



# LL97 Offset Purchase Application

New York City Affordable Housing Reinvestment Fund

## INSTRUCTIONS:

- To complete this New York City Affordable Housing Reinvestment Fund Offset Purchase Application (this “**Application**”) answer all questions and complete all fields that are applicable. If a question is not applicable, write: “n/a”. If you do not know the answer to a question, write: “unknown”.
- Text appearing in *italics* provides instructions or additional information on a given field.
- Before sending your completed Application, read the “Acknowledgments, Agreements and Certifications” on page 3 and sign in the space indicated.
- If you have questions, e-mail the Fund Administrator at [NYCOffsets@nyceec.com](mailto:NYCOffsets@nyceec.com), call 646-797-4630, or visit the Program website [here](http://www.nyceec.com).
- Send the completed and signed Application by e-mail as a .PDF file to the Fund Administrator at [NYCOffsets@nyceec.com](mailto:NYCOffsets@nyceec.com).

## Part 1. Contact Information

Full legal name of person completing this Application (the “**Purchaser’s Agent**”):

Title:	Organization:
Telephone:	E-mail:
Person completing the application is <i>(check one)</i> : <input type="checkbox"/> An engineer or design professional <input type="checkbox"/> The owner of the Building(s) identified in Part 3	<input type="checkbox"/> The manager for the Building(s) identified in Part 3 <input type="checkbox"/> An officer or director of the Purchaser identified below <input type="checkbox"/> Other _____ <i>(insert description)</i>

## Part 2. Information on Offset Purchaser

Is the person completing this application the Offset Purchaser (the “**Purchaser**”): ☐ Yes ☐ No

*Note: The Purchaser is the person or entity for whom the offsets will be retired. Purchaser must be the owner of the Building(s) covered by LL97.*

If “No”, full legal name of the Purchaser:

Purchaser E-mail:

Legal structure *(check one)*: ☐ Limited Liability Company ☐ For-profit Corporation ☐ Not-for-profit Corporation  
☐ General Partnership ☐ Limited Partnership ☐ Sole Proprietorship ☐ S-Corporation  
☐ Condominium ☐ Cooperative ☐ Private Individual  
☐ Other \_\_\_\_\_  
*(insert description)*

Federal Employer Identification Number (EIN):

State of formation: Date formed:

Primary business address:

City: State: Zip:

E-mail address to which notices should be sent:

Is the person or entity that is the proposed Purchaser the owner of the Building(s)? ☐ Yes ☐ No

*The Fund Administrator may contact the Applicant directly to obtain necessary identifying and/or other information. If the proposed Purchaser is an individual, Applicants must not include in this Application any personally identifiable information (“PII”) for the individual such as their date of birth, Social Security Number, or other similar PII.*

Is this purchase of Offsets being undertaken for any purpose other than Local Law 97 compliance?

☐ Yes ☐ No ☐ Unknown *Note: This Offset Purchase Application may only be used by building owners for LL97 compliance purposes.*



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If the answer to the above is Yes or Unknown, state the reason or potential reason for wishing to purchase the Offsets:

### Part 3. LL97 Compliance Information

Total Number of LL97 Covered Building(s): \_\_\_\_\_ Note: This should be the total number of buildings included in this Offset purchase.  
(insert number)

Full legal name of person or entity that owns all the Building(s) identified below:

Note: A separate Application must be submitted for each Building owner. Multiple Buildings may be included in the same Application only if they are owned by the same entity or person.

To complete the fields below, information on each Building should be entered separately. If an aggregated emissions report for LL97 is being submitted for multiple buildings, only the BBL(s) as displayed on the LL97 reporting portal need to be provided, no BIN or address is required. Email [BEAM\\_LL97@buildings.nyc.gov](mailto:BEAM_LL97@buildings.nyc.gov) for any questions relating to aggregate reports.

