

REBNY UNIVERSAL NEW DEVELOPMENT BROKERAGE AGREEMENT

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THIS REBNY UNIVERSAL NEW DEVELOPMENT BROKERAGE AGREEMENT (this “Agreement”) is made as of the ___ day of _____ 20__, by and between _____ (“Owner”), having an office at _____, and _____ having an office at _____ (“Outside Broker”).

W I T N E S S E T H:

WHEREAS:

A. Owner is the sponsor of the Offering Plan, dated _____, and as may be amended from time to time (“Plan”), for the property located at _____, New York _____ (“Property”);

B. Owner desires to offer for sale certain residential units in the Property (“Units”; each, a “Unit”) pursuant to the terms of the Plan (and any and all amendments thereto) as accepted for filing by the New York State Department of Law (“Department of Law”) and the terms of agreements between any potential purchasers and Owner for the sale of Units at the Property, including but not limited to either option and/or purchase agreements (collectively, “Purchase Agreements”);

C. _____ (“Exclusive Sales Agent”), having an office at _____, has been appointed by Owner as Owner’s exclusive sales agent under the Plan;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, Owner and Outside Broker hereby agree as follows:

1. Representations of Outside Broker. Outside Broker represents to Owner (for the benefit of both Owner and Exclusive Sales Agent) that:

(a) Outside Broker is a real estate broker duly licensed in the State of New York and all persons affiliated with Outside Broker in the sale of real estate are real estate brokers or salespersons duly licensed in the State of New York, and that to the extent now or hereafter required by applicable laws or regulations, Outside Broker has or will provide upon request the Department of Law with proof of its compliance with Article 12-A of the New York Real Property Law licensing requirements, including placing on file with the Department of Law a copy of the real estate broker or salesperson license issued by the New York State Department of State. Outside Broker and its brokers and salespersons shall maintain such licenses in good standing throughout the term of this Agreement; and

(b) Outside Broker is authorized to act as a real estate broker and to market the Units to prospective purchasers (each, a “Prospect”) and agrees that each Unit to be listed for sale is offered subject to the Plan (and any and all amendments thereto) and to errors, omissions, changes in price or terms, withdrawal at any time, and prior sale.

2. Compensation.

(a) In connection with the prospective sales of Units to Prospects solely procured by Outside Broker (and any co-broker of Outside Broker, if applicable), and subject to all other conditions contained in this Agreement, Outside Broker agrees to accept a brokerage commission (“Commission”) equal to ____ (___ %) percent of the Net Purchase Price (as such term is defined in Paragraph 2(d) below) for each Unit. Owner shall have the right to change the amount of the Commission payable to Outside Broker with respect to one or more Units at any time by written notice to Outside Broker; provided, however, that any such notice shall not affect the amount of the Commission, or other incentive program, payable to Outside Broker with respect to a sale of a Unit to a Prospect who has submitted a Purchase Agreement or other written offer signed by Prospect, and received by Owner prior to Outside Broker’s receipt of Owner’s notice.

(b) The Commission shall be deemed earned by Outside Broker and due and payable by Owner to Outside Broker only if, as and when (i) a Purchase Agreement satisfactory in all respects to Owner, in its sole judgment, is fully executed by a Prospect and Owner, it being agreed that Owner shall have the absolute right to accept or reject any Prospect without explanation and without liability to Outside Broker; and (ii) such Purchase Agreement is consummated and the agreed upon purchase price, less any discounts agreed to by Owner, is paid to and accepted by Owner at the closing of the sale of the Unit (“Closing”). It is further understood and agreed that: (x) if, for any reason whatsoever, a Purchase Agreement shall not be entered into between Owner and a Prospect, or (y) if a Purchase Agreement shall be entered into, but shall not be consummated for any reason whatsoever, including, but not limited to, Owner’s default, it being expressly understood that the closing of the sale of the Unit is an absolute condition to any liability for any Commission, then, and in either such event, no Commission or compensation of any kind shall be due, earned or payable to Outside Broker and Outside Broker hereby releases Owner and the Exclusive Sales Agent and any and all other Indemnified Parties (as such term is defined in Paragraph 11 below) from any and all claims whatsoever, including for a Commission or other compensation in connection with the relevant Prospect. Commissions, if due, shall be paid at the Closing. No portion of the Commission shall be payable until Outside Broker shall have delivered to Owner a bill for the payment of the same, unless otherwise agreed to by Owner.

