

FIRST AMENDMENT TO AGREEMENT OF LEASE

THIS FIRST AMENDMENT TO AGREEMENT OF LEASE, dated as of June 1, 2011 (this "Amendment"), by and 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 One World Financial Center, New York, New York 10281 ("Landlord") and PIER A BATTERY PARK ASSOCIATES, LLC, a Delaware limited liability company having an office at 93 Pearl Street, New York, New York 10004 ("Tenant").

WITNESSETH

WHEREAS, the Landlord and the Tenant have entered into that certain Agreement of Lease, dated as of March 9, 2011, (the "Operating Lease"), demising the premises known as "Pier A" at 22 Battery Place in the City, County and State of New York; and

WHEREAS, the Landlord and the Tenant desire to modify certain terms of the Operating Lease; and

WHEREAS, capitalized terms used but not defined in this Amendment shall have the respective meanings ascribed to such terms in the Operating Lease;

NOW THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby covenant and agree as follows:

1. The Operating Lease is hereby amended as follows:
  - a. The bracketed "Note" is deleted from Clause (5) of Section H of Article 16;
  - b. The bracketed words "[intentionally omitted]" are deleted from Article 16(F) and the following provision is hereby inserted in place thereof:

*(1) Provided that an historic rehabilitation tax credit transaction permitting the sale of Federal or New York State historic rehabilitation tax credits with respect to the Demised Premises (an "HTC Transaction"), on terms and conditions and with a structure acceptable to Landlord, Tenant and the City, has been agreed to by said parties, and provided that said structure involves a transfer or sublet of Tenant's interest in this Lease, Landlord shall not unreasonably withhold its consent to said sublet or transfer, provided further that:*

- (a) Tenant is not then in default under this Lease;*
- (b) pursuant to such transfer or sublease Tenant shall continue to operate the Demised Premises and shall not be relieved of any responsibility or liability under this Lease; and*
- (c) such transfer or sublease shall otherwise be in compliance with the terms and conditions of this Lease.*

(2) *Tenant shall reimburse Landlord for any third party costs and expenses, including but not limited to reasonable attorneys' fees and expenses, incurred by Landlord in connection with reviewing and/or effectuating any proposed HTC Transaction.*

c. The following sentence is hereby added at the end of Section (1) of Article 16(H):

*Landlord's consent shall not be required for a transfer of this Lease or Tenant's leasehold estate hereunder to an Institutional Lender that is the Mortgagee (or its wholly owned nominee) pursuant to a judgment of foreclosure and sale or a transfer in lieu of foreclosure following a default under a Mortgage.*

d. The bracketed words "[intentionally omitted]" are deleted from Article 51 and the following provisions are hereby inserted in place thereof:

**ARTICLE 51. Identity of Tenant:**

*Notwithstanding any other provision of this Lease:*

(A) *At no time shall Tenant be a Prohibited Person. A "Prohibited Person" shall mean:*

(1) *A "Non-Permissible Person" as defined in the City Lease;*

(2) *Any person or entity, or affiliate of such person or entity, that is in default or in breach, beyond any applicable grace period, of its obligations under any material written agreement with Landlord or any affiliate thereof unless such default or breach has been waived in writing by Landlord or such affiliate; or*

(3) *Any person or entity, or affiliate of such person or entity, that is an organized crime figure or is reputed by an appropriate law enforcement agency to have substantial business or other affiliations with an organized crime figure.*

(B) *Any person or entity to which Tenant's interest in this Lease is assigned or otherwise transferred (including any sublet of all or substantially all of the Demised Premises) pursuant to Article 16(H)(5) without Landlord's consent shall be a Qualified Operator. A "Qualified Operator" shall mean a person or entity, or an entity controlled by a person or entity, that:*

(1) *Is in the business of operating commercial real estate with retail and restaurant operations;*

