

Land Use
Subcommittee on
Landmarks,
Public Sitting &
Maritime Uses

Date	7-21-08
Start Time	
Finish Time	

City Council Subcommittee on Landmarks, Public Siting & Maritime Uses
July, 21, 2008

Pier A Redevelopment Testimony

Good morning. I am Susan Long, Vice President for Strategic Planning at the Hugh L. Carey Battery Park City Authority. I appreciate the opportunity to speak with you this morning about the rehabilitation and development of Lower Manhattan's historic Pier A.

For those of you not entirely familiar with the Battery Park City Authority, we are a public benefit authority that administers a 92-acre man-made, mixed-use community located at the southwestern tip of Manhattan.

Battery Park City contains 33 acres of park space, 9.5 million square feet of office space, a 500,000 square foot commodities trading facility, retail space, a marina, two hotels, a movie theater, museums, public schools, and approximately 9,000 residential units. Battery Park City is also home to almost 5 million square feet of green development, including the nation's first green residential high-rise, New York's first building to be retrofitted for LEED certification – the New York Mercantile Exchange – and soon, the City's first green public school for 900 children. All development in Battery Park City must adhere to our strict green guidelines.

Pier A is located within the Authority's statutory project area, immediately adjacent to the current southern boundary of Battery Park City, and was one of the underutilized piers that the Authority was created to replace or revitalize. However, in the late 1970s Pier A was designated as a New York City landmark and placed on the National Register of Historic Places, and was retained by the City in 1982 when the current Battery Park City area was turned over to the Authority. It is now the last remaining historic pier in Manhattan. When the pier was completed in 1886, it served as a gateway to New York City, and later housed the City's Department of Docks, the Police and Fire Departments.

The Battery Park City Authority will oversee the Pier's badly needed underwater repairs, restore the 3-story building to its historic nature, and ensure the surrounding plaza area links up with existing downtown park and transportation systems so the Pier is once again a vibrant part of downtown Manhattan.

The estimated cost of the redevelopment is approximately \$30 million, and we believe the Pier can be renovated and operational by December 2010. The cost estimate originates with the previous tenant, so as more accurate information becomes available we will share it with the City for their approval. The Authority will submit a detailed budget along with schematic drawings for the pier's redevelopment later this summer.

The City wishes the redevelopment of the pier to be completed on an expedited schedule. To that end, the Authority has commenced the urgently needed underwater repair work, with a view toward completing this element in 2008. We are also beginning discussions with the State Office

of Parks, Recreation and Historic Preservation with respect to the terms of a grant made to the City for Pier A in 1998, under which the State has certain continuing rights. The Lease will take effect upon receipt of all necessary State approvals.