<b>Building 1:</b> <sup>1</sup>	Full Site Address:	
Borough, Block, Lot No (BBL): 10-digits, no spaces	Quantity of Offsets for Building 1 (in tCO <sub>2</sub> e): Round to nearest hundredths (e.g. 10.12)	
Building Identification Number (BIN): 7- digits, no spaces	Offset Purchase Price: \$268 per Offset/tCO <sub>2</sub> e (For example: 21.71 Offsets x \$268 = \$5,818.28)	
<b>Building 2:</b>	Full Site Address:	
Borough, Block, Lot No (BBL): 10-digits, no spaces	Quantity of Offsets for Building 2 (in tCO <sub>2</sub> e): Round to nearest hundredths (e.g. 10.12)	
Building Identification Number (BIN): 7- digits, no spaces	Offset Purchase Price: \$268 per Offset/tCO <sub>2</sub> e (For example: 21.71 Offsets x \$268 = \$5,818.28)	
<b>Building 3:</b>	Full Site Address:	
Borough, Block, Lot No (BBL): 10-digits, no spaces	Quantity of Offsets for Building 3 (in tCO <sub>2</sub> e): Round to nearest hundredths (e.g. 10.12)	
Building Identification Number (BIN): 7- digits, no spaces	Offset Purchase Price: \$268 per Offset/tCO <sub>2</sub> e (For example: 21.71 Offsets x \$268 = \$5,818.28)	

If more than 3 buildings are covered by this Application, attach a supplemental page to this Application with the same information as specified above for Buildings 1 – 3.

### Part 4. Information on Offsets Being Purchased

Total quantity of Offsets to be purchased (in tCO<sub>2</sub>e):  
Round to the nearest hundredths of a whole number of tCO<sub>2</sub>e: e.g. 100.01 tCO<sub>2</sub>e, or 10.71 tCO<sub>2</sub>e

Total Purchase Price: \$ \_\_\_\_\_ Note: the price should be the quantity of Offsets to be purchased multiplied by \$268.00.

LL97 filing year for which the Offsets are being purchased:

Filing year is the year for which you are filing a LL97 Compliance Report based on the prior year's building performance.

<sup>1</sup> Use the BBL, BIN and building address associated with your building's account in Building Energy Analysis Manager ("BEAM"), the LL97 reporting portal.

**Part 5. Acknowledgments and Certifications**

**By signing below, the undersigned hereby acknowledges, agrees and certifies to the New York City Energy Efficiency Corporation, a New York not-for-profit corporation, in its capacity as Fund Administrator (the “Seller”), as follows:**

1. Capitalized terms used but not defined in this Application have the meanings given in the *General Terms and Conditions* attached at the end of this Application (the “**Terms**”).
2. I am the Purchaser or I am a duly authorized officer or similar representative of the Purchaser.
3. To the best of my knowledge, the information included in this Application is true and accurate and this Application does not omit or misrepresent any material information.
4. I will notify Fund Administrator promptly if there is any material change to any of the information provided in this Application, acknowledging, however, that unless Fund Administrator otherwise agrees, I will not be able to change the number of Offsets requested herein after submission of this Application.
5. This Application is subject to, and hereby incorporates by this reference, the Terms attached at the end of this Application, and this Application together with the Terms together constitute a binding agreement between Seller and Purchaser which only becomes effective upon the satisfaction of the conditions-precedent specified in Section 1.3 of the Terms.
6. I understand that, consistent with the Terms, the Purchaser has no right or claim to the Offset Certificate, and the Fund Administrator has no obligation to convey the Offset Certificate, until Fund Administrator confirms that the full and complete Purchase Price has been deposited in the Seller Account.

*If the Purchaser is an individual, complete and sign here:*

**Signature:** \_\_\_\_\_  
*(signature of individual who is the Purchaser)*

**Name:** \_\_\_\_\_  
*(full name of individual who is the Purchaser)*

**Date:** \_\_\_\_\_

*If Purchaser is an entity, complete and sign here:*

**Full legal name of Purchaser:** \_\_\_\_\_  
*(insert full legal name of the entity that is the Purchaser)*

**By:** \_\_\_\_\_  
*(signature of person signing for the Purchaser)*

**Name:** \_\_\_\_\_  
*(name of person signing for the Purchaser)*

**Title:** \_\_\_\_\_  
*(title of person signing for the Purchaser)*

**Date:** \_\_\_\_\_

***If this Application is approved, Fund Administrator will notify Purchaser at the e-mail address specified in Part 1 above.***

