

EXECUTION VERSION

**AMENDED AND RESTATED TEMPORARY ENTRY PERMIT**

**(EASTERN RAIL YARD SECTION OF THE  
JOHN D. CAEMMERER WEST SIDE YARD)**

**BETWEEN**

**METROPOLITAN TRANSPORTATION AUTHORITY AND  
THE LONG ISLAND RAIL ROAD COMPANY**

**AS LICENSORS**

**AND**

**ERY TENANT LLC (f/k/a RG ERY LLC)**

**AS LICENSEE**

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**DATE: May 26, 2010**

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Licensee shall not be deemed in default of its obligations under this License prior to the delivery of a written notice by the Licensors specifying the nature of the default and twenty (20) days' opportunity to cure (or, in the event that such cure cannot reasonably be effected within such time, if Licensee fails to commence such cure and/or diligently pursue the same to completion), or such shorter notice period expressly provided in this License, provided that any such notice shall contain a clear and conspicuous statement that the Licensors intend to exercise their remedies hereunder if such default is not timely cured. If Licensee fails to cure such default within such period, the Licensors shall have all available remedies at law or in equity, including without limitation the rights to: (a) take such steps as shall be reasonably necessary to remedy such default by self-help, (b) revoke the License and remove Licensee from the ERY by any lawful means, and/or (c) bring an action at law or in equity for damages and/or specific performance. Any costs and expenses incurred in connection with the exercise of such rights by the Licensors shall be paid in accordance with the Project Documents. .... 31

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Whenever requested upon at least twenty-one (21) days' prior written notice from another party (or its designee, including a mortgagee or potential mortgagee), the requested party shall furnish to such requesting party or its designee a written statement, setting forth: (a) whether this License is in full force and effect; (b) the extent to which this License has been modified; (c) the extent to which, to the best of the certifying party's knowledge, any other party is in default under this License, which default remains uncured; and (d) any other information known to the certifying party and reasonably requested by the requesting party. Such statement may be relied upon by the requesting party and said designee. .... 32

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**AMENDED AND RESTATED TEMPORARY ENTRY PERMIT  
(EASTERN RAIL YARD SECTION OF THE  
JOHN D. CAEMMERER WEST SIDE YARD)**

**BETWEEN**

**METROPOLITAN TRANSPORTATION AUTHORITY AND THE LONG ISLAND  
RAIL ROAD COMPANY AS LICENSORS**

**AND**

**ERY TENANT LLC (f/k/a RG ERY LLC) AS LICENSEE**

This Amended and Restated Temporary Entry Permit (Eastern Rail Yard Section of the John D. Caemmerer West Side Yard) (this "Temporary Entry Permit" or this "License"), is made this 26<sup>th</sup> day of May, 2010, by and among **METROPOLITAN TRANSPORTATION AUTHORITY**, a body corporate and politic constituting a public benefit corporation of the State of New York, having an office at 347 Madison Avenue, New York, New York 10017-3739 and its successors and/or assigns as owner(s) of the ERY (as hereinafter defined) ("MTA"), **THE LONG ISLAND RAIL ROAD COMPANY**, a body corporate and politic constituting a public benefit corporation of the State of New York, having an office at Jamaica Station, Jamaica, New York 11435 and its successors and/or assigns as operator(s) of the ERY ("LIRR" and, together with MTA, the "Licensors"), **ERY TENANT LLC (f/k/a RG ERY LLC)**, a Delaware limited liability company, having an office c/o The Related Companies, L.P., 60 Columbus Circle, New York, New York 10023 and its successors and/or permitted assigns ("Licensee"), and **TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY**, a body corporate and politic constituting a public benefit corporation of the State of New York, having an office at 2 Broadway, New York, New York 10004 ("TBTA").

**WITNESSETH:**

**WHEREAS**, MTA, LIRR and TBTA, as licensors, and Licensee, as licensee, were parties to that certain Temporary Entry Permit (Eastern Rail Yard Section of the John D. Caemmerer West Side Yard), dated July 15, 2008 (the "Original Temporary Entry Permit");

**WHEREAS**, TBTA has conveyed to MTA all of TBTA's right, title and interest in and to a portion of, and MTA now owns fee title to all of, that certain parcel of land known as the Eastern Rail Yard Section of LIRR's John D. Caemmerer West Side Yard, located between West 30th and 33rd Streets and between 10th and 11th Avenues in Manhattan (the "ERY"), which parcel is used and operated by LIRR as a commuter railroad storage yard and maintenance facility and for other LIRR operations;

**WHEREAS**, that certain building commonly known as the Metals Purchasing Building (the "Metals Purchasing Building") is located on the southern perimeter of the ERY;

**WHEREAS**, simultaneously with the execution of this Temporary Entry Permit, the Licensors and ERY Developer LLC ("Developer"), an Affiliate of Licensee, are entering into a construction agreement (the "ERY Construction Agreement"), which, inter alia, provides for the

respective rights and responsibilities of the Licensors and Developer with respect to the design and construction of the LIRR Work (as defined therein);

**WHEREAS**, simultaneously with the execution of this Temporary Entry Permit, the Licensors and Licensee are entering into that certain Agreement to Enter into Lease (the "ERY Agreement to Enter into Lease"), which provides, inter alia, that (a) Licensee may elect to perform the demolition of the Metals Purchasing Building (including demolition and removal of all floors, slabs, walls and foundations down to the same grade as the grade of the adjacent West 30th Street, but excluding the excavation and removal of any soil) (such excluded work, the "MPB Excluded Work") (such work, subject to Section 1.4 hereof, the "MPB Demolition Work") and (b) any Remediation of MTA Environmental Matters prior to the Closing Date (as such terms are defined therein) (the "MTA Environmental Remediation Work" and, together with the MPB Demolition Work, the "Work") shall be performed by Licensee. All capitalized terms used but not otherwise defined herein shall have the respective meanings set forth in the ERY Agreement to Enter into Lease;

**WHEREAS**, Licensee furnished to MTA pursuant to the Original Temporary Entry Permit, and MTA currently holds, an irrevocable letter of credit (the "Environmental Entry Permit Letter of Credit") in the aggregate face amount of Two Million Five Hundred Thousand and 00/100 Dollars (\$2,500,000); and

**WHEREAS**, the Licensors and Licensee wish to amend and restate the Original Temporary Entry Permit in its entirety to set forth the terms on which (a) Licensee will be granted access to the ERY in order to perform any MPB Demolition Work and any MTA Environmental Remediation Work and (b) MTA will continue to hold the Environmental Entry Permit Letter of Credit as security for Licensee's obligations under this Temporary Entry Permit and the Original Temporary Entry Permit.

**NOW, THEREFORE**, in consideration of the promises and covenants herein contained, the parties hereto agree that the Original Temporary Entry Permit is hereby amended and restated in its entirety as follows:

1. Grant of License.

1.1 The Licensors hereby grant Licensee and its officers, employees, agents, contractors, and consultants (subject, with respect to contractors and consultants, to the prior written approval of LIRR, which approval shall not be unreasonably withheld or delayed) to perform the Work at the ERY (provided that those consultants, contractors, and/or subcontractors listed on Exhibit A hereto shall be deemed approved for purposes of this Section 1.1) (collectively, the "Licensee Parties") a temporary, non-exclusive license to enter upon the ERY solely for the purposes of performing the Work, subject to and in accordance with the terms and conditions set forth herein. The Licensors hereby appoint LIRR (and Licensee hereby consents thereto) for all responsibilities in coordinating in all respects the administration of this License. The Licensors acknowledge and agree that, subject to the terms and conditions of this License, including without limitation Section 31 hereof, Licensee shall be entitled to rely on all consents, agreements, requests, notices, estoppels, comments, disapprovals, elections, the Force Account

Estimate, waivers and approvals (including deemed approvals) by LIRR as binding on the Licensors for all purposes hereunder without any further inquiry.

1.2 For purposes of this Temporary Entry Permit, Licensee accepts the ERY "where is" and "as is" as of the effective date of this Temporary Entry Permit, with all existing encumbrances and improvements thereon and with no warranties or representations, except as otherwise expressly set forth herein. Nothing contained in this License is intended to limit the rights and obligations of the parties under the ERY Agreement to Enter into Lease.

1.3 During the Term (as hereinafter defined), the Licensee Parties shall be the only parties permitted to perform the Work in the ERY (except for the provision of inspectors, watchmen, flagmen, pilots and/or craft labor by MTA and/or LIRR as provided in Section 6.1 hereof). Notwithstanding the foregoing, Licensee shall: (a) share all relevant information and data about environmental conditions at or near the ERY, including without limitation results of any environmental testing, with the Licensors; and (b) permit representatives of the Licensors to observe the Work while it is being performed. All such information and data provided to the Licensors shall become the property of the Licensors upon submission, and the Licensors (and their respective designees) shall be entitled to utilize such information and data for any purpose whatsoever in connection with the ERY, without liability to any Licensee Party or any other party who prepared the same.

1.4 The Licensee Parties shall have the right (but not the obligation) to perform the MPB Excluded Work as part of the MPB Demolition Work, provided however that all costs associated with the performance of the MPB Excluded Work shall be borne by Licensee.

## 2. Term of License.

This License commenced on the date on which the Original Temporary Entry Permit was executed by the MTA, LIRR, TBTA and Licensee and delivered to Licensee (the "Commencement Date") and shall expire (except for those provisions which are expressly stated herein to survive termination or expiration hereof) upon the earlier to occur of (i) the termination of the ERY Agreement to Enter into Lease and (ii) the Closing Date or, if any Work has been commenced but has not been completed as of the Closing Date, the date on which such Work is completed (the earlier to occur of (i) and (ii), the "Expiration Date"), subject to the Licensors' right to terminate this License prior to the Expiration Date as set forth in Section 16.2 hereof. The period beginning on the Commencement Date and ending on the Expiration Date (or such earlier date as the Licensors shall elect to terminate this License in accordance with the provisions of Section 16.2 hereof) shall be referred to as the "Term." Promptly after the Expiration Date, at the request of either the Licensors or Licensee, the parties shall confirm in writing the date on which the Expiration Date occurred (which obligation shall survive the termination of this License).

## 3. Performance of the Work.

### 3.1 MPB Demolition Work.

(a) In the event that Licensee elects to undertake to perform the MPB Demolition Work, Licensee shall submit to the Licensors for their review and approval (which approval shall not be unreasonably withheld) (i) a work plan (the "Proposed MPB Demolition Work Plan") prepared by a reputable engineer licensed in the State of New York selected by Licensee and, if such engineer is not listed on Exhibit A attached hereto, subject to the reasonable approval of the Licensors (an "Engineer") and (ii) a cost estimate for a lump-sum contract or cost-not-to-exceed contract therefor (the "Proposed MPB Demolition Cost Estimate"). Licensee, at the sole cost and expense of the Licensors, shall cooperate with the Licensors in endeavoring to minimize the expenses to be incurred by the Licensors under this Section 3.1(a) and with respect to the performance of the MPB Demolition Work. If the Licensors reasonably disapprove of the Proposed MPB Demolition Work Plan and/or the Proposed MPB Demolition Cost Estimate, the Licensors shall notify Licensee of same, specifying in reasonable detail the reasons for such disapproval. Upon receipt of such notice from the Licensors, Licensee shall then either (x) cause the Proposed MPB Demolition Work Plan and/or the Proposed MPB Demolition Cost Estimate, as applicable, to be revised and resubmitted to the Licensors for review and approval as aforesaid or (y) dispute such disapproval under the dispute resolution process set forth in Section 23 hereof. The Proposed MPB Demolition Work Plan will also include the fencing in of the Metals Purchasing Building in a manner reasonably agreed to by the parties.

