

FIRST AMENDMENT TO AMENDED AND RESTATED INDENTURE OF LEASE

This FIRST AMENDMENT TO AMENDED AND RESTATED INDENTURE OF LEASE (this "**Amendment**") dated as of July 20, 2020 (the "**date of this Amendment**" or 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 MARINA TOWERS ASSOCIATES, L.P., a New York limited partnership, having an office at 40 West 57th Street, New York, New York 10019 ("**Tenant**"),

WITNESSETH:

WHEREAS:

A. Landlord and Tenant are landlord and tenant, respectively, under and pursuant to that certain Amended and Restated Indenture of Lease dated as of July 1, 2009 (the "**Original Ground Lease**"), of which a memorandum was recorded July 6, 2009 in the office of the Register of the City of New York as CRFN 2009000203311, for property commonly known as Gateway Plaza, 345 South End Avenue, Battery Park City, New York, New York, Manhattan tax map Block 16, Lot 100. (All the property demised under the Original Ground Lease shall be referred to herein as the "**Property**".)

B. Landlord and Tenant are parties to that certain Amended and Restated QRS Agreement of even date herewith (the "**Restated QRS Agreement**"), providing for limitations to the increases in rents that Tenant may charge certain residential subtenants at the Property.

C. Landlord and Tenant wish to amend certain provisions of the Original Ground Lease, effective from and after July 1, 2020, on the terms and conditions set forth herein.

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

1. Effectiveness of this Amendment; Consents from Mortgage Parties.

(a) The Original Ground Lease is hereby amended as set forth in this Amendment, effective as of, from and after July 1, 2020, subject to Section 1(c) hereof.

(b) Tenant shall diligently seek to obtain and deliver to Landlord written consents to this Amendment (the "**Lender Consents**"), executed by both (i) Wells Fargo Bank, N.A. (as successor-by-merger to Wachovia Bank, N.A., as successor-by-merger to

American Property Financing, Inc.), which is the holder of that certain Leasehold Mortgage dated as of April 27, 2005 given by Tenant, as mortgagor, to American Property Financing, Inc., as mortgagee, recorded May 16, 2005 in said Register's office as CRFN 2005000283532 (the "**Mortgage**"), and (ii) the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner, who is a party with Tenant to that certain Regulatory Agreement for Multifamily Housing Projects with the legend "Project No. 012-35679", dated as of April 27, 2005 and recorded May 16, 2005 in said Register's office as CRFN 2005000283533 (the "**Regulatory Agreement**").

(c) Notwithstanding any provision of this Amendment to the contrary, if both Lender Consents are not received within one hundred twenty (120) days after the date hereof (such 120th day, the "**Consent Deadline**"), either party may, by written notice to the other given within sixty (60) days after the Consent Deadline, (such 60th day, the "**Termination Deadline**"), time being of the essence as to the Termination Deadline, but before both Lender Consents are received, revoke and terminate both this Amendment and the Restated QRS Agreement, provided that if either the Consent Deadline or the Termination Deadline falls on a day that is not a business day (as hereinafter defined), then it shall be deemed to fall on the next following business day. If Landlord or Tenant gives such notice of revocation and termination on or before the Termination Deadline, but before both Lender Consents are received, this Amendment and the Restated QRS Agreement (other than this Section 1(c)) shall be null and void and of no force or effect *ab initio*, and the Original Ground Lease shall continue to be effective and enforceable on its terms and conditions without modification by this Amendment. If either (i) both Lender Consents are received by the Consent Deadline or (ii) neither Landlord nor Tenant gives such notice of revocation and termination on or before the Termination Deadline, then (A) this Amendment and the Restated QRS Agreement shall not be terminated or revoked but shall continue in full force and effect, and (B) neither Landlord nor Tenant shall have any right to terminate or revoke this Amendment or the Restated QRS Agreement pursuant to this Section 1(c).

2. Definitions.

(a) As used in this Amendment, the following terms shall have the following meanings:

"**Business Day**" or "**business day**" means each weekday (Monday through Friday) during which the Federal Reserve Bank of New York is not closed.

"**CPI Fraction**" means a fraction (which shall never be less than one), the numerator of which is the CPI Index published for the designated applicable date and the denominator of which is the CPI Index published for the designated earlier comparison date.

"**CPI Index**" means the Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor (or any successor thereto), with the caption "Consumer Price Index - New York-Newark-Jersey City, NY-NJ-PA (1982-84 = 100)", for "All Urban Consumers (CPI-U), All Items", currently available on the internet web page <https://www.bls.gov/regions/new-york-new-jersey/data/xg-tables/ro2xgcpiny.htm> (subject to any movement of such Consumer Price Index to a different internet web page from time to time). If

such Consumer Price Index is terminated, a successor or substitute index, appropriately adjusted, shall be mutually and reasonably selected by both Landlord and Tenant. If such Consumer Price Index is converted to a different standard reference base or is otherwise revised, the CPI Index shall be determined with the use of such conversion factor, formula or conversion table as may be published by the Bureau of Labor Statistics or, if such Bureau shall not publish same, then with the use of such conversion factor, formula or table as may be mutually and reasonably selected by both Landlord and Tenant.

