

SECOND AMENDMENT TO AGREEMENT OF LEASE

This SECOND AMENDMENT TO AGREEMENT OF LEASE (this “**Amendment**”) dated as of August 2, 2022 (the “**date hereof**”) between BATTERY PARK CITY AUTHORITY d/b/a HUGHL. 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 THE BOARD OF MANAGERS OF THE RIVER AND WARREN CONDOMINIUM, having an office at 212 Warren Street, New York, NY 10282-1503 (“**Tenant**”),

WITNESSETH:

WHEREAS:

A. Landlord and Tenant are landlord and tenant, respectively, under and pursuant to that certain Agreement of Lease dated as of September 30, 1999, of which a Memorandum of Lease was recorded June 12, 2000 in the Office of the City Register, New York County, in Reel 3114, Page 1848, as amended by that certain Lease Amendment dated as May 27, 2001 (collectively, as so amended, the “**Original Ground Lease**”), for property commonly known as “**River and Warren**”, **Site 19A** in Battery Park City, 212 Warren Street, New York, New York 10282-1113, and (formerly) as **Block 16, Lot 190** and (currently) as **Block 16, Lots 4301 through 4492** on the New York County tax map.

B. Pursuant to Section 4(B) of Exhibit H of the Original Ground Lease, and as a result of that certain “Declaration Establishing a Plan for Qualified Leasehold Condominium Ownership of the Premises known as 212 Warren Street New York, New York 10282 Pursuant to Article 9-B of the Real Property Law of the State of New York,” dated April, 2015, recorded July 7, 2015 in said Register’s Office as CRFN 2015000231660, as amended by that certain First Amendment to Declaration of River and Warren Condominium dated as of October 14, 2015 and recorded December 21, 2015 in said Register’s Office as CRFN 201500045078, and the occurrence of the Initial Unit Transfer (as defined in Exhibit H of the Original Ground Lease), Tenant is the tenant under the Original Ground Lease.

C. 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 Article 1 of the Original Ground Lease:

“**First Rent Adjustment Date**” shall mean March 1, 2021.

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

1.2. The definition of “Second Period” in Article 1 of the Original Ground Lease is hereby deleted in its entirety and the following is inserted in the Original Ground Lease in replacement thereof:

“**Second Period**” shall mean the period commencing on the First Rent Adjustment Date (*i.e.*, March 1, 2021) and ending on February 29, 2036.

1.3. The definition of “First Appraisal Date” in Article 1 of the Original Ground Lease is hereby deleted from the Original Ground Lease. All references in the Original Ground Lease to “First Appraisal Date” that are not deleted or modified by this Amendment are hereby modified to be references to “First Rent Adjustment Date.”

1.4. Landlord and Tenant agree and confirm that, from and after the First Rent Adjustment Date, each Lease Year shall be the twelve-month period commencing on the First Rent Adjustment Date (*i.e.*, the period from and including March 1, 2021, through and including February 28, 2022) and each twelve-month period thereafter.

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

1.6. All terms used but not defined in this Amendment shall have the meanings provided in the Original Ground Lease, including in Exhibit H of the Original Ground Lease.

2. Revised Base Rent during Second Period.

2.1. Section 3.01(a)(ii) of the Original Ground Lease is hereby deleted in its entirety and the following is inserted in the Original Ground Lease in replacement thereof:

“(ii) For each Lease Year during the Second Period, an amount per annum as follows:

Lease Year Commencement Date	Lease Year Expiration Date	Base Rent (per annum)
March 1, 2021	February 28, 2022	\$ 1,683,606.00
March 1, 2022	February 28, 2023	\$ 1,734,114.18
March 1, 2023	February 29, 2024	\$ 1,786,137.61
March 1, 2024	February 28, 2025	\$ 1,839,721.73
March 1, 2025	February 28, 2026	\$ 1,894,913.39
March 1, 2026	February 28, 2027	\$ 1,951,760.79
March 1, 2027	February 29, 2028	\$ 2,010,313.61
March 1, 2028	February 28, 2029	\$ 2,070,623.02
March 1, 2029	February 28, 2030	\$ 2,132,741.71
March 1, 2030	February 28, 2031	\$ 2,196,723.96
March 1, 2031	February 29, 2032	\$ 2,262,625.68
March 1, 2032	February 28, 2033	\$ 2,330,504.45
March 1, 2033	February 28, 2034	\$ 2,400,419.58
March 1, 2034	February 28, 2035	\$ 2,472,432.17
March 1, 2035	February 29, 2036	\$ 2,546,605.14”

2.2. By August 3, 2022, time being of the essence on such date, Tenant will pay Landlord \$967,266.70, being the amount by which Base Rent (as computed in accordance with this Amendment) from and after March 1, 2021 through the date hereof exceeds the amounts actually paid by Tenant to Landlord on account of Base Rent from and after March 1, 2021 through the date hereof. Such payment constitutes a payment of Rental for all purposes of Original Ground Lease.

