages with such outstanding principal balance to the new lender,
- (b) lender fees are paid in the amount of \$1,050,000; however, this is capped at \$700,000 [ $= 1\% \times \$70,000,000$ ], for the purposes of calculating Net New Proceeds,
- (c) Borrower's (i.e., Tenant's) actual out-of-pocket costs of lender's mortgage title insurance (if any), appraisal fees, property condition reports, environmental reports and insurance reviews are in the aggregate amount of \$950,000,
- (d) \$50,000 of reasonable legal fees are incurred,
- (e) \$0 (zero dollars) of prepayment fees or penalties are incurred in connection with the payment of the prior existing mortgage,
- (f) \$0 (zero dollars) of loan brokerage fees are incurred for the new Financing, and
- (g) there are \$0 (zero dollars) on account of Qualified Financing Earn-outs.

The aggregate of such Base Loan Amount and items (a) through (g) above is \$58,578,000. Net New Proceeds from such first Financing is thus \$11,422,000 [ $= \$70,000,000 - \$58,578,000$ ]. Accordingly, the Refinancing Fee payable upon such Financing is \$342,660 [ $= 3\% \times \$11,422,000$ ], and upon the payment of same to Landlord, the Base Loan Amount shall thereupon be increased to \$70,000,000.

**Continuing Hypothetical:** Assume that one year after the Financing described in the Initial Hypothetical above, the following are true:

- (i) 100% of the membership interests in Tenant are owned by Tribeca Parent LLC, a limited liability company ("**Parent**"), and such membership interests in Tenant are all or substantially all of the assets of Parent,
- (ii) 40% of the membership interests in Parent are owned by Tribeca Mezz LLC ("**Mezzanine Borrower**"), whether or not such membership interests in Parent constitute all or substantially all the assets of Mezzanine Borrower,
- (iii) Mezzanine Borrower is obtaining a \$28,000,000 Mezzanine Financing secured by a pledge of certain of its assets, which are all its membership interests in Parent and its membership interests in certain other limited liability companies that, directly or indirectly through further limited liability companies, own various parcels of real estate,
- (iv) the appraisals for such Mezzanine Financing show that (A) the appraised value of Tenant's interest in the Property is \$31,000,000, (assuming for the purposes of this

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<sup>2</sup> The amounts provided in these hypotheticals are solely intended to be examples and not in any way indicative of what the actual amounts may be in a given transaction, in either absolute or relative terms.

- hypothetical a value of the leasehold under the Ground Lease of \$100,000,000 less the \$69,000,000 outstanding principal balance of the Mortgage Financing described above, on which there has been \$1,000,000 of amortization of principal since the Mortgage Financing described above), and (B) accordingly, the appraised value of Borrower's direct or indirect interest in Tenant is \$12,400,000 [= 40% x \$31,000,000],
- (v) such appraisals show that the appraised values of all assets of Mezzanine Borrower being pledged as collateral for the Mezzanine Financing is \$50,000,000, which includes the \$12,400,000 on account of the value of Mezzanine Borrower's direct or indirect interests in Tenant that constitute part of the security or collateral for such Mezzanine Financing, with the result that the ratio of \$12,400,000 / \$50,000,000 (the "**Ratio**") is 24.8%,
  - (vi) on such Mezzanine Financing, there is \$0 (zero dollars) of mortgage recording tax,
  - (vii) on such Mezzanine Financing, there is \$140,000 of lender fees and discounts (Note: As this is below the cap, the entire amount is included in the calculation),
  - (viii) on such Mezzanine Financing, there is \$200,000 aggregate amount of Tenant's actual out-of-pocket costs of UCC title insurance costs, appraisal fees, property condition reports, environmental reports and insurance reviews,
  - (ix) on such Mezzanine Financing, there is \$30,000 of reasonable legal fees,
  - (x) on such Mezzanine Financing, there is \$0 (zero dollars) of prepayment fees or penalties because there was no prior Mezzanine Financing to be paid,
  - (xi) on such Mezzanine Financing, there is \$280,000 of commercially reasonable loan brokerage fees, and
  - (xii) on such Mezzanine Financing, there is \$0 (zero dollars) on account of Qualified Financing Earn-outs.

Utilizing (where appropriate) the Ratio of 24.8%<sup>3</sup>, the relevant Net New Proceeds and the resulting Refinancing Fee are computed as follows:

- The aggregate principal amount of the new Financing together with the principal amount of the existing Mortgage Financing that is not then being paid or refinanced is computed as \$24,304,000 [= 24.8% x (\$70,000,000 + \$28,000,000), with the principal balance of the existing Mortgage Financing being deemed to be not less than its \$70,000,000 Base Amount].

- From such \$24,304,000, the following are deducted:

- (a) \$17,360,000 on account of Base Loan Amount [= 24.8% x \$70,000,000],
- (b) \$0 (zero dollars) on account of mortgage recording taxes,
- (c) \$34,720 on account of lender fees and discounts [= 24.8% x \$140,000], all of which is deductible because it is less than 1% of \$24,304,000,
- (d) \$49,600 on account of Tenant's actual out-of-pocket costs of UCC title insurance premium, appraisal fees, property condition reports, environmental reports and insurance reviews [= 24.8% x \$200,000],
- (e) \$7,440 on account of legal fees [= 24.8% x \$30,000],
- (f) \$0 (zero dollars) on account of prepayment fees or penalties, and

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<sup>3</sup> Note for this revision: This exemplifies the application of the ratio described in the last sentence of the definition of "Net New Proceeds"