“Effective Gross Income” or **“EGI”** means the *sum of* (a) all gross revenue payable to or received by or on behalf of Tenant or any property manager, including all gross revenue from the Property, on a cash accounting basis, including all apartment rental revenue, all retail or other commercial rental revenue, all garage, laundry and miscellaneous revenue, (but excluding (i) reimbursements for utilities, (ii) reimbursements for damage, (iii) reimbursements for insufficient funds fees charged to Tenant by Tenant’s bank, (iv) application fees, (v) late fees, (vi) interest income, and (vii) health club fees), whether or not such revenue is in the possession and/or control of or on behalf of (A) a lender to, creditor of and/or investor in Tenant and/or Tenant’s direct and indirect partners and/or (B) a property or asset manager, servicer, receiver, lender in possession, judgment creditor, taxing authority, court, subrogated party, fiduciary, trustee, conservator, agent, other claimant or similar party, *plus* (b) the amount of any and all QRS Rent Credit (as hereinafter defined).

“Ground Lease” means the Original Ground Lease, as amended by this Amendment.

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

“Land Rent” has the meaning provided in the Ground Lease, subject to the modification thereto set forth in Section 7 hereof.

“Limitation Period” has the meaning provided in the Restated QRS Agreement..

“Minimum Annual CAPEX Amount” in each Tax Year (starting July 1, 2022) means a per annum dollar amount equal to the *product of* (a) the total number of apartments at the Property (not limited to QRS Units) *multiplied by* (b) \$500.00 per apartment, provided that such \$500.00 amount shall be increased every three years on July 1 (starting July 1, 2025) by being multiplied by the CPI Fraction (for which the “applicable date” shall be the April 15 immediately before such July 1 and the “comparison date” shall be the April 15 that is three years earlier than such applicable date). (As a hypothetical example, (i) if on April 15, 2022 the CPI Index is 300.00 and on April 15, 2025 the CPI Index is 330.00, then on July 1, 2025 such \$500.00 amount shall become \$550.00 for the three Tax Years from July 1, 2025 through June 30, 2028; and (ii) if on April 15, 2028 the CPI Index is 400.00, then on July 1, 2028 such \$550.00 amount shall become \$666.67 for the three Tax Years from July 1, 2028 through June 30, 2031.) This calculation will be documented as a new note in the annual audited financial statements.

“**QRS Credit Start Date**” means July 1, 2022, provided however that if the Judgment (as defined in the Stipulation of Settlement) is not Final (as defined in the Stipulation of Settlement) on July 1, 2020, then the QRS Credit Start Date shall be ten (10) days after the date that is two years after the date on which the Judgment becomes Final, and provided further that if the QRS Credit Start Date as so determined shall not be the first day of a calendar month, then the QRS Credit Start Date shall be the first day of the immediately following calendar month.

“**QRS Subtenants**” has the meaning provided in the Restated QRS Agreement, subject to Section 4(e) thereof.

“**QRS Units**” or “**Quasi-Rent Stabilized Units**” are apartments at the Property leased to QRS Subtenants as of the date of this Amendment, provided that an apartment that shall not be (or that shall cease to be) subject to the required sublease renewals and limitations on rent increases set forth in Section 4 of the Restated QRS Agreement pursuant to Section 4(d) thereof shall be deemed not to be a “Quasi-Rent Stabilized Unit” or “QRS Unit”.

“**Stipulation of Settlement**” has the meaning provided in the Restated QRS Agreement.

“**Tax Year**” shall mean each 12-month period starting on a July 1 and ending on the following June 30.

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

3. QRS Credit or Offset against Land Rent.

(a) In consideration of Tenant’s limitations of rent increases to QRS Subtenants as set forth in the Restated QRS Agreement, to the extent such limited rents are less than contemporaneous market rents for the QRS Units in each calendar month from the QRS Credit Start Date through the end of the Limitation Period only, and for so long as Tenant is in compliance in all material respects with the Restated QRS Agreement (pending the resolution of any good faith disputes between Tenant and any Subtenants), Landlord shall provide Tenant with a credit or offset against Land Rent, solely as computed and made available for application pursuant to (and in the steps set forth in) the following provisions of this Section 3.

(b) At the end of each calendar month, starting at the end of the calendar month in which the QRS Credit Start Date occurs and including but ending on June 30, 2030, the aforementioned amount by which limited rents are less than market rents for such calendar month will be calculated as follows:

(i) First, at the end of each such calendar month, for the period starting on the first day of such month and ending on the last day of such month (for example, if the QRS Credit Start Date is July 1, 2022, for the period starting on July 1, 2022 and ending July 31, 2022), Tenant will calculate a weighted average rent per square foot of leased market rate apartments at the Property during such month, per the methodology described in Exhibit A attached hereto. Market rate apartments will include

all apartments at the Property that are not QRS Units or non-revenue staff units. This calculated value is referred to as "**Market Rent**". (On the date of this Amendment, there are three non-revenue staff units, as indicated in the Credit Calculation Template described in Exhibit A attached hereto.)

(ii) Second, at the end each such calendar month, Tenant will use such Market Rent to calculate an Adjusted Implied Market Rent per the methodology described in Exhibit A attached hereto ("**Adjusted IMR**") during such month for each QRS Unit that is still occupied by a QRS Subtenant at the end of such month, based on the unit group methodology in such Exhibit A.

(iii) Third, at the end of each such calendar month, Tenant will subtract the rents paid and payable (whether or not actually paid) from the QRS Units during such month (the "**QRS Rent**") from the Adjusted IMR. This difference is referred to as "**QRS Rent Differential**".