(c) In addition to the foregoing, Outside Broker acknowledges and agrees that Outside Broker shall not be entitled to any Commission with respect to a particular Unit should any of the following events arise or apply to a transaction involving such Unit:

(i) the Plan is abandoned or withdrawn, for any reason whatsoever, in accordance with its terms (or otherwise as may be permitted by law);

(ii) the sale is not procured solely by Outside Broker (and its co-broker, if applicable) or Outside Broker is not instrumental in bringing about the sale;

(iii) the Prospect (either directly or through a broker) has previously registered at the Property with Owner or the Exclusive Sales Agent, as determined by Owner or Exclusive Sales Agent, in their discretion;

(iv) the Prospect is an agent, employee or family member of Outside Broker or its brokers, salespersons or any co-broker, or a family member of an agent or employee of Outside Broker or its brokers, salespersons or any co-broker, unless otherwise agreed to by Owner;

(v) (A) Outside Broker fails to register the Prospect, in writing, in accordance with Paragraph 4 below, with the Exclusive Sales Agent before introducing the Prospect to the Property, (B) Outside Broker and the applicable broker or salesperson of Outside Broker are not listed on the Property's sign-in sheet (the "Sign-in Sheet") filled out by the Prospect, or (C) the Prospect indicates on the Sign-in Sheet that they are not working with a broker;

(vi) Outside Broker has otherwise failed to comply with the provisions of Paragraph 3 hereof;

(vii) Outside Broker registers the Prospect in accordance with Paragraph 4 below, and it is subsequently discovered prior to execution by Prospect of a Purchase Agreement, as determined by Owner and/or Exclusive Sales Agent in its sole discretion, that such Prospect had previously registered with a different broker;

(viii) Outside Broker has not accompanied the Prospect on the Prospect's first visit to the sales office for the Property (such location, or any other location designated by Owner or Exclusive Sales Agent, to be referred to herein as the "Sales Office"), unless (A) at such first visit the Prospect has designated Outside Broker as its broker on the Sign-in Sheet, (B) Outside Broker has accompanied the Prospect on the Prospect's second visit to the Sales Office, if any, and (C) this Agreement has been fully executed and delivered prior to or simultaneously with Prospect's first visit to the Property, or prior to or simultaneously with the acceptance by Owner of a written offer to purchase from a Prospect represented by Outside Broker;

(ix) the Prospect has not visited the Sales Office prior to submitting a written offer or signed Purchase Agreement for the Unit, unless same was submitted to Owner or Exclusive Sales Agent by Outside Broker on behalf of the Prospect;

(x) a party related in some way to Prospect, including but not limited to a familial relative, co-purchaser, guarantor, or other related party, has previously registered in accordance with Paragraph 4 below with a different broker;

(xi) Exclusive Sales Agent has received a letter from a Prospect (a) stating that Prospect reasonably believes they have been abandoned by Outside Broker; or (b) Prospect reasonably believes that they have not been effectively represented by Outside Broker, and provides the basis for such belief;

(xii) a Purchase Agreement for a Unit is not signed and submitted by a Prospect within sixty (60) days after such Prospect was most recently registered by Outside Broker, in accordance with Paragraph 4 below; or

(xiii) the Purchase Agreement includes a representation or statement by the Prospect that it dealt with a broker other than Outside Broker, Exclusive Sales Agent and any co-broker of Outside Broker.

Outside Broker understands and agrees that Outside Broker may be required to provide an affidavit to establish proof regarding any assertion by Outside Broker with respect to the above provisions. In addition, in the event of any dispute between Outside Broker and another broker claiming a right to the Commission to be paid pursuant to a transaction on a specific Unit, Owner shall have the right to deposit the Commission into an escrow account maintained by the Real Estate Board of New York, Inc., which shall then hold the Commission until resolution of the dispute between the opposing brokers.