(b) If the Licensors shall fail to notify Licensee of their determination with respect to the Proposed MPB Demolition Work Plan and/or the Proposed MPB Demolition Cost Estimate within twenty-one (21) days after Licensee's submission thereof to the Licensors, Licensee shall provide to the Licensors a written notice, which notice shall state in capital letters on the first page thereof: "THIS NOTICE IS BEING GIVEN UNDER SECTION 3.1 OF THE AMENDED AND RESTATED TEMPORARY ENTRY PERMIT (EASTERN RAIL YARD SECTION OF THE JOHN D. CAEMMERER WEST SIDE YARD). YOUR FAILURE TO RESPOND WITHIN TEN (10) DAYS WILL RESULT IN YOUR DEEMED APPROVAL OF THE PENDING PROPOSED MPB DEMOLITION [WORK PLAN/COST ESTIMATE]". In the event that the Licensors shall fail to disapprove the Proposed MPB Demolition Work Plan and/or the Proposed MPB Demolition Cost Estimate, as applicable, setting forth the reasons for such disapproval in reasonable detail, within ten (10) days after Licensee provides the Licensors with such notice, the Licensors shall be deemed to have approved the Proposed MPB Demolition Work Plan and/or the Proposed MPB Demolition Cost Estimate, as applicable (the Proposed MPB Demolition Work Plan as approved or deemed approved by the Licensors in accordance with this Section 3.1, the "Approved MPB Demolition Work Plan", and the Proposed MPB Demolition Cost Estimate as approved or deemed approved by the Licensors in accordance with this Section 3.1, the "Approved MPB Demolition Cost Estimate"). Without limiting the foregoing, the Licensors shall use good faith efforts to review and comment on all matters related to the MPB Demolition Work requiring approval (including without limitation with respect to revisions of the Approved MPB Demolition Work Plan) as soon as possible.

(c) Upon the approval or deemed approval of the Approved MPB Demolition Work Plan and Approved MPB Demolition Cost Estimate, Licensee shall be entitled to commence the MPB Demolition Work on the date specified in the Approved MPB Demolition Work Plan, provided that Licensee shall have delivered the evidence of insurance required by Section 15 hereof. The MPB Demolition Work shall at all times be performed in accordance

with the Approved MPB Demolition Work Plan and the terms and conditions set forth herein. Payment for the MPB Demolition Work shall be made in accordance with the ERY Agreement to Enter into Lease and the Approved MPB Demolition Cost Estimate.

(d) In the event that Licensee shall desire from time to time to modify the Approved MPB Demolition Work Plan or the Approved MPB Demolition Cost Estimate, Licensee shall first submit such proposed modifications to the Licensors. The submittal, review and approval of any such proposed modifications shall be on the same terms and conditions as apply to the submittal, review and approval of the Proposed MPB Demolition Work Plan and the Proposed MPB Demolition Cost Estimate pursuant to Sections 3.1(a) and (b) hereof.

### 3.2 MTA Environmental Remediation Work.

(a) In the event that Licensee is required to perform MTA Environmental Remediation Work pursuant to the ERY Agreement to Enter into Lease, then Licensee shall submit to the Licensors for their review and approval (which approval shall not be unreasonably withheld), a remediation work plan prepared by an Engineer (a "Proposed MTA Environmental Remediation Work Plan"), including any proposed use of Force Account Personnel (as hereinafter defined), for any MTA Environmental Remediation Work to be performed by the Licensee Parties. Promptly upon the submission of such Proposed MTA Environmental Remediation Work Plan, LIRR shall estimate in good faith the Force Account Costs to be incurred in connection with such MTA Environmental Remediation Work (which shall include the Force Account Costs of the review and approval of the Proposed MTA Environmental Remediation Work Plan) (the "Force Account Cost Estimate"). Licensee shall thereafter submit to the Licensors for their review and approval (which approval shall not be unreasonably withheld), an aggregate cost estimate for a lump-sum contract or cost-not-to-exceed contract with respect to such MTA Environmental Remediation Work (such estimate, exclusive of the Force Account Cost Estimate, a "Proposed MTA Environmental Remediation Cost Estimate"). Licensee, at the sole cost and expense of the Licensors, shall cooperate with the Licensors in endeavoring to minimize the expenses to be incurred by the Licensors under this Section 3.2(a) and with respect to the performance of the MTA Environmental Remediation Work. Approval of the Proposed MTA Environmental Remediation Cost Estimate (or any revision thereto) shall not be required if Licensee is proceeding under Section 7.3(b)(ii)(2) of the ERY Agreement to Enter into Lease. If the Licensors reasonably disapprove of a Proposed MTA Environmental Remediation Work Plan and/or a Proposed MTA Environmental Remediation Cost Estimate, the Licensors shall notify Licensee of same, specifying in reasonable detail the reasons for such disapproval. Upon receipt of such notice from the Licensors, Licensee shall then either (x) cause such Proposed MTA Environmental Remediation Work Plan and/or Proposed MTA Environmental Remediation Cost Estimate, as applicable, to be revised and resubmitted to the Licensors for review and approval as aforesaid or (y) dispute such disapproval under the dispute resolution process set forth in Section 23 hereof.

(b) If the Licensors shall fail to notify Licensee of their determination with respect to a Proposed MTA Environmental Remediation Work Plan and/or a Proposed MTA Environmental Remediation Cost Estimate, within twenty-one days (21) days after the Licensors shall have received both of such items, Licensee shall provide to the Licensors a written notice, which notice shall state in capital letters on the first page thereof: "THIS NOTICE IS BEING



GIVEN UNDER SECTION 3.2 OF THE AMENDED AND RESTATED TEMPORARY ENTRY PERMIT (EASTERN RAIL YARD SECTION OF THE JOHN D. CAEMMERER WEST SIDE YARD). YOUR FAILURE TO RESPOND WITHIN TEN (10) DAYS WILL RESULT IN YOUR DEEMED APPROVAL OF THE PENDING PROPOSED MTA ENVIRONMENTAL REMEDIATION [WORK PLAN/COST ESTIMATE]". In the event that the Licensors shall fail to approve or disapprove a Proposed MTA Environmental Remediation Work Plan and/or a Proposed MTA Environmental Remediation Cost Estimate within ten (10) days after Licensee provides the Licensors with such notice, the Licensors shall be deemed to have approved such Proposed MTA Environmental Remediation Work Plan and/or Proposed MTA Environmental Remediation Cost Estimate, as applicable (a Proposed MTA Environmental Remediation Work Plan as approved or deemed approved by the Licensors in accordance with this Section 3.2, an "Approved MTA Environmental Remediation Work Plan", and a Proposed MTA Environmental Remediation Cost Estimate as approved or deemed approved by the Licensors in accordance with this Section 3.2, an "Approved MTA Environmental Remediation Cost Estimate"). Without limiting the foregoing, the Licensors shall use good faith efforts to review and comment on all matters related to the MTA Environmental Remediation Work requiring approval as soon as possible (including proposed modifications to the Approved MTA Environmental Remediation Work Plan and Approved MTA Environmental Remediation Cost Estimate).

(c) In the event that Licensee shall desire from time to time to modify an Approved MTA Environmental Remediation Work Plan or an Approved MTA Environmental Remediation Cost Estimate, Licensee shall first submit such proposed modifications to the Licensors. The submittal, review and approval of any such proposed modifications shall be on the same terms and conditions as apply to the submittal, review and approval of a Proposed MTA Environmental Remediation Work Plan and a Proposed MTA Environmental Remediation Cost Estimate pursuant to Sections 3.2(a) and (b).

(d) Upon the approval or deemed approval of the Approved MPB Demolition Work Plan and Approved MPB Demolition Cost Estimate for any MTA Environmental Remediation Work, Licensee shall be entitled to commence such MTA Environmental Remediation Work on the date specified in the Approved MTA Environmental Remediation Work Plan, provided that Licensee shall have delivered the evidence of insurance required by Section 15 hereof. The MTA Environmental Remediation Work shall at all times be performed in accordance with the Approved MTA Environmental Remediation Work Plan and the terms and conditions set forth herein.

(e) Subject to MTA's rights under Section 7.3(b) of the ERY Agreement to Enter into Lease, within ten (10) Business Days after the approval by the Licensors of an Approved MTA Environmental Remediation Work Plan and Approved MTA Environmental Remediation Cost Estimate for any MTA Environmental Remediation Work, the Licensors shall deposit with Licensee an amount equal to one hundred fifteen percent (115%) of the amount of the Approved MTA Environmental Remediation Cost Estimate (less the estimated amount of the Force Account Costs set forth therein), in immediately available funds to be deposited in an interest-bearing account, with interest earned on such funds to be reinvested in such account (the "MTA Environmental Remediation Fund"). If the Licensors approve any modifications to the Approved MTA Environmental Remediation Cost Estimate that increase the estimated cost of

the MTA Environmental Remediation Work, the Licensors shall be obligated, subject to Section 7.3(b)(ii) of the ERY Agreement to Enter into Lease, to deposit the amount of such increase into the MTA Environmental Remediation Fund within ten (10) Business Days after such approval.

(f) Licensee shall have the right from time to time to withdraw amounts from the MTA Environmental Remediation Fund for the costs incurred by Licensee in connection with the MTA Environmental Remediation Work. Licensee shall deliver written notice to the Licensors on a monthly basis of amounts drawn by Licensee from the MTA Environmental Remediation Fund, together with a reasonably detailed itemization of the costs paid and supporting documentation for same. In the event that the costs of performing such MTA Environmental Remediation Work shall exceed the full amount of the MTA Environmental Remediation Fund, Licensee shall be responsible for the amount of such deficit. If such costs shall be less than the amount of the MTA Environmental Remediation Fund, Licensee shall refund such excess (including, for the avoidance of doubt, any and all interest earned on the funds) to the Licensors.

(g) "Force Account Costs" as used herein means the sum of Equipment Costs, Direct Material Costs, Direct Labor Costs and those management costs treated by the Licensors as Force Account Costs, plus such percentage thereof as represents LIRR's overhead costs at the time the costs are incurred (which shall be adjusted by LIRR for each calendar year as set forth below) plus premiums for any force account insurance covering liability, physical damage and medical payments as is customary at the time in connection with force account work for private parties by LIRR. "Direct Labor Cost" as used herein means the gross pay (including, without limitation, any associated costs paid by LIRR pursuant to all applicable contractual obligations under any labor agreements), including overtime and reimbursable employee expenses, if any, paid to the Force Account Personnel in connection with work which must be performed by Force Account Personnel as required by applicable contractual obligations under applicable labor agreements. "Direct Material Cost" as used herein means the replacement cost of any material necessary for the performance of the work that is taken from inventory or the total purchase and delivery price, including applicable taxes, if any, on any such item purchased. "Equipment Cost" as used herein means the rental value of any equipment owned by LIRR and necessarily used in conjunction with the work or invoice cost of any equipment rented by LIRR for such use. If, at the time of determination of Force Account Costs, LIRR has a list of standard equipment rental rates in effect, such list shall be prima facie evidence of the rental value of equipment owned by it. Subject to the foregoing, the pay and overhead rates, plus the rate for force account insurance premiums, shall be in accordance with the rates then applicable to force account work charged to private parties by LIRR for the calendar year in which the work is performed. "Force Account Personnel" as used herein means LIRR's inspectors, watchmen, flagmen, lookouts, engineers, technical and professional staff, laborers, LIRR field personnel or other personnel employed or retained by LIRR, including General Engineering Personnel to act as an extension of LIRR staff. For the avoidance of doubt, the parties acknowledge that the Licensors shall be responsible for any and all Force Account Costs associated with completing the Approved MPB Demolition Work Plan and the Approved MTA Environmental Remediation Work Plan (subject to the limitations contained in Section 7.3(b)(ii) of the ERY Agreement to Enter into Lease).

