

## LICENSE AGREEMENT

This LICENSE AGREEMENT ("License Agreement") made as of the        day of       ,        (the "Effective Date") between BOARD OF MANAGERS OF THE 534 WEST 42<sup>ND</sup> STREET CONDOMINIUM, a Condominium, having offices located at 534 West 42<sup>nd</sup> Street, New York, NY ("Licensee") and **CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**, a New York corporation, having offices located at 4 Irving Place, New York, NY 10003 ("Con Edison"). Licensee and Con Edison are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

### WITNESSETH:

**WHEREAS**, Licensee has requested that Con Edison permit Licensee to access and use Con Edison's property located at        or such portion thereof as may be depicted in any sketch annexed hereto in Exhibit A (such property or, as applicable, such portion thereof as may be depicted in such sketch, the "Con Edison Property"); and

**WHEREAS**, Con Edison is willing to grant such access and use to Licensee upon the terms and conditions of this License Agreement.

**NOW, THEREFORE**, in consideration of the covenants and the promises contained herein, Con Edison and Licensee hereby agree as follows:

**1. Term.** This License Agreement is effective as of the Effective Date, but the term of the "Permitted Use" (as defined below) shall be between the hours of        A.M. to        P.M. Eastern Prevailing Time from               to               (the "Term") unless this License Agreement is terminated prior to such time in accordance herewith; provided, however that the defense, indemnity and hold harmless provisions of Section 5 hereof, the disclaimer provisions of Section 7 hereof, Sections 9 and 11 hereof, the right of Con Edison under Sections 6 and 14 hereof to have the work referenced therein performed by Con Edison personnel and/or others at the expense of Licensee, and Sections 22 and 23 hereof shall survive any expiration or termination of this License Agreement. Notwithstanding the foregoing, Licensee shall not be permitted to commence the Permitted Use (as hereinafter defined) until Licensee has submitted, and Con Edison has approved, a Health and Safety Plan (the "HASP") with respect to the Permitted Use.

**2. Grant of Right To Use Con Edison Property; Permitted Use.** Subject to the terms and conditions hereof, Con Edison shall permit Licensee, its employees, contractors and subcontractors (collectively, the "Permitted Persons") to access and use the Con Edison Property during the Term for the sole purpose of        in accordance with that certain scope of work annexed hereto in Exhibit B and, during such further time as may be reasonably necessary, for the sole purposes of performing the work referenced in Sections 6 and 14 hereof (collectively,

the “Permitted Use”). The Permitted Use is the only access to and use of the Con Edison Property that is permitted by this License Agreement and no Permitted Person may access or use the Con Edison Property for any other purpose. Licensee shall ensure that the Permitted Use does not interfere with any present or future use by Con Edison or others permitted by Con Edison to access, use or be present on the Con Edison Property or any other operations of Con Edison or its affiliate companies. The question of whether there is any such interference shall be determined in the sole discretion of Con Edison.

**3. License Fee; Oversight.** As the fee (the “License Fee”) for the Permitted Use, Licensee shall pay Con Edison the sum of \$ 0.00 (ZERO DOLLARS AND 00/100 DOLLARSCENTS) upon Licensee’s execution of this License Agreement. All payments to Con Edison pursuant to this Section shall be by certified check drawn on, or official check issued by, a bank, savings bank, trust company or savings and loan association. Such checks shall be made payable to the order of “Consolidated Edison Company of New York, Inc.” and shall be delivered to Consolidated Edison Company of New York, Inc., Real Estate Department, 4 Irving Place, Room 206-S, New York, New York, 10003, Attention: Director, Real Estate.

Licensee hereby acknowledges and agrees that Con Edison has the right to assign one or more escorts, inspectors, oversight personnel or other representatives to escort, inspect and/or oversee the performance of the Permitted Use, at the sole expense of Licensee as provided below; provided, however, that Con Edison shall have no obligation to conduct any such escorting, inspections or oversight. Any instructions from Con Edison’s escorts, inspectors, oversight personnel or other representatives must be strictly and promptly obeyed by Licensee and the other Permitted Persons. Any failure to follow any such instructions shall be considered a breach under this Agreement pursuant to Section 13 hereof and may lead to immediate termination of Licensee’s right to perform the Permitted Use pursuant to this Agreement. Licensee shall pay Con Edison for its expenses incurred in connection with any such escorting, inspection or oversight, at its standard hourly rates in effect from time to time, with payments due within ten (10) days after Licensee’s receipt of a reasonably detailed invoice for the same. Con Edison estimates that the standard rate in effect for the personnel that would be assigned to oversee the performance of the Permitted Use is ----per hour. Notwithstanding the foregoing, in the event that any Permitted Person remains on the Con Edison Property after 3:00PM on any day Monday through Friday or accesses the Con Edison Property at any time on a Saturday, Sunday or holiday, Licensee shall be required to reimburse Con Edison for such oversight at overtime rates and shall reimburse Con Edison any other costs and expenses directly or indirectly incurred by Con Edison as a result of such access of the Con Edison Property during non-standard hours.