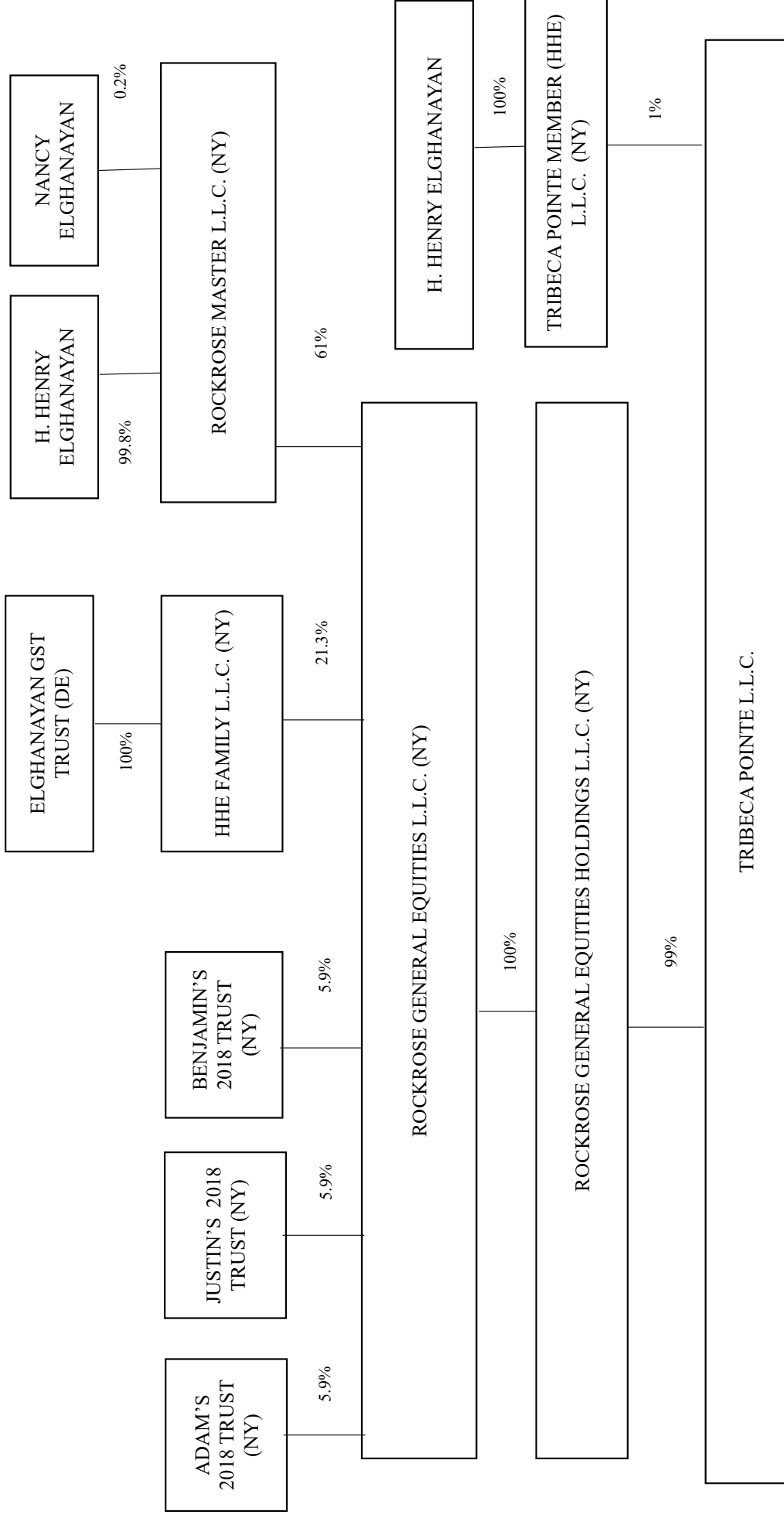
(g) \$69,440 on account of loan brokerage fees [ = 24.8% x \$280,000].  
The Net New Proceeds from such Mezzanine Financing are thus \$6,782,800 [ = \$24,304,000 less the deductions in (a) through (g) ].  
Accordingly, the Refinancing Fee payable upon such Mezzanine Financing is \$203,484 [ = 3% x \$6,782,800 ], and upon the payment of same to Landlord, the Base Loan Amount shall thereupon be increased to \$76,944,000 [ = \$70,000,000 + \$6,944,000, where such \$6,944,000 is 24.8% x \$28,000,000].

Schedule D

Current Ownership Chart of Tenant

**[See attached page.]**

TRIBECA POINTE L.L.C.



Schedule E

Minimum Property Improvement Amount in Each Amendment Year

Amendment Year	Minimum Property Improvement Amount (per apartment per year)
1st	\$ 500.00
2nd	\$ 510.00
3rd	\$ 520.20
4th	\$ 530.60
5th	\$ 541.22
6th	\$ 552.04
7th	\$ 563.08
8th	\$ 574.34
9th	\$ 585.83
10th	\$ 597.55
11th	\$ 609.50
12th	\$ 621.69
13th	\$ 634.12
14th	\$ 646.80
15th	\$ 659.74
16th	\$ 672.93
17th	\$ 686.39
18th	\$ 700.12
19th	\$ 714.12
20th	\$ 728.41
21st	\$ 742.97
22nd	\$ 757.83
23rd	\$ 772.99
24th	\$ 788.45

Amendment Year	Minimum Property Improvement Amount (per apartment per year)
25th	\$ 804.22
26th	\$ 820.30
27th	\$ 836.71
28th	\$ 853.44
29th	\$ 870.51
30th	\$ 887.92
31st	\$ 905.68
32nd	\$ 923.79
33rd	\$ 942.27
34th	\$ 961.12
35th	\$ 980.34
36th	\$ 999.94
37th	\$ 1,019.94
38th	\$ 1,040.34
39th	\$ 1,061.15
40th	\$ 1,082.37
41st	\$ 1,104.02
42nd	\$ 1,126.10
43rd	\$ 1,148.62
44th	\$ 1,171.59
45th	\$ 1,195.03
46th	\$ 1,218.93
47th	\$ 1,243.31
48th	\$ 1,268.17



Schedule F

All Current Mortgages

1. Amended and Restated Multifamily Mortgage, Assignment of Rents and Security Agreement dated as of November 1, 1999 between Tribeca Pointe L.L.C., formerly known as Tribeca Landing L.L.C., as mortgagor, and New York State Housing Finance Agency, as mortgagee, in the maximum principal amount of \$56,500,000, recorded December 17, 1999 in the office of the Register of the City of New York, New York County, in Reel 3011, page 2477; as assigned by New York State Housing Finance Agency to United States Trust Company of New York and Fannie Mae by Assignment of Mortgage dated as of November 1, 1999 and recorded December 17, 1999 in said Register's office in Reel 3012, page 0034; and
2. Multifamily Mortgage, Assignment of Rents and Security Agreement dated as of November 1, 1999 between Tribeca Pointe L.L.C., formerly known as Tribeca Landing L.L.C., as mortgagor, and Fannie Mae, as mortgagee, in the maximum principal amount of \$56,500,000, recorded December 17, 1999 in said Register's office in Reel 3012, page 0001;

which two mortgages secure the same principal indebtedness in the aggregate maximum principal amount of \$56,500,000, being the initial Base Loan Amount described in Section 5.1 hereof. For the purposes of this Amendment, such two mortgages shall be deemed to constitute a single mortgage, and a Financing that refinances one or both such mortgages shall be treated as a refinancing of both such mortgages, treated as a single mortgage with a single Base Loan Amount of \$56,500,000.

Exhibit 1

Copy of NYS DTF Tax Bulletin ST-104 (TB-ST-104)

**[See attached pages.]**



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## Capital Improvements

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### Introduction

Whether or not a contractor collects sales tax from a customer depends on if the work being performed is considered a capital improvement to real property, or is installation, repair, or maintenance work. This bulletin explains what type of work is a capital improvement to real property, which is not taxable. It also includes information on purchases by contractors and property owners, billing, and the appropriate use of exemption certificates.