(d) The computation of the Commission to be paid to Outside Broker (and co-broker, if any, acting with the Outside Broker) in the event of a sale shall be based solely upon the Net Purchase Price of the Unit or Units. For purposes of this Agreement, “Net Purchase Price” means the price set forth in the Purchase Agreement, provided, however:

(i) any amounts specifically identified as credits on the final closing statement and/or the amount of any concessions or purchaser incentives paid by or credited by the Owner in lieu of a reduction in the purchase price in order to effectuate execution of the Purchase Agreement and close of title to the Unit shall be deducted from the Net Purchase Price;

(ii) any extra charge for special work or special items ordered and paid for by Prospect shall not be added on to the Net Purchase Price; and/or

(iii) any credits or deductions given after execution of the Purchase Agreement relating to the condition of the Unit shall not be deducted from the Net Purchase Price.

The Net Purchase Price of a Unit as provided in the preceding sentence shall include the actual purchase price paid by such Prospect for any storage, parking or other facility offered for sale or license by Owner at the Project that is purchased or licensed by such Prospect.

3. Appointments.

(a) Outside Broker agrees that Outside Broker or its broker or salesperson shall telephone or e-mail Exclusive Sales Agent (at the Sales Office) and arrange in advance a confirmed appointment during Exclusive Sales Agent’s business hours at the Sales Office (“Sales Office Hours”) and Outside Broker further agrees that Outside Broker or its broker or salesperson shall use its best efforts to accompany the Prospect on any appointment, subject to Paragraph 2(c)(viii) above.

(b) Outside Broker hereby understands and acknowledges that access to the Property will be granted only at Owner’s sole discretion, and may be limited or restricted due to construction activity. Any such request for access shall require reasonable advance notice, and such access, if granted, will be during Sales Office hours. If requested by Owner, prior to gaining access to the Property, all parties shall sign a waiver prepared by Owner.

4. Registration.

(a) In the event Outside Broker attempts to introduce a Prospect to the Property, Outside Broker shall register in writing at the Sales Office, such registration to include: (i) Outside Broker's name and the name of the applicable broker or salesperson of Outside Broker, (ii) the name, address, and phone number of the Prospect, and (iii) the date and time of any on-site visit. Outside Broker will comply with the registration procedures Exclusive Sales Agent establishes from time to time. Outside Broker acknowledges that any registration is valid for an initial period of sixty (60) days only, but shall be extended for additional sixty (60) day-periods after the occurrence of any of the following events:

(i) A visit to the Sales Office by the Prospect or the Outside Broker at the request of the Prospect;

(ii) Acceptance by Owner or Exclusive Sales Agent, on behalf of Owner, of an offer to purchase by Prospect; or

(iii) Issuance of a Purchase Agreement by Owner to Prospect.

(b) In the event Outside Broker arranges a confirmed appointment with respect to a Prospect in accordance with Paragraph 3, such Prospect shall be deemed to be registered as of the date such appointment is arranged, provided that such the Prospect appears for the appointment and that at such appointment Outside Broker complies with the provisions of Paragraph 4(a) set forth above.

5. Change of Exclusive Sales Agent: Owner may change the Exclusive Sales Agent listed in connection with this Agreement by executing a "REBNY LISTING SERVICE CHANGE OF NEW DEVELOPMENT BROKERAGE/SALES OFFICE FORM" form and submitting such form to REBNY's designated representative. For the avoidance of doubt, Owner is not required to execute a new Agreement each time an Exclusive Sales Agent for the Property may change.

6. Unit Presentations. Exclusive Sales Agent will conduct all Unit presentations to all Prospects. Outside Broker acknowledges that Exclusive Sales Agent and its sales staff have been specifically trained to understand and present the features of the Property and its Units on behalf of Owner.

7. Withdrawal of a Unit; Owner's Discretion. Owner reserves the right to elect in its sole discretion to withdraw any Unit from the market before or after the submission of an offer, and where multiple offers exist on a Unit, to elect at its sole discretion which, if any, to accept.

8. Purchase Agreement. No Purchase Agreement shall be deemed binding or effective for any purposes until countersigned by Owner and no Prospect shall have any right with respect to any Unit unless and until Owner, in its sole discretion, shall countersign such Purchase Agreement and accept the deposit made thereunder and return one original counterpart of the Purchase Agreement to the Prospect or such Prospect's attorney.