**4. Security.** Con Edison shall have no responsibility for any aspect of the Permitted Use or any cost or expense thereof. As between Con Edison on the one hand and Licensee on the other, Licensee shall be solely responsible for securing and safeguarding (i) any and all Permitted Persons (and their possessions) while present at or about the Con Edison Property, (ii) all work performed by any and all Permitted Persons on or about the Con Edison Property, and (iii) any and all equipment, tools, supplies, materials and other personal property used in connection with

such work or brought onto or located at or about the Con Edison Property by or on behalf of any and all Permitted Persons. To the fullest extent permitted by law, Con Edison shall have no responsibility for any equipment, tools, supplies, materials or other personal property that may be brought onto or located at or about the Con Edison Property and which is subsequently lost, stolen or damaged. To the fullest extent permitted by law, the immediately preceding sentence shall apply even under circumstances where Con Edison may be negligent.

**5. Compliance with Laws, Regulations and Procedures; Denial of Access and Removal for Noncompliance.** (a) Licensee shall comply with and shall cause all other Permitted Persons to comply with all applicable laws, rules, regulations, and ordinances (including, but not limited to, Environmental Laws, as defined below), the HASP, as well as all regulations, procedures and directives of Con Edison, while at or about the Con Edison Property. Licensee and Con Edison acknowledge and agree that the HASP may be modified from time to time by Licensee, subject to Con Edison's prior written approval of such modifications, or at the request of Con Edison, to address new or modified environmental, health or safety issues and concerns that arise or are discovered as the Permitted Use progresses. The HASP must be onsite at all times during Licensee's performance of the Permitted Use.

(b) Licensee shall be responsible for obtaining and maintaining all permits (including without limitation, any Environmental Permits), licenses, and any other governmental permission required for, or in connection with, the Permitted Use. Licensee shall cause any and all Permitted Persons who are not in compliance with such laws, rules, regulations, ordinances, plans, procedures, directives, permits, licenses or any other governmental permission or who otherwise engage in objectionable, improper or illegal conduct to be refused access to the Con Edison Property and, if present at the Con Edison Property, to be immediately removed therefrom. If Licensee fails to comply with its obligations under the immediately preceding sentence, Con Edison, without any liability whatsoever to Licensee, any Permitted Person or others, may, but shall not be obligated to, cause any and all Permitted Persons who are not in compliance with such laws, rules, regulations, ordinances, plans, procedures, directives, permits, licenses or any other governmental permission to be refused access to the Con Edison Property and to be immediately removed from the Con Edison Property. To the fullest extent permitted by applicable law, Licensee shall defend, indemnify and hold Con Edison, its trustees, directors, officers, employees and agents (collectively, the "Protected Parties") harmless from and against any and all claims, actions, causes of action, damages, loss and liability, including costs and expenses, legal and otherwise, and statutory or administrative fines, penalties, or forfeitures, which arise from or relate to refusing access to, removing, failing to refuse access to and/or failing to remove from the Con Edison Property any and all such Permitted Persons. To the fullest extent permitted by applicable law, Licensee' obligations pursuant to the immediately preceding sentence shall apply regardless of whether such claims, actions, causes of action, damages, loss or liability results in whole or in part from the negligence of the Protected Parties or any of them.

(c) In connection with the Permitted Use and any Remediation (as defined below) of the Con Edison Property, Licensee shall provide Con Edison with copies of: (i) all validated environmental sample data, laboratory and other reports, boring logs and submissions intended to go to a Governmental Authority at least six (6) days prior to such submission; (ii) all geotechnical boring logs and data produced promptly after such information becomes available; and (iii) all communications submitted to and received from any Governmental Authority. The requirements of this Section 5(c) are in addition to, and not in lieu of, the requirements contained in Section 6.