### What is a capital improvement?

A *capital improvement* is any addition or alteration to real property that meets **all three** of the following conditions:

- It substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property.
- It becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself.
- It is intended to become a permanent installation.

For example, building a deck, installing a hot water heater, or installing kitchen cabinets are all capital improvement projects. Repairing a broken step, replacing a thermostat on a hot water heater, or painting existing cabinets are all examples of taxable repair and maintenance work.

[Publication 862](#), *Sales and Use Tax Classifications of Capital Improvements and Repairs to Real Property*, provides detailed information on various types of work that do and do not qualify as capital improvements. Since the method of installation may affect how the work is taxed, certain work will need to be looked at on a case-by-case basis.

### Purchases of materials

Building materials and other tangible personal property purchased for capital improvement work are taxable, whether purchased by a contractor, subcontractor, repairman (hereafter *contractor*), or homeowner. The sales tax paid by contractors becomes an expense that can be passed through to the customer as part of the overall charge for the capital improvement.

Contractors do not normally sell building materials to customers without installation and, therefore, cannot use [Form ST-120](#), *Resale Certificate*, to make purchases of building materials exempt from tax.

However, in certain circumstances, contractors can use [Form ST-120.1](#), *Contractor Exempt Purchase Certificate*, to make purchases exempt from sales tax. For example, a contractor is hired to build a house, and the contract requires the contractor to provide certain freestanding appliances such as a refrigerator, washer, and dryer. The installation

of these appliances does not qualify as a capital improvement, since freestanding appliances do not become part of the real property, as do building materials. The contractor can use [Form ST-120.1](#) to purchase the appliances exempt from sales tax. However, the contractor **must** collect sales tax on the charge to the customer for the appliances.

Purchases of materials in one taxing jurisdiction in New York may be subject to a different tax rate (higher or lower) if the materials are later used in a different jurisdiction in New York. For additional information see Tax Bulletins [Use Tax for Businesses \(TB-ST-910\)](#) and [Contractors - Sales Tax Credits \(TB-ST-130\)](#).

**Exemption certificates**

When performing capital improvement work, a contractor should get a properly completed [Form ST-124, Certificate of Capital Improvement](#), from the customer (including a customer that is an exempt organization) and should not collect sales tax from the customer for the project. Receiving [Form ST-124](#) relieves the contractor from liability for any tax due on the work. The contractor should keep this exemption certificate in his or her records to show why no sales tax was collected on the work. However, if no capital improvement certificate is received, the contract or other records of the project can still be used to establish that the work done constituted a capital improvement.

If a contractor hires a subcontractor to work on a capital improvement project, the contractor should give the subcontractor a copy of the capital improvement certificate issued by the customer, so that the subcontractor’s charges will be exempt from sales tax.

All records must be kept for a minimum of three years. Additional information can be found in Tax Bulletin [Recordkeeping Requirements for Sales Tax Vendors \(TB-ST-770\)](#).

**Capital improvement billing**

When calculating how much to charge a customer, a contractor may include the sales tax paid on building materials just like any other project expense.

*Example: A contractor is hired to build a new porch for a customer, which qualifies as a capital improvement. The contractor purchases \$500 of materials, including lumber, screws, and stain. The bill to the contractor might look like this:*

Materials:	\$500
Sales tax (8%):	<u>40</u>
Total:	\$540

*The bill to the customer might look like this:*

Materials (including sales tax and mark up):	\$600
Labor:	<u>1,000</u>
Total:	\$1,600

The sales tax that the contractor paid on the materials is an expense that the contractor builds into the price charged to the customer. However, because the work is a capital improvement, there is no sales tax due on the charge to the customer.

**Leasehold improvements**

Additions or alterations to real property made by or for a tenant, rather than the owner of the property, may be considered to be temporary in nature, rather than permanent. As a result, certain work that may otherwise qualify as a capital improvement may not qualify if the tenant’s lease does not transfer ownership of the improvement to the property owner. For example, some leases require the tenant to return the property to its original state

when the lease expires. In those cases, nothing that was installed over the term of the lease can be considered permanent, since it will have to be removed if the tenant moves. This fact means that the work performed cannot qualify as a capital improvement. See [TSB-M-83\(17\)S](#), *Taxable Status of Leasehold Improvements For or By Tenants*, for more information.

*Example: A contractor installs sinks and related plumbing fixtures for a hair salon that is a tenant in a building. Installing a sink normally qualifies as a capital improvement. However, the hair salon's lease stipulates that the premises must be returned to their original condition when the lease ends. Because the sinks must be removed at the end of the lease, they do not qualify as a permanent installation, and their installation is not a capital improvement.*

## Property owners

A property owner (including a property owner that is an exempt organization) who hires a contractor to perform work that qualifies as a capital improvement should give the contractor a completed [Form ST-124](#), *Certificate of Capital Improvement*. The contractor should keep the form in its records to show why no sales tax was collected on the work.

A contractor is not required to accept [Form ST-124](#). If a contractor charges sales tax on work that the customer believes qualifies as a capital improvement, the customer can apply for a refund directly from the Tax Department. For more information, see Tax Bulletin [How to Apply for a Refund of Sales and Use Tax \(TB-ST-350\)](#).

As stated above, there is no exemption from sales tax on the purchase of materials used in a capital improvement project. Purchases of materials are taxable, regardless of whether a property owner or a contractor buys them.

Note: A Tax Bulletin is an informational document designed to provide general guidance in simplified language on a topic of interest to taxpayers. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes in the Tax Law or its interpretation may affect the accuracy of a Tax Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.

### References and other useful information

**Tax Law:** Sections 1101(b)(4), 1105(c)(3), and 1105(c)(5)

**Regulations:** Sections 541.1 and 541.5

**Memoranda:**

[TSB-M-83 \(17\)S](#), *Taxable Status of Leasehold Improvements For or By Tenants*

**Publications:**

[Publication 862](#), *Sales and Use Tax Classifications of Capital Improvements and Repairs to Real Property*

**Bulletins:**

[Use Tax for Businesses \(TB-ST-910\)](#)

[Contractors--Sales Tax Credits \(TB-ST-130\)](#)

[Recordkeeping Requirements for Sales Tax Vendors \(TB-ST-770\)](#)

[How to Apply for a Refund of Sales and Use Tax \(TB-ST-350\)](#)

Exhibit 2

Copy of NYS DTF Publication 862

**[See attached pages.]**



## **Publication 862**

# **Sales and Use Tax Classifications of Capital Improvements and Repairs to Real Property**

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## About This Publication

Publication 862 provides contractors and their customers (property owners) sales and compensating use tax guidance for distinguishing between a capital improvement to real property and repairs, maintenance, or installation services to real property. For this purpose, we include a list of various activities with respect to real property and identify them as either a capital improvement or a repair, maintenance, or installation service.