3.3 The Licensee Parties shall be permitted to enter the ERY solely for purposes of performing the Work. No Licensee Party shall enter upon the ERY other than during the periods

specified in the Approved MPB Demolition Work Plan or any Approved MTA Environmental Remediation Work Plan, as applicable, or otherwise approved in advance by the Licensors, provided that the foregoing shall not limit the rights of any Licensee Party under any other agreement with the Licensors, including the ERY Construction Agreement. The Licensors shall use good-faith efforts to coordinate other work being performed on the ERY so as to avoid interference with the Work.

3.4 The Licensee Parties shall obtain any and all federal, state and local approvals and permits necessary for the performance of the Work (subject to the reimbursement of costs incurred in connection therewith to the extent the same are included in the Approved MPB Demolition Cost Estimate and/or the MTA Environmental Remediation Cost Estimate as applicable). The Licensors shall cooperate with and provide reasonable assistance to Licensee in obtaining such approvals and permits, including, without limitation, by executing any applications necessary therefor and providing, subject to the Licensors' information security protocols, such information in the Licensors' possession not otherwise available to Licensee as is necessary in connection therewith.

3.5 At all times during the Term, both the Licensors and Licensee shall provide for one or more individuals (the individual or individuals appointed by the Licensors, the "Licensor Project Liaison", and the individual or individuals appointed by Licensee, the "Licensee Project Liaison", and each, a "Project Liaison") to serve as a point of contact for communications with the other party regarding the Work. Any written approvals granted by the Licensor Project Liaison shall be deemed to be the approval of the Licensors and shall be binding upon all of the Licensors. Any written approvals of the Licensee Project Liaison shall be deemed to be the approval of Licensee and shall be binding upon Licensee. Licensee and the Licensors hereby designate the individual(s) listed on Exhibit B hereto as their respective Project Liaisons. Each party shall notify the other as promptly as possible in advance of any change in the identity of and/or contact information for its Project Liaison.

3.6 The Licensors shall have the right, at all times during the performance of the Work, to maintain at the ERY, at the Licensors' expense, an engineer or other qualified professional (the "Licensors' On-Site Representative"), along with its other engineers and other qualified professionals required to inspect the ongoing performance of the Work and conformance of the same with the Approved MPB Demolition Work Plan and/or any Approved MTA Environmental Remediation Work Plan, as applicable, including any field changes or other approved modifications thereto. Licensee shall at all times during the performance of the Work maintain at the ERY an engineer or other qualified professional ("Licensee's On-Site Representative"). The Licensors' On-Site Representative will notify Licensee of any aspects of the Work that, in the professional opinion of the Licensors' On-Site Representative, do not conform to the Approved MPB Demolition Work Plan and/or any Approved MTA Environmental Remediation Work Plan, as applicable. Upon such notice, subject to the provisions of Sections 16.1 and 16.2 hereof regarding the Licensors' rights to terminate this License or require Licensee temporarily or permanently to cease the performance of the Work, the Licensors' On-Site Representative and Licensee's On-Site Representative shall consult with each other about a cure for such non-conformance, and from and after such consultation Licensee shall follow all directions and instructions of the Licensors' On-Site Representative regarding Work which in the professional opinion of the Licensors' On-Site Representative is

not in conformance with the Approved MPB Demolition Work Plan and/or any Approved MTA Environmental Remediation Work Plan, as applicable, subject to the dispute resolution provision in Section 23 hereof. In the event that any such instructions are later determined to have been unreasonable, the Licensors shall be responsible for any increases to the cost of performing the MPB Demolition Work and/or the MTA Environmental Remediation Work (as applicable) as a result of any delay resulting from such instructions. The Licensors shall provide Licensee with all necessary contact information for the Licensors' On-Site Representative (and any changes thereto), and Licensee shall provide the Licensors with all necessary contact information for Licensee's On-Site Representative (and any changes thereto).

3.7 Licensee shall promptly inform the Licensors of any request received by any Licensee Party from any federal, state, or local government agency other than the Licensors to inspect any aspect of the Work.

3.8 Licensee shall cause the removal of all occupants of the Metals Purchasing Building, at Licensors' expense, prior to the anticipated date of commencement of the MPB Demolition Work, and shall cause the Metals Purchasing Building to remain vacant from such time until the actual commencement of the MPB Demolition Work.

#### 4. Prior Notice and Approval.

The initial entry of the Licensee Parties upon the ERY pursuant to this Temporary Entry Permit shall be upon no less than five (5) Business Days' prior written notice to the Licensor Project Liaison, who must approve, in writing, the time, place and manner of such entry, which approval shall not be unreasonably withheld unless such entry would have an adverse effect on Public Safety, Service Reliability (as such terms are hereinafter defined) or Legal Compliance (as defined in the ERY Construction Agreement); provided, that such approval shall not be required so long as Licensee's initial entry onto the ERY shall occur on the date, in the place and in the manner set forth in the Approved MPB Demolition Work Plan and/or any Approved MTA Environmental Remediation Work Plan, as applicable, or on such other date, place and/or manner as LIRR shall have otherwise agreed to in writing. Each subsequent entry of Licensee Parties upon the ERY that is not part of an entry that was previously approved shall be upon no less than three (3) Business Days' prior oral notice to and authorization from the Licensor Project Liaison, which authorization shall not be unreasonably withheld unless such entry would have an adverse effect on Public Safety, Service Reliability or Legal Compliance. During each entry period, Licensee shall keep the Licensor Project Liaison fully advised of all activities of the Licensee Parties at the ERY. Notwithstanding the authorization from the Licensor Project Liaison to enter upon the ERY, any entry upon the ERY or conduct of activities therein by a Licensee Party must be strictly in accordance with the provisions of the Approved MPB Demolition Work Plan and/or any Approved MTA Environmental Remediation Work Plan, as applicable.

#### 5. Safety and Protection of Railroad Traffic and Property.

5.1 The Work shall be conducted in compliance with all applicable laws and with the terms hereof and in accordance with the Approved MPB Demolition Work Plan and/or any Approved MTA Environmental Remediation Work Plan, as applicable, and in such manner and

at such times so that it shall not, without the Licensors' prior consent, interfere with the safety and security of LIRR's passengers and employees and the general public ("Public Safety") or the ability of LIRR to provide reliable rail transportation services consistent with its prevailing schedules and service levels ("Service Reliability"). The Work shall be conducted in such manner as shall otherwise minimize disruptions and inconvenience to LIRR Operations and LIRR Activities (as such terms are hereinafter defined). The Licensors shall provide to Licensee such information with respect to LIRR Operations and LIRR Activities as may be reasonably requested by Licensee to coordinate the performance of the Work with LIRR Operations and the performance of LIRR Activities at the ERY, and shall otherwise reasonably cooperate with Licensee in connection therewith.

5.2 All Licensee Parties shall conduct their activities on the ERY with due care and in a professional manner so that at all times the ERY does not present any hazardous condition resulting from such activities.

6. Intentionally Omitted.

7. Alterations.

Except to the extent specifically set forth in the Approved MPB Demolition Work Plan and/or any Approved MTA Environmental Remediation Work Plan, as applicable, Licensee shall make no changes, alterations, or repairs in or about the ERY, or affix any permanent improvements to the ERY, without the prior written approval of the Licensor Project Liaison, and then only by such contractors and in such manner and with such materials as the Licensor Project Liaison may approve. All requests for approval by the Licensor Project Liaison shall be in writing and shall be made in accordance with the provisions of Section 23 hereof.

8. Repairs and Maintenance.

The Licensee Parties' use of the ERY shall be subject to (a) all existing surface, subsurface and overhead structures, facilities, machinery, equipment and utilities located therein and (b) the use thereof by LIRR's personnel. LIRR reserves unto itself the right to install, construct, maintain, repair and renew, as may be required by LIRR at LIRR's sole discretion, any structures, facilities, machinery, equipment and utilities that may now or hereafter be installed within or located at the ERY (such installations, construction, maintenance, repairs and renewals and related activities, "LIRR Activities"). Licensee acknowledges that LIRR's personnel will require regular and uninterrupted access to such structures, facilities, machinery, equipment and utilities for and in connection with LIRR's operation of the ERY ("LIRR Operations") and the performance of other LIRR Activities, subject to the restrictions on LIRR Activities contained in the ERY Agreement to Enter into Lease and/or the ERY Construction Agreement. LIRR shall endeavor not to interfere unreasonably with the Work, provided, however, that Licensee acknowledges that Public Safety, Service Reliability, compliance with applicable law, LIRR Operations and LIRR Activities shall take priority over the Work.

## 9. Environmental Matters.

9.1 Disclosure of Environmental Matters. Licensee shall deliver prompt written notice to the Licensors of any known, suspected or threatened Release of any Hazardous Substance arising from, caused by or exacerbated as a result of or in connection with the performance of the Work or any discovery of any Hazardous Substance on the ERY of which the Licensors shall not have previously notified Licensee.

## 9.2 Covenants Relating to Environmental Matters.

(a) Licensee, understanding that the ERY has been and continues to be used for railroad and related purposes, and that Hazardous Substances may, as a result, be present in the surface or subsurface areas thereof, shall, during the performance of the Work: (i) conduct (and cause the other Licensee Parties to conduct) any and all activities at the ERY in accordance with all Environmental Laws and applicable federal, state and local laws, rules and regulations relating to worker safety (collectively, "Worker Safety Laws"); (ii) employ (and cause the other Licensee Parties to employ) due care in construction techniques, dust control procedures and other measures as required by applicable Environmental Laws and Worker Safety Laws in order to assure the health and safety of workers and the general public during performance of the Work; and (iii) handle, transport and dispose of (and cause the other Licensee Parties to handle, transport and dispose of) any Hazardous Substances or other materials that may be transported to, recovered, or excavated from the ERY by or on behalf of the Licensee Parties at the ERY in accordance with all applicable Environmental Laws.

(b) Licensee shall not use, store, generate or dispose of any Hazardous Substance (or permit any Hazardous Substance to be used, stored, generated or disposed of) on or in the ERY by any Licensee Party other than in accordance with the Approved MPB Demolition Work Plan and/or any Approved MTA Environmental Remediation Work Plan, as applicable, and Legal Requirements, without first obtaining written consent from the Licensors, except that commercially reasonable quantities of gasoline, diesel and acids to be used in the performance of the Work may be used and stored at the ERY upon prior written notice to the Licensors of the type and amount of such substances to be brought onto the ERY. If any use, storage, generation or disposal of any Hazardous Substance on the ERY results in a Release thereof other than in accordance with the Approved MPB Demolition Work Plan and/or any Approved MTA Environmental Remediation Work Plan, as applicable, and Legal Requirements, Licensee shall promptly, at its sole expense, take any and all necessary actions (in compliance with Environmental Law) to return the ERY to the condition existing before the presence of any such Hazardous Substances on the ERY; provided, however, that Licensee shall first obtain the Licensors' approval for any such actions. The Licensors and Licensee agree that, with respect to any Hazardous Substances permitted to be used, stored, generated or disposed on or in the ERY pursuant to this Section 9.2(b), including any Hazardous Substance to be disposed of in accordance with the Approved MPB Demolition Work Plan and/or any Approved MTA Environmental Remediation Work Plan ("Permitted Hazardous Substances"), such Permitted Hazardous Substances (i) shall be used and disposed of in compliance with all applicable Environmental Laws; and (ii) where

required to be removed from the ERY, shall be removed, transported and disposed of in accordance with all applicable Environmental Laws by the earlier to occur of (x) the completion of all Work or (y) the termination of this Temporary Entry Permit or, if such removal, transportation or disposal prior to such termination is not practicable, as promptly as practicable thereafter (it being acknowledged and agreed by the parties that this obligation shall survive the termination of this Temporary Entry Permit). Licensee further agrees to be responsible for the Remediation of all Releases of Permitted Hazardous Substances which were brought onto the ERY by any Licensee Party in compliance with all applicable Environmental Laws and to the reasonable satisfaction of the Licensors, unless such Release was due to the gross negligence or willful misconduct of any of the Licensors, and that anything herein to the contrary notwithstanding, Licensee shall indemnify, defend and hold harmless the MTA Indemnified Parties (sometimes referred to herein as the "Licensor Indemnitees") pursuant to ERY Tenant's Environmental Indemnity with respect to any Environmental Claims or Environmental Obligations arising from or in connection with any use, storage, generation or disposal of Permitted Hazardous Substances at the ERY, including but not limited to any penalties or fines arising therefrom and reasonable attorneys' fees incurred in connection therewith, except to the extent arising from the Licensors' gross negligence or intentional misconduct.