(c) For each such calendar month for which the QRS Rent Differential is to be calculated, Tenant will provide Landlord with source information to support the calculation in the form shown and pursuant to the Credit Calculation Template described in Exhibit A attached hereto, and a summary of the calculation of the QRS Rent Differential, following the methodology described in such Exhibit A, which shall be certified by Tenant to Landlord as being true, correct and complete. Landlord reserves the right to request additional information, including subleases for which the QRS Rent Differential has been calculated, and Tenant shall provide the same within thirty (30) days after each request therefor.

(d) If any current or future legislation or regulation, or agreement entered into by Tenant (other than the Restated QRS Agreement), limits, restricts or reduces Market Rent, Tenant will comply with such legislation, regulation or agreement. If the same limits, restricts or reduces Market Rent so that the Adjusted IMR is less than QRS Rent, then there will be no QRS Rent Differential. If the same limits, restricts or reduces Market Rent but the permitted amounts of Market Rent and the resulting Adjusted IMR are still more than QRS Rent, then the QRS Rent Differential will be calculated and reduced accordingly.

(e) QRS Rent Differential from each such month (if any) will be credited to a Tenant ledger account ("**QRS Credit Account**"), and Tenant may use (and debit) the balance thereof to offset the subsequent required payments of Land Rent on a monthly basis, provided that the amount utilized therefrom to offset Land Rent in each month will be limited so that the aggregate net amount payable in each calendar year of Land Rent less such offsets shall not be less than the following minimum annual amounts:

<u>Calendar Year</u>	<u>Minimum Annual Net Amount Payable of Land Rent Less Such Offsets</u>
2022	\$ 305,440
2023	\$ 308,494
2024	\$ 317,749
2025	\$ 327,282
2026	\$ 337,100
2027	\$ 347,213
2028	\$ 357,630
2029	\$ 368,358

(f) For the avoidance of doubt, Land Rent less such offsets shall continue to be payable monthly, and not less in each month than the amount needed to achieve the above annual aggregate minimum payment for the respective calendar year. (The actual offset of Land Rent in each month, as so limited, is the “**QRS Rent Credit**”.) If the QRS Credit Account exceeds the QRS Rent Credit for any month, the remaining balance of the QRS Credit Account will roll over to the following month. There will be no additional credits to the QRS Credit Account after June 30, 2030, but any remaining credit balance in the QRS Credit Account as of June 30, 2030 can continue to be so used to offset Land Rent each month until such remaining balance shall be fully utilized.

(g) Notwithstanding any provision of this Section 3 to the contrary, the offset to Land Rent set forth in this Section 3 is conditioned upon Tenant’s compliance in all material respects with the Restated QRS Agreement (pending the resolution of any good faith disputes between Tenant and any Subtenants) and shall be available only for such months in which Tennant has so been complying with the Restated QRS Agreement. There shall be no offset to Land Rent as set forth in this Section 3 in any month or months in which Tenant shall not have been in such compliance with the Restated QRS Agreement.

(h) Landlord shall have the right to review and audit Tenant’s books and records, including copies of all subleases, rent invoices and rent receipts, from time to time, for the purpose of determining whether the computed amounts of Market Rent, Adjusted IMR, QRS Rent Differential and QRS Rent Credit, and minimum net payments pursuant to Section 3(e) hereof, for any one or more periods are correct, and whether Tenant has been complying with its obligations under the Restated QRS Agreement as set forth in the preceding Section 3(g) hereof. Tenant shall provide all materials reasonably requested by Landlord for each such review or audit.

4. Addition of QRS Rent Credit to Income in RPIE. In each Real Property Income & Expense form that Tenant will submit to the New York City Department of Finance (“**DOF**”), Tenant will add the aggregate QRS Rent Credit (if any) for the reporting period as other or additional income, including without limitation 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 Chief Financial Officer to Landlord that the aggregate QRS Rent Credit (if any) for the reporting period of such RPIE has been added thereto as other or additional income.

5. Commercial Real Property Taxes. Tenant agrees to pay a \$13,517,462 portion (based on the ratio of cumulative commercial rents to cumulative gross revenue) of the cumulative difference between Tax Equivalency Payments and Full Taxes, designated as "Potential repayment" and as computed in Exhibit B attached hereto, in four (4) agreed equal installments of \$3,379,365.50 each, such four installments to be paid to Landlord on the date of execution and delivery of this Amendment and on each of the first three (3) anniversaries of the date of this Amendment, with a payment of the entire remaining balance thereof (if any) with such last payment, but in all cases Tenant will pay to Landlord the outstanding balance thereof in full upon any mortgage financing or refinancing obtained by or on behalf of Tenant (or upon any other loan, financing or refinancing described in Paragraph A of Section 1.3 of the Original Ground Lease, as modified by Section 8 hereof) on or after the date hereof.

6. Extension of Term and Modification of Renewal Terms.

(a) The date of expiration of the term of the Ground Lease is hereby extended from June 30, 2040 to June 30, 2045, on which date the term of the Ground Lease shall expire and terminate and Tenant shall deliver possession of the Property to Landlord in the manner required under the Ground Lease, subject to Article 17 of the Ground Lease as modified by Section 6(b) hereof.

(b) Article 17 of the Ground Lease is hereby modified to be consistent with the following: There shall be only two (2) Renewal Terms. If Tenant first elects to renew the term of the Ground Lease, which Tenant may do only in the manner set forth in such Article 17, the first Renewal Term will start on July 1, 2045 and expire on June 30, 2055. If Tenant again elects to renew the term of the Ground Lease, which Tenant may do only in the manner set forth in such Article 17, the second and final Renewal Term will start on July 1, 2055 and expire on June 17, 2069.