If a contractor does a capital improvement for a customer and the customer provides the contractor with a properly completed Form ST-124, *Certificate of Capital Improvement*, no sales tax is required to be collected from the customer. On the other hand, when a contractor performs a job that constitutes a repair, maintenance, or installation service to real property, sales tax must be collected from the customer, unless the contractor receives a properly completed Form ST-119.1, *Exempt Organization Certification*, or other applicable exemption document.

In determining whether a job is a capital improvement, please keep in mind that the installation of certain items listed as capital improvements on the following pages may not qualify as a capital improvement if the items are installed by a commercial tenant as a trade fixture.

As a general rule, a contractor must pay sales tax to its supplier when it purchases tangible personal property. It does not matter whether the tangible personal property will be used in performing a capital improvement or a repair, maintenance, or installation service.

If you have questions about the material presented in this publication, please refer to the back cover of this publication for the appropriate address or telephone number to contact for more information.

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## **Part I - General Information**

### **Tax on building materials**

As a general rule, if you are a contractor or a property owner, you must pay sales tax on your purchases of building materials, unless some exemption applies, in which case you must provide an exemption certificate or other document to the supplier which indicates that no tax is imposed or required to be collected when the building materials are purchased.

### **Frequently used exemption documents**

Instead of receiving a tax payment, suppliers may accept certain exemption documents. Examples of frequently used exemption documents and from whom they may be accepted are:

#### **From contractors**

- Form ST-120.1, *Contractor Exempt Purchase Certificate*
- Form AU-297, *Direct Payment Permit*

#### **From exempt organizations**

- Form ST-119.1, *Exempt Organization Certification*

#### **From farmers and commercial horse boarding operations**

- Form ST-125, *Farmers and Commercial Horse Boarding Operations Exemption Certificate (For information on the newly expanded exemptions applicable to farmers and commercial horse boarding operations enacted by Chapter 407 of the Laws of 1999, please see TSB-M-00(8)S.)*

#### **From a Qualified Empire Zone Enterprise (QEZE)**

- Form ST-121.6, *Qualified Empire Zone Enterprise (QEZE) Exempt Purchase Certificate (For information on sales and use tax exemptions afforded to a QEZE enacted by Chapter 63 of the Laws of 2000, please see TSB-M-01(1)S.)*

#### **From retailers**

- Form ST-120, *Resale Certificate*

#### **From New York State and its political subdivisions and the United States and its agencies**

- Government Purchase Orders

**90 day rule for exemption documents**

If you are a contractor or supplier who makes a sale of services or building materials that is exempt from tax, you must have a properly completed exemption document in your possession **no later than 90 days after the service is rendered** or you will be required to collect tax and the purchaser will need to file a claim for refund of the tax with the Tax Department.

**Services to real property**

Services to real property are classified as either a capital improvement or a repair, maintenance or installation service. Installation services include the installation of tangible personal property which remains tangible personal property after its installation.

**Real property**

The term *real property* means real property, property or land as defined in the Real Property Tax Law and includes but is not limited to:

- land and vegetation growing on the land such as trees, shrubs, bushes, and grass;
- buildings and structures erected upon, under, or above land, or affixed to the land;
- utility lines, wires, and poles;
- mains, pipes and tanks for conducting steam, heat, water, oil, gas, and electricity; and
- boilers, heating, ventilating, lighting apparatus, and plumbing.

**Tangible personal property**

The term *tangible personal property* means corporeal personal property of any nature having a material existence and perceptibility to the human senses including but not limited to materials, tools, equipment and supplies.

**Capital improvement**

A *capital improvement* is an addition or alteration to real property that:

- substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property;
- becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself; **and**
- is intended to become a permanent installation.

However, the addition of a mobile home to real property is never a capital improvement, regardless of how it is installed.

For special rules regarding when the installation of a floor covering constitutes a capital improvement, see page 15.

In the case of a capital improvement, if you are a **property owner who**:

- purchases materials and supplies only and you perform your own labor, you **pay tax to the supplier on the materials and supplies.**
- purchases materials and supplies and hires a contractor to perform the labor, you **pay tax to the supplier on the materials and supplies, but you do not pay tax to the contractor for the labor.**
- purchases materials and supplies and labor from the contractor, you **pay no tax.**

In the case of a capital improvement, if you are a **contractor who purchases** materials and supplies, you pay tax to the supplier **and you do not collect any sales tax from your customer.**

## **Leasehold improvements**

As a general rule, additions or alterations to real property for or by a tenant with respect to leased premises are presumed to be temporary in nature. Consequently, they do not qualify as capital improvements. However, these additions or alterations may qualify as capital improvements if there is a demonstrated intention to make them permanent (*assuming the other qualifications are met*). For example, an intention of permanence would be demonstrated by a provision in the building lease indicating that immediately upon installation title to the installation vests with the lessor and the installed property is to remain with the premises after the termination of the lease.

If a lease does not contain these provisions, other factors such as the nature of the installation, or written agreements other than a lease provision may be considered in determining the intention of the parties with respect to the permanence of the installation. Please see TSB-M-83(17)S for further information on leasehold improvements.

## Repair and maintenance

*Repair and maintenance* relates to keeping real property in a condition of fitness, efficiency, readiness and/or safety or to restoring it to such condition.

In the case of a job that constitutes repair or maintenance, if you are a **property owner who:**

- purchases materials and supplies only and performs your own labor, **you pay tax to the supplier on the materials and supplies.**
- purchases materials and supplies and hires a contractor to perform the labor, **you pay tax to the supplier on the materials and supplies and to the contractor for the labor.**
- purchases materials and supplies and labor from a contractor, **you pay tax to the contractor on the total charge.**

In the case of a job that constitutes repair or maintenance, if you are a **contractor who:**

- purchases materials, **you pay tax to the supplier**, even though you are also required to collect tax from your customer. However, you are entitled to a refund or credit of the tax that you paid on the materials that you transferred to the customer.
- purchases supplies, **you pay tax to the supplier.**

## Installation

*Installation services* are services related to setting up tangible personal property or putting it in place for use.

If you are a contractor who installs items such as washing machines, clothes dryers, dishwashers, refrigerators, furniture, etc., which when installed or placed in real property do not become part of the real property, you must collect tax on your charge for the installation. The individual charge for any of these items is also taxable as the sale of tangible personal property.