(c) Without limiting the provisions of Section 9.2(b) hereof, with respect to any Hazardous Substances that are transported from or disposed of off the ERY in accordance with the Approved MPB Demolition Work Plan and/or any Approved MTA Environmental Remediation Work Plan and with Legal Requirements, (i) the Licensors shall be required to take title and shall be required to sign all manifests, bills of lading and other documents associated with the removal, storage, transport and disposal of such Hazardous Substances by Licensee in the course of the Work as sole owner, operator, generator or arranger for such transportation or disposal; (ii) the Licensors' responsibilities pursuant to this License for such Hazardous Substances, materials and other waste shall continue through and after their removal, transportation, treatment (if any) and disposal; and (iii) except to the extent required by Legal Requirements, (x) Licensee shall not be deemed to be an owner, operator, generator or arranger for the transportation or disposal of, nor bear any responsibility for, any such Hazardous Substances generated by the Work, and (y) Licensee's name shall not be used on any manifests or other documents associated with the disposal of such Hazardous Substances, materials or other waste.

(d) Licensee shall be deemed to have completed any MTA Environmental Remediation Work for the purposes of this Temporary Entry Permit only upon the performance of all of the activities set forth in the Approved MTA Environmental Remediation Work Plan therefor and the achievement of Closure (as hereinafter defined) with respect thereto. As used herein, "Closure" shall mean, with respect to any MTA Environmental Remediation Work, (i) if any elements of such MTA Environmental Remediation Work are required by applicable Environmental Law or the governmental authority supervising the same or having jurisdiction over the ERY to be performed in order to complete such MTA Environmental Remediation Work, Licensee shall have received a "no further action letter," order, covenant not to sue or other like



documentation from the applicable governmental authority evidencing that such work has been satisfactorily completed, and (ii) subject to any subsequent requirements imposed by a governmental authority having jurisdiction over the ERY, if any elements of such MTA Environmental Remediation Work are not required to be conducted under the auspices of or supervision of a governmental authority, Licensee shall have delivered to the Licensors upon the performance thereof a written report in form and level of detail reasonably satisfactory to the Licensors, prepared by an environmental consulting firm, which report shall describe with specificity the elements of such MTA Environmental Remediation Work undertaken and completed, and the Licensors shall not have notified Licensee in writing that further action is required by Licensee with respect to the elements covered by such report, or that such report is otherwise insufficient or unsatisfactory, within twenty (20) Business Days after receipt of such written report together with a notification from Licensee that failure of the Licensors to respond will result in a deemed approval of such report. In the event that any Governmental Authority imposes additional conditions for closure beyond those contained in the Approved MTA Environmental Remediation Work Plan, subject to Section 7.3(b)(ii) of the ERY Agreement to Enter into Lease, the Licensors shall pay the reasonable additional costs thereof, even if the same exceed the Approved MTA Environmental Remediation Cost Estimate, provided that such additional costs shall be credited against MTA Environmental Matters Cap for purposes of Section 7.3(b)(ii) of the ERY Agreement to Enter into Lease.

(e) Without limiting the provisions of Article VII of the ERY Agreement to Enter into Lease and Article IX of the ERY Construction Agreement, Licensee shall, at no expense to the Licensors, perform and/or cause Developer to perform in accordance with the ERY Agreement to Enter into Lease and/or the ERY Construction Agreement, as applicable, any and all Required Remediation Activities relating to conditions arising out of or in connection with this Temporary Entry Permit or Licensee's obligations hereunder, if as and when required herein.

#### 10. Licensee's General Indemnity:

Except as otherwise provided in Article VII of the ERY Agreement to Enter into Lease, Licensee hereby acknowledges and agrees that the Licensor Indemnitees shall have no liability whatsoever for any personal injuries (including death) or damage to or loss of property (including without limitation the Licensors' property, facilities and equipment) resulting from the use or occupancy of the ERY by any Licensee Party, the performance of the Work, or the acts of any Licensor Indemnitees or any third parties occurring at the ERY, except to the extent that such acts constitute intentional misconduct or negligence on the part of the Licensor Indemnitee (such exculpated claims, "Damages Claims"). Licensee, on behalf of itself and each Licensee Party and their respective officers, directors, employees, agents, consultants, successors and assigns, hereby releases each Licensor Indemnitee from, and covenants and agrees that it will not make any claim against any Licensor Indemnitee for, losses, damages, suits, claims, costs, expenses, penalties or fines, including without limitation workers' compensation or disability benefits coverage or claims, arising out of any Damages Claims, except to the extent that such matters constitute intentional misconduct or negligence on the part of the Licensor Indemnitee and except as otherwise provided in Article VII of the ERY Agreement to Enter into Lease. In



consideration of this License and to the maximum extent permitted by law, Licensee shall indemnify, protect, hold harmless and defend the Licensors Indemnitees from and against any and all losses, damages, suits, claims, costs, expenses, penalties or fines (including without limitation (a) reasonable attorneys' fees and disbursements, (b) any costs attributable to the provision of any substitute railroad facilities and rail car and equipment storage that may be displaced temporarily or permanently, together with any associated MTA and LIRR force account costs and (c) any increased railroad operating costs occasioned by any Damages Claims, but excluding claims by third parties for lost revenue as a consequential result of railroad delays (collectively, "Damages Liabilities"), in the case of each of (a), (b) and (c), to the extent arising from or incurred in connection with any Damages Claims, brought by any Licensee Party (and, if Licensee failed to perform any aspect of the Work in accordance with Legal Requirements and/or the Approved MPB Demolition Work Plan or Approved MTA Environmental Remediation Work Plan, as applicable, with respect to such aspect, any third party) and/or their respective officers, directors, employees, agents, consultants, successors and assigns (collectively, "Licensee's General Indemnity"). Licensee's General Indemnity shall not be subject to any limitation on the amount of liability or indemnification (including without limitation any limitation described in Article VII of the ERY Agreement to Enter into Lease) and shall survive the expiration or other termination of this Temporary Entry Permit. Notwithstanding the foregoing, the Licensors shall, prior to making a claim for indemnification pursuant to Licensee's General Indemnity, make a good-faith determination as to whether or not such claim falls under the railroad protective insurance policies provided by Licensee for the benefit of the Licensors under this Temporary Entry Permit and/or under LIRR's force account insurance policy, and if the Licensors determine, in their sole and absolute discretion, based on the information available at the time that the Licensors are notified of the claim, that such claim is covered under such policies, the Licensors shall file such claim with such carrier(s) for coverage and pursue the same with reasonable diligence. The Licensors hereby agree that no indemnification claim shall be made under Licensee's General Indemnity to the extent that such claim is paid by the force account insurance maintained by the Licensors or the railroad protective liability insurance coverage obtained by Licensee for the Licensors; provided, that nothing herein shall be deemed to waive any claims to the extent such waiver may invalidate or limit any force account insurance or railroad protective liability insurance, or limit an insurer's right of subrogation to the extent of claims paid.

11. Intentionally Omitted.
12. Control by Licensee of Indemnified Matters.

12.1 If a Lensor Indemnitee seeks indemnification with respect to any Damages Liability that is within the scope of Licensee's General Indemnity, such Lensor Indemnitee shall give written notice thereof to Licensee (any such notice, a "Lensor Party Notice"). Failure of the Lensor Indemnitee to give notice pursuant to this Section 12.1 shall not relieve Licensee of its indemnification obligations hereunder. Licensee shall elect whether to assume (directly or through its insurance carriers) the defense or control of the matter described in the notice (at Licensee's sole cost and expense except as otherwise expressly provided herein) within sixty (60) days of its receipt of such Lensor Party Notice (provided, however, that if a response is required with respect to such matter prior to such sixtieth (60th) day in order to preserve all

defenses and legal rights with respect thereto, then the Licensors shall advise Licensee of the applicable time period in which response would need to be made in order to so preserve such defenses and legal rights and, in such event, such period after receipt of such Licensors Party Notice shall be shortened from sixty (60) days to such shorter time period ending five (5) days prior to the last date available to the Licensors for such response, as such date for response may be extended by agreement of the party bringing such action or order of the court in which it is being brought, the Licensors agreeing that they will cooperate with Licensee in endeavoring to obtain extensions of any such date(s) for response) (such sixty (60) day or shorter time period for Licensee to elect whether to assume defense or control of the matter being referred to hereinafter as the "Response Period"). If Licensee elects to assume the defense or control (including the planning or implementation of any investigation, Remediation or other response action) of the matter, Licensee shall notify the applicable Licensors Indemnitee of such election prior to the expiration of the Response Period and undertake, with counsel that is reasonably acceptable to the Licensors Indemnitees, or cause its insurance carrier to undertake, to defend such matter. If Licensee assumes the defense or control of any matter and it is ultimately determined that such matter is not one with respect to which Licensee is obligated to indemnify a Licensors Indemnitee, the Licensors shall be obligated to reimburse Licensee upon demand for all costs incurred in connection therewith. If Licensee does not elect to assume the defense of the matter by written notice delivered to such Licensors Party within the Response Period, then such Licensors Indemnitee may undertake to defend the matter by counsel and experts chosen by such Licensors Indemnitee, at Licensee's sole cost and expense.

12.2 Nothing contained herein shall limit or impair the Licensors' or Licensee's rights to bring any action or claim against, or seek indemnification, reimbursement or contribution from, any third party (other than any Licensee Parties or Licensors Indemnitees) for the costs incurred by such party with respect to any Damages Liabilities or any other liabilities.

### 13. Environmental Entry Permit Letter of Credit.

~~13.1~~ If at any time Licensee shall have failed to perform any of its obligations under this Temporary Entry Permit, or funds are due to the Licensors or any of the Licensors Indemnitees under this Temporary Entry Permit, and Licensee shall fail to perform such obligation or make such payment within ten (10) Business Days following written notice from MTA or, if such obligation shall require more than ten (10) Business Days to perform, shall have failed to commence to perform the same and/or to continue to diligently pursue the same until completion, MTA shall have the right to draw upon the Environmental Entry Permit Letter of Credit in such amounts as MTA shall reasonably deem necessary to perform such obligation or make such payment; provided, however, that if Licensee challenges any amount so drawn (or the basis for such claim), such dispute is resolved pursuant to Section 23 hereof in Licensee's favor, and Licensee restores the Environmental Entry Permit Letter of Credit to its undrawn principal amount prior to such disputed draw, the Licensors shall pay Licensee in immediately available funds an amount equal to the amount so drawn. MTA shall notify Licensee on a monthly basis of amounts drawn by MTA upon the Environmental Entry Permit Letter of Credit, itemizing the purposes for which the funds were drawn.