## **GENERAL TERMS AND CONDITIONS**

### **SECTION 1 - PURCHASE OF OFFSETS.**

1.1 Information Concerning Seller. The New York City Energy Efficiency Corporation, a New York not-for-profit corporation (“NYCEEC” or “Seller”), in its capacity as the administrator of the New York City Affordable Housing Reinvestment Fund (the “Fund”) in accordance with 1 RCNY § 103-14, an implementing rule of Local Law 97 of 2019, as amended, ( “LL97”) is referred to herein as “Fund Administrator”. Purchaser and Seller are each individually a “Party” and collectively the “Parties.”

1.2 Purchase and Sale of Offsets. Purchaser shall purchase from Seller, and Seller, acting solely in its capacity as Fund Administrator, shall sell, transfer, convey, and deliver to Purchaser, the Offsets in the quantity specified in Part 4 of the Application, where the term “Offset” has the same meaning as the term “Greenhouse Gas Offset” as used and defined in § 28-320.1 of the NYC Administrative Code.

1.3 Payment. As soon as practicable after Seller reviews the Application and proceeds with the sale of Offsets, Seller shall notify Purchaser and request payment of the offset purchase price in the amount specified in Part 4 of the Application (the “Purchase Price”). As soon as practicable after receiving such notification, but in any event no later than by 5:00 pm (New York time) on the day before the date of any deadline applied by the New York City Department of Buildings (“DOB”). Purchaser shall pay the Purchase Price to Seller, by wire transfer of immediately available funds in U.S. dollars to Seller’s account identified in the invoice sent to Purchaser (the “Seller Account”) without setoff, counterclaim, withholding or deduction of any kind. Purchaser shall notify Seller by e-mail on the day such wire transfer is initiated. These Terms shall only become effective once Seller confirms in writing that such payment has cleared (the date such confirmation is sent being the “Effective Date” of these Terms).

1.4 Non-Refundable Purchase. The sale of the Offsets to Purchaser pursuant to these Terms is final. Purchaser’s payment of the Purchase Price for the Offsets is non-refundable, including (without limit) in the event of a change of law or an overestimation of or other error in the annual LL97 building emissions limit applicable to the building(s) specified in Part 3 of the Application (the “Building(s)”) for the calendar year identified in Part 4 of the Application for which the Building(s) is or are required to report annual emissions pursuant to LL97, if any.

1.5 No Sales or Other Taxes. If, at any time, it is determined by the City or the State of New York, or based on the advice of counsel to Seller, that any federal, State or municipal sales or other tax, surcharge, assessment or other governmental charge is or may be applicable in any way to the purchase and

sale of all or a portion of the Offsets, then within ten (10) days of written demand by Seller, Purchaser will pay to Seller any amount Seller has calculated is or should have been paid by Seller in connection with the sale of the Offsets. If any such payment is required, it shall be paid by Purchaser by wire transfer in immediately available funds in U.S. dollars to an account specified by Seller in writing without setoff, counterclaim, withholding or deduction of any kind.

### **SECTION 2 - DELIVERY AND APPLICATION OF OFFSETS.**

2.1 Delivery of Offset Certificate. Seller shall have no obligation to deliver any Offsets to Purchaser until Seller verifies that the Purchase Price has been received by the Seller in the Seller Account and the Effective Date has occurred. Promptly after the Effective Date, Seller shall deliver by e-mail to Purchaser at the applicable address specified in the Application a certificate representing the Offsets purchased by Purchaser (the “Offset Certificate”). The Offset Certificate shall be deemed delivered on the date such e-mail is sent by Seller (the “Delivery Date”).

2.2 Application of Offsets. If and to the extent the Building(s) is or are required to comply with LL97, it is the intention of the Parties for the Offsets purchased by Purchaser to be applied by DOB toward Purchaser’s LL97 compliance in the filing year specified in Part 4 of the Application.

2.3 Offset Registry. Seller maintains a publicly available electronic registry of all Offsets generated by the Fund and sold by Seller including identifying information provided in Part 3 of the Application (the “Offset Registry”). As soon as practicable after Seller confirms the Purchase Price has been received in the Seller Account, Seller will update the Offset Registry to reflect the sale and retirement of the Offsets.