## Part II - Listing of Capital Improvements and Repair, Maintenance, and Installation Services

	<b>Capital improvement*</b>	<b>Repair, maintenance, or installation</b>
<b>Air cleaners</b>	Installation of central air cleaner systems  Original installation of ductwork or required additional ductwork  Replacement of complete central air cleaner units	Repair or replacement of the following in self-contained or central units: <ul style="list-style-type: none"> <li>• collector plates</li> <li>• electronic plates</li> <li>• filters</li> <li>• power boxes</li> <li>• return air ducts</li> <li>• sails</li> </ul> Installation or replacement of self-contained air cleaners
<b>Air conditioners</b> (other than central air conditioning systems) <i>(see also - Central air conditioning)</i>	Original installation or complete replacement of through-the-wall mounted units	Repair or replacement of the following in in-window or through-the-wall mounted units: <ul style="list-style-type: none"> <li>• air flow controls</li> <li>• blowers</li> <li>• casings</li> <li>• compressors</li> <li>• copper tubing</li> <li>• fans</li> <li>• fan motors</li> <li>• filters</li> <li>• grilles</li> <li>• motors</li> </ul> Installation or replacement of window air conditioners
<b>Bathrooms</b> <i>(see also - Electrical, Plumbing, and Walls)</i>	Complete remodeling of bathrooms (toilet, tub, and vanity)  Complete installation or replacement (including any necessary fixtures) of: <ul style="list-style-type: none"> <li>• cabinets</li> <li>• exhaust fans</li> <li>• floor tiles (if ceramic or quarry type)</li> <li>• sinks</li> <li>• tile (floor or wall)</li> <li>• toilets</li> <li>• tubs</li> <li>• tub or shower enclosures</li> <li>• vanities</li> <li>• wall tiles</li> </ul>	Installation of free-standing cabinets  Repair of: <ul style="list-style-type: none"> <li>• cabinets</li> <li>• exhaust fans</li> <li>• faucets</li> <li>• mirrors</li> <li>• shower heads</li> <li>• sinks</li> <li>• tile</li> <li>• toilets</li> <li>• tubs</li> <li>• tub or shower enclosures</li> <li>• vanities</li> </ul> Replacement of faucets and shower heads



**Capital improvement\***

**Repair, maintenance, or installation**

**Brickwork**

*(see also -Chimneys, Masonry)*

Construction of new or complete replacement of brick:

- chimneys
- exterior surfaces
- fireplaces
- stairs or steps
- structures
- walls

Fixing cracks

Replacing damaged bricks

Repointing

Sandblasting

**Central air conditioning**

*(see also - Air conditioners)*

Installation of central air conditioning systems

Original installation of ductwork or required additional ductwork

Replacement of complete central air conditioning units

Maintenance contracts

Repair or replacement of:

- blowers
- coils
- compressors
- condenser coils
- control devices
- ductwork sections
- excess moisture drains
- fans
- filters
- refrigerant
- refrigerant tubes

**Chimneys**

*(see also - Brickwork, Fireplaces, Masonry)*

Addition or complete replacement of flue or liner (metal or foam)

Complete replacement of chimneys

Installation of new chimneys

Chimney cleaning

Fixing cracks

Installation of spark arrestors

Repair of flues

Repointing

Sealing of flashings

Repair or replacement of:

- caps
- damaged bricks
- flashings
- loose mortar
- pots
- rain and draft deflectors

**Decks**

*(see also - Patios)*

Additions to decks

Installation or complete replacement of:

- entire decks
- floor of deck
- footings
- stairs
- railings

Water sealing, staining or painting of **new** decks

Cleaning of decks

Repair or partial replacement of :

- decks
- floor of deck
- footings
- stairs
- railings

Water sealing, staining or painting of existing decks

## Capital improvement\*

## Repair, maintenance, or installation

### Doors

Closing off a doorway

Cutting of doorways

Installation or replacement of doors, or doors and frames, or storm doors with related hardware

Painting, varnishing or staining a new door

Addition of paneling to a door

Caulking (interior/exterior)

Elimination of binding or looseness

Installation of the following items in an existing door:

- closers
- decorative moldings
- kickplates
- mailslots
- peepholes
- thresholds
- weather stripping

Repair of existing doors

Painting, varnishing, or staining existing doors

Repair or replacement of:

- casing
- closers
- door frames
- door knobs
- glass panes
- handles
- head jambs
- hinges
- jambs
- locks or latches
- locksets
- panels
- saddles
- screens
- stiles
- stops
- thresholds
- top rails
- trim
- weather stripping

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### Driveways, parking lots, and walks

*(see also - Exterior, Landscaping and yard care)*

Installation or complete repaving (resurfacing) of driveways, parking lots, and walks

Original landscaping of parking lot islands

Original installation of gravel or crushed stone driveway

Original striping (line painting) on new parking lot

Replacement of:

- cobblestones
- crushed stone
- crushed stone with oil

Repairing and patching of holes and cracks

Replacing sections of concrete or blacktop driveways, parking lots, and walks

Restriping, sealing, and dressing

Resurfacing of gravel or crushed stone driveways with new gravel or crushed stone

Maintaining or repairing of parking lot islands, including ongoing landscaping

## Capital improvement\*

## Repair, maintenance, or installation

### Electrical

Complete wiring or rewiring of structures or the upgrading of a service

Additions to wiring systems; for example, new circuits

In-wall installations of electrical wiring and communications cables in connection with the installation of burglar alarms or security systems

Original in-wall installations of telephone wiring, speaker wire, computer cable or coaxial cable, with the exception of the installation of telephone wiring installed by the telephone service provider, in connection with the telephone service that it is selling or cable television cable installed by the cable television service provider in connection with its service.

Original installation of:

- circuit breakers
- outlets
- receptacles
- switches

Original installation or complete replacement of:

- add-on panels
- breaker panels
- ceiling fixtures
- door bells
- door buzzers
- door chimes
- floor outlets
- fluorescent fixtures
- main power boxes
- metal raceways
- multi-outlet strips
- outdoor lamp posts
- wall boxes
- wall fixtures
- wiring

Installation of a dimmer switch to replace an existing switch

Repair of:

- floor outlets
- fluorescent fixtures
- lighting fixtures
- main power boxes
- metal raceways
- multi-outlet strips
- outdoor lamppost
- wall boxes
- wall fixtures
- wiring

Replacement of:

- circuit breakers
- fluorescent fixture parts: (ballasts, starters, tubes)
- fuses
- light bulbs
- outlets
- receptacles
- switches

### Exterior

*(See also - Driveways, parking lots and walks, Landscaping and yard care)*

Additions to existing structures

Application of siding to structures

Complete replacement of porches

Construction of:

- decks
- dormers
- footings
- foundations
- garages
- new homes
- new porches
- pole barns

Deepening existing water wells

Drilling or boring new water wells

Excavation work if for a capital improvement

Installation of:

- canvas awnings
- patching cracks

Painting of existing:

- awnings
- brickwork
- concrete

Repair of louvers and shutters

Repair or maintenance of:

- awnings (including canvas)
- exterior surfaces
- patios
- roof decks
- water well pumps

**Capital improvement\***

**Repair, maintenance, or installation**

**Exterior (cont.)**

Insulating structures

Installation of new or complete replacement of existing:

- awnings (other than canvas)
- gutter and downspout systems
- fences
- louvers
- shutters
- water well pumps

Installation or complete replacement of permanent (non-floating) docks

Complete re-siding of structures

Painting of new structures

Repair, replacement, or maintenance of:

- canvas awnings
- fence pickets, posts, rails or sections
- flashings
- gates
- shingles (partial)
- siding (partial)

Excavation work - if for repair and maintenance

Snow removal

Installation or replacement of floating docks

Repair or maintenance of any dock

**Fire, water, wind damage**

Rehabilitation of damaged structures (See appropriate sections for work performed.)