13.2 MTA shall have the right to draw down the full face amount of the Environmental Entry Permit Letter of Credit if MTA receives notice from the issuing bank that such

Environmental Entry Permit Letter of Credit will expire as of a date that is prior to the Security Release Date (as hereinafter defined) without renewal, and a replacement of the expiring Environmental Entry Permit Letter of Credit (which replacement (a) shall be an irrevocable letter of credit issued for the benefit of MTA by a bank that is reasonably satisfactory to MTA, in the aggregate face amount of Two Million Five Hundred Thousand and 00/100 Dollars (\$2,500,000), for a term of not less than one year, renewable automatically upon expiration, and otherwise in the form of the expiring Environmental Entry Permit Letter of Credit or in such other form as shall be reasonably satisfactory to MTA and (b) shall constitute, upon the delivery thereof to MTA, the Environmental Entry Permit Letter of Credit for all purposes hereunder) has not been delivered to MTA at least thirty (30) days prior to the expiration date.

13.3 The Environmental Entry Permit Letter of Credit shall be returned to Licensee, together with a letter of surrender addressed to the issuer thereof, on the date which is three (3) years after the date on which the Work is completed (the "Security Release Date"). Promptly after the Security Release Date, the Licensors shall cooperate with Licensee to facilitate the return and cancellation of the Environmental Entry Permit Letter of Credit. The provisions of this Section 13 shall survive until the Security Release Date.

14. Covenant Not to Sue.

The parties understand and agree that, except as otherwise provided in the ERY Agreement to Enter into Lease or the ERY Construction Agreement, their respective rights and obligations under this License shall constitute their sole and exclusive remedies with respect to the matters covered by this License, and the parties hereby covenant not to sue each other pursuant to, and waive and unconditionally release each other from, any rights and remedies that they may otherwise have against each other relating to or arising from the matters covered by this License, including, without limitation, any claims for contribution under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, *et seq.*, or common law relating to Hazardous Substances or the protection of the environment ("CERCLA"); ~~provided, however, for the avoidance of doubt, in the event that a claim is made~~ against any of the Licensors Indemnitees arising from the transportation or arrangement for transportation of Hazardous Substances (other than in accordance with the Approved MPB Demolition Work Plan or any Approved MTA Environmental Remediation Work Plan, as applicable) to a site other than the ERY by Licensee, the Licensors Indemnitees shall not have waived their rights to seek contribution against Licensee under CERCLA, the Resource Recovery and Conservation Act, 42 U.S.C. §§ 6901, *et seq.* ("RCRA") or any state or local Environmental Law analogous to CERCLA or RCRA. Nothing in this Section 14 shall be construed or deemed to limit the commencement of any action to enforce this License or the resolution of disputes in accordance with Section 23 hereof or to limit any rights and remedies of the parties under the ERY Agreement to Enter into Lease or the ERY Construction Agreement. Damages for any breach of this Section 14 may include, but shall not be limited to, the reasonable attorneys' fees of the party sued in breach hereof.

15. Insurance.

15.1 Licensee and/or its contractors, as applicable, shall, at its or their sole cost and expense, carry (or cause to be carried) and maintain (or cause to be maintained) at all times

during the performance of any Work under this Temporary Entry Permit the policies of insurance as set forth below, provided that such costs and expenses shall be included in the Approved MPB Demolition Cost Estimate and/or the Approved MTA Environmental Remediation Work Estimate, as applicable (except to the extent that such insurance is, at the time of performance of the Work, required to be maintained by Licensee or ERY Developer pursuant to another ERY Project Document and provides coverage with respect to the matters described herein):

(a) **Workers' Compensation Insurance** (including Employer's Liability Insurance with limits of not less than Two Million Dollars (\$2,000,000) each accident or disease, which limit may be met by a combination of primary and excess insurance) meeting the statutory limits of New York State. Such insurance shall also be maintained by any of Licensee's contractors performing any Work.

(b) **Commercial General Liability Insurance** (ISO 2001 Form or equivalent approved by the Licensors) in Licensee's name with limits of liability in the amount of at least Ten Million Dollars (\$10,000,000) each occurrence / Ten Million Dollars (\$10,000,000) General Aggregate Limit (other than products-completed operations) / Ten Million Dollars (\$10,000,000) Products/Completed Operations Aggregate Limit on a combined single limit basis for injuries to persons (including death) and damage to property, if available. The limits may be provided in the form of a primary policy or combination of primary and umbrella/excess policies. When the minimum contract amounts can only be met when applying the umbrella/excess policy, Licensee shall use best efforts to have the umbrella/excess policy follow the form of the underlying policy and be extended to "drop down" to become primary in the event primary limits are reduced or aggregate limits are exhausted. Such insurance shall, with respect to the negligence of Licensee, be primary and non-contributory to any other valid and collectible insurance maintained by the Licensors. Such policy shall be written on an occurrence form, and shall include:

- (i) Contractual coverage for liability assumed by Licensee under this Temporary Entry Permit;
- (ii) Personal and Advertising Injury Coverage;
- (iii) Products - Completed Operations;
- (iv) Independent Contractors Coverage;
- (v) "XCU" coverage (Explosion, Collapse, and Underground Hazards) where necessary;
- (vi) Deletion of the Contractual Liability Exclusion, applicable to activities and operations to be performed within fifty (50) feet of railroad tracks;
- (vii) Coverage for claims for bodily injury asserted by an employee of an additional insured and any Employer Liability Exclusion which may otherwise operate to exclude such coverage shall be voided in this respect; and

(viii) Additional Insured Endorsement ISO Form CG 2010-1185 (or its equivalent) is preferred. Alternatively, ISO Form CG 20 26 07 04 (ongoing) and CG 20 37 07 04 (completed operations) versions (or their equivalents) may be utilized naming: the Licensors (and each of their subsidiaries and Affiliates, as appropriate); Amtrak; New Jersey Transit; City of New York; Hudson Yards Development Corporation; Hudson Yards Infrastructure Corporation; Consolidated Rail Corporation; CSX Transportation Inc.; and others designated by the Licensors which the Licensors are contractually obligated to have named (collectively, "Additional Insureds").

(c) **Business Automobile Liability Insurance** (ISO Form CA 00 01 10 01 or its equivalent reasonably approved by the Licensors) with limits of liability of at least Five Million Dollars (\$5,000,000) each accident for claims for bodily injuries (including death) to persons and for damage to property arising out of the ownership, maintenance or use of any owned, hired or non-owned motor vehicle. The limits may be provided in the form of a primary policy or combination of primary and umbrella/excess policies.

(i) If the Work involves transporting and/or disposing of any hazardous material or waste outside the ERY, the MCS-90 (or its equivalent) must be added to the automobile policy. The CA9948 endorsement (or its equivalent) is also required if transporting outside of New York State. (Additional pollution liability insurances will also be required and identified in below paragraphs.)

(ii) Copies of the MCS-90 and CA9948 (if applicable) endorsement(s) (or their equivalents) shall be submitted for review as part of the insurance submission.

(d) **Railroad Protective Liability Insurance** (ISO-RIMA or equivalent form approved by the Licensors) covering the Work and affording protection for damages arising out of bodily injury or death, physical damage to or destruction of property, including damage to the insured party's own property and conforming to the following:

(i) The insured parties covered by such policy shall be the Additional Insureds;

(ii) The limit of liability shall be not less than Five Million Dollars (\$5,000,000) per occurrence, subject to a Ten Million Dollars (\$10,000,000) annual aggregate, if then commercially available, or such lesser limit as shall be approved by the MTA Parties, if a Five Million Dollar (\$5,000,000) annual aggregate is not then commercially available;

(iii) "Physical Damage to Property" definition within the policy must be amended by endorsement to mean "direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control arising out of the acts or omissions of the contractor named on the Declarations," except for tools and equipment that is not covered under a Builders Risk policy;

(iv) The policy must include coverage for claims arising from injury to employees covered by Federal Employer's Liability Act (FELA);

(v) The policy must indicate the name and address of Licensee as the purchaser of the insurance;

(vi) Evidence of Railroad Protective Liability Insurance shall be provided in the form of the original policy (provided that a detailed insurance binder (ACORD or Manuscript Form) (or its equivalent) which is valid until the issuance of the original policy will be accepted pending issuance of the original policy, which must be provided within ninety (90) days of the binder approval); and

(vii) Licensee's use of a form equivalent to ISO-RIMA is acceptable, and any renewal or replacement policy shall provide equal or superior coverage, as determined solely by the Licensors.

(e) **Contractor's Pollution Liability.** Licensee shall procure site specific Contractor's Pollution Liability Insurance with respect to the Work and the activities of all of Licensee's contractor(s) or its subcontractors, including but not limited to handling, transporting or disposing of any Hazardous Substances and/or environmentally regulated materials and any sudden and/or non-sudden pollution or impairment of the environment, including clean-up costs and defense. This insurance shall name as additional insureds the Additional Insureds, under this policy (or policies) and shall have limits of liability of at least Ten Million Dollars (\$10,000,000) per occurrence and Twenty Million Dollars (\$20,000,000) in the aggregate. The Contractor's Pollution Liability Insurance shall be in effect at all times during the performance of the Work. Any additional insurance policies necessary to obtain required permits or otherwise comply with Legal Requirements regarding the performance of the Work shall be at the risk of Licensee.

(i) If the contractor is not performing any of the relevant Work, this insurance may be supplied by a subcontractor, provided that all Additional Insureds are endorsed to said policy.

(ii) The contractor or its subcontractor performing the Work shall obtain all permits, licenses and other forms or documentation which are required and forward them to the Engineer for the Work. The insurance shall be submitted to MTA Risk and Insurance Management Department pursuant to requirements of this Section 15.

(iii) In the event that a contractor or its subcontractors transports from the ERY Hazardous Substances or any other environmentally regulated substance that requires a governmentally regulated manifest, the MCS-90 Endorsements shall be attached to the auto liability policy (the CA9948 is also required, if hauling outside of NYS). Both shall be furnished on a primary basis with limits of liability of at least Five Million Dollars (\$5,000,000) per occurrence providing coverage for bodily injury or property damage including liability for environmental restoration resulting from negligence in the operation, maintenance or use of any motor vehicle involved in the transportation of Hazardous Substances or any other environmentally regulated substance as required pursuant to any federal, state or local laws, rules and regulations. A copy of each endorsement must be submitted for review.

(iv) Any additional insurance policies necessary to obtain required permits or otherwise comply with applicable law, ordinances or regulations regarding the performance of the Work should be provided to the Licensors.

(f) **Pollution Legal Liability (Non-Owned Disposal Site)**. If the Work includes the disposal of waste or other Hazardous Substance from the ERY, Licensee shall maintain or cause to be maintained this insurance.

(i) Licensee shall provide a certificate of insurance to the Licensors (x) evidencing a blanket policy which covers the disposal facility or (y) listing the disposal facility as an insured location or, alternatively, Licensee may designate the disposal site, and provide a certificate of insurance from the disposal facility to Licensee.

(ii) Unless this coverage is being provided under a blanket policy, the Additional Insureds are to be named as additional insureds on these policies with limits of liability of at least Five Million Dollars (\$5,000,000) per occurrence and in the aggregate.

(iii) The coverage shall be extended for a minimum of five (5) years from the commencement of the Work.

(iv) If coverage is not provided under a stand alone policy; but is included in the general liability policy, a Non-Owned Disposal Site endorsement shall be referenced on the insurance certificate and a copy thereof submitted with the insurance.

(g) **Professional Liability Insurance** covering actual or alleged negligent acts, errors or omissions committed by Licensee's architects and engineers in the performance of activities under this Temporary Entry Permit, regardless of the type of damages. The coverage shall be maintained during the performance of the Work, and for at least five (5) years following completion of the Work (or until the earlier death or dissolution of the architect or engineer). The policy or policies shall have limits of liability of not less than Two Million Dollars (\$2,000,000) per claim and in the annual aggregate, subject to a deductible of no more than Five Hundred Thousand Dollars (\$500,000). The deductible is the sole responsibility of the architect or engineer, and no portion of such deductible is the responsibility of the Licensors. Such insurance shall be subject to the terms and conditions and exclusions that are usual and customary for this type of insurance.