7. Land Rent during Term.

(a) From July 1, 2020 through June 30, 2023, inclusive, Land Rent shall continue to be as set forth in Section 1.1 of the Ground Lease. Such Land Rent shall be payable monthly, in advance, on the first day of each calendar month. Tenant shall have the right to offset the QRS Rent Credit against such Land Rent pursuant to Section 3 hereof if and to the extent that the QRS Credit Start Date shall be before June 30, 2023.

(b) From July 1, 2023 through June 30, 2045, inclusive, Land Rent is hereby modified to be as set forth in the following Section 7(c)(ii). Tenant shall have the right to offset the QRS Rent Credit against such Land Rent pursuant to Section 3 hereof from and after the later of (i) the QRS Credit Start Date and (ii) July 1, 2023.

(c) Tenant agrees as follows for the purpose of computing and determining the Land Rent described in the preceding Section 7(b) hereof:

(i) On each July 1, from July 1, 2023 through and including July 1, 2044, Tenant shall present to Landlord Tenant's calculation of EGI for the immediately preceding Tax Year (the "**Annual EGI Statement**"), which shall (A) be certified by Tenant to Landlord as being true, correct and complete and (B) set forth in

reasonable detail the components of such EGI. (On each such July 1, to the extent the EGI for the immediately preceding June is not yet finally determined, the Annual EGI Statement will include Tenant's good faith estimate of the EGI for such immediately preceding June, which estimate shall include all EGI that Tenant knows it has received in such June, and Tenant shall clearly label any such estimate as an estimate.)

(ii) In each Tax Year, starting July 1, 2023, and ending June 30, 2045, Land Rent (as an annual amount) shall be Ten and Three-Quarters Percent (10.75%) of EGI in the immediately preceding Tax Year as reported in the Annual EGI Statement so presented by Tenant, subject to review and correction of any errors by Landlord and subject to true-up adjustment as and when set forth below. Such annual Land Rent shall be payable in monthly installments, in advance, on each such July 1 and on the first day of each following calendar month during such Tax Year.

(iii) Whether or not Tenant shall be the Secretary, Tenant shall continue to provide all the statements, reports, sheets and other materials described in Section 13.5 of the Ground Lease as and when provided in such Section 13.5.

(iv) Tenant hereby certifies to Landlord that the "Fiscal Year" (as defined in the Ground Lease) is the calendar year. Together with the annual financial statements described in Section 13.5(d) of the Ground Lease, starting with the annual financial statements that cover the 2022 Fiscal Year and continuing with the annual financial statements that cover each subsequent Fiscal Year, Tenant shall deliver to Landlord computations and reports prepared by Tenant's accountants of each of (A) the EGI for the six months immediately before such Fiscal Year, (B) the EGI for the first six months of such Fiscal Year, (C) the EGI for the second six months of such Fiscal Year, and (D) any discrepancies *between* (x) the EGI for the immediately preceding Tax Year pursuant to the most recent Annual EGI Statement and Tenant's computation of the Land Rent for the current Tax Year based on such Annual EGI Statement *and* (y) the EGI for the immediately preceding Tax Year as computed by such accountants and the Land Rent for the current Tax Year based on such accountants' computation, provided that for the annual financial statements that cover the 2022 Fiscal Year only, such computations and reports in this sentence need cover only the second six months of such Fiscal Year described in clause (C) of this sentence. Such computations and reports shall be on a cash accounting basis as converted from the accountants' certified financial statements prepared in accordance with generally accepted auditing standards, with a reconciliation between the two systems and supported by appropriate details and documentation.

(v) Starting in the July 1, 2023 – June 30, 2024 Tax Year, there shall be a true-up adjustment and payment or crediting for any discrepancies in the computations of Land Rent as reported by the accountants pursuant to clause (D) of the preceding Section 7(c)(iv), with a rebuttable presumption that the accountant's computations of EGI and Land Rent are correct. Tenant shall either pay any amount of Land Rent then owing pursuant to the foregoing, within ten (10) days after the receipt of such accountants' report of discrepancies, or shall receive a credit against subsequent monthly installments of Land Rent for any amount of Land Rent that shall have been overpaid. In addition, the amount of the subsequent monthly installments of Land Rent

shall be corrected to reflect such computations of Land Rent as reported by the accountants.

(vi) All computations and reports of EGI and resulting computations and payments of Land Rent shall be subject to review, audit and revision by Landlord. Tenant shall provide such supporting documentation of any of the foregoing calculations of EGI and Land Rent as Landlord may request from time to time, within ten (10) Business Days after each request therefor by Landlord. Landlord shall have the right to review and/or audit Tenant's books and records, including copies of all subleases, rent invoices and rent receipts, from time to time, for the purpose of determining whether the computed amounts of EGI and Land Rent for any one or more such Tax Years are correct, and Tenant shall provide all materials reasonably requested by Landlord for each such review or audit.