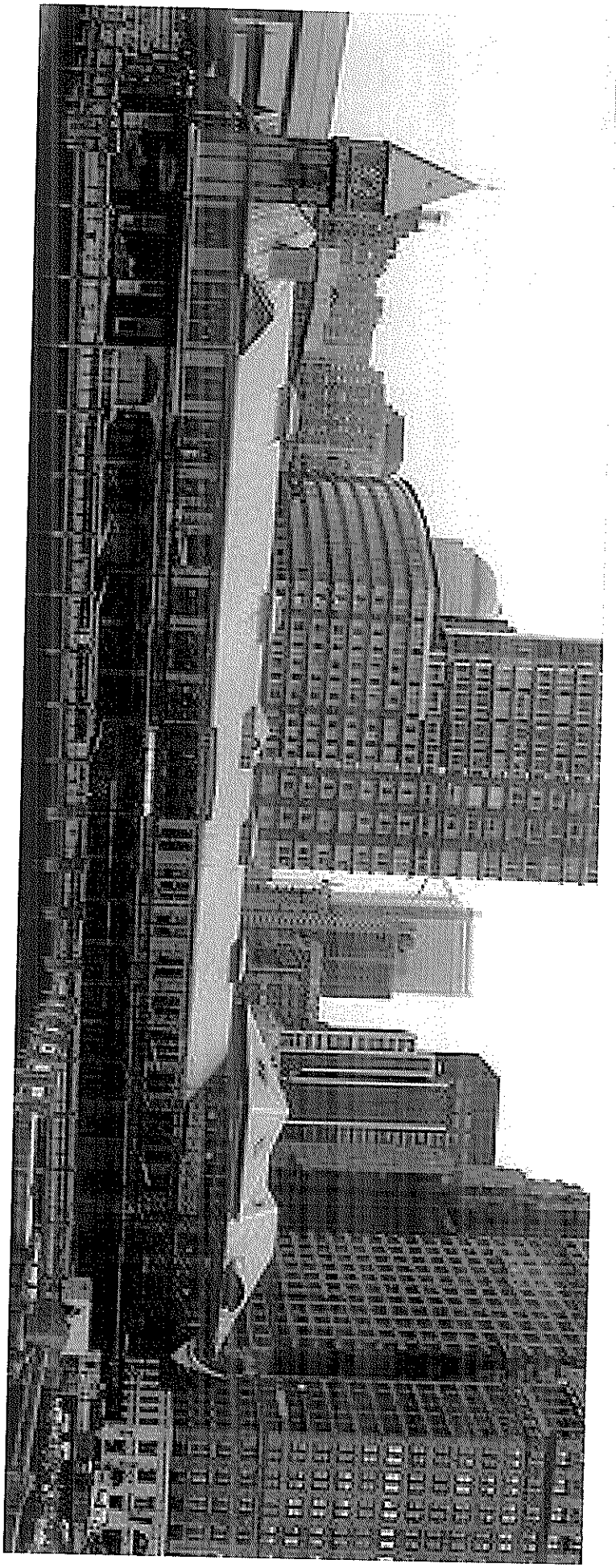
We are currently exploring the best uses for the pier including retail, restaurant, office and event space. All plans and tenants will be approved by the City. Upon completion, the Battery Park City Authority will maintain all public areas and the space occupied by other tenants.

In addition to the historic building, the Pier A site includes a 35 acre plaza which sits between Battery Park and the Battery Park City's Wagner Park. It will be designed to allow the public to walk easily between points in lower Manhattan and Battery Park City and may include features such as landscaping, plantings, decorative pavers and seating. Pier A will serve as a critical link between the esplanades along Battery Park City and Battery Park, and the open space we create will be vital to pedestrian and bicycle traffic, and a cure to the congestion that exists there now.

Battery Park City's close proximity to Pier A, in addition to our extensive experience managing multi-million dollar capital projects and major construction activity, make us uniquely equipped to facilitate Pier A's rehabilitation. It is the Battery Park City Authority's intention to restore Pier A to its former glory. We believe Pier A will be a vibrant destination point for tourists and locals alike, and a valuable addition to the Manhattan Harbor District.

My thanks to the committee for the opportunity to discuss the Battery Park City Authority's role in this important and historic project. I look forward to working with you, Councilman Gerson and Community Board 1 as we move forward. I would be happy to answer any questions.

Thank you.