If this insurance is provided on a claims-made basis, Licensee shall maintain continuous insurance coverage during the term of this Temporary Entry Permit and in addition to the coverage requirements above, such policy shall provide that:

- i. Policy retroactive date coincides with or precedes the insureds' initial services under this Temporary Entry Permit and shall continue until the termination of this Temporary Entry Permit (including subsequent policies purchased as renewals or replacements);
- ii. Policy allows for reporting of circumstances or incidents that might give rise to future claims;



- iii. An extended Reporting Period of at least one year will be available and must be purchased in the event ongoing coverage is not maintained.

## 15.2 General Requirements Applicable to Insurance Policies.

(a) Insurance Companies. All of the insurance required by this Section 15 shall be written by companies with an A.M. Best Company (or equivalent) rating of A-, VII or better and reasonably approved by the Licensors, and Licensee shall deliver evidence of such policies to the Licensors.

(b) Special Policy Terms Required. The policies required by this Section 15 shall: (i) be written in accordance with the requirements of this Temporary Entry Permit and (ii) with the exception of the workers compensation policy, state or be endorsed to provide that the coverage afforded under the policy shall apply on a primary and not on an excess or contributing basis with any policies which may be available to the Licensors. The insurance limits required herein may be met through the combined use of the insured's primary and umbrella/excess policies. Except for professional liability policies under Section 5.1(g), policies written on a claims-made basis are not acceptable. Each required insurance policy shall have a term of not less than one (1) year (if such policy term is customary and available), and Licensee shall procure renewals thereof from time to time and deliver evidence of the same to the Licensors as promptly as reasonably practicable and in all events within five (5) days after renewal.

(c) Policy Deductible/Self Insured Retentions. Deductibles or self-insured retentions above Five Hundred Thousand Dollars (\$500,000) shall require approval from the Licensors, which approval shall not be unreasonably withheld. Licensee or its subcontractors shall be responsible for all claim expense and loss payments within any deductible or self-insured retention in their policies as would be the case if commercial insurance was available for the loss.

(d) Required Forms. All references to forms and coverages referred to above shall be those used by the Insurance Services Office, Inc. ("ISO") or equivalent forms approved by the Insurance Department of the State of New York.

(e) Adjustments and Collections. Licensee and the Licensors (i) shall cooperate in connection with the adjustment and collection of any insurance recoveries that may be due in the event of loss and (ii) shall execute and deliver such proofs of loss and other instruments which may reasonably be required for the purpose of obtaining the recovery of any such insurance moneys with respect to the Work.

(f) Notice of Claims. Licensee and the Licensors shall not knowingly violate or knowingly permit to be violated any of the conditions or provisions of any policy of insurance required to be maintained hereunder, and shall so perform and satisfy or cause to be performed and satisfied the requirements of the companies writing such policies. Licensee shall provide written notice to the Licensors promptly after Licensee becomes aware of any claim or



proceeding that has been filed against it if such claim or proceeding involves any actual or alleged (i) cord injury (including without limitation paraplegia or quadriplegia), (ii) amputations requiring a prosthesis, (iii) brain damage affecting mentality or the central nervous system (including without limitation permanent disorientation, behavior disorder, personality change, seizures, motor deficit, inability to speak, hemiplegia or unconsciousness), (iv) blindness, (v) third-degree burns involving over ten percent (10%) of the body or second-degree burns involving over thirty percent (30%) of the body, (vi) multiple fractures (involving more than one member or non-union), (vii) fracture of both heel bones, (viii) nerve damage causing paralysis and loss of sensation in an arm and hand, (ix) massive internal injuries affecting body organs, (x) injury to a nerve at the base of the spinal canal or any other back injury resulting in incontinence of bowel and/or bladder, (xi) fatalities, (xii) any other claim that presents an unusual exposure to the coverage or (xiii) any other serious injury or damage which may involve a liability.

(g) Required Clauses. Each policy of insurance required to be obtained herein shall contain, to the extent generally obtainable and permitted by law, and (without limiting the foregoing) whether or not an additional premium shall be required in connection therewith, (i) a provision that no unintentional act or omission of any named insured or unintentional violation of warranties, declarations or conditions by any named insured shall prejudice the coverage afforded by such policy, (ii) an agreement by the insurer that such policy shall not be canceled (or not renewed) without at least thirty (30) (or, in the case of nonpayment of premiums, ten (10)) days' prior written notice.

### 15.3 Evidence of Policies.

(a) Licensee shall furnish evidence of any policy required by this Temporary Entry Permit, as promptly as reasonably practicable but in all events within five (5) days after the date on which such policy is required to be procured, to the Licensors (with a copy to MTA Risk & Insurance Management, Standards Enforcement and Claims Unit, Metropolitan Transportation Authority, 2 Broadway, New York, New York 10004).

(b) Certificates of Insurance may be supplied as evidence of the above policies, except for the Railroad Protective Liability Policy, described in Section 15.1(d) hereof. However, if requested by the Licensors, Licensee shall deliver to the Licensors, within forty-five (45) days after a request therefor or ninety (90) days after the binding of the coverage, whichever is later, a copy of such policies. If the Licensors exercise their option to request copies of original policies in the case of discovery or to resolve a legal matter, Licensee shall deliver to the Licensors, as the case may be, within thirty (30) days of the request, or within ninety (90) days after the binding of coverage, whichever is later, a copy of such policies. At the request of Licensee, the Licensors shall, to the extent permitted by law, treat as confidential information marked by Licensee as "CONFIDENTIAL PROPRIETARY INFORMATION" on any such insurance policies.

(c) If a Certificate of Insurance is submitted, it shall: (i) be provided in a form acceptable to the Licensors; (ii) be signed by an authorized representative of the insurance carrier or by a producer; (iii) disclose any deductible, sublimit, self-insured retention or aggregate limit; (iv) indicate the Additional Insureds and Named Insureds as required herein; (v) reference the contract by number on the face of the certificate; and (vi) expressly reference

the inclusion of all required endorsements. Licensee must provide a physical copy of the Additional Insured Endorsement (ISO Form CG 20 10 1185 version or equivalent, as applicable) and the endorsement(s) must include policy number(s).

15.4 No Limit on Liability. Nothing herein contained shall be deemed to limit the liability of Licensee to the limits of liability, or the coverage of the policies listed in Section 5.1 (or any renewals or replacements thereof).

15.5 Failure to Comply. If, at any time during the Term, insurance as required hereunder is not in effect, or proof thereof is not provided to the Licensors, the Licensors shall have the option to: (a) direct Licensee to suspend the Work with no additional cost to the Licensors or extension of time due on account thereof; and (b) if such failure to maintain insurance shall continue for a period of thirty (30) days after there shall have been given to Licensee a notice specifying such failure, such failure shall be deemed a default hereunder.

#### 16. Licensors' Rights

16.1 If the performance of the Work on any part of the ERY shall interfere, other than in a de minimis manner, with LIRR Operations or the performance of any LIRR Activities, or shall threaten or adversely affect compliance by the Licensors with applicable law, Public Safety or Service Reliability in any way, or shall not be in compliance with applicable law (such interference, threat, effect or noncompliance, an "Adverse Impact"), the Licensors may require the Licensee Parties to (a) temporarily (upon one (1) day's prior notice, or immediately in the case of any interference with Public Safety or other Emergency Situation (as hereinafter defined)) cease the performance of the portion of the Work that LIRR reasonably determines to be constituting, causing or exacerbating any such Adverse Impact, secure their equipment and cause Licensee Parties' personnel to vacate the ERY, (b) immediately commence, diligently pursue and prosecute to completion the remedy of any and all matters constituting, causing or exacerbating the Adverse Impact, and/or (c) promptly modify the Approved MPB Demolition Work Plan and/or any Approved MTA Environmental Remediation Work Plan, as applicable, to the reasonable satisfaction of the Licensors at Licensor's sole cost and expense (unless such Adverse Impact resulted from the failure of Licensee to perform the Work in accordance with the Approved MPB Demolition Work Plan and/or any Approved MTA Environmental Remediation Work Plan and with Legal Requirements, in which case such modifications shall be at Licensee's sole cost and expense), to remedy the Adverse Impact, and all Licensee Parties shall promptly comply with all such requirements of the Licensors. The foregoing shall apply notwithstanding the prior approval by the Licensors of the Approved MPB Demolition Work Plan and/or any Approved MTA Environmental Remediation Work Plan, as applicable, or any particular action or item of Work not expressly set forth in such plan. Notwithstanding the foregoing, if at any time the Licensors reasonably determine that the Licensee Parties are failing diligently to pursue and prosecute to completion the remedy of any and all matters constituting, causing or exacerbating the Adverse Impact, or otherwise are continuing to cause or exacerbate an Adverse Impact, the Licensors shall have the right, in addition to all other rights and remedies available to the Licensors pursuant to this Temporary Entry Permit, to require that Licensee cease performance of all Work at the ERY until such time as all Adverse Impacts shall be remedied and the Approved MPB Demolition Work Plan and/or any Approved MTA Environmental

Remediation Work Plan, as applicable, shall be modified to the reasonable satisfaction of the Licensors.

16.2 In addition to, and not in derogation of, the remedies provided in Section 16.1 hereof, if Licensee shall fail to comply with any term or condition of this Temporary Entry Permit, the Licensors, the Licensors shall have the option to direct the Licensee Parties to immediately suspend work or operation, secure their equipment and cause Licensee Parties' personnel to vacate ERY until such failure is remedied with no additional cost due from the Licensors on account thereof, provided that the failure of the Licensee Parties to comply with the foregoing or the vacate obligations under Section 16.1 shall not be deemed a default hereunder unless the cessation does not occur within one (1) Business Day after the giving of the suspension notice.

16.3 This License is not a lease and does not grant to any Licensee Party rights of a tenant under the laws of the State of New York in any action against Licensee, in any claim brought by any Licensee Party against any Licensor Indemnitee, or a defense against any action brought by any Licensor Indemnitee.

#### 17. Equipment and Machinery.

Licensee shall not carry onto or use at the ERY heavy machinery of any kind without obtaining the Licensors' prior written consent, except to the extent that such heavy machinery is of the nature described in the Approved MPB Demolition Work Plan and/or an Approved MTA Environmental Remediation Work Plan. A list of any and all equipment proposed to be used on the ERY by Licensee shall be submitted to the Licensors for prior written approval, such approval not to be unreasonably withheld so long as such equipment is of a type customarily used for the performance of the Work to be undertaken by Licensee pursuant to the terms hereof, as applicable, and shall not otherwise interfere with Service Reliability, Public Safety, compliance with applicable law, LIRR Operations or the performance of any LIRR Activities. The Licensors reserve the right, in their reasonable discretion, to prohibit the use of any equipment on the ERY, except to the extent such equipment has been approved by the Licensors in accordance with the Approved MPB Demolition Work Plan and/or an Approved MTA Environmental Remediation Work Plan.

#### 18. Restoration of ERY.

18.1 If during the course of the performance of the Work there is any damage to any of the Licensors' facilities, equipment or other property (excluding the Metals Purchasing Building) caused by the Work ("LIRR Damage"), the Licensors shall promptly notify Licensee of such LIRR Damage. In the event of any situation which would have an immediate adverse impact on Public Safety, Service Reliability or Legal Compliance (an "Emergency Situation"), the Licensors shall have the option of either (a) repairing and making safe, or causing to be repaired and made safe, the subject LIRR Damage, so as to return the damaged property to its original condition and functionality, in which case all Force Account Costs incurred with respect to work associated with such repairs, and all reasonable third-party contractor costs (for all such work performed by third-party contractors), shall be charged to and paid by Licensee, or (b) demanding that Licensee repair and make safe such LIRR Damage, in which case Licensee shall

immediately undertake and diligently complete the necessary repair work, in a good and workmanlike manner, so as to restore the damaged property to its original condition and functionality, at Licensee's sole cost and expense.