Demolition of a building or structure

Cleaning

Deodorizing

Refinishing floors

Removal of water or debris

Repainting

Replacement of broken glass

**Fireplaces**

*(see also - Chimneys, Heating - wood burning furnace, boiler, stove)*

Installation or complete replacement of fireplaces (other than freestanding units or inserts)

Cleaning

Fixing cracks

Repointing

Repair or replacement of:

- ash pits
- cold air inlets
- damaged bricks
- dampers
- damper controls
- fireboxes
- firebricks
- firechambers
- headers
- hearths
- lintels
- mantels
- smoke chambers
- smoke shelves
- warm air outlets

Installation, maintenance or repair of freestanding fireplace unit or insert

## Capital improvement\*

## Repair, maintenance, or installation

### Floor coverings

(See also-Floors and floorings, Bathrooms, Fire, water and wind damage)

Installation of carpet, carpet tile, carpet padding, linoleum and vinyl roll floor covering, linoleum tile, vinyl tile, and other similar floor covering, **as the initial finished floor covering:**

- in the new construction of a building or structure; or
- in a new addition to an existing building or structure; or
- in the total reconstruction of an existing building or structure.

(The installation of floor covering under any other circumstance is not a capital improvement.)

Installation of carpet, carpet tile, carpet padding, linoleum and vinyl roll floor covering, linoleum, vinyl tile, and other similar floor coverings in an existing building, or in a building **more than 6 months** after the building has otherwise been completed.

Repair maintenance or replacement of any of the above floor coverings.

### Floors and floorings

Installation or complete replacement of floorings such as wood floor, floating wood laminate floors, ceramic tile floor, terrazzo, marble, concrete and other similar floors

Cleaning, sanding, waterproofing, painting, staining, varnishing and waxing **new** floors

Raised flooring [see TSB-M-98(2)S for more information]

Repair, maintenance or partial replacement of floorings such as wood floor, ceramic tile floor, terrazzo, marble, concrete and other similar floors

Cleaning, stripping, sanding, waterproofing, painting, staining, varnishing and waxing existing floors

### Garage doors

Installation or replacement of complete garage doors

Installation or complete replacement of electric garage door openers and controls

Painting, varnishing or staining of **new** garage doors

Adjustment of spring tension

Lubrication of parts

Repair or maintenance of electric garage door openers and controls

Painting, varnishing or staining of existing garage doors

Weatherstripping

Repair or replacement of:

- |                 |           |
|-----------------|-----------|
| • cables        | • panels  |
| • casings       | • rollers |
| • door frames   | • saddles |
| • door sections | • springs |
| • glass panes   | • stiles  |
| • hinges        | • stops   |
| • jambs         | • tracks  |
| • locks         | • trim    |

**Capital improvement\***

**Repair, maintenance, or installation**

**Heating - electric**

Addition to permanently installed electric heating systems

Installation or replacement of permanently installed electric heating units or systems

Cleaning

Maintenance contracts

Repair of baseboard heaters and wall heaters

Repair or replacement of heating elements and thermostats

**Heating - electric boiler**

Installation or complete replacement of electric boilers

Cleaning of electric boiler

Maintenance contracts

Repair or replacement of:

- automatic airvents
- circulators
- controls
- drain valves
- expansion tanks
- heating elements
- pressure controls
- relief valves
- return lines
- supply lines
- thermostats

**Heating - electric furnace**

Installation or complete replacement of electric furnaces

Cleaning of electric furnaces

Maintenance contracts

Repair or replacement of:

- blowers
- condensers
- elements
- filters
- fuses
- low-voltage terminals
- relays
- sequencers
- thermostats
- transformers

**Heating - gas**

Installation or complete replacement of gas furnaces

Cleaning of gas furnaces

Maintenance contracts

Repair or replacement of:

- burner heads
- draft hoods
- filters
- main gas valves
- main shutoff valves
- pilot gas lines
- pressure regulators
- safety control valves
- safety thermostat elements
- vent pipes

**Capital improvement\***

**Repair, maintenance, or installation**

**Heating - heat pump**

Installation or complete replacement of heat pump units

Cleaning of heat pump units

Maintenance contracts

Repair or replacement of:

- blowers
- coils
- compressors
- valves

**Heating - hot water**

Additions to hot water systems

Bleeding of radiators

Installation or complete replacement of hot water boilers or systems

Cleaning

Original insulation of new or replacement piping systems

Flushing of boilers

Maintenance contracts

Repair or replacement of:

- air vent valves
- boiler tubes
- circulating pumps
- coils
- drain cocks
- expansion tanks
- furnace controls
- main shutoff valves
- piping sections
- pressure reducing valves
- pressure-relief valves
- radiators
- return mains
- risers
- supply mains
- thermostats
- thermocouples
- water supply lines

**Heating - oil**

Installation or complete replacement of oil burner guns

Cleaning of oil furnaces or boilers

Installation or complete replacement of oil furnaces or boilers

Maintenance contracts

Original installation or replacement of oil tanks

Repair of oil burner guns

Repair or replacement of:

- air tubes
- blowers
- fuel lines
- motors
- oil - level control valves
- refractory firepots
- stack-control relays
- storage tanks
- strainer pumps
- transformers

**Capital improvement\***

**Repair, maintenance, or installation**

**Heating - radiant**

- Additions to radiant systems
- Complete replacement of radiant systems
- Installation of radiant systems

- Cleaning of radiant systems
- Maintenance contracts
- Repair or replacement of:
  - balancing valves
  - circulating pumps
  - coils
  - common returns
  - drain cocks
  - feed lines
  - furnace controls
  - returns
  - shutoff valves
  - tanks (to trap air)
  - thermostats
  - vents

**Heating - solar**

- Additions to permanent solar systems
- Installation or replacement of permanent solar systems

- Cleaning of solar heating systems
- Maintenance contracts
- Repair or maintenance of solar heating systems

**Heating - steam**

- Additions to steam systems
- Installation or replacement of steam boilers or systems
- Insulation of piping systems

- Cleaning of steam systems
- Maintenance contracts
- Repair or replacement of:
  - air vents
  - drain cocks
  - drain plugs
  - piping (sections)
  - radiators
  - reducers
  - safety valves
  - shutoff valves
  - steam gauges
  - steam mains
  - thermostats
  - water gauges
  - water supply lines
  - wet returns