2.4 Building Energy Analysis Manager. As soon as practicable after recording the Offsets on the Offset Registry, Seller shall deliver to DOB such records, files or other information concerning the purchase and sale of the Offsets as DOB may request by uploading, transferring or otherwise providing such records, files or other information to the Building Energy Analysis Manager (“BEAM”) platform established by DOB or by another reasonable method. It is the understanding of the Parties that if the Building(s) is or are covered by LL97, then such records, files, and other information will be used by DOB to account for the Purchaser’s purchase of the Offsets and the allocation of the Offsets to the Building(s)’ account in BEAM for the applicable calendar year. Purchaser acknowledges and agrees, however, that Seller has no intellectual property interest in or control over BEAM and that Seller has no liability to Purchaser or any person or entity affiliated with Purchaser if BEAM is at any time



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offline or otherwise unavailable for any reason or if any errors, delays or other issues of any sort may arise from time to time with BEAM.

**2.5 Non-Transferrable. Purchaser may not sell, assign, pledge, or in any other manner transfer the Offsets, in whole or in part.**

### **SECTION 3 - REPRESENTATIONS AND WARRANTIES.**

**3.1 Mutual Representations and Warranties.** Each Party hereby represents and warrants to the other Party and the City that as of the Effective Date: (a) to the extent that it is a corporation, partnership or limited liability company, it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; (b) the execution, delivery and performance of their respective obligations under these Terms are within its power and legal capacity, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any laws applicable to it; and (c) these Terms constitute a valid, legal and binding obligation enforceable against such Party.

**3.2 Seller Representations and Warranties.** Seller, as Fund Administrator, hereby represents and warrants to Purchaser that as of the Effective Date: (a) it has been duly appointed by the City to act in the capacity of Fund Administrator; (b) it is authorized to sell the Offsets, issue the Offset Certificate, enter the Offsets on the Offset Registry, and retire the Offsets; and (c) the Offsets have not been purchased by, transferred to, or retired by any entity or person other than Purchaser.

**3.3 Purchaser Representations and Warranties.** Purchaser hereby represents and warrants to Seller and the City that as of the Effective Date:

(a) Purchaser is acting for its own account, has made its own independent decision to agree to these Terms and as to whether this transaction is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understands and accepts the conditions and risks of these Terms and the transactions contemplated herein. In making such assessment Purchaser has had the opportunity to consult with its own attorney, accountant, and other advisors.

(b) Purchaser is the owner of all of the Building(s), and if the Application is being filled out by a Purchaser's Agent, such Purchaser's Agent is acting on behalf of the owner and is duly authorized by Purchaser to agree to these terms and perform its obligations hereunder for and on behalf of such Purchaser. The calendar year specified in Part 4 the Application is the correct year under LL97 for which Purchaser wishes to report the Offsets. The "BBL" number, "BIN", and street address(es) for the

Building(s) as specified in Part 3 of the Application are true, correct and complete in all respects.

(c) The information provided by or on behalf of Purchaser in the Application is true and correct in all material respects.

(d) Purchaser (i) is not a "Prohibited Person," meaning any person or entity (a) named on the "Specially Designated Nationals and Blocked Persons" list maintained by the U.S. Department of Treasury's Office of Foreign Assets Control at its official website or any replacement website or other replacement official publication of such list; (b) that is otherwise the target of any economic sanctions program currently administered by any federal Governmental Authority; (c) who has in the prior three (3) years violated, is currently in violation of, or is known to have been under investigation by any governmental authority for any potential violation of the Bank Secrecy Act, the Patriot Act, or any other related or similar U.S. law, rule or regulation governing terrorism or money laundering activities; (d) with whom a U.S. person may not otherwise conduct business by prohibition of applicable law; and (e) that is an affiliate of any kind of any person or entity identified in clauses (a) – (d) of this definition; (ii) is not a "Covered Entity," meaning a "Russian entity", "Supporting entity" or "Entity conducting business operations in Russia"; as such terms are defined in (a) Executive Order No. 14 (Directing State Agencies and Authorities to Divest Public Funds Supporting Russia) issued by Governor Kathy Hochul of the State of New York on February 27, 2022; and/or (b) Executive Order No. 16 (Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia) issued by Governor Kathy Hochul of the State of New York on March 17, 2022; (iii) is not owned or controlled by a Prohibited Person or a Covered Entity; (iv) does not act for or on behalf of, or provides assistance, support, sponsorship, or services of any kind to, a Covered Entity; and (v) does not engage in any dealings or transactions, nor is it otherwise associated with, a Covered Entity.