18.2 If during the course of the performance of the Work there is any LIRR Damage that does not give rise to an Emergency Situation, the Licensors shall look first to Licensee for the repair of the subject LIRR Damage, and upon demand by the Licensors, Licensee shall promptly undertake and diligently complete the necessary repair work, in a good and workmanlike manner, so as to restore the damaged property to its original condition and functionality, at Licensee's sole cost and expense.

18.3 If, pursuant to either Section 18.1 or Section 18.2 hereof, the Licensors make a demand on Licensee to repair LIRR Damage, and Licensee fails within the time frames specified therein to commence repairing such LIRR Damage or shall fail to diligently pursue the same to completion, the Licensors shall have the right to make or cause to be made such repairs as are required to return such LIRR Damage to its original condition and functionality, in which case all Force Account Costs incurred with respect to the work associated with such repairs, and all reasonable third-party contractor costs (for all such work performed by third-party contractors), shall be charged to and paid by Licensee.

18.4 Promptly upon completion of the Work, but in all events not later than the end of the Term (or, in the case of a Required Remediation Activity that is performed in whole or in part after the end of the Term, not later than the end of the term of any additional access agreement entered into between the Licensors and Licensee for the performance of such Required Remediation Activity), Licensee shall complete all of the aforementioned repairs and restore the ERY to a condition reasonably satisfactory to the Licensors. The provisions of this Section 18 shall survive the expiration of the Term or any earlier termination of this Temporary Entry Permit.

#### 19. Compliance with Law.

Licensee shall comply (and shall cause all Licensee Parties to comply) with all federal, state and applicable local laws, regulations, rules, requirements and ordinances applicable to the Licensee Parties' entry upon and use of the ERY pursuant to this License. This License shall be construed in accordance with the laws of the State of New York.

#### 20. No Assignment.

Licensee shall make no assignment or transfer of this License (provided, that in the event that Licensee assigns its rights and obligations under the ERY Agreement to Enter into Lease to any Person in accordance with Article XVI thereof Licensee shall simultaneously assign all of its rights and obligations under this License to such Person) and shall not permit the ERY to be used or occupied by any person other than the Licensee Parties without prior written consent of the Licensors. Any assignment, transfer, use or occupancy attempted to be made or permitted in violation of this Section 20 shall be void.

21. Signage; Confidentiality.

21.1 Signage. Except as required by law, Licensee shall not place or allow to be placed upon any part of the ERY any signs or notices without the Licensors' prior written approval. Licensee shall not use the name, trademark or logo of any Licensor Indemnitee or issue any press release or public statement regarding this License or the Work for any purpose without the prior written consent of MTA.

21.2 Licensee's Confidentiality Obligations. This License and all terms outlined herein and the information relating to the Work supplied by MTA or LIRR shall be kept strictly confidential by Licensee except as otherwise required by Legal Requirements or agreed to by the Licensors, provided that Licensee may share such information as it deems pertinent with its counsel, consultants, accountants and employees and with prospective lenders and investors, and their respective counsel, consultants, accountants and employees, but shall require that they shall maintain similar confidentiality and shall be responsible for any breach of the terms of this confidentiality requirement by such parties, and provided further that such confidentiality requirement shall not extend to information previously made public, other than by reason of Licensee's breach of this Section 21.2.

21.3 Licensor Confidentiality Obligations. The Licensors acknowledge that Licensee has provided and will be hereafter providing confidential information, including trade secrets and proprietary information, the disclosure of which would be harmful to Licensee's competitive position. Accordingly, the Licensors agree that, if disclosure requests are received by the Licensors pursuant to the Freedom of Information Law or any judicial or legislative subpoena, requesting any financial information concerning Licensee or its principals, or any trade secret or proprietary information provided to the Licensors by Licensee, they shall give Licensee prior written notice and the opportunity to object to such Freedom of Information Law request or subpoena (it being understood and agreed that the Licensors shall have the right to make disclosures believed in good faith to be required under the Freedom of Information Law or other applicable law notwithstanding any objection of Licensee). Licensee understands and acknowledges that each of the Licensors is a public authority of the State of New York and is subject to review and oversight by legislative and other regulatory bodies, and that the Licensors are required by Legal Requirements and may be compelled or requested by such oversight bodies to make public disclosure of information regarding the ERY Project and the Work, and the Licensors shall be fully entitled to do so without objection from Licensee, subject to the foregoing provisions of this Section 21.3.

22. Force Majeure.

Except to the extent required to maintain Public Safety, Service Reliability or compliance with applicable law, Licensee shall be permitted to delay the performance of its non-monetary obligations under this License due to either (a) the occurrence of Force Majeure (as hereinafter defined), or (b) a failure by the Licensors to provide Force Account Personnel in accordance with the Approved MPB Demolition Work Plan and/or any Approved MTA Environmental Remediation Work Plan, as applicable. The Licensors shall reimburse Licensee for any reasonable increased costs in performing the Work as a direct result of a failure described in clause (b). As used herein, "Force Majeure" shall mean a delay incurred by a party (such party,

a "Delayed Party") in the performance of any non-monetary obligation under this License as a direct and proximate result of (a) an act of God, (b) inability to obtain labor, equipment, supplies or materials due to extraordinary governmental action, (c) any action or inaction on the part of Amtrak in its capacity as an occupant of tunnels within the ERY, (d) unscheduled extraordinary actions taken by Amtrak with respect to train movement control actions in and around Penn Station and between Penn Station and the WSY, (e) unscheduled extraordinary actions taken by New Jersey Transit or the Port Authority in connection with the construction of facilities in and around the ERY, (f) enemy action, terrorism, civil commotion, earthquake, flood, extreme weather (consisting of a hurricane, or a snow storm at a predicted level of Level 2 or above, per the classification of the LIRR), major fire, casualty, war, hostilities, invasion, insurrection, riot, mob violence, malicious mischief, or sabotage, (g) a strike of any labor union or a lockout, in both cases which generally affects all or a substantial portion of the applicable industry or of the LIRR System, and, in the case of Licensee, not just the ERY Project or other projects of Licensee Parties, (h) the unreasonable withholding of consent or approval by another party hereunder (other than in its capacity as a Governmental Authority) to the extent that this License expressly provides that such consent or approval cannot be unreasonably withheld, (i) the withholding of any approvals by a Governmental Authority, Amtrak, NYCTA, the Port Authority or New Jersey Transit (as such terms are defined in the ERY Construction Agreement) (acting in its governmental or proprietary capacity) beyond the period provided for obtaining such approvals in the ERY Construction Schedule (as such term is defined in the ERY Construction Agreement) or (j) other similar cause beyond the reasonable control of the Delayed Party (not including the Delayed Party's insolvency or financial condition or a delay arising as a result of the actions or inactions of a Delayed Party and/or its Affiliates), which has the effect of delaying or preventing the Delayed Party's performance of its obligations hereunder (other than any obligation of the Delayed Party involving the payment of money), but only (i) to the extent (if any) such delay cannot be offset or eliminated by the exercise of reasonable, good-faith curative efforts on the part of the Delayed Party, and without giving duplicative effect to concurrent delays and (ii) provided that the Delayed Party (x) notifies the other party(ies) in writing of the occurrence of any event constituting a Force Majeure condition promptly after commencement thereof, and (y) throughout the pendency of such Force Majeure condition, utilizes good-faith efforts to minimize the impact and delays caused by such Force Majeure condition.

## 23. Dispute Resolution.

23.1 If any dispute arises between the Licensors and Licensee with respect to the rights and/or obligations of the parties under this Temporary Entry Permit, the Licensors and Licensee shall attempt to resolve the matter at a field level among the appropriate representatives of the Licensors and Licensee. If the dispute is not resolved after diligent efforts by the Licensors and Licensee, the dispute shall be submitted to LIRR's Vice-President for East Side Access and Special Projects (or such other person as may be designated for such purpose by the LIRR President) and Licensee's Vice President (or such other person as may be designated for such purpose by Licensee). If the matter in dispute is not resolved at this level, it shall be presented to the LIRR President and L. Jay Cross, President of Licensee (or his successor). It is intended that, if a matter is not resolved within fourteen (14) days after submission to a level of review, it shall thereafter be referred to the next level of review.

23.2 Any dispute between the parties related to the MPB Demolition Cost Estimate or the MTA Environmental Remediation Cost Estimate (but excluding disputes relating to the use of Force Account Personnel or the incurrence of Force Account Costs) that the parties could not resolve in accordance with Section 23.1, shall be resolved according to the following procedure: (i) for disputes involving a claim, or aggregated claims with respect to substantially similar matters, of greater than One Hundred Thousand Dollars (\$100,000) and up to One Million Dollars (\$1,000,000) ("Arbitrable Claims") the parties will present matters to the Arbitrator for binding arbitration in accordance with Section 23.3; and (ii) for disputes involving a claim, or aggregated claims on substantially similar matters, of (x) One Hundred Thousand Dollars (\$100,000) or less, or (y) greater than One Million Dollars (\$1,000,000), the parties reserve their rights to pursue all available legal and equitable remedies; provided, that the One Million Dollar (\$1,000,000) threshold will be increased to Two Million Five Hundred Thousand Dollars (\$2,500,000) if both parties agree, acting reasonably and in good faith, that the procedure set forth in Section 23.3 has fairly and efficiently resolved the disputes before it. The amounts set forth in this Section 23.2 shall be subject to CPI Adjustment.

23.3 In the event that the Licensors and Licensee are unable to negotiate a resolution of any Arbitrable Claim as set forth above, either the Licensors or Licensee may submit such Arbitrable Claim to binding arbitration by giving written notice thereof to the other party and to the Arbitrator. The following provisions shall apply to any such arbitration:

(a) The arbitration shall be administered and conducted by a neutral Person in New York, New York, mutually agreed to by the Licensors and Licensee from time to time (the "Arbitrator"). The Arbitrator shall have not less than ten (10) years' experience in the subject area of the Arbitrable Claim, and shall not have been employed by, or engaged in a professional capacity (other than as an arbitrator) for any of the parties. In the event that the parties cannot agree within fifteen (15) days on the identity of the Arbitrator, either party may apply to the Supreme Court, New York County, for the appointment of an Arbitrator, provided however, that if an arbitrator has been appointed and is still serving in such capacity under either the ERY Agreement to Enter into Lease, the ERY Expenses Agreement or the ERY Construction Agreement for the resolution of a dispute between one or more of the Licensors, on the one hand, and Licensee or Developer, on the other hand, concerning the same or any similar issue, such arbitrator shall serve as Arbitrator hereunder. The Arbitrator shall, once so selected, serve as Arbitrator for all disputes hereunder with respect to such issue and/or any similar issue until the earlier of (i) the fifth (5<sup>th</sup>) anniversary of the date hereof and each succeeding fifth (5<sup>th</sup>) anniversary thereafter and (ii) any death, incapacity, resignation or removal (by mutual agreement of the Licensors and Licensee) of the Arbitrator, the Licensors and Licensee (acting reasonably and in good faith) shall agree on a successor Arbitrator, who may or may not have previously served as the Arbitrator. The fees and expenses of the Arbitrator in connection with the arbitration shall be borne fifty percent (50%) by the Licensors and fifty percent (50%) by Licensee.