**New York City Council Subcommittee on Landmarks, Public Siting & Maritime Uses:
Pier A**

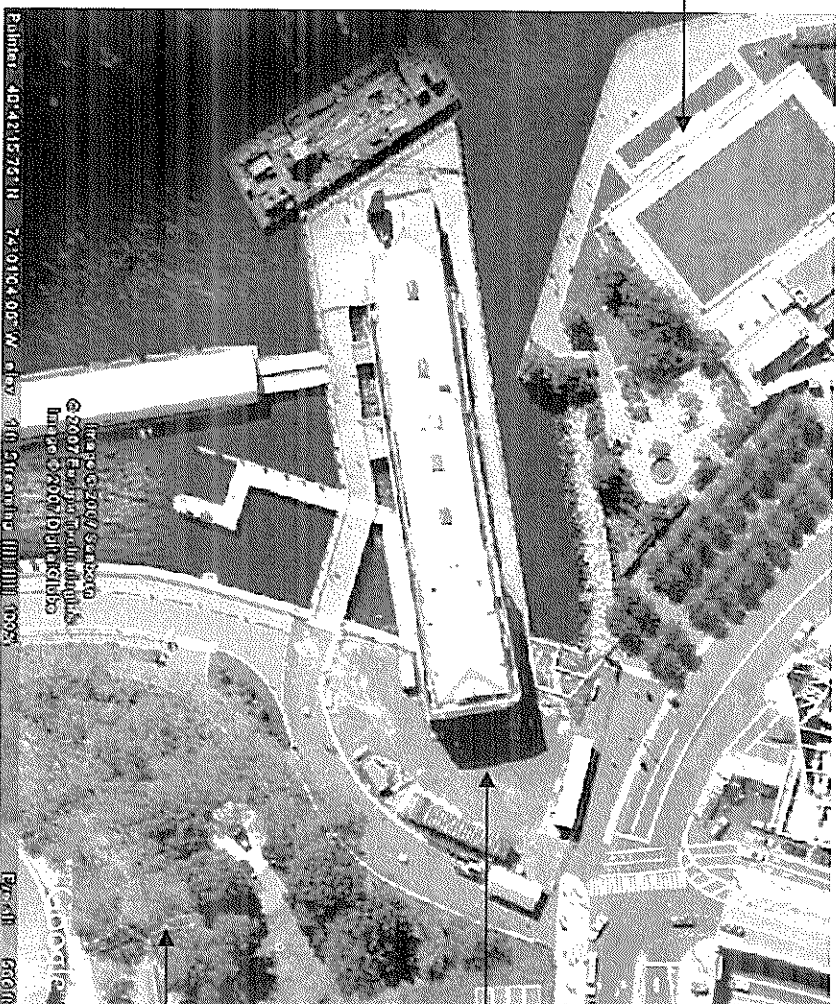
Testimony by Patrick J. O'Sullivan, Vice President, NYCEDC
July 21, 2008

Agenda

- History of Pier A
- Status
- Lease with Battery Park City Authority
- Redevelopment Plan
- Battery Park City Authority

