

COST REIMBURSEMENT AND IMPREST ACCOUNT AGREEMENT

THIS AGREEMENT, dated as of May [REDACTED], 2023 is entered into between the New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) having an address at 633 Third Avenue, New York, New York 10017, to seek the redevelopment of 31-33 West 110th Street (the “Site”), and [Developer Entity], (“Developer”), having an address at [developer address]. As used in this agreement, the term “Development” shall mean all development of the Site, 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 Obligation to Pay Costs. In the event that 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, on or after May [REDACTED], 2023, by ESD in connection with Development and any related negotiations and transactions (collectively, “Costs”) including, without limiting the foregoing, 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 including environmental work conducted prior to the solicitation;
- 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, including, without limiting the foregoing, surveys and appraisals for leasehold interests and development rights;

- 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 and all legally required planning documents (*e.g.*, a General Project Plan (“GPP”) and modifications to the GPP) as necessary;
- h) 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;
- i) Engineering and architectural design and review work with respect to the Development;
- j) Stakeholders meetings, negotiations, agreements, presentations, and documentation related to the Development; and
- k) All costs incurred by ESD in establishing and maintaining the Imprest Account (as defined below).

2. ESD Obligations. ESD has no obligation with respect to the Development until ESD has entered into with Developer a mutually binding agreement in writing 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 \$500,000, 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 as required to achieve a construction finance closing and necessary analyses and reimbursements; and (iv) promptly return to Developer, in accordance with this agreement, unspent Imprest Account funds, if any.

3. Imprest Account. In order to fund the obligation of Developer to pay Costs, Developer has delivered to ESD Developer’s check in the amount of \$500,000. Upon ESD signing and transmitting to Developer a counterpart of this agreement signed by ESD, ESD may deposit such check in an interest-bearing account (the “Imprest Account”). Imprest Account may be drawn on by ESD and used (both principal and interest) for payment of the Costs of ESD, including Costs incurred prior to the date of designation. ESD shall inform Developer of the Costs so paid by written report within ten (10) business days after written request from Developer, but not more often than quarterly, and ESD shall provide to Developer supporting documentation, to the extent that such supporting documentation is provided to ESD including copies of invoices and

other such information as reasonably requested by Developer. ESD shall notify Developer each time that the balance of the Imprest Account is \$250,000 or less. Promptly after receipt of such notice, Developer shall replenish the Imprest Account by depositing into that account the amount of funds that is necessary in order to increase to \$500,000 the Imprest Account balance. All such payments to the Imprest Account shall be made by wire transfer pursuant to the instructions to be set forth in a written notice of ESD provided to Developer. Promptly after (i) termination by ESD of Development transaction negotiations with Developer and payment of all incurred Costs or (ii) completion of the Development by Developer such that (x) ESD shall incur no further Costs and (y) all incurred Costs have paid in full, ESD shall return to Developer all funds remaining in the Imprest Account (inclusive of any unspent interest) and provide to Developer, to the extent received by ESD and not previously provided to Developer, supporting documentation of Costs incurred.

4. Indemnity. 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 of the parties by the other, 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, to:

Empire State Development ("ESD")

633 Third Avenue,
New York, New York 10017,
Attention: General Counsel

If to the Developer, to:

[Developer Entity]
[Developer Address]
[Developer City/State/Zip]

With a copy to:

[Developer Counsel Name, Address, and Attn.]

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 Entity]

By: _____
Name: [Signatory]
Title: []