(b) Within fifteen (15) Business Days after the delivery of an arbitration notice in accordance with the foregoing provisions of this Section 23.3, the Licensors and Licensee shall each submit to the Arbitrator a single proposed settlement of the dispute (which settlement shall not be inconsistent with this Temporary Entry Permit), together with such written explanation or evidence relating thereto as such party deems appropriate. After making its



submission, neither the Licensors nor Licensee may make any additions to or deletions from, or otherwise change, the same. If either the Licensors or Licensee fails to make a submission within such fifteen (15) Business Day period, TIME BEING OF THE ESSENCE WITH RESPECT THERETO, such party shall be deemed to have irrevocably waived its right to make any submission.

(c) Within five (5) Business Days after the earlier of (i) the receipt by the Arbitrator of submissions from the Licensors and Licensee in accordance with clause (b) of this Section 11.1 and (ii) the end of the fifteen (15) Business Day period described in such clause, the Arbitrator shall select the settlement proposed in one of such submissions, in its entirety and without any modification thereto, and shall render a determination to such effect in a signed and acknowledged written instrument, originals of which shall be sent simultaneously to the Licensors and Licensee. Such determination shall be conclusive, final and binding on the Licensors and Licensee, and shall constitute an "award" by the Arbitrator for the purposes of applicable law, and judgment may be entered thereon in any court of competent jurisdiction. The Arbitrator's determination may be based on such assistance as the Arbitrator may find desirable, including advice of engineering or other experts. The effect of such determination shall not be impaired or waived by any negotiations or settlement offers, or by any prior decision of others, which prior decisions shall be deemed subject to review, or by any termination or cancellation of this Temporary Entry Permit.

#### 24. Notices.

24.1 Any notice required to be given shall be in writing and shall be sent by certified mail (postage prepaid and return receipt requested), prepaid overnight courier or hand delivery to the addresses set forth below:

- (a) If to Licensors, to MTA at its address first set forth above, attention:  
Director of Real Estate

with a copy at the same time to MTA at the address first set forth above,  
attention: General Counsel

with a copy at the same time to LIRR at the address first set forth above,  
attention: General Counsel

and to:

Paul Weiss Rifkind Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, New York 10019  
Attention: Meredith J. Kane, Esq.

- (b) If to Licensee, to its address first set forth above, attention: Mr. Jeff T. Blau

with a copy at the same time to Licensee at the address first set forth



above, attention: Mr. L. Jay Cross

and to:

Fried Frank Harris Shriver & Jacobson LLP  
One New York Plaza  
New York, New York 10004  
Attention: Stephen Lefkowitz, Esq.

24.2 Any party may change its address as set forth herein by notice to the others in the manner provided for herein. Notice shall be deemed given (a) when personally delivered with signed delivery receipt obtained, (b) upon receipt when sent by prepaid reputable overnight courier, or (c) three (3) days after the date so mailed if sent postage prepaid by certified mail, return receipt requested.

25. Acceptance.

Licensee will have a duly authorized officer indicate acceptance of the above conditions by signing four (4) counterparts of this License and returning them to the Licensors.

26. Entire Agreement.

This License, together with the other ERY Project Documents represents the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior understandings or agreements oral or written with respect to access to the ERY by any Licensee Party or any employee or consultant thereof. No change or modification of any of the terms and conditions hereof shall be valid or binding unless contained in writing signed by all the parties hereto.

27. Waiver.

No consent, express or implied, by any Licensor Indemnitee, to any breach or default by Licensee in the performance of any obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default; the Licensor Indemnitees' failure to complain of any act or failure to act on the part of Licensee or to declare Licensee in breach or default of the License, irrespective of how long such failure continues, shall not constitute any waiver of the Licensor Indemnitees' rights hereunder. No consent, express or implied, by Licensee, to any breach or default by any Licensor Indemnitee in the performance of any obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default. Except as otherwise provided herein, Licensee's failure to complain of any act or failure to act on the part of any Licensor Indemnitee or to declare the Licensors in breach or default of the License, irrespective of how long such failure continues, shall not constitute any waiver of Licensee's rights hereunder.

28. Severability.

The provisions of this License are severable and if any term, condition or other portion thereof is held invalid, the remaining provisions hereof shall be given full force and effect.

29. Construction of License.

This License has been jointly drafted by the parties hereto, and no party shall be deemed to be the drafter of this License or any provision hereof for purposes of any statute, case law, or rule of interpretation that would or might cause any provision to be construed against the drafter.

30. Sole Benefit.

This License is for the sole benefit of Licensee, the Licensors and the Licensor Indemnitees, and nothing herein shall convey any rights on any other person.

31. Approvals.

Any approvals granted by the Licensors pursuant to this License (but without limiting Section 1.1 hereof) shall be deemed to be the approval of Licensors and shall be binding upon all Licensors, except with respect to matters for which LIRR approval is expressly required by the terms hereof. No approvals granted by the Licensors shall be deemed to waive Licensee's obligations under this License to comply with applicable laws, including Environmental Laws, in the conduct of Licensee's activities hereunder, or be deemed approval or consent by the Licensors to any activities conducted in violation of applicable laws.

32. No Personal Liability.

No direct or indirect partner, member or shareholder of Licensee (or any officer, director, agent, member, manager, personal representative, trustee or employee of any such direct or indirect partner, member or shareholder), shall be personally liable for the performance of Licensee's obligations under this License, nor shall any officer, director, trustee, agent, manager, or employee of the Licensors be personally liable for the performance of the Licensors' obligations under this License.

33. Defaults.

Licensee shall not be deemed in default of its obligations under this License prior to the delivery of a written notice by the Licensors specifying the nature of the default and twenty (20) days' opportunity to cure (or, in the event that such cure cannot reasonably be effected within such time, if Licensee fails to commence such cure and/or diligently pursue the same to completion), or such shorter notice period expressly provided in this License, provided that any such notice shall contain a clear and conspicuous statement that the Licensors intend to exercise their remedies hereunder if such default is not timely cured. If Licensee fails to cure such default within such period, the Licensors shall have all available remedies at law or in equity, including without limitation the rights to: (a) take such steps as shall be reasonably necessary to remedy such default by self-help, (b) revoke the License and remove Licensee from the ERY by any lawful means, and/or (c) bring an action at law or in equity for damages and/or specific performance. Any costs and expenses incurred in connection with the exercise of such rights by the Licensors shall be paid in accordance with the Project Documents.

34. Estoppel Certificates.

Whenever requested upon at least twenty-one (21) days' prior written notice from another party (or its designee, including a mortgagee or potential mortgagee), the requested party shall furnish to such requesting party or its designee a written statement, setting forth: (a) whether this License is in full force and effect; (b) the extent to which this License has been modified; (c) the extent to which, to the best of the certifying party's knowledge, any other party is in default under this License, which default remains uncured; and (d) any other information known to the certifying party and reasonably requested by the requesting party. Such statement may be relied upon by the requesting party and said designee.

35. Original Temporary Entry Permit.

Each of the parties hereto certify, to the best of their respective knowledge, that (i) no other party hereto is in default under the Original Temporary Entry Permit and (ii) except as modified by this License, the Original Temporary Entry Permit remains unmodified and in full force and effect.

[remainder of page intentionally left blank]

IN WITNESS HEREOF, the parties hereto have caused this Temporary Entry Permit to be duly executed as of the day and year first indicated above.

LICENSEE:

ERY TENANT LLC

By: 

Name: Jeff T. Blau

Title: Executive Vice President

LICENSORS:

METROPOLITAN TRANSPORTATION AUTHORITY

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

Name: Jeffrey Rosen

Title: Director of Real Estate

THE LONG ISLAND RAIL ROAD COMPANY

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

Name: Helena E. Williams

Title: President

ACKNOWLEDGED AND AGREED:

TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY

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

Name: Jeffrey Rosen

Title: Director of Real Estate

IN WITNESS HEREOF, the parties hereto have caused this Temporary Entry Permit to be duly executed as of the day and year first indicated above.

LICENSEE:

ERY TENANT LLC

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

Name: Jeff T. Blau

Title: Executive Vice President

LICENSORS:

METROPOLITAN TRANSPORTATION AUTHORITY

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

Name: Jeffrey Rosen

Title: Director of Real Estate

THE LONG ISLAND RAIL ROAD COMPANY

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

Name: Helena E. Williams

Title: President

---

ACKNOWLEDGED AND AGREED:

TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY

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

Name: Jeffrey Rosen

Title: Director of Real Estate

IN WITNESS HEREOF, the parties hereto have caused this Temporary Entry Permit to be duly executed as of the day and year first indicated above.

LICENSEE:

ERY TENANT LLC

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\_\_\_\_\_  
Name: Jeff T. Blau  
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LICENSORS:

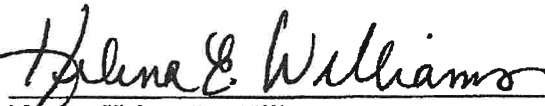
METROPOLITAN TRANSPORTATION AUTHORITY

By:

\_\_\_\_\_  
Name: Jeffrey Rosen  
Title: Director of Real Estate

THE LONG ISLAND RAIL ROAD COMPANY

By:

  
\_\_\_\_\_  
Name: Helena E. Williams  
Title: President

---

ACKNOWLEDGED AND AGREED:

TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY

By:

\_\_\_\_\_  
Name: Jeffrey Rosen  
Title: Director of Real Estate

ACKNOWLEDGEMENTS

STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF NEW YORK    )

On the 26 day of May in the year 2010 before me, the undersigned, personally appeared Jeff T. Blau, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



\_\_\_\_\_  
Notary Public

**ROBERT P. SCHROEDER**  
Notary Public, State of New York  
No. 01SC4803179  
Qualified in Queens County  
Commission Expires 7-31-10

STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF NEW YORK    )

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2010 before me, the undersigned, personally appeared Jeffrey Rosen, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted; executed the instrument.

\_\_\_\_\_  
Notary Public

ACKNOWLEDGEMENTS

STATE OF NEW YORK    )  
                                  ) ss.:  
COUNTY OF NEW YORK )

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2010 before me, the undersigned, personally appeared Jeff T. Blau, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK    )  
                                  ) ss.:  
COUNTY OF NEW YORK )

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\_\_\_\_\_  
Notary Public

**ROBERT P. SCHROEDER**  
Notary Public, State of New York  
No. 0180403179  
Qualified in Queens County  
Commission Expires 7-31-10



On the 25<sup>th</sup> day of May in the year 2010 before me, the undersigned, personally appeared Helena E. Williams, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Catherine Pinaldi  
Notary Public

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2010 before me, the undersigned, personally appeared Jeffrey Rosen, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

*Signature Page to ERY Temporary Entry Permit*

STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF NEW YORK    )

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2010 before me, the undersigned, personally appeared Helena E. Williams, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF NEW YORK    )

On the 26 day of May in the year 2010 before me, the undersigned, personally appeared Jeffrey Rosen, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



\_\_\_\_\_  
Notary Public

**ROBERT P. SCHROEDER**  
Notary Public, State of New York  
No. 0180483179  
Qualified in Queens County  
Commission Expires 7-31-10

**EXHIBIT A**

**Approved Contractors/Subcontractors**

Langan Engineering and Environmental Services P.C.

**Drilling:**

Aquifer Drilling & Testing, Inc. (ADT); New Hyde Park, NY

Summit Drilling; Summit, NJ .

**Utilities Tone-Out:**

Admiral Conservation Services (ACS); Georgetown, CT .

**Laboratory:**

Spectrum Analytical; Agawam, MA.

Aqua Pro-Tech Labs; Fairfield, NJ.

**Other:**

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Kohn Pederson Fox

Syska & Hennessy

Systra Engineering

Thornton Thomasetti

Bovis Lend Lease

Skanska

Jaros Baum & Bolles

**EXHIBIT B**

**Project Liaisons**

**Licensee Project Liaison:**

Nicholas Mazzaferro  
Phone: (212) 801-1017

**Licensors Project Liaison:**

George Ehrhardt  
Phone: (212) 643-5085