### **SECTION 4 – LIMITATION ON LIABILITY; INDEMNIFICATION.**

**4.1 Limitation of Liability.** Except as set forth herein, the Offsets are sold "AS IS" without any warranty or representation from Seller. Seller expressly disclaims all implied warranties, including any implied warranty of merchantability or fitness for a particular purpose, including but not limited to satisfying any governmental or non-governmental program's carbon emissions mandatory or permissive purpose. Neither Seller nor the City will be liable for consequential, incidental, punitive, exemplary or indirect damages, lost profits, or other business interruption damages by statute, in tort or contract, under any indemnity provision or otherwise. Neither Seller nor the City shall have any liability to Purchaser or any person or entity affiliated with Purchaser





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(whether sounding in tort, contract, equity or otherwise) for losses suffered by Purchaser or any person or entity affiliated with Purchaser in connection with or in any way related to the transactions contemplated by these Terms, or any act, omission or event occurring in connection herewith, unless it is determined by a final and non-appealable judgment or court order binding on Seller that the losses were the result of acts or omissions constituting a material breach of the obligations of Seller hereunder, or the gross negligence or willful misconduct of Seller. Without limiting any disclaimers and releases provided herein, the liability of Seller and the City, by statute, in tort, in contract or otherwise, relating to the subject matter of these Terms shall be limited to direct damages not in excess of the Purchase Price. The limitations of liability provided for in this Section 4.1 shall apply in each case to the greatest extent permitted by applicable law.

**4.2 City Not a Party.** Seller is independent from and is not a part of the City, and it has no right or ability to influence the City or cause the City to apply the Offsets for any particular purpose. Nothing contained in these Terms shall impair the rights of the City nor create any contractual relationship between Purchaser and the City.

#### **4.3 Purchaser's Indemnification Obligations.**

(a) As used in this Section 4.3: (i) the term "Claims" means any and all loss, liability, damage, claim, cost, charge, demand, fine, penalty or expense of any kind or nature, including any direct damage, claim, cost, charge, demand, or expense, reasonable attorney costs and other costs of litigation, arbitration and mediation (and including in the case of third-party claims only, indirect and consequential loss or damage of such third-party); and (ii) the term "Indemnified Parties" means Seller and the City and their respective officials, directors, officers, employees, agents, assigns, and successors in interest.

(b) To the fullest extent permitted by law, Purchaser hereby releases, and shall indemnify, defend and hold harmless each of the Indemnified Parties from and against any and all Claims arising out of or in connection with Seller's performance of this transaction. Notwithstanding the foregoing, Purchaser shall not be required to indemnify any Indemnified Party hereunder for Claims against any Indemnified Party to the extent it is determined by a final and non-appealable judgment or court order binding on Seller or another Indemnified Party that the Claim resulted from such Indemnified Party's gross negligence or intentional tortious acts.

## **SECTION 5 – MISCELLANEOUS.**

**5.1 Notices.** Whenever these Terms require or permit delivery of a "Notice" (or requires a Party to "notify"), the Party giving notice shall provide a written communication by courier, nationally recognized overnight delivery service, or e-mail.

Notices to the Purchaser should be sent to the street address or e-mail address specified in Part 2 of the Application. Notices to Seller should be given to: NYCEEC, c/o Offset Fund Administrator, 1359 Broadway, 19<sup>th</sup> Floor, New York, NY 10018, Attn: LL97 Offset Fund Admin., or e-mailed to [NYCOffsets@nyceec.com](mailto:NYCOffsets@nyceec.com). Notices given by courier or delivery service shall be deemed to have been received on the next business day immediately following the date such Notice was deposited with the courier or delivery service. Notices given by e-mail shall be deemed to have been received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, return e-mail or other written acknowledgment). The address of a Party to which Notice shall be given, as specified in the Application, may be changed by Notice.