9. Confirmation Letter.

(a) Prior to Owner entering into a Purchase Agreement with a Prospect procured by Outside Broker or by a co-broker acting with Outside Broker, Outside Broker and any such co-broker shall, if Owner has so requested in writing, represent to Owner in writing that, to the best of their knowledge, Outside Broker and any such co-broker are the sole brokers responsible for procuring such Prospect.

(b) The right to receive payment of any Commission due to Outside Broker may be conditioned upon the delivery by Outside Broker to Owner at or prior to Closing (if Owner has requested the same in writing at or prior to the Closing) of a letter confirming that, to the best of its knowledge, Outside Broker is the sole broker (other than the Exclusive Sales Agent or any co-broker who worked with Outside Broker) with respect to any sale of the Unit(s) for which such Commission is claimed by Outside Broker.

10. Co-Brokers of Outside Broker.

(a) In the event Outside Broker engages a co-broker in the sale of a Unit, no more than one Commission in the aggregate shall be payable by Owner.

(b) Outside Broker agrees that any Commission may, at Owner's option, be paid either to Outside Broker or by check to the order of Outside Broker and its co-broker jointly.

(c) This Agreement shall not be deemed the engagement by Owner of any co-broker with whom Outside Broker may engage. Neither Exclusive Sales Agent nor Owner shall have any obligation (i) with respect to any co-brokerage agreement that exists or may exist between Outside Broker and another party, including, without limitation, the obligation to pay any commission due thereunder, or (ii) to determine if any such co-brokerage agreement exists.

(d) Unless Outside Broker shall have the right pursuant to a separate agreement, the fact that Outside Broker shall have dealt with any co-broker in the showing of a Unit to any Prospect shall not give Outside Broker any right to compensation which may be paid by Owner to the co-broker for procuring any other transaction involving any other Prospect.

11. Indemnification by Outside Broker. Outside Broker agrees, to the fullest extent of the law, to indemnify, defend (with counsel reasonably approved by Owner) and hold harmless Owner and Exclusive Sales Agent and each of their respective agents, members, principals, officers, directors, employees, successors and assigns, ("Indemnified Parties") from and against all costs, damages, claims, suits, actions, proceedings, fines, penalties, judgments, amounts paid in settlement and expenses, including reasonable attorneys' fees and disbursements arising out of or resulting from: (i) any claim of any other person or entity for brokerage fees, commissions or compensation based upon any dealings with Outside Broker and/or the Prospect in connection with the Unit; (ii) willful misconduct or gross negligence on the part of Outside Broker or any of its brokers, salespersons, staff or agents and acts of Outside Broker outside the scope of Outside Broker's duties under this Agreement or Outside Broker's failure to conform to this Agreement; (iii) claims for salaries or other compensation of personnel employed or retained as sales or

brokerage agents by Outside Broker; and (iv) any misrepresentations regarding the Plan, the Property and/or the Units made by Outside Broker or any of its employees except to the extent made in reliance on information or materials provided to Outside Broker by any Indemnified Parties. The extent of Outside Broker's indemnification liability set forth in this Paragraph 11 shall be limited with respect to any Unit to the amount of the Commission paid or payable to Outside Broker, or the amount that would have been payable, if applicable, in connection with the sale of the underlying Unit transaction giving rise to the claim, provided, however, that such indemnification shall not be limited with respect to any claim arising from conduct covered by Paragraph 11(ii). In the event of termination of this Agreement under Paragraph 16, Outside Broker's obligations under the indemnities given hereunder shall survive such termination.

12. Fiduciary Duty of Outside Broker.

(a) Outside Broker acknowledges that Owner has entered into an agreement with Exclusive Sales Agent pursuant to which Exclusive Sales Agent has been given the right as selling agent under the Plan to sell Units. Outside Broker shall, subject to Paragraph 12(b) below, cooperate with Exclusive Sales Agent in facilitating sales of Units.

(b) Owner acknowledges that, notwithstanding Paragraph 12(a) above, Outside Broker (including any broker of Exclusive Sales Agent that is acting as an Outside Broker) shall represent the Prospect, not Owner or Exclusive Sales Agent, in the sale of any Unit. Owner accepts and understands that Outside Broker's fiduciary duty to the Prospect may conflict with the interests of Owner or Exclusive Sales Agent and that such duty takes priority over any fiduciary duty owed by Outside Broker to Owner or to Exclusive Sales Agent pursuant to this Agreement.