(2) *Has not less than five (5) years' experience successfully operating first class facilities with restaurant and retail operations and that are otherwise comparable to the manner and scope of use of the Demised Premises provided for in this Lease;*

(3) Has an excellent reputation for operating first class facilities with restaurant and retail operations; and

(4) Has financial resources, including access to additional funding, that are adequate for taking over and successfully operating the Demised Premises in accordance with this Lease, provided that, following the completion of Tenant's Work the ownership by the proposed assignee or transferee of unencumbered liquid assets in an amount equal to or greater than the sum of one (1) year of then-applicable (or reasonably estimated) Base Rent, Impositions, water and sewer charges, utility charges and other regularly payable expenses of operating the Demised Premises for which Tenant is responsible under this Lease shall be deemed to be adequate financial resources for purposes of this subsection.

(C) Tenant or any Mortgagee (or its affiliate) shall notify Landlord of any proposed assignment or other transfer of this Lease or the Demised Premises pursuant to Article 16(H)(5) not less than one hundred (100) days before the proposed effective date of such transaction, which notice shall comply with the requirements of Article 51(D) below. Reasonably promptly after Landlord's receipt of any such notice Landlord shall notify Tenant or any Mortgagee (or its affiliate) of any deficiencies in such notice and of any additional materials that Landlord reasonably requires.

(D) The notice required by Article 51(C) above shall contain the name and address of the proposed assignee or transferee and shall contain the following statement, in capital letters, 12 point type, at the top of the first page thereof:

THIS NOTICE IS GIVEN PURSUANT TO ARTICLE 51 OF THE LEASE AGREEMENT WITH PIER A BATTERY PARK ASSOCIATES, LLC. A FAILURE TO RESPOND WITHIN THE TIME PERIOD PRESCRIBED IN ARTICLE 51 OF THE LEASE WILL ADVERSELY AFFECT THE AUTHORITY'S ABILITY TO CONFIRM THAT CERTAIN REQUIREMENTS UNDER THE LEASE HAVE BEEN MET

In addition, the notice shall contain the following information:

(1) in the case of a proposed corporate assignee or transferee, or in the case of a corporate general partner or joint venturer of a partnership or joint venture that is the proposed assignee or transferee (other than a corporation whose common stock is traded over the New York Stock Exchange, the American Stock Exchange or any other exchange now or hereafter regulated by the Securities and Exchange Commission), a certificate of an authorized officer of such corporation giving the names and addresses of all current directors and officers of the corporation and persons or entities having more than a five percent (5%) interest in such assignee or transferee;

(2) in the case of a proposed corporate assignee or transferee, or in the case of a corporate general partner or joint venturer of a partnership or joint venture that is the proposed assignee or transferee whose

common stock is traded over the New York Stock Exchange, the American Stock Exchange or any other exchange now or hereafter regulated by the Securities and Exchange Commission, all of the periodic reports required to be filed with the Securities and Exchange Commission by such corporation pursuant to the Securities Exchange Act of 1934, any amendments thereto, and the regulations promulgated thereunder within the last twelve (12) months, including, without limitation, its most recently filed annual report on form 10-K and all reports required to be filed by any person or entity owning stock of such corporation with the Securities and Exchange Commission pursuant to the reporting requirements of Sections 13(d), (e), (f) and (g) of the Securities Exchange Act of 1934, any amendments thereto, and the regulations promulgated thereunder;

(3) in the case of a proposed partnership or joint venture assignee or transferee, a certificate of the managing general partner or other authorized general partner or managing venturer of the proposed assignee or transferee giving the names and addresses of all current general and limited partners and joint venturers of the partnership or joint venture and describing their respective interests in said partnership or joint venture;

(4) in all cases, a certification by an authorized officer, managing general partner, or other authorized general partner or managing venturer, whichever shall be applicable, of the proposed assignee or transferee to the effect that to his or her knowledge the proposed transaction will not, as of the date of closing, violate the provisions of subsection (A) and (B) of this Article 51;