(vii) To provide additional data to Landlord to support its reviews of reports and computations of EGI and Land Rent pursuant to the preceding provisions of this Section 7(c), in each monthly statement that Tenant is obligated to provide to Landlord pursuant to Section 13.5(a) of the Ground Lease (which the parties acknowledge are unaudited), starting with the monthly statement that covers July, 2022 as the "previous month", Tenant shall also provide a statement and computation of EGI (A) for the previous month and (B) on a cumulative basis for the Tax Year in which such previous month occurs, setting forth in reasonable detail the components of such EGI and in such further detail as Landlord may reasonably require. Each Annual EGI Statement provided by Tenant shall be consistent with such unaudited monthly statements covering the same Tax Year and any correction to such unaudited monthly statements that Tenant may deliver to Landlord simultaneously with such Annual EGI Statement.

(d) Land Rent during each of the two Renewal Terms described in Section 6(b) hereof, if any, shall be determined as set forth in Section 17.1(d) of the Ground Lease.

8. Refinancing Fee. Paragraph A of Section 1.3 of the Original Ground Lease is hereby deleted in its entirety and the following provisions are hereby inserted in the Original Ground Lease in place thereof:

"A. Tenant shall pay to Landlord as Additional Rent a fee (the "**Refinancing Fee**") equal to three (3%) percent of the Net Proceeds of and upon (a) each mortgage financing or refinancing of all or any part of the Property (including of Tenant's interest in this lease and/or of Tenant's interest in any subleases or the rent or other proceeds therefrom), and (b) each financing or refinancing by any of Tenant's direct or indirect owners that is secured by a pledge of (in whole or in part) such owner's assets that include direct or indirect ownership interests in Tenant if (i) such owner's only assets are direct or indirect interests in Tenant or (ii) such owner has assets in addition to direct or indirect interests in Tenant, in which case (in this clause (ii)) such financing or refinancing (and the principal balance of any prior financing or refinancing being paid therefrom) shall be allocated, and its Refinancing Fee shall be computed, on a proportional basis in the ratio of (A) the value of such borrower's direct or indirect

interests in Tenant that are so pledged to (B) the value of all the assets of such borrower that are so pledged. “**Net Proceeds**” is defined as the maximum principal amount of the new financing, refinancing or loan amount less the outstanding principal balance of any prior financing, refinancing or loan being repaid therefrom at the time of closing such new financing, refinancing or loan and less any new mortgage recording tax on the new financing, refinancing or loan. In the preceding sentence, the new principal financing, refinancing or loan amount shall be deemed to include without limitation the entire maximum principal amount that may be advanced or disbursed under such financing, refinancing or loan, whether at or after closing thereof and/or subject to conditions to such advances or disbursements. Tenant shall pay (or cause to be paid) the entire Refinancing Fee to Landlord upon the closing of each such financing, refinancing or loan. Tenant shall deliver to Landlord copies of any relevant documents for such financing, refinancing or loan immediately upon request therefor by Landlord. To assist Landlord in determining the Refinancing Fee and Net Proceeds in the case of clause (c) above, (I) Tenant shall deliver to Landlord an organizational chart of Tenant showing its direct and indirect owners (including without limitation the relevant owner) with percentage ownership interests (as the same shall exist both before and after such closing), and (II) Tenant shall provide a statement showing all the information required by clause (c)(ii) above based on the values of such interest in Tenant and such assets that were delivered to and accepted by the parties providing the financing, refinancing or loan together with evidence of such delivered and accepted valuations. Landlord shall have the right to review and audit all relevant documents for the purpose of determining whether the correct amount of Refinancing Fee was paid to Landlord at each such closing, and Tenant shall provide all materials reasonably requested by Landlord for each such review or audit.”

9. Required CAPEX Expenditure.

(a) In each Tax Year, starting July 1, 2022, Tenant shall expend at least the Minimum Annual CAPEX Amount for such Tax Year on actual out-of-pocket costs and expenses for capital and non-capital improvements to the Property but excluding, for the purposes of this Section 9, improvements to, repairs of, refurbishments of, renovations of and additions of fixtures, furniture, appliances and equipment to apartments, provided that project-wide alterations that occur primarily outside apartments but secondarily within apartments such as replacements of exterior windows or substantially all of the HVAC system (including the central HVAC plant for one or more buildings) or elements that are connected to the major mechanicals of the building shall not be excluded. (Tenant’s expenditures for actual out-of-pocket costs and expenses as described in the preceding sentence are referred to herein as “**Qualifying CAPEX Expenditures**”.) Tenant may satisfy the preceding obligation on an average annual basis over each rolling three (3) Tax Year period (from a July 1 in any calendar year to the June 30 in the third following calendar year). A hypothetical example of such average annual basis over rolling three (3) Tax Year periods is attached hereto as Exhibit C.

(b) Tenant shall have the right to apply the aggregate amount of Qualifying CAPEX Expenditures actually paid in a rolling three (3) Tax Year period in excess of the aggregate Minimum Annual CAPEX Amounts for such three (3) Tax Years towards future Tax Years’ obligations set forth in the preceding Section 9(a), with no limitation on the excess

amount that may be so applied or on the number of such future Tax Years to which such excess can be applied. A hypothetical example of such application is included in Exhibit C attached hereto.

(c) Tenant shall cause its accountants to include a schedule in the annual financial statements submitted to Landlord pursuant Section 13.5(d) of the Ground Lease that provides all details related to Tenant's performance or nonperformance of its obligation in this Section 9 for the preceding three (3) full Tax Years, including the nature of the improvements performed (including improvements completed and remaining to be completed), the actual out-of-pocket expenditures for same in such Tax Year, the computation of any average over a rolling three (3) Tax Year period as set forth in Section 9(a) hereof, the amount of any excess or deficit of Qualifying CAPEX Expenditures less aggregate Minimum Annual CAPEX Amounts for such three (3) Tax Years, and such other related details as Landlord may reasonably require.