**Heating - warm air duct system**

- Additions to warm air duct systems
- Installation or replacement of warm air duct systems
- Original insulation of new or replacement duct systems

- Cleaning of warm air duct systems
- Repair or replacement of:
  - angle boots
  - balance dampers
  - cold air returns
  - duct sections
  - elbows
  - endcaps
  - floor diffusers
  - plenums
  - plenum takeoffs
  - side stack takeoffs
  - starting collars
  - supply stackheads
  - top stack takeoffs



**Capital improvement\***

**Repair, maintenance, or installation**

**Heating - wood burning furnace, boiler, stove**  
(see also - Fireplaces)

Installation or replacement of wood burning furnaces or boilers

Original installation of wood burning stoves (Including strengthening floors and fireproofing walls and floors)

Cleaning of wood burning furnaces, boilers and stoves

Maintenance contracts

Replacement of wood burning stoves

Repair and maintenance of wood burning furnaces, boilers or stoves

**Hot water heaters**

Installation or replacement of hot water heaters

Cleaning of hot water heaters

Maintenance contracts

Repair or replacement of:

- anode rods
- burners
- casing covers
- connectors
- drain pipes
- drain valves
- draft diverters
- flue baffles, bodies or collars
- glass inner tanks
- heating elements
- inlet-outlet pipes
- outlet pipes
- tank linings
- temperature control knobs
- temperature-pressure relief valves
- thermocouples
- thermostats

**Humidifiers**

Installation or complete replacement of permanently installed humidifiers

Cleaning of humidifiers

Maintenance contracts

Repair or replacement of:

- evaporator pads
- fans
- motors
- trays

**Kitchens**

(see also - Electrical, Plumbing, and Walls)

Installation or complete replacement of:

- built-in dishwashers
- freezers
- ranges
- refrigerators
- ovens
- countertops
- ducted hoods
- exhaust fans
- garbage disposals
- kitchen cabinets
- sinks
- water softeners

Painting, varnishing or staining of new kitchen cabinets

Complete reconditioning of kitchen cabinets

Installation of ductless hoods

Installation of free-standing appliances

Painting, varnishing or staining of existing kitchen cabinets

Repair or maintenance of:

- cabinets
- countertops
- dishwashers
- ducted or ductless hoods
- exhaust fans
- faucets
- freezers
- garbage disposals
- ovens
- ranges
- refrigerators
- sinks

**Capital improvement\***

**Repair, maintenance, or installation**

**Kitchens (cont.)**

Replacement of:

- cabinet doors
- faucets
- portions of countertops
- portions of cabinets
- portable dishwashers
- freezers
- ranges
- refrigerators

**Landscaping and yard care**

*(see also - Driveways, parking lots, and walks, Exterior)*

Original installation or complete replacement of:

- fences (permanent)
- flagstone walks
- patio block or other types of walks
- fountains (except free standing)
- gates
- lawns or complete sections\* of a lawn
- ponds (permanent)
- retaining walls
- rock gardens
- underground lawn sprinkler systems

Planting or replacing perennials

Planting or replacing of shrubs and trees

Original installation of gravel or crushed stone paths

Original installation or complete replacement of concrete and blacktop sidewalks

Resurfacing of blacktop sidewalks

\* A “complete section” of a lawn is a section surrounded by driveways, buildings, walks, structures or other barriers which divide it from other sections of lawn.

Application of fertilizers, herbicides and pesticides

Installation of free standing fountains

Installation of temporary or moveable ponds

Maintenance contracts

Mowing of lawns

Planting of annuals

Pruning, winter banking, fertilizing of trees and shrubs

Removal without replacement of trees or shrubs (when not part of a capital improvement project)

Repair of walks; adding stone, replacing damaged patio blocks or bricks, releveling walks, repairing cracks in concrete

Repair of fences and gates

Repair or replacement of the following in underground lawn sprinkler systems:

- centrifugal pumps
- pump controllers
- remote control valves
- sections of piping
- sprinkler controllers
- sprinkler heads

Repairing sections of retaining walls

Replacement of fence fabric

Reseeding or overseeding of lawns

Sodding bare spots

Straightening or repairing retaining walls

### Capital improvement\*

### Repair, maintenance, or installation

**Masonry**

(see also - Brickwork, Chimneys)

- Installation or complete replacement of:
- block walls
  - brick walls
  - footings
  - foundations
  - walks
  - poured concrete posts slabs sidewalks stairways walls

- Repair or partial replacement of:
- block walls
  - brick walls
  - footings
  - foundations
  - walks
  - poured concrete posts slabs sidewalks stairways walls

**Miscellaneous**

Asbestos removal (when done as part of a capital improvement contract)

Asbestos removal (when done as part of a repair or maintenance contract)

Debris removal from construction sites (when done as part of a capital improvement contract)

Debris removal from construction sites (when done as part of a repair or maintenance contract)

Fire sprinkler system installed or replaced in ceilings and connected to water supply systems

- Installation or replacement of:
- attic fans (removable)
  - independent smoke or heat detectors
  - mail boxes (installed on wall or post)
  - smoke detectors (battery operated)

Installation or complete replacement of elevators

Periodic maintenance services on elevators and escalators

- Installation or complete replacement of:
- attic fans (permanently installed)
  - fire or smoke detectors (permanently installed)
  - central vacuum systems
  - suspended ceilings

Pest control

Repair or maintenance of central vacuum systems

Installation of winter protection, temporary heat, electric and plumbing at construction sites

Repair or maintenance of elevators

**Painting**

Painting of **new** buildings, structures, or additions

Painting or repainting of existing buildings, structures, or parts thereof

Painting of any new additions or installations that constitute capital improvements

**Capital improvement\***

**Repair, maintenance, or installation**

**Patios**

(see also - Decks)

Installation or complete replacement of:

- blacktop patios
- concrete patios
- flagstone, block or brick patios
- patio roofs
- wood patios

Painting, varnishing or waterproofing **new** patios

Painting, varnishing or waterproofing existing patios

Repair or maintenance of patios

Repairing and patching of holes or cracks

Replacing sections of concrete patios

Replacement of blocks and flagstones

**Plumbing - piping**

Additions to piping systems

Excavation required for installation or complete replacement of piping systems

Original insulation of new or replacement piping systems

Installation or complete replacement of:

- garbage disposals
- piping systems
- sprinkler systems
- water softeners
- water pumps

Repair of pipes and fittings

Repair of sprinklers, water softeners and well pumps

Repair or replacement of:

- air chambers
- cabinets
- relief valves
- shutoff valves
- storage tanks
- traps

Thawing frozen pipes

Unclogging of main drain pipes

**Plumbing - sinks**

Installation or complete replacement of sinks and necessary sink fittings

Repair or replacement of:

- aerators
- bottom cages
- couplings
- diverter assemblies
- escutcheons
- faucets
- handles
- handle assemblies
- hose assemblies
- hose guides
- inlet seals
- locknuts, connectors
- packing nuts
- seats
- spouts
- spray heads
- stems
- traps
- washers

Unclogging of sink drains

**Plumbing - toilets**

Installation or complete replacement of toilets and necessary toilet fittings

Cleaning

Repair or replacement of:

- float arms/balls
- flush handles
- guide arms
- inlet valves
- lift wires
- plungers
- tank balls
- tank drains
- toilet seals
- toilets seats
- trip sleeves
- tubes
- valve seats
- washers

Unclogging of toilet drains

## Capital improvement\*

## Repair, maintenance, or installation

### Plumbing - tubs and showers

Installation or complete replacement (including necessary fittings) of:

- Shower stalls
- Tubs
- Tub enclosures

Cleaning

Repair of enclosures

Repair or replacement of:

- |                       |                  |
|-----------------------|------------------|
| • automatic diverters | • retainer clips |
| • cartridges          | • shower bases   |
| • ears                | • shower heads   |
| • faucets             | • stems          |
| • faucet heads        | • stop tubes     |
| • handles             | • traps          |
| • red flats           | • washers        |

Unclogging of tub-shower drains

### Roofs and roofing materials

Complete replacement of a roof or roofing materials (entire building), or the complete side of a peaked roof, or the complete roof or roofing materials on a wing, turret, dormer, etc.

Installation or replacement of complete gutter and downspout systems

Original installation of all types of roof systems including accessories

Application of roof coating or resaturants to existing roofs

Cleaning and repairing of all types of roof systems, gutters, downspouts, drains, etc.

Repair or spot replacement of all types of roofs or roofing materials (asphalt, shingle, slate, tile, built-up, metal, single ply)

Repair or replacement of the following items or accessories:

- |  |                                |
|--|--------------------------------|
| • copings                                | • louvers and screens          |
| • cornices                               | • metal or composition valleys |
| • drip edges                             | • metal ornaments              |
| • electric heating tape                  | • metal stacks                 |
| • expansion joints                       | • rain and draft deflectors    |
| • flashings (all types)                  | • shingles (all types)         |
| • gravel stops and fascias               | • skylights and scuttles       |
| • gutter and downspout systems (partial) | • snow guards                  |
| • heating cables                         | • snow slides                  |
|  | • ventilators                  |

### Septic systems

Excavation required for installation

Installation or complete replacement of:

- |                      |                |
|----------------------|----------------|
| • distribution boxes | • lines        |
| • dry wells          | • seepage pits |
| • grease traps       | • septic tanks |
| • leach fields       |                |

Cleaning or pumping out of septic tank

Excavation required for repair or maintenance

Repair or maintenance of:

- |                      |                |
|----------------------|----------------|
| • distribution boxes | • lines        |
| • dry wells          | • seepage pits |
| • grease traps       | • septic tanks |
| • leach fields       |                |

**Capital improvement\***

**Repair, maintenance, or installation**

**Stairs**

Installation or complete replacement of sets of stairs or staircases

Painting, varnishing or staining of new stairs or staircases

Eliminating squeaks

Painting, varnishing or staining of existing stairs

Repair or replacement of:

- balusters
- handrails
- newels
- risers
- termite damage
- treads
- wet and dry rot

Tightening of loose balusters

**Sump pumps**

Digging of sump pump holes

Installation or complete replacement of permanent sump pumps

Installation or replacement of portable sump pumps

Repair or replacement (in permanent or portable sump pumps) of:

- electrical cords
- floats
- motors
- piping and connectors
- pump suction heads
- shutoff switches

**Swimming pools**

Installation of in-ground swimming pool, including excavation work done in connection with the installation

Original installation or complete replacement of:

- heater for in-ground swimming pool
- liner for in-ground swimming pool

Installation or replacement of:

- above ground swimming pool including excavation work done in connection with the installation
- pumps, filters etc.
- heater for above ground swimming pool

Repair or maintenance of above ground or in-ground swimming pool, including:

- cleaning
- repairing of liners
- repairing pumps and heaters

**Ventilation**

Installation or complete replacement of permanent:

- attic fans
- exhaust fans
- gable vents
- roof vents
- soffit vents
- wind turbines

Installation or replacement of portable attic fans

Repair, maintenance or replacement of the following in permanent or portable attic or exhaust fans:

- bearings
- blades
- motors
- shutters

## Capital improvement\*

## Repair, maintenance, or installation

### Walls

Baseboards and trim installed in connection with paneling walls

Baseboards and trim installed on new or completely replaced walls

Complete paneling of new or existing walls

Finishing of new or completely replaced walls

Installation or complete replacement of tile walls

Installation or complete replacement of a wall

Original insulation of new or completely replaced walls

Painting of new or completely replaced walls (including murals)

Removal of a wall

Wallpapering of new or completely replaced walls

Waterproofing new or completely replaced walls

Cleaning

Fixing nail pops

Painting of existing walls (including murals)

Patching cracks

Regrouting of ceramic tile

Repair of:

- dents
- split wallboard tape
- termite damage
- wet and dry rot

Replacement of:

- ceramic fixtures
- damaged ceramic tiles
- existing baseboards, molding, trim
- wallboard panels
- wood panels

Stopping water leaks

Taping of existing walls

Wallpapering of existing walls

### Windows

Application of window film or coating in connection with original installation or complete replacement

Caulking of new or completely replaced windows

Installation or complete replacement of permanent combination storm windows

Installation or complete replacement of complete windows (frames and sashes)

Painting, varnishing or staining of new or completely replaced windows

Installation or complete replacement of permanent window shutters

Applying putty, window film or coating to existing windows

Caulking of existing windows (interior/exterior)

Eliminating sticking

Installation of:

- drapery rods/ hardware
- shades
- valances
- Venetian blinds
- window quilts

Lubricating sashes

Painting, varnishing or staining of existing windows

Repair of:

- broken glass
- termite damage
- wet and dry rot
- windows
- window frames
- window sills

**Capital improvement\***

**Repair, maintenance, or installation**

**Windows (cont.)**

Replacement of:

- aprons
- balances
- frames
- hardware (latches, handles, locks, etc.)
- inside stops
- parting strips
- pocket covers
- sash balances
- sash cords
- sash stiles
- sash weights
- sash weight pulleys
- side casings
- side jambs
- stools
- storm windows panes or screens
- window frames
- window panes (glass or plastic)
- window sills
- yoke or head jambs

Weatherstripping

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**Yard Care**

*(See - Landscaping and yard care)*

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\* Items characterized in this Part as Capital Improvements will not qualify as capital improvements if they are installed for a tenant and the lease provides that they must be removed at the end of the lease if the item is otherwise intended not to be permanently installed. Please see "Leasehold improvements" on page 8 of this publication.



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