COST REIMBURSEMENT AND IMPREST ACCOUNT AGREEMENT

THIS COST REIMBURSEMENT AND IMPREST ACCOUNT AGREEMENT, dated as of _____, 202__ (this "Agreement") is entered into between the New York State Urban Development Corporation d/b/a Empire State Development ("ESD"), having an address at 655T Third Avenue, New York, New York 10017 and [Developer Entity], ("Developer"), having an address at [developer address], regarding the Developer's funding of third-party costs that ESD will incur in connection with ESD's proposed acquisition and disposition of state-owned property located at 621 West 45th Street, New York, New York (Manhattan Block 1093, Lot 9) (the "Site") for a project that would include residential use, including affordable housing, and associated mixed uses (the "Project"), as described in ESD's Request For Proposals issued on _____, 202__. ESD and Developer each are sometimes referred to hereinafter as a "Party" or collectively as the "Parties".

In response to the RFP, Developer has submitted a Development proposal for the Site to ESD. As used in this Agreement, the term "Development" shall mean all development of the Site related to the Project, including, without limitation, all inspection, testing, surveying, remediation, demolition, design, planning, reconstruction, construction, subdivision, leasing, and dispositions, and all documentation relating to any of the foregoing.

1. **Developer's Obligation to Pay Costs**. If Developer is designated to enter into negotiations with ESD for potential Development, Developer agrees to pay the reasonable out-of-pocket fees, costs, and expenses (including, without limiting the foregoing, fees, costs, and expenses of legal counsel, consultants, architects, engineers, appraisers, surveyors, and others) that may be incurred by ESD in connection with Development and any related negotiations and transactions (collectively, "Costs") including, but not limited to, all Costs related to:

   a) Review and analysis of and due diligence with respect to Development;

   b) Drafting, reviewing, and negotiating: (i) a memorandum of understanding and/or agreement and/or term sheet between ESD and Developer and all agreements and documents related thereto; and (ii) all agreements, documents, and instruments regarding or related to the Development, including, without limiting the foregoing, agreements, documents, financing, property rights disposition (*e.g.*, conveyances, leases, and easements), in connection with the development of Site (each such memorandum of understanding, agreement, term sheet, agreement, document, and instrument, a "Transaction Document" and collectively, the "Transaction Documents");

   c) Environmental review, analysis, findings, and compliance pursuant to federal and State environmental law and regulations with respect to Development;

   d) Structuring, documenting, negotiating, and closing all aspects of the Development, including, without limiting the foregoing, the Transaction Documents and other matters (*e.g.*, permits, filing and recording fees, transfer taxes, *etc.*);

   e) Surveys and appraisals;

f) Publication of notices of public hearings and public meetings, independent hearings officers, stenographers, electricians, transcripts, venues, equipment, digital broadcast and communication services and other costs related to noticing, conducting, and making the record of testimony at such hearings and meetings;

g) Preparation and distribution of all environmental review documents under the New York State Environmental Quality Review Act ("SEQRA") and any other applicable laws and regulations;

h) Preparation, public review and ESD Director's approval of a General Project Plan ("GPP") under the New York State Urban Development Corporation Act ("UDC Act") and any modifications to the GPP if necessary;

i) Preparation of material for and attendance at Public Authorities Control Board ("PACB") meeting(s) for PACB's consideration of approval of the actions of ESD with respect to the Development, if necessary;

j) Engineering and architectural design and review work with respect to the Development;

k) Stakeholders meetings, negotiations, agreements, presentations, and documentation related to the Development; and

l) All costs incurred by ESD in establishing and maintaining the Imprest Account (as defined below).

2. **ESD's Obligations**. ESD has no obligation with respect to the Development until ESD has entered into a mutually binding written agreement with Developer regarding the Development, and ESD's obligations shall be limited to those expressly set forth in such agreement. ESD shall not incur any obligations to Developer as a result of or pursuant to this Agreement except for the obligations, in accordance paragraph 3 of this Agreement, to: (i) promptly return to Developer the Developer's initial deposit into the Imprest Account, as described in Section 3 below, in the event that Developer is not designated to enter into negotiations with ESD with respect to the Development; (ii) use the Imprest Account (as defined below) funds in accordance with this Agreement; (iii) provide to Developer statements describing in reasonable detail the use of Imprest Account funds and supporting documentation to the extent received by ESD or provided to ESD; and (iv) promptly return to Developer, in accordance with this Agreement, unspent Imprest Account funds, if any.