**5.2 Expenses.** Within ten (10) days after written demand therefor, Purchaser shall pay to Seller all costs and expenses incurred by Seller, including reasonable attorney costs, in connection with (a) the Seller's enforcement or attempted enforcement of, or the investigation, protection or preservation of any rights or remedies of Seller under these Terms; or (b) any amendment, revision, correction, update, replacement, waiver or consent with respect to any provision contained in these Terms, the Offset Certificate, the Offset Registry, and any other present or future instrument executed by or between the Parties or among the Parties and any third party(ies) relating to these Terms or the transactions contemplated hereunder (collectively, the "Transaction Documents") that is requested by the City or that Seller determines (in consultation with the City) must be made from time to time to any Transaction Document; in each where such costs and expenses (including reasonable attorney costs) arise (i) from any breach by Purchaser of its obligations hereunder, and/or (ii) due to any error or omission in any information provide to Seller by or on behalf of Purchaser, or any representation and warranty made herein by Purchaser proving to have been untrue and/or inaccurate as of the Effective Date.

**5.3 Assignment.** Purchaser shall not assign or delegate its rights or obligations hereunder (in whole or in part) without the prior written consent of Seller. With reasonable prior notice to Purchaser, Seller may assign or delegate all or any portion of its rights and/or obligations hereunder to the City or any person or entity designated by the City.

**5.4 Amendment.** These Terms may not be modified, amended, altered or supplemented, except by written agreement signed by the Parties.

**5.5 Independent Parties; No Third Party Beneficiaries.** Nothing herein creates an agency, partnership, employer-employee relationship or corporate association between the Parties. Aside from the City, there are no other third party beneficiaries hereto and aside from the City, these Terms do not



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confer any rights or remedies upon any other person or entity not a Party hereto.

5.7 Freedom of Information Law. Notwithstanding anything to the contrary set forth herein or in any other agreement or instrument, Purchaser hereby acknowledges and agrees that information and documents provided to Seller may be subject to disclosure under New York's Freedom of Information Law, Article 6 of the Public Officers Law ("FOIL") when the information or documents requested are not subject to an exception from disclosure under FOIL, which determination shall be made by Seller in its sole discretion.

5.8 Governing Law. These Terms and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the State of New York, without regard to principles of conflicts of laws.

5.9 JURY TRIAL WAIVER. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THESE TERMS OR THE TRANSACTIONS CONTEMPLATED HEREUNDER.

#### 5.10 JURISDICTION.

(a) PURCHASER IRREVOCABLY SUBMITS TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND OF THE UNITED STATES SITTING IN NEW YORK COUNTY IN RESPECT OF ANY ACTION OR PROCEEDING INVOLVING PURCHASER, AND SELLER RELATING IN ANY WAY TO THESE TERMS OR THE TRANSACTIONS CONTEMPLATED HEREUNDER. PURCHASER AGREES TO BE BOUND BY ANY JUDGMENT OF ANY SUCH COURT WITH RESPECT TO THESE TERMS OR THE TRANSACTIONS CONTEMPLATED HEREUNDER. PURCHASER ACKNOWLEDGES AND AGREES THAT ANY CLAIM IT SEEKS TO BRING AGAINST SELLER OR THE CITY OF NEW YORK ARISING OUT OF THESE TERMS OR THE TRANSACTIONS CONTEMPLATED HEREUNDER MAY ONLY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR OF THE UNITED STATES SITTING IN NEW YORK COUNTY.

(b) Purchaser irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to these Terms in any court referred to in subsection (a) of this Section 5.9. Each Party irrevocably waives, to the fullest extent permitted by Law, the defense of inconvenient forum to the maintenance of any such suit, action or proceeding in any such court.

5.11 Survival. The provisions of Sections 3, 4 and 5 shall survive beyond the Delivery Date.

\* \* \*