**6. Hazardous Substances:** (a) Licensee shall not, and shall not allow Permitted Persons to, use, store, or bring any “**Hazardous Substances**” (as defined below) on or about the Con Edison Property or any other property of Con Edison. If any Hazardous Substances are released, discharged, spilled, emptied, emitted, dumped, injected, poured, deposited, dispersed, or otherwise leak, escape, leach or migrate (each, a “**Release**”) or are discovered or encountered (each, a “**Discovery**”) on or about the Con Edison Property or any other property of Con Edison as a result of or in connection with the Permitted Use or any unauthorized use of the Con Edison Property or any other property of Con Edison by Licensee or any Permitted Persons or if a Release is threatened (collectively, any such Release, Discovery or threatened Release of Hazardous Substances shall be referred to herein as an “**Environmental Condition**”), Licensee shall (1) immediately notify Con Edison of the Environmental Condition, (2) promptly notify the appropriate Governmental Authority (as defined below) of the Environmental Condition as required under Environmental Laws and promptly inform Con Edison of all associated government spill numbers, (3) promptly take all actions, at Licensee’s sole cost and expense and without abatement of the License Fee, as are necessary to perform Remediation (as defined below) of any such Environmental Condition as if Licensee was the party solely responsible for the Environmental Condition under Environmental Laws and to perform such other work as may be required to safeguard the health, safety or welfare of any persons, the Con Edison Property and any other property of Con Edison from any Environmental Condition and, (4) restore any impacted portion or portions of the Con Edison Property and any other property of Con Edison, together with any and all affected soil and groundwater, to at least the condition that existed prior to the Environmental Condition, as well as the condition required by Environmental Laws and to satisfy the requirements of any Governmental Authority exercising jurisdiction with respect to the Con Edison Property or such Environmental Condition. Con Edison shall have the right to approve all Remediation and related work, including, without limitation: (i) the selection of any contractor or consultant Licensee proposes to retain to investigate the nature or extent of an Environmental Condition or to perform any Remediation; (ii) any reports or disclosure statements to be submitted to any Governmental Authority prior to the submission of such materials; and (iii) any proposed remediation plan or any material revision thereto prior to submission to any Governmental Authority. Notwithstanding the foregoing, Con Edison’s prior approval to take all necessary and required action shall not be necessary if an Environmental Condition poses an immediate threat to the health, safety or welfare of any persons and, despite Licensee’s best efforts, it is not reasonably practicable to obtain Con Edison’s prior approval before taking action to abate such immediate threat; provided, however, that (x) Licensee shall notify Con Edison as soon as possible and shall

thereafter obtain Con Edison's approval as otherwise provided in this Section for any further action; and (y) Licensee shall take only such action as may be necessary or appropriate to abate such immediate threat and then shall otherwise comply with the provisions of this Section. In connection with any Remediation, Con Edison shall have the right, but not the obligation, to participate with Licensee and Licensee's consultants and contractors in any meetings with representatives of any Governmental Authority, and Licensee shall provide Con Edison with reasonable notice of any such meetings. All work shall be performed in compliance with all Environmental Laws. Following completion of any required Remediation, Licensee shall be required to perform, at Licensee's sole cost and expense, any sampling and analysis determined to be necessary by Con Edison or any Governmental Authority to document that the Remediation has been performed as required herein and in accordance with any remediation plans in effect and all Environmental Laws. In the event that Licensee does not perform the obligations contained in this Section, Con Edison may cause such obligations to be performed by Con Edison personnel and/or others at the expense of Licensee.

(b) Licensee shall be solely responsible at its expense for the appropriate handling, storage, transportation, treatment and disposal, pursuant to all applicable laws, rules, regulations, and ordinances (including, but not limited to, Environmental Laws) and the HASP, of all waste materials, including Hazardous Substances, generated by, from or in connection with the Permitted Use. To the extent permitted by applicable laws, rules, regulations, and ordinances (including, but not limited to, Environmental Laws), Licensee shall be listed as the waste "generator" on all applicable manifests and filings for the transportation of such waste materials from the Con Edison Property. Licensee shall promptly characterize and remove from the Property all waste materials and transport them to a properly licensed disposal or treatment facility approved by Con Edison. Licensee shall provide Con Edison with copies of all manifests and filings documenting that the waste has been received at such properly licensed disposal or treatment facility for destruction and/or disposal. Notwithstanding anything to the contrary in this License Agreement, any and all waste materials generated by, from or in connection with the Permitted Use shall be handled, transported, stored, treated and disposed of at Licensee's sole risk and expense, and Con Edison shall have no liability arising from or in connection with such handling, transportation, storage, treatment, or disposal of such waste materials.