13. Independent Contractor. It is understood that Outside Broker is an independent contractor and shall not be considered the agent of Owner or Exclusive Sales Agent for any purpose whatsoever, and Outside Broker is not granted any right or authority to assume or create any obligation or liability or make any representation, warranty or agreement (express or implied) on behalf of Owner or Exclusive Sales Agent or to bind Exclusive Sales Agent or Owner in any manner whatsoever.

14. Expenses.

(a) Outside Broker shall be solely responsible for any expenses Outside Broker incurs in soliciting, procuring and consummating Unit sales (including, but not limited to, co-brokerage fees or Commissions to its brokers, salespersons or co-brokers, advertising expenses, overhead, and personnel) and neither Exclusive Sales Agent nor Owner shall be obligated to pay or reimburse Outside Broker for any such expenses.

(b) Neither Owner nor Exclusive Sales Agent is authorized or empowered to incur any expenses on Outside Broker's behalf, to offset any of Owner's or Exclusive Sales Agent's selling expenses against Commissions due Outside Broker hereunder, or to enforce any Commission claims on Outside Broker's behalf.

15. Information and Advertising.

(a) If Owner shall advise Outside Broker that certain information is confidential, Outside Broker shall hold such information (other than as already disclosed in public marketing materials) received by it with respect to the Plan, Property, any Unit or any Prospect, in confidence, subject to any legal or ethical obligation that may require Outside Broker to disclose such information.

(b) Information pertaining to the Property and the Units or any transaction relating thereto shall not be released by Outside Broker to any newspaper, magazine, website, radio or television station or other publicly accessible medium.

(c) Outside Broker shall not advertise the Units in any way, in print or electronically or on the internet, or make any other advertisement or public statement with respect to the Plan, the Property or the Units, nor shall Outside Broker make use of any written material, "set ups," or descriptions, except for selling brochures and other material furnished to Outside Broker by Exclusive Sales Agent. Such brochures and other material furnished by Exclusive Sales Agent may only be used as expressly permitted in writing by Exclusive Sales Agent or Owner.

(d) A breach by Outside Broker or any of its brokers or salespersons or any co-broker of any of the provisions of this Paragraph 15 shall constitute a material breach of this Agreement.

16. Termination. This Agreement may be terminated by Owner without cause upon fifteen (15) days' prior written notice or immediately upon written notice to Outside Broker of any material breach of the terms of this Agreement. This Agreement shall terminate automatically three (3) years from the date it is countersigned by Owner, unless terminated earlier in writing by either party. In the event of termination of this Agreement, all of Outside Broker's rights under this Agreement shall terminate on the date of such termination, except as otherwise expressly provided herein. Notwithstanding the previous sentence, subsequent to termination of this Agreement, Outside Broker shall retain the right to receive a Commission (i) with respect to Prospects registered in accordance with Paragraph 4 of this Agreement prior to termination, and (ii) provided that all other conditions to Outside Broker's entitlement to a Commission with respect to a specific Unit as set forth in this Agreement are satisfied, except that in the case of termination for material breach no Commission shall be payable in connection with any transaction involving the material breach committed by Outside Broker.

17. Communications. Any and all communications between Outside Broker and Owner regarding the Property and the Units must be made through Exclusive Sales Agent.

18. Further Covenants.

(a) Outside Broker represents and agrees that Outside Broker will offer the Units strictly in accordance with the provisions of the Plan and applicable law, and that no statement, promise, warranty or representation may be made by Outside Broker except as specifically set forth and described in the Plan.

(b) Outside Broker acknowledges that it is responsible for the actions of all of its brokers, salespersons and any co-brokers working with Outside Broker and will ensure their compliance with the terms of this Agreement and with applicable law.

(c) Outside Broker acknowledges that neither Outside Broker nor any of its brokers or salespersons nor any co-broker will attend any “punch list” inspections of a Unit scheduled in connection with the Closing for such Unit, or attend the Closing for such Unit, without the prior written consent of Owner.