(5) a proposed form of assumption agreement from the assignee or transferee to Landlord, which assumption agreement shall be reasonably satisfactory to Landlord;

(6) financial statements, funding commitments, an operating history and a description of the other real estate interests of the proposed assignee or transferee (or its principal or affiliates) demonstrating that the proposed assignee or transferee meets the requirements of being a Qualified Operator;

(7) a description of any litigation in which the proposed assignee or transferee or its affiliates or principals have been involved relating to its real estate operations, other than tort litigation covered by insurance;

(8) a completed Vendex questionnaire and other due diligence materials applicable to Landlord's procurement procedures; and

(9) any other information or documents which may be required under the City Lease or which Landlord may reasonably request.

If any change in circumstances prior to the closing of the transaction renders the information provided in (1) – (9) above incomplete or incorrect, Tenant or the Mortgagee (or its affiliate) shall notify Landlord of the change, which notification, if relating to a change which is material in any respect in Landlord's reasonable

judgment, shall recommence the period for Landlord's notification to Tenant under Article 51(E) below.

(E) Landlord shall notify Tenant or the Mortgagee (or its affiliate), within one hundred (100) days after receipt of notice from Tenant or the Mortgagee (or its affiliate) pursuant to Section (C) of this Article 51 and submission of all necessary information, whether the consummation of a proposed assignment or other transfer would violate the provisions of this Article 51. If Landlord shall have failed to respond to such notice within such one hundred (100) day period then Tenant or the Mortgagee (or its affiliate) shall send Landlord a second copy of such notice. If Landlord shall fail to respond within thirty (30) days after receipt of such second notice then the proposed assignee or transferee shall be deemed to be a Qualified Operator, and, subject to any subsequent determination, not a Prohibited Person.

2. Nothing herein shall be construed as amending any terms or conditions of the Operating Lease except as expressly provided for in this Amendment. As so amended the Operating Lease is hereby ratified and confirmed. References in the Operating Lease to "this Lease Agreement" and words of similar import shall be construed as meaning the Operating Lease as amended by this Amendment.

3. Landlord and Tenant each represents, with respect to itself, that this Amendment has been duly authorized and that the person executing it on such party's behalf is authorized to act on behalf of and bind such party, and that upon its execution this Amendment is the valid, legal and binding obligation of such party and is enforceable with respect to such party in accordance with its terms.

4. This Amendment may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

*[Signatures appear on the following page]*

IN WITNESS WHEREOF the parties have caused this Amendment to be executed and delivered by their respective duly authorized officers as of the day and year first above written.

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

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

Name:

Title:

**GAYLE M. HORWITZ**  
**PRESIDENT & CEO**

PIER A BATTERY PARK ASSOCIATES, LLC

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

Name:

Title:

IN WITNESS WHEREOF the parties have caused this Amendment to be executed and delivered by their respective duly authorized officers as of the day and year first above written.

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

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

PIER A BATTERY PARK ASSOCIATES, LLC

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

  
**Drew Spittler**  
**Authorized Signatory**

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

On the 23<sup>rd</sup> day of June, 2011, before me, the undersigned, a notary public in and for said state, personally appeared Caillen M. Horwitz, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

*Megan A. Churnetski*  
Notary Public



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

On the \_\_\_ day of June, 2011, before me, the undersigned, a notary public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public



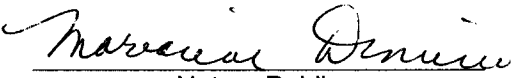
STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF NEW YORK    )

On the \_\_\_ day of June, 2011, before me, the undersigned, a notary public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

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

On the 23 day of June, 2011, before me, the undersigned, a notary public in and for said state, personally appeared Drew Spitzer, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

Marianne Dimino  
Notary Public - State of New York  
No. 01D14649869  
Qualified in Queens County  
My Comm. Expires January 6, 2016