(c) As used in this License Agreement, the term "**Hazardous Substances**" means (i) any petroleum, petroleum products or byproducts and all other hydrocarbons (including, without limitation, petro chemicals and crude oil) or any fraction thereof, paint, sludge, coal ash, radon gas, asbestos, asbestos-containing material, urea formaldehyde, polychlorinated biphenyls, chlorofluorocarbons and other ozone-depleting substances, and (ii) any chemical, material, substance, product, waste (including, without limitation, thermal discharges) or electromagnetic emissions that is, has been, or hereafter shall be (x) listed or defined as hazardous, toxic, or dangerous under any Environmental Laws, (y) listed at 40 C.F.R. 302.4, 6 NYCRR 597.2 or 15 RCNY 11.04 (or their successors), or (z) prohibited, limited or regulated by or pursuant to any Environmental Laws.

(d) As used in this License Agreement, the term “**Environmental Laws**” means all current and future federal, state, local and foreign laws (including common law), treaties, regulations, rules, ordinances, codes, decrees, judgments, directives, orders or agreements (including consent orders), Environmental Permits (as defined below) and New York State Department of Environmental Conservation Division of Environmental Remediation Guidance and Commissioner’s Policy Documents, regulations set forth at NYCRR Part 375 and other guidance documents issued or published by any Governmental Authority, in each case, relating to pollution, contamination, protection of the environment, natural resources or human health and safety, the presence, Release of, threatened Release of, or exposure to, Hazardous Substances, or to the generation, manufacture, processing, distribution, use, treatment, storage, transport, recycling or handling of, or arrangement for such activities with respect to, Hazardous Substances.

(e) As used in this License Agreement, the term “**Environmental Permits**” means the permits, licenses, consents, approvals, manifests and other authorizations or certifications required by any Governmental Authority with respect to Environmental Laws relating to any Remediation or the Permitted Use.

(f) As used in this License Agreement, the term “**Governmental Authority**” means any federal, state, local, domestic or foreign government or any court, administrative or regulatory agency, board, committee or commission or other governmental entity or instrumentality, domestic, foreign or supranational or any department thereof.

(g) As used in this License Agreement, the term “**Remediation**” means the investigation, cleanup, removal, transportation, disposal, treatment (including *in-situ* treatment), management, stabilization, neutralization, collection, or containment of Hazardous Substances that may be required to satisfy Environmental Laws, in each case, including, without limitation, any monitoring, operations and maintenance activities that may be required by any Government Authority after the completion of such investigation, cleanup, removal, transportation, disposal, treatment (including *in-situ* treatment), management, stabilization, neutralization, collection, or containment activities as well as the performance of any and all obligations imposed by any Governmental Authority in connection with such investigation, cleanup, removal, transportation, disposal, treatment (including *in situ* treatment), management, stabilization, neutralization, collection, or containment activities.

**7. As-Is; No Representations Or Warranties By Con Edison.** The Con Edison Property is being made available hereunder for the Permitted Use on an “**AS-IS**” basis and subject to the other terms and conditions hereof. Con Edison does not make, and hereby disclaims, any express, implied, statutory, or common law warranty, guarantee, or promise, representation or assurance **INCLUDING ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE**, concerning title to or the suitability or condition of the Con Edison Property for any purpose including, without limitation, the Permitted Use. Licensee represents and warrants that it has

examined or has had an opportunity to examine the Con Edison Property and is fully and completely satisfied with the condition, fitness and order thereof.

**8. No Alteration Of Con Edison Property; No Signage Without Consent.** Licensee shall not, and shall not permit any other Permitted Person to, dig, excavate, mark, paint, drill, puncture, or in any way mar, deface, or otherwise alter any portion of the Con Edison Property without the prior written consent of an authorized representative of Con Edison. Licensee shall not, and shall not permit any other Permitted Person to, display or erect any lettering, signs, pictures, notices or advertisements upon any part of the Con Edison Property without the prior written consent of an authorized representative of Con Edison.