3. **Imprest Account**.

a) Initial Deposit. In order to fund its obligation under this Agreement to pay Costs, Developer shall deliver to ESD an initial deposit (the "Initial Deposit") in the sum of $500,000, an amount that is based on an assessment by ESD of the anticipated Costs that ESD reasonably anticipates incurring with respect to the Development The

Initial Deposit shall be made by wire transfer pursuant to the instructions to be provided by ESD. ESD may deposit such funds in an interest-bearing account (the "Imprest Account").

b) Draws. The Imprest Account may be drawn on by ESD and used (both principal and interest) for payment of ESD's Costs, including Costs incurred prior to the date of Developer's funding of th Imprest Account, if ESD incurs such Costs. ESD shall provide a written report to Developer specifying the Costs incurred by ESD within twenty (20) business days after receipt of Developer's written request, but not more often than quarterly (*i.e*., four reports per calendar year), and ESD shall provide supporting documentation to Developer, to the extent that such supporting documentation is available. However, in the case of legal services, ESD shall in its discretion only provide the number of hours and amount of the invoice to preserve attorney-client privilege and/or to avoid making the contents subject to the New York Freedom of Information Law or the federal Freedom of Information Act.

c) Replenishment. ESD shall notify Developer each time that the balance of the Imprest Account falls below the sum of $250,000. Promptly after receipt of such notice, Developer shall replenish the Imprest Account by depositing into that account the amount of funding necessary to increase the Imprest Account balance to the amount of the Initial Deposit. At least 30 days prior to the estimated closing date for the construction financing for the Development ("Closing"), Developer will request that ESD provide an estimate of costs ("Close-out Cost Estimate") to be incurred through the fulfillment of Developer's Obligation to Pay ESD's Costs as provided in Section 1 above. ESD shall provide the Close-out Cost Estimate at least 15 days prior to the estimated date of Closing. After ESD provides the Close-out Cost Estimate to Developer, Developer (in lieu of replenishing of Imprest Account to the amount of the Initial Deposit) will replenish the Imprest Account to the amount of the Close-out Cost Estimate. Thereafter, within 30 days of receiving written notice from ESD, Developer shall provide any additional funding to the Imprest Account that may be necessary to cover any additional invoiced ESD's Costs associated with the Development.

d) Promptly after ESD issues to Developer (i) a notification to Developer stating that ESD does not anticipate incurring any further Costs payable from the Imprest Account and (ii) a statement that ESD has paid all incurred Costs in full, ESD shall return to Developer all funds remaining in the Imprest Account (inclusive of any unspent and accrued interest) and provide Developer, to the extent available and not previously provided to Developer, supporting documentation of such Costs as specified in this Agreement.

4. **Indemnification**. Developer hereby indemnifies and holds ESD and the State of New York, individually and collectively, harmless from any and all suits, claims, and other liabilities (including fees, costs, and expenses of legal counsel) arising from the Development (except

and unless arising primarily from willful and wanton misconduct or grossly negligent acts by ESD), and any amounts due to ESD, individually and/or collectively, as a result of such indemnification also shall be deemed "Costs" pursuant to this Agreement. This section and, with respect to such Costs, sections 2 and 3 above, shall survive the expiration or earlier termination of this Agreement.

5. **Term**. The term of this Agreement shall commence as of the date first above written and shall continue until all Costs incurred or to be incurred have been paid in full.

6. **Miscellaneous**. This Agreement constitutes the entire agreement among the Parties concerning the subject matter hereof and all prior or contemporaneous understandings or oral agreements among the Parties with respect to the subject matter hereof are hereby merged in this Agreement. This Agreement may be amended only by a written agreement signed by ESD and Developer. This Agreement shall be governed and construed in accordance with the laws of the State of New York.

7. **Notices**. Whenever it is provided in this Agreement that a notice, demand, request, consent, approval or other communication shall or may be given to or served upon either Party by the other Party, such notice, demand, request, consent, approval or other communication shall be in writing, shall be given either by (a) personal delivery (with receipt acknowledged), (b) reputable, national overnight delivery service (with its confirmatory receipt therefor) next Business Day delivery specified, or (c) mailing same by registered or certified mail, return receipt requested, postage paid, in each case to the Parties as follows:

If to ESD:

Empire State Development
Director of Real Estate
655 Third Avenue, 4th Floor
New York, New York 10017
Arden.Sokolow@esd.ny.gov

with a copy to:

Empire State Development
General Counsel
655 Third Avenue, 4th Floor
New York, New York 10017
Joshua.Bloodworth@esd.ny.gov

If to Developer:

[--- Developer name and contact information---]

With a copy to:

[---Names and contact information for any other recipients---]

Notices so addressed shall be deemed properly given when personally delivered in the case of hand delivery or overnight courier service or when receipt is rejected. Either Party may, by written notice to the other, change the address to which notices to such Party shall thereafter be given.

If the foregoing accurately sets forth our understandings, please sign each counterpart of this Agreement in the space set forth below and return to us one fully executed counterpart.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first written above.

NEW YORK STATE URBAN DEVELOPMENT CORPORATION
d/b/a EMPIRE STATE DEVELOPMENT

By: _____
Name: _____
Title: _____

[**DEVELOPER'S LEGAL NAME**]

By: _____
Name: _____
Title: _____