2.3. For the avoidance of doubt, Landlord and Tenant agree that Sections 3.01(a)(iii), 3.01(a)(iv) and 3.01(a)(v) of the Original Ground Lease remain unmodified and in full force and effect.

2.4. Section 3.01(c) of the Original Ground Lease is hereby deleted in its entirety and the following is inserted in the Original Ground Lease in replacement thereof:

“(c) For the purposes of calculating Base Rent for the Third Period, Fourth Period and Fifth Period, the fair market value of the Land shall be determined as of the first day of the Third Period, Fourth Period and Fifth Period, respectively (each such first day, a “Reappraisal Date”). Such determination of fair market value shall be by appraisal in the manner provided in Section 3.05(a) hereof, unless prior to any such Reappraisal Date, Landlord and Tenant shall have agreed upon such fair market value.”

2.5. In Section 3.05(a) of the Original Ground Lease, the reference to “Section 3.01(a)(ii)-(vi)” is hereby amended to be a reference to “Section 3.01(a)(iii)-(v)”.

3. Status of Other Rental. 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, Civic Facilities Payment and Impositions, shall remain unmodified and in full force and effect and due and payable as, when and pursuant to the provisions of the Original Ground Lease for the entire Term.

4. Sustainability.

4.1. As used in this Amendment and the Ground Lease, the following term has the following meaning, and the following definition is hereby added to the Ground Lease:

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

4.2. Tenant shall at all times designate a Tenant Sustainability Contact. Within ten (10) 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.

4.3. Tenant shall provide to Landlord a complete copy of any substantive filing made in accordance with Local Law 84 of 2009 as amended, within thirty (30) days after submission thereof to any Governmental Authority of New York City, including filings with respect to energy use data submitted via the United States Environmental Protection Agency's online benchmarking tool.

4.4. Tenant shall provide to Landlord a complete copy of any substantive filing made in accordance with Local Law 87 of 2009, as amended, within thirty (30) days after submission thereof to any Governmental Authority of New York City, including energy efficiency reports.

4.5. Nothing contained in sections 4.2, 4.3 and 4.4 shall be construed to require the preparation of or submission to BPCA of any materials not already required by law.

4.6. During the Second Period, Tenant agrees to complete the following improvements at Tenant's sole cost and expense and in compliance with all Requirements and all provisions of the Ground Lease (including Articles 7, 12, 13, 14 and 16 of the Ground Lease):

- (a) Replacement of the Building's Exhaust Fan System;
- (b) Replacement of the Building's solar panels; and
- (c) Implementation of a Level 4 Recycling Program.

4.7. In addition, Tenant agrees to provide Landlord, no less than annually, a description of all other contemplated sustainability projects, including potential timing of any projects, and estimated cost of any projects ("Sustainability Reports"). Such Sustainability Reports will serve as informational only and will not by themselves constitute an affirmative obligation on the part of Tenant to commence or complete any projects, provided that this sentence does not limit, modify or waive any of Tenant's obligations under the Ground Lease, including Tenant's obligations set forth in Articles 12 and 14 and Section 26.03 of the Ground Lease.

5. Updated Notice Addresses.

5.1. The notice addresses for Tenant in Section 25.01(a) of the Original Ground Lease are hereby revised and updated to be Board of Managers of the River and Warren Condominium, 212 Warren Street, New York, NY 10282-1503, Attention: Board President, with a copy to Braverman Greenspun, P.C. 110 East 42nd Street, Suite 1700 New York, NY 10017, Attn: Robert J. Braverman, Esq.

5.2. 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.

6. Memorandum of this Amendment. Within thirty (30) days after the date hereof, Landlord shall prepare and Landlord and Tenant shall execute, acknowledge and deliver a memorandum of this Amendment in recordable form and submit the same to a licensed title insurance company selected by Tenant for recording in the New York City Register's office. Tenant shall pay all costs and expenses of the same, including any New York State or New York City real property transfer taxes.

7. Ground Lease Covenants and Defaults.

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

7.2. 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 Original 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 Original 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, subject only to Sections 7 through 12 of Exhibit H of the Ground Lease (as modified hereby).

8. 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.

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

9.1. 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.

9.2. 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.

9.3. 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.

10. Representations. Tenant represents and warrants to Landlord that 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 (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. Both Tenant and the individual signing this Amendment on behalf of Tenant represent and warrant to Landlord that such individual is duly authorized to sign this Amendment and that Tenant is bound hereby.

11. 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.

12. 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.

13. 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.

14. 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, 41.07, 41.09, 41.10, 41.13 and 41.19.

15. 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 Second 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

THE BOARD OF MANAGERS OF THE RIVER AND
WARREN CONDOMINIUM

By: 

Name: Frank Massino
Title: President