**9. Indemnification.** To the fullest extent permitted by applicable law, Licensee shall defend, indemnify and hold the Protected Parties harmless from and against any and all claims, actions, causes of action, damages, loss and liability, including, without limitation, costs and expenses, legal and otherwise, and statutory or administrative fines, penalties, or forfeitures, which, in whole or in part, arise from, relate to, or are connected with the Permitted Use, any unauthorized use of the Con Edison Property or other Con Edison property by or on behalf of Licensee or any other Permitted Persons, and any breach or violation by Licensee of any provision of this License Agreement. To the fullest extent permitted by applicable law, Licensee's obligations pursuant to the immediately preceding sentence shall apply regardless of whether such claims, actions, causes of action, damages, loss or liability results in whole or in part from the negligence of the Protected Parties or any one or more of the Protected Parties. Licensee, with respect to its employees, expressly agrees, and Licensee shall cause any of its contractors and subcontractors who are Permitted Persons to expressly agree, with regard to their respective employees, that Con Edison may pursue claims for contribution and indemnification against Licensee and any such contractors and subcontractors in connection with any claims made against Con Edison for injury to and/or death to employees of Licensee or such contractors or subcontractors, notwithstanding the provisions of Section 11 of the New York Workers' Compensation Law limiting such claims for contribution and indemnification against employers. Licensee hereby waives, and Licensee shall cause any of its contractors and subcontractors who are Permitted Persons to waive, the limitations on contribution and indemnification claims against employers provided in Section 11 of the New York Workers' Compensation Law insofar as such claims are asserted by Con Edison against Licensee or such contractors or subcontractors.

**10. Insurance.** Licensee shall procure and maintain, and Licensee shall cause any of its contractors and subcontractors who are Permitted Persons to procure and maintain, the following insurance during the Term and until any and all work required by Section 6 and Section 14 has been fully and completely performed: **(i)** Workers' Compensation Insurance as required by law; **(ii)** Employer's Liability Insurance covering accidents (with a limit of not less than \$1,000,000 per accident) and occupation diseases (with a limit of not less than \$1,000,000 per employee); **(iii)** Comprehensive Automobile Liability Insurance covering all owned, non-owned, borrowed and hired vehicles used by Licensee, its contractors and subcontractors with limits of not less than \$1,000,000 per occurrence for bodily injury or death and \$500,000 per occurrence for property

damage or a combined single limit of not less than \$1,000,000 per occurrence (such insurance shall contain an “occurrence” and not a “claims made” determinant of coverage); and **(iv)** Comprehensive (also called Commercial) General Liability Insurance, including Contractual Liability coverage, with limits of not less than \$7,500,000 per occurrence for bodily injury or death and \$1,000,000 per occurrence for property damage or a combined single limit of not less than \$7,500,000 (such insurance shall contain an “occurrence” and not a “claims made” determinant of coverage, shall name Consolidated Edison, Inc. and Consolidated Edison Company of New York, Inc., as additional insureds and contain a waiver of subrogation claims against Consolidated Edison, Inc. and Consolidated Edison Company of New York, Inc., shall not contain an exclusion for claims by Licensee’s or its contractor’s or subcontractor’s employees against Con Edison based on injury to or the death of such employees and shall, for the full limits of liability, be primary and non contributory to any insurance maintained by Consolidated Edison Inc. and Consolidated Edison Company of New York, Inc.; such insurance may be satisfied through a combination of a primary or underlying policy and an excess policy).

Licensee shall cause all insurance carried hereunder to be endorsed by the insurer to require that the insurer furnish Licensee with at least thirty (30) days' written notice prior to the effective date of cancellation of the insurance or of any changes in policy limits or scope of coverage, except for notice of cancellation for non-payment of premium which shall be upon at least ten (10) days prior written notice, and Licensee shall promptly provide Con Edison with a copy of any such notice upon its receipt.

Prior to commencement of the Permitted Use, Licensee shall furnish Con Edison with Certificate(s) of Insurance covering all required insurance and signed by the insurer or its authorized representative certifying that the required insurance has been obtained and will not be canceled or altered without at least thirty (30) days' prior written notice to Licensee, except for notice of cancellation for non-payment of premium which shall be upon at least ten (10) days prior written notice. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that Consolidated Edison, Inc. and Consolidated Edison Company of New York, Inc. are additional insureds with respect to the Comprehensive (also called Commercial) General Liability Insurance, including Contractual Liability, required herein, as well as any Excess Liability Insurance, if obtained to satisfy the requirements referenced above. The insurance certificates and copies of any notices received by Licensee from its insurer regarding cancellation or alteration shall be submitted to Consolidated Edison Company of New York, Inc., 4 Irving Place, Room 206-S, New York, New York 10003, Attention: Director, Real Estate. Con Edison shall have the right to require Licensee to furnish a copy of the insurance policy or policies required.