19. Dispute Resolution. All disputes relating to Commissions under this Agreement shall be resolved by binding arbitration under the auspices of the Real Estate Board of New York Inc., pursuant to its rules and regulations, and any disputed Commission shall be placed in escrow pending the outcome of such arbitration, and the parties agree to submit to and be bound by such arbitration. In the event any other dispute arises out of this Agreement hereunder, the parties hereto agree to enforce the terms and provisions of this Agreement in Supreme Court of the State of New York in New York County or the federal court in the Southern District of New York, this being in addition to any other remedy to which they are entitled at law or in equity. In addition, each of the parties hereto consents to submit itself to the personal jurisdiction of the federal court located in the Southern District of New York or any New York State Supreme Court in New York County.

20. Notices. Any and all notices, elections, demands, requests, consents and responses thereto permitted or required to be given under this Agreement shall be in writing, signed by the party giving the same, and shall be deemed to have been properly given and shall be deemed effective upon receipt (i) if personally delivered, or (ii) if delivered by a reputable overnight courier, with receipt confirmed, to the other party at the address of such other party set forth below or at such other address as such other party may designate by notice specifically designated as a notice of change of address and given in accordance herewith. Each party authorizes routine communications between the parties to be given by fax, email, or other electronic communication. Personal delivery to a party or to any officer, partner, agent or employee of such party at such address shall constitute receipt. Rejection or other refusal to accept or inability to deliver because of change of address of which no notice has been received shall constitute receipt. Any such notice, election, demand, request or response shall be addressed as follows:

(i) To Owner:

with a copy to Owner’s attorney at:

and a copy to Exclusive Sales Agent at:

(ii) To Outside Broker:

21. Designated Party. Either Owner or Outside Broker may designate (by providing notice to the other party hereto) a representative authorized to act on its behalf with respect to this Agreement.

22. Authority. The individuals executing this Agreement on behalf of each of Owner and Outside Broker represent that they are authorized to do so.

23. No Waiver. No waiver of or consent to any breach of any condition, covenant or agreement contained in this Agreement shall be construed to be a waiver of any subsequent breach thereof or of this Agreement.

24. Severability. The illegality or invalidity of any provision of this Agreement shall not affect the validity of the remaining provisions hereof.

25. Successors and Assigns. This Agreement shall inure to the benefit of, and be enforceable by, Owner, its successors and assigns.

26. Assignment. None of this Agreement, the obligations of Outside Broker or any payments due Outside Broker may be assigned by Outside Broker without Owner's prior written consent and any such attempted assignment shall be void and of no force or effect. Notwithstanding the foregoing, Outside Broker may, without Owner's prior consent, assign its interest in, to and under this Agreement to any entity which is controlled by Outside Broker, or any successor to Outside Broker by purchase, merger, consolidation, recapitalization or otherwise. For purposes of this paragraph, "control" shall be deemed to mean ownership or voting control, directly or indirectly, of not less than fifty (50%) percent of the voting stock, partnership interests or other beneficial interests of such entity.

27. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York applicable to agreements made and to be performed wholly in the State of New York, without regard to principles of conflicts of law. The parties hereto acknowledge and agree that, except as otherwise expressly set forth in

Paragraph 19, disputes arising out of this Agreement will be subject to the jurisdiction of the courts of New York and the parties hereby waive any right to protest or otherwise remove such jurisdiction.

28. Legal Fees. In the event a dispute arises between the parties and any litigation, arbitration or other proceeding is commenced to enforce the provisions of this Agreement, the prevailing party in litigation, arbitration or proceeding shall be entitled to seek, claim and receive from the non-prevailing party reasonable attorneys' fees and disbursements, including court costs through all appeals, incurred by the prevailing party with respect thereto, unless otherwise determined by the arbitrators.

29. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and any other agreements, whether oral or written, heretofore entered into between the parties hereto with respect to the sale of Units are hereby canceled and of no further force or effect.

30. Modifications. The provisions of this Agreement may not be modified except by an agreement in writing between and signed by the parties hereto.

31. Counterparts. This Agreement may be executed in any number of counterparts, including PDF, each of which shall constitute an original, but all of which, taken together, shall constitute but one and the same instrument.

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

OUTSIDE BROKER [Non-RLS Participant]¹:

By: _____
Name:
Title:
Company Name:

OWNER:

By: _____
Name:
Title:

¹ Only Non-RLS Participant brokers need to execute the agreement.