Location

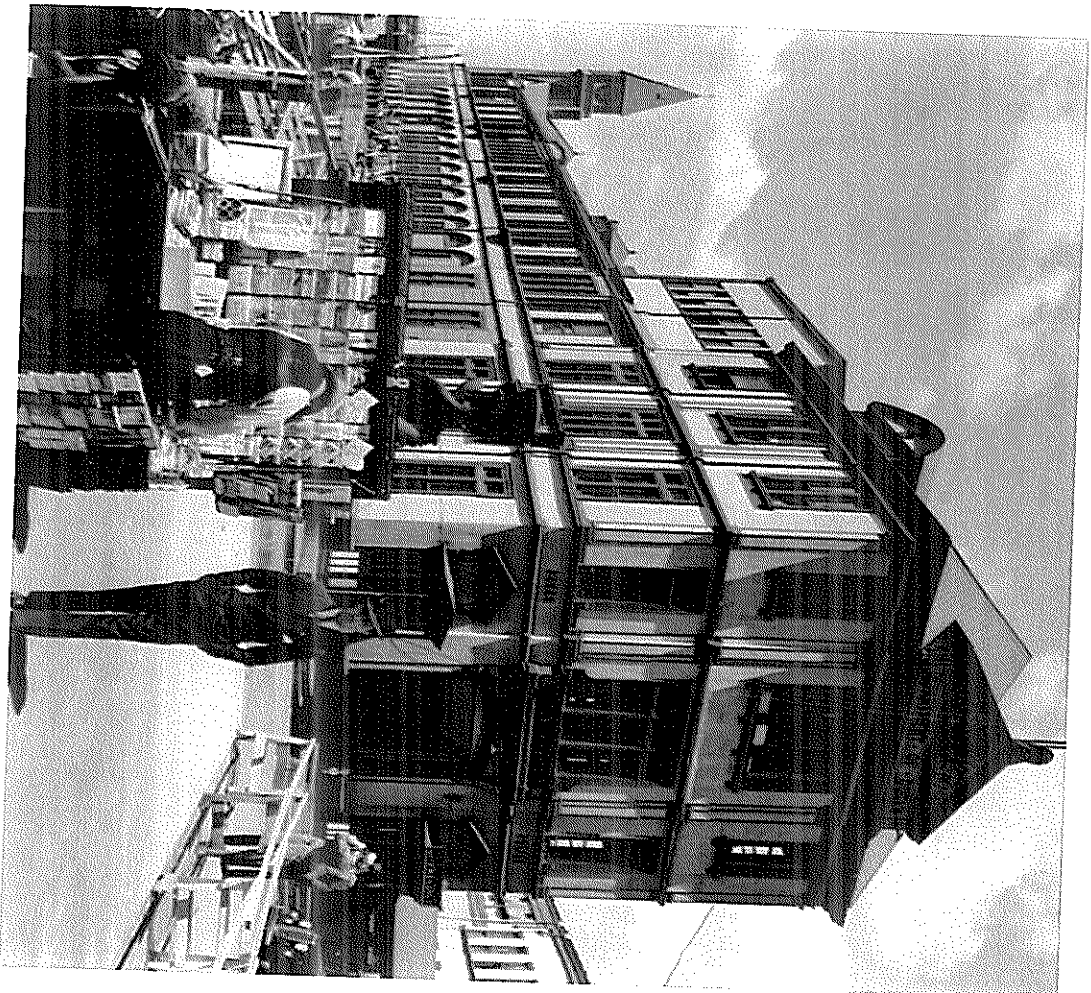
Battery Park City



Pier A

Battery Park

Pier A History



- Construction completed in 1886 by Department of Docks
- Oldest pierhead in the City
- Served as headquarters for Harbor Police until 1959
- Subsequently housed Marine Division of Fire Department
- Historic landmark that is significant to City's maritime past
 - Sailing of the Lusitania
 - Hudson-Fulton Celebration
 - Memorial Clock

Pier A Status



- Redevelopment plans initially proposed in late 1980s
- City reached agreement on lease with developer in 1997
- City took back possession of Pier in June 2007
- City and Battery Park City reached agreement on terms to redevelop site in December 2007
- City budget includes \$30M in FY09 for renovation of Pier (building and substructure)

Lease with Battery Park City Authority

Major terms include:

- 49-year term with five 10-year renewal options
- Recreational maritime and ancillary uses including retail, event and dining uses
- “Triple net” lease with nominal rent meaning that Battery Park City Authority will be responsible for maintenance and operations
- City to retain approval authority with respect to certain decisions including tenancies and annual budgets
- Battery Park City Authority to proceed with redevelopment plans to be agreed upon by City
- Milestones with respect to final designs and completion of work

Redevelopment Plan



- Over 30,000 sf of indoor space as well as an outdoor plaza area
 - Development of mixed-use commercial space
 - Potential visitors' center
- Redevelopment Plans will seek to:
 - Preserve and highlight a historical City landmark
 - Develop a first-class destination for New Yorkers and visitors alike
 - Create a “gateway” to the Harbor District