Licensee agrees that this is an insured contract. The insurance required herein is intended to cover Con Edison for its own liability for negligence or any other cause of action in any claim or lawsuit for bodily injury or property damage arising out of this License Agreement and/or the Permitted Use. For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Licensee shall be deemed to have assumed tort liability for

any injury to any employee of Licensee or Con Edison arising out of this License Agreement and/or the Permitted Use, including injury caused by the partial or sole negligence of Con Edison and notwithstanding any statutory prohibition or limitation of any indemnification obligation hereunder.

**11. Disclaimer Of Liability.** To the fullest extent permitted by law, Con Edison shall not be liable to Licensee, or any of the Permitted Persons, whether in tort (including, but not limited to, negligence), strict liability, contract, or otherwise, for any special, indirect, incidental, consequential, exemplary, punitive, or multiple damages whatsoever (including, but not limited to, losses, costs and damages resulting from loss of use, loss of business opportunities, loss of profits or revenue, increased cost of conducting business, costs of capital, loss of goodwill, claims of customers or related or unrelated companies, cost of leased, licensed, purchased or replacement properties or facilities, and like items of loss or damage) arising from, relating to, or connected with this License Agreement or the Permitted Use. To the fullest extent permitted by law, Con Edison's liability for direct damages arising from, relating to, or connected with this License Agreement shall be limited in the aggregate to the amount of the License Fee referenced in Section 3 hereof and if no License Fee is there referenced, to One Hundred Dollars (\$100.00); provided, however, that if this limitation of liability for such direct damages is determined by a court of competent jurisdiction to be invalid or unenforceable, then Con Edison's liability for such direct damages shall be limited in the aggregate to the smallest amount permitted by law. Anything to the contrary notwithstanding, this disclaimer will not apply if Licenser breaches this Agreement.

**12. Force Majeure.** In the event that the Permitted Use of the Con Edison Property cannot be provided by Con Edison hereunder because of act of God, act or failure to act of governmental authority, , act of terrorism, storms or other severe weather conditions, accident such as fire or explosion, strikes, lockouts, or other industrial disturbances, riot, failure of public transportation facilities, the need to maintain and/or restore safe and reliable utility service following an unanticipated or unforeseen event, circumstance or situation (including, but not limited to, storms and other severe weather) or in preparation for a then reasonably likely, but previously unanticipated or unforeseen event, or any other cause (whether of the kind herein enumerated or otherwise) that is beyond the reasonable control of Con Edison, Con Edison shall have no obligation or liability as a result thereof.

**13. Termination for Convenience/Breach.** Without any liability to Licensee or others, ~~Con Edison, upon at least three (3) days written notice to Licensee, may terminate this License Agreement in whole or in part for any reason whatsoever, including for Con Edison's convenience; provided, however, that~~ Con Edison may terminate this License Agreement ~~immediately~~ upon five (5) days written notice to Licensee in the event that Licensee breaches any provision whatsoever of this License Agreement and regardless of whether or not such provision is a material provision of this License Agreement, ~~and fails to cure the default within ten (10) days or if such default cannot reasonably be cured within the ten day period, then Licensee commences to cure the default within 10 days and diligently pursues completion of the cure.~~

**14. Clean-Up.** Licensee shall be responsible to, at all times, keep clean any portion of the Con Edison Property and any other property of Con Edison that may be affected by the Permitted Use, including but not limited to removing all trash and litter from such property and taking all other measures necessary to restore the Con Edison Property and any other affected property of Con Edison to the condition it was in immediately prior to the commencement of the Permitted Use. Such clean-up activities shall be performed during the Term and immediately thereafter and shall be performed to Con Edison's reasonable satisfaction. In the event that Licensee does not perform the obligations contained in this Section, Con Edison may cause such obligations to be performed by Con Edison personnel and/or others at the expense of Licensee.