(d) Landlord shall have the right to review and audit Tenant's performance of its obligations in this Section 9.

10. Review or Audit by Landlord.

(a) With respect only to the matters provided in this Amendment (including in any provision added to the Ground Lease by this Amendment) to be subject to review or audit by Landlord, Landlord shall have the right to review and audit (directly or by accountants or other professionals, provided that such accountants or other professionals are not hired on a contingency-fee basis) Tenant's relevant books, records and supporting documents (including copies of all subleases, rent invoices, rent receipts, and loan documents of or for Tenant or its direct and indirect owners, contracts and subcontracts, work orders and revisions, invoices and payments related to the foregoing, replacements or supplements to any of the foregoing, and any other materials expressly provided in this Amendment or the Ground Lease) from time to time, for the purpose of determining Tenant's compliance or non-compliance with this Amendment (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 all materials reasonably requested by Landlord for each such review or audit. In addition to the foregoing, Section 13.7 and the last three sentences of Section 13.4 of the Ground Lease shall apply to Tenant and its books and records with respect to the foregoing. Tenant shall make available to such auditors a dedicated office at the management and records office for the Property for such audit, with a facility for such 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.

(b) If any such review or audit determines that any monetary amount for any period was previously reported or computed incorrectly or otherwise recomputes such monetary amount, Landlord shall so notify Tenant. Tenant shall pay any related deficiency in Land Rent, Additional Rent or other amount due under the Ground Lease or this Amendment, or notify Landlord that Tenant disputes Landlord's determination, within thirty (30) days after Landlord's demand therefor. 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. Tenant shall fully perform the same, or notify Landlord that Tenant disputes Landlord's determination, within thirty (30) days after Landlord's demand therefor. Any dispute arising under this Section shall be resolved by arbitration in accordance with Article 21 of the Original Ground Lease.

(c) The cost of each such review or audit shall be borne by Landlord, provided that if either (i) such review or audit results in a recomputation of any monetary amount for any period such that both (A) such recomputed amount differs from the originally reported amount by more than five percent (5%) of the lower of the recomputed amount or the originally reported amount and (B) after such recomputation a greater amount of Land Rent, any item of Additional Rent or any other amount is owed to Landlord or any other person or entity than had been previously paid, *or* (ii) such review or audit determines that any non-monetary obligation of Tenant was not fully and timely performed and that the cost to complete the performance of same is reasonably determined by Landlord to exceed Fifty Thousand (\$50,000.00) Dollars, 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 for all purposes of the Ground Lease.

11. Ground Lease Covenants and Defaults.

(a) All agreements and covenants of Tenant in this Amendment constitute agreements and covenants of Tenant in the Ground Lease.

(b) Any breach of this Amendment by Tenant shall constitute a default by Tenant under and as described in (a) Section 15.1(a) of the Ground Lease if such breach is Tenant's failure to pay any Land Rent, Tax Equivalency Payment, Refinancing Fee, Additional Rent or other amount due hereunder or under the Ground Lease as modified hereby, or (b) Section 15.1(c) of the Ground Lease 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.

12. Conflicts; Remainder of Ground Lease Unmodified.

(a) 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" or similar) shall be deemed to refer to the Original Ground Lease as modified by this Amendment, and to this Amendment.

(b) 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.

(c) Except as modified or supplemented by this Amendment, all provisions of the Original Ground Lease remain unmodified and in full force and effect. Without limitation to the foregoing, except as modified or supplemented by this Amendment, all provisions in the Original Ground Lease for the payment of Land Rent and Additional Rent (including Tax Equivalency Payments, Civic Facilities Payments and Special Civic Facilities

Payments), shall continue to apply and be payable at all times through the entire term of the Ground Lease, as the same may be renewed pursuant to Article 17 of the Ground Lease as modified by Section 6(b) hereof.

13. Supersedes. This Amendment, together with the Restated QRS Agreement, replace and supersede in their entirety any and all term sheets and prior agreements regarding the subject matter hereof and/or of the Restated QRS Agreement, all of which are merged into and modified by this Amendment and/or the Restated QRS Agreement.

14. Successors and Assigns. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

15. 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.

16. 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.]


First Amendment to GL

[Signatures to First Amendment to Amended and Restated Indenture 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

MARINA TOWERS ASSOCIATES, L.P.

By: Marina Battery Park, Inc., General Partner


By: 
Name: Arnold S. Lehman
Title: Vice President

EXHIBIT A: CALCULATION OF QRS RENT DIFFERENTIAL

The methodology for calculating the QRS Rent Differential will be as follows for each month from the QRS Credit Start Date through June 30, 2030:

1. Calculate Market Rent per Unit Group

Tenant will calculate the weighted average Market Rent per square foot by unit type by building, or unit group. There are five Unit types as follows: 1) Studios, 2) Alcove studios, 3) One bedrooms, 4) Two bedrooms and 5) Three bedrooms. There are six buildings within the Gateway complex numbered as follows: 1) Building 100, 2) Building 200, 3) Building 300, 4) Building 400, 5) Building 500 and 6) Building 600. Together, these types make up thirty unit groups.