**15. Inspection.** The Con Edison Property and the Permitted Use shall at all times be subject to inspection by Con Edison; provided, however, that Con Edison shall have no obligation to conduct any such inspections. If any condition is observed by Con Edison during any inspection, which, in the opinion of Con Edison, warrants attention by Licensee, Licensee shall take such corrective prompt action as may be directed by Con Edison. In the event that such action is not taken, Con Edison may cause such action to be taken by others at the expense of Licensee. In the event that Con Edison determines that an emergency exists, Con Edison may without first notifying Licensee, cause such action to be taken at Licensee's expense as Con Edison deems necessary to address the emergency and/or ameliorate its effects. Neither Con Edison's inspection or actions with regard to observed conditions or emergencies, nor the failure of Con Edison to so inspect or act shall, in any way, result in any liability of any kind to Con Edison or relieve Licensee of any obligation imposed by this License Agreement or by applicable law.

**16. Licensee's Film Rights.** If the Permitted Use includes taking or making still and/or motion pictures and/or sound recordings, all rights in and to any and all still and motion pictures and sound recordings made by Licensee as a result of the Permitted Use shall, as between Con Edison and Licensee, be the sole property of Licensee to exercise and use as it sees fit; provided, however, that without Con Edison's prior written consent, which may be denied or conditioned in its sole discretion, under no circumstances shall Licensee take or make, or permit any other Permitted Persons to take or make, any still and/or motion pictures or any sound recordings that depict, reference, or mention: (i) Con Edison or its affiliate companies; (ii) Con Edison's name or logo or those of its affiliate companies; (iii) any trustees, directors, officers, employees of Con Edison or its affiliate companies in their capacities as trustees, directors, officers, employees of Con Edison or its affiliate companies; or (iv) any property, equipment or facilities of Con Edison or its affiliate companies.

**17. Notices.** All notices and communications hereunder required to be in writing shall be personally delivered, mailed by registered or certified mail, return receipt requested, as provided below. A party may change its address for receipt of written notices by notifying the other party in writing of such change pursuant to this Section.

**If to Con Edison:**

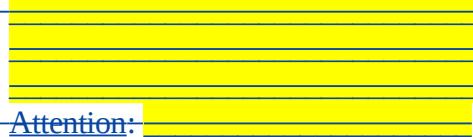
Consolidated Edison Company of New York, Inc.  
Real Estate Department  
4 Irving Place, Room 206-S  
New York, NY 10003  
Attention: Director, Real Estate

**If to Licensee:**

Vernon & Ginsburg LLP  
261 Madison Avenue, 26<sup>th</sup> Floor  
New York, NY 10016  
Attn: Darryl Vernon  
dvernon@vgllp.com

and

BOARD OF MANAGERS OF THE 534 WEST 42ND STREET CONDOMINIUM  
534 West 42nd Street,  
New York, NY  
claude@vrtxinc.com  
Attn: Claude Simon



Such notice or other communication shall be deemed duly given when received or when receipt is refused by the addressee.

**18. No Interest In Real Property.** This License Agreement does not create any interest in real property, nor does it grant, convey, or otherwise transfer any interest in real property (including without limitation, any leasehold interest or easement). This License Agreement does not confer upon Licensee or any Permitted Person the right to exclusive possession of any real property or any portion thereof as against Con Edison or any other person or entity.

**19. No Assignment By Licensee.** This License Agreement may not be assigned or transferred by Licensee without the prior written consent of Con Edison. Any such purported assignment or transfer without such consent shall be void.

**20. No Partnership, Joint Venture Or Agency Relationship.** This License Agreement is not intended to, and shall not create, a partnership, joint venture, or principal-agent relationship between the Parties, nor shall any act in the performance thereof operate to do so.

**21. No Third Party Rights.** Nothing in this License Agreement, express or implied, is intended to confer upon any person, other than the Parties hereto and their permitted assigns, any rights or remedies under, or by reason of, this License Agreement.

**22. Submission To Jurisdiction/Choice Of Forum.** Licensee hereby irrevocably submits to the exclusive jurisdiction of the courts located within the State of New York with regard to any controversy arising out of, relating to, or connected with this License Agreement. Licensee agrees that service of process on it in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail, return receipt requested, addressed to it pursuant to Section 17 or by personal delivery to it at such address. Such service of process shall be deemed to be sufficient even under circumstances where, apart from this License Agreement, there would be no jurisdictional basis for such service. Service of process on Licensee may also be effected in any manner permitted by law. Licensee consents to the selection of the New York State and the United States courts situated within the City of New York as the exclusive forums for any legal proceeding arising out of or relating to this License Agreement, irrevocably waives any and all rights to assert that any such court is an inconvenient or improper forum, and agrees that all discovery proceeding shall also take place in the City of New York and waives any claim.