2. Calculate Implied Market Rent per QRS Unit Group

For each unit group, Tenant will calculate an Implied Market Rent per square foot ("IMR"). IMR will be based on the weighted average Market Rent per square foot, as reported by Tenant, for each unit group which is then multiplied by the square footage of each QRS unit within that unit group. The IMR is then adjusted by the Renovation Cost, fixed at minus \$3.00 per SF, and the Free Rent/Downtime, fixed at 1.5 months, to yield the Adjusted IMR ("Adjusted IMR"). The Free Rent/Downtime adjustment calculated annually is equal to 1.5 months' rent times the percentage of turnover of Market units. Tenant will then calculate the total Adjusted IMR for each Unit Group.

3. Calculation of QRS Rent Differential

The difference between the Adjusted IMR per Unit per Month and the Contract Rent per Month for each unit is the QRS Rent Differential per unit. The sum of this amount for all applicable units is the QRS Rent Differential.

The following calculation is a hypothetical example of the calculation for one unit:

Example Apartment (for hypothetical purposes only)		
Apartment	1003D	
Type	1 BR/1 BA	
Building #	100	
Square Feet (SF)	764	
Adjustment Assumptions	Total	Tracking with Credit Calculation Template (Excel workbook described below)
Renovation Cost PSF	\$3.00	Cell D4
Months of Free Rent/Downtime	1.5/yr. (0.125/mth.)	Cell D5
Market Unit Turnover Rate	35%	Cell D6
Implied Market Rent Calculation	Total (nearest \$)	Methodology
Annual Implied Market Rent (IMR) Per SF	\$57.97	Cell R41 = weighted average rent of all 1 BR Market units in building #100
Annual Implied Market Rent Per SF Less Reno Cost PSF	\$54.97	Cell S41 = Cell R41 – Cell D4

First Amendment to GL

Monthly IMR Less Reno Cost	\$3,500	Cell T41 = (Cell S41/12) x Cell C41 (Unit Sq. Ft.)
Adjusted IMR per Month	\$3,347	Cell U41 = Cell T41 x (1-(Cell D6 x Cell D5/12))
Contract Rent per Month	\$2,166	Cell V41 (and in Cell E41)
QRS Rent Differential	\$1,181	Cell W41 = Cell U41 - Cell V41 (if greater than 0)

Notes:

Figures in the table above are for illustration as an example only.

In any situation where there are no Market units available within any one unit group, the IMR for those QRS units will be based on the overall average rent per square foot for that unit type within the overall complex.

For each month, Tenant will provide Landlord with a rent roll and backup data to support the calculation, in a form that is compatible with the Credit Calculation Template described below. Landlord will have a right to review and audit the rent roll based on the subtenant leases.

An Excel workbook ("**Credit Calculation Template**") showing a hypothetical example of the required data for a month and proper computation of QRS Rent Differential for such month, consistent with Sections 3(a) through 3(c) of this Agreement and this Exhibit A, is attached to an email sent July 13, 2020 at 11:22 am Eastern Daylight Time by Abigail Goldenberg for Landlord (abigail.goldenberg@bpca.ny.gov) to the following recipients:

- Adam Silfen for Tenant (ASilfen@lefrak.com),
- Arnold Lehman for Tenant (ALEHMAN@lefrak.com),
- Pamela Frederick for Landlord (pamela.frederick@bpca.ny.gov),
- Olivia Moss of HR&A Advisors, Inc., Landlord's consultant (OMoss@hraadvisors.com),
- Mark T. Godfrey of CBRE, Landlord's consultant (Mark.Godfrey@cbre.com),
- Timothy Sheehan of CBRE, Landlord's consultant (Timothy.Sheehan@cbre.com), and
- Jana Drachman of CBRE, Landlord's consultant (Jana.Drachman@cbre.com)

Such Credit Calculation Template (with monthly updating of data for the tenants and apartments) is intended to be a template for organizing such data and making such computation of QRS Rent Differential in each month from the QRS Credit Start Date through the end of the Limitation Period.

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EXHIBIT B:
DIFFERENCE BETWEEN TAX EQUIVALENCY PAYMENTS AND FULL TAXES

[See next page.]