**23. Non-Disclosure.** Licensee agrees that at no time, during the Term or at any other time, shall Licensee directly or indirectly make or cause or permit others to make any media disclosure, press release, marketing release, advertisement or any similar public statement or announcement regarding this License Agreement, the Permitted Use, Licensee's future contemplated uses, if any, of the Con Edison Property or otherwise using Con Edison's name, without obtaining Con Edison's prior written consent, which consent may be withheld in Con Edison's sole and unfettered discretion. Licensee and Con Edison agree that Licensee's violation of this Section will constitute a material violation of this License Agreement and that the damages that Con Edison will suffer will be substantial, but will be impossible or difficult to ascertain with precision. Accordingly, upon each such violation of this Section, Licensee, to the fullest extent permitted by law, shall be required to pay to Con Edison, immediately upon demand, the sum of Ten Thousand Dollars (\$10,000.00) as liquidated damages ("Liquidated Damages") and not as a penalty. Licensee and Con Edison hereby expressly agree that the amount of the Liquidated Damages set forth herein is a fair and reasonable estimate of the actual damages that Con Edison would suffer upon each violation of this Section by Licensee. In the event a court of competent jurisdiction shall determine that Licensee's obligation to pay the amount of Liquidated Damages set forth herein is unenforceable, Licensee and Con Edison agree that the amount of Liquidated Damages that Licensee shall pay to Con Edison shall be the maximum amount permitted by law and that the court may determine that maximum amount. Licensee agrees that in addition to Con Edison's other remedies pursuant to this License Agreement and applicable law (including without limitation, receiving the payment of Liquidated Damages), Con Edison is entitled to

injunctive relief to enforce this Section and to enjoin any violations or threatened violations of this Section. Licensee hereby agrees to reimburse Con Edison for any and all court and/or reasonable attorney fees, costs and expenses incurred by Con Edison in connection with a violation or threatened violation of this Section by Licensee.

**24. Waiver.** Neither the performance by Con Edison of any of Licensee's obligations under this License Agreement, nor any failure of Con Edison to insist on strict performance by Licensee or to assert rights in one or more instances shall constitute a waiver by Con Edison of such performance or rights, either then or in the future. Any waiver shall be effective only if in writing and signed by Con Edison's authorized representative, and then only with respect to the particular event to which it specifically refers. No termination or rescission hereof, in whole or in part, because of a breach hereof shall be deemed a waiver of any money damages to which Con Edison may be entitled because of said breach.

**25. Entire Agreement; No Oral Modification.** This License Agreement contains the entire agreement between the Parties hereto relating to the subject matter hereof and any prior or contemporaneous oral or written understandings or agreements relating to such subject matter are merged herein. This License Agreement may be modified only by a writing signed by each of the Parties hereto.

**26. Counterparts.** This License Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument. This License Agreement and any counterpart thereof may be delivered via facsimile or email, it being the express intent of the Parties that such License Agreement and any counterpart thereof delivered via facsimile or email (together with the signatures thereon) shall have the same force and effect as if they were originals.

**27. Headings.** The headings of the Sections of this License Agreement are inserted for convenience only and shall not be deemed to constitute part of this License Agreement.

**28. New York Law.** This License Agreement shall be interpreted and the rights and liabilities of the Parties determined in accordance with the laws of the State of New York, without recourse to such State's choice of law principles.

**29. Severability.** If any provision in this License Agreement is finally determined to be invalid, void or unenforceable, such determination shall not invalidate, void or make unenforceable any other provision, agreement or covenant of this License Agreement.

**IN WITNESS WHEREOF**, the Parties have executed and delivered this License Agreement as of the Effective Date.

**CONSOLIDATED EDISON COMPANY OF  
NEW YORK, INC.**

**NEW YORK, INC.**

**BOARD OF MANAGERS OF THE 534  
WEST 42<sup>ND</sup> STREET  
CONDOMINIUM*{insert name of Licensee}***

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

Title:\_\_\_\_\_

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

Title:\_\_\_\_\_

**EXHIBIT A**

**The Con Edison Property**

**[See Attached]**

**EXHIBIT B**

**Scope of Work**

[See Attached]