Gateway - Full Taxes vs. Tax Equivalency Payment

Tax Year	Transitional Assessed Value	Class 2 Tax Rate	Full Taxes	Tax Equiv Payment	Difference Full - TEP	Year	Commercial Rent	Gross Revenue	Total Commercial %
1984	66,740,000	9.15%	6,106,710	2,485,213	6,106,710	2004-2005	2,451,478	47,860,450	5.1%
1985	70,160,000	9.15%	6,419,640	2,485,213	3,934,427	2005-2006	2,373,253	49,638,271	4.8%
1986	75,580,000	9.15%	6,915,570	2,613,292	4,444,462	2006-2007	2,280,694	51,554,047	4.4%
1987	82,080,000	9.15%	7,510,320	2,613,292	4,897,028	2007-2008	2,328,784	53,491,295	4.4%
1988	87,060,000	9.27%	8,072,203	2,716,367	5,355,836	2008-2009	2,222,659	56,061,454	4.0%
1989	91,040,000	9.23%	8,402,082	2,817,466	5,584,616	2009-2010	2,756,754	55,070,934	5.0%
1990	96,350,000	9.23%	8,891,178	2,808,006	6,083,172	2010-2011	2,168,077	56,237,330	3.9%
1991	97,410,000	9.89%	9,628,979	2,875,295	6,753,684	2011-2012	2,849,379	59,581,973	4.8%
1992	97,382,000	9.91%	9,650,556	2,902,113	6,748,443	2012-2013	2,695,762	63,610,017	4.2%
1993	94,592,683	10.37%	9,808,315	2,991,657	6,816,659	2013-2014	2,819,551	66,212,843	4.3%
1994	91,792,683	10.55%	9,685,964	3,080,131	6,605,833	2014-2015	3,102,634	68,446,817	4.5%
1995	85,762,683	10.81%	9,268,373	3,080,131	6,188,242	2015-2016	5,671,282	74,657,079	7.6%
1996	82,972,683	11.06%	9,173,460	3,224,715	5,948,745	2016-2017	5,151,517	75,473,115	6.8%
1997	81,010,683	11.05%	8,948,440	3,364,671	5,583,769	2017-2018	5,171,462	76,631,307	6.7%
1998	82,440,000	10.74%	8,853,232	3,578,481	5,274,751	2018-2019	5,301,538	77,651,069	6.8%
1999	85,320,000	10.85%	9,258,073	3,738,230	5,519,843				
2000	91,890,000	10.85%	9,967,308	3,917,481	6,049,827				
2001	99,810,000	10.79%	10,771,495	3,877,682	6,893,813				
2002	100,635,600	11.54%	11,613,851	3,250,385	8,363,466				
2003	101,855,600	12.62%	12,854,177	4,275,385	8,578,792				
2004	103,295,600	12.22%	12,618,590	4,483,772	8,134,819				
2005	102,905,600	12.40%	12,756,178	4,699,041	8,057,137				
2006	101,075,600	12.74%	12,873,999	4,876,787	7,997,212				
2007	107,450,000	11.93%	12,816,636	5,055,891	7,760,745				
2008	114,850,000	12.60%	14,466,506	5,339,231	9,127,275				
2009	119,530,000	13.24%	15,826,967	5,253,170	10,573,798				
2010	117,000,000	13.35%	15,623,010	5,332,544	10,290,466				
2011	117,008,550	13.43%	15,717,759	5,716,821	10,000,938				
2012	123,483,340	13.18%	16,276,339	6,065,139	10,211,201				
2013	124,386,440	13.15%	16,350,598	6,294,473	10,056,125				
2014	132,059,240	12.86%	16,977,501	6,581,252	10,396,249				
2015	138,755,600	12.88%	18,004,714	8,187,462	9,817,252				
2016	147,481,290	12.89%	19,013,288	10,562,506	8,450,782				
2017	154,284,030	12.72%	19,623,386	13,267,865	6,355,521				
2018	161,947,080	12.61%	20,424,766	16,440,173	3,984,592				
2019	166,731,930	12.47%	20,796,474	18,382,975	2,413,499				
2020			441,966,636	186,606,909	255,359,727				
Total			441,966,636	186,606,909	255,359,727				

(i) Full taxes during Applicable Period
(ii) actual TEP paid during Applicable Period
(iii) subtrant (ii) from (i)
(iv) fraction of commercial/total income

Potential repayment **33,517,462**

Note: Applicable Period for Calculation of Commercial %

From: Final Endorsement Date (Nov. 30, 1984)
To: 40th anniversary of term commencement date (June 3, 1980) or June 3, 2021

Note: Final tax rate for 2019-20 is 12.473% - (had not been published as of 10-19)

BPCA to confirm TEP for 2019-2020

EXHIBIT C: HYPOTHETICAL EXAMPLE OF COMPLIANCE WITH SECTION 9(a)

The following is a hypothetical example. For the purposes of this example, assume that
 (a) the Property has exactly 1,700 apartments,
 (b) the Minimum Annual CAPEX Amount for the three Tax Years July 1, 2022 through June 30, 2025 is therefore \$850,000 per annum,
 (c) the \$500 amount in the definition of “Minimum Annual CAPEX Amount” increases to \$550 as of July 1, 2025 because the relevant CPI Fraction is then 110%, and therefore the Minimum Annual CAPEX Amount for the three Tax Years July 1, 2025 through June 30, 2028 is \$935,000 per annum, and
 (d) Tenant actually spends the below-indicated respective amounts on Qualifying CAPEX Expenditures:

Tax Year	Minimum Annual CAPEX Amount	Tenant’s actual Qualifying CAPEX Expenditures	Result: Is Tenant in compliance with Section 9(a) hereof?
7/1/22-6/30/23	\$ 850,000.00	\$ 100,000.00	Too soon to determine compliance.
7/1/23-6/30/24	\$ 850,000.00	\$ 100,000.00	Too soon to determine compliance.
7/1/24-6/30/25	\$ 850,000.00	\$ 2,800,000.00	Establishes compliance for this Tax Year and the preceding two Tax Years, with \$450,000 excess applicable going forward pursuant to Section 9(b) hereof.
7/1/25-6/30/26	\$ 935,000.00	\$ 100,000.00	In compliance this Tax Year and the preceding two Tax Years.
7/1/26-6/30/27	\$ 935,000.00	\$ 2,000,000.00	In compliance this Tax Year and the preceding two Tax Years.
7/1/27-6/30/28	\$ 935,000.00	\$ 100,000.00	Tenant has failed to comply with Section 9(a) because its Qualifying CAPEX Expenditures in this Tax Year and the preceding two Tax Years (after taking into account the \$450,000 rollover) are deficient in the aggregate amount of \$155,000.