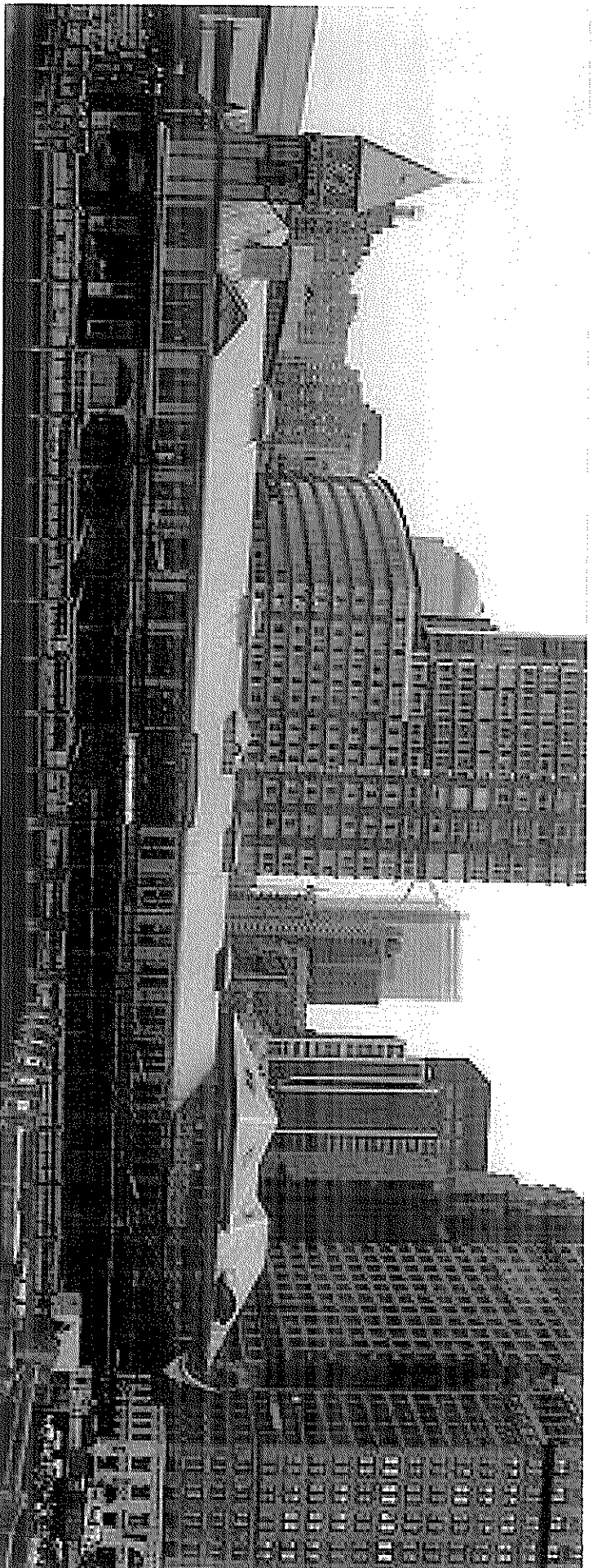
Battery Park City Authority

Reasons for the Authority's Involvement:

- Pier part of Battery Park City footprint when Authority was created
- Strong record of successfully developing and maintaining public property
- Attuned to the interests of the surrounding community
- Prepared to undertake immediate action

Authority's inclusion of community in the process:

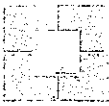
- Regularly seeks input from Community Board 1's Battery Park City Committee
- Kick-off "charrette" held in the spring
- Will continue to undertake community outreach



**New York City Council Subcommittee on Landmarks, Public Siting & Maritime Uses:
Pier A**



New York City
Economic Development
Corporation



New York City
Economic Development
Corporation

June 27, 2008
CITY COUNCIL
LAND USE DIVISION

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New York, NY 10038
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2008 JUN 27 P 5:34

The Council
City of New York
City Hall
New York, NY 10007
Attn: Christine Quinn, Speaker

Re: Maritime Lease
Pier A
Manhattan

Dear Speaker Quinn:

Pursuant to Section 13.01.2(f) of the City Charter, the undersigned, on behalf of the Department of Small Business Services, submits for Council consideration the enclosed proposed lease (the "Lease") between the City, acting through the Commissioner of Small Business Services, as landlord, and Battery Park City Authority ("BPCA") as tenant, with respect to property (the "Premises") known as Pier A and certain lands under water and an upland area contiguous to Pier A, Manhattan.

The Lease with BPCA will facilitate the preservation and proposed redevelopment of the Premises as part of the revitalization of Lower Manhattan. Pier A, listed on the State and National Registers of Historic Places and designated as a New York City Landmark, was constructed between 1884 and 1886 and is the last surviving historic pier in Manhattan. It contains a three-story building, with approximately 30,000 square feet of usable interior space, and a perimeter walkway. The building is currently vacant and closed to the public, and has not been in active use since 1992. BPCA intends to restore and rehabilitate Pier A and return this deteriorating, underutilized and inaccessible facility to public use. The proposed project would utilize the existing building, while the adjacent upland area would be developed as an open space public plaza.

The principal terms of the Lease are generally as follows:

Tenant: Battery Park City Authority
One World Financial Center
New York, NY 10281

Such entity is a public benefit corporation of the State of New York.

Premises: means the property known as Pier A in Manhattan, New York and certain lands under water and an upland area contiguous to Pier A, including the pier shed, underwater pilings, deck and interior and exterior systems, all designated as Block 16, Lot 1 on the Tax Map of the City of New York for the Borough of Manhattan.

Term: 49-year term with five 10-year renewal options. The term commences upon execution of the Lease by both parties and the receipt of certain State approvals and, unless earlier terminated, expires upon the expiration of the initial term or a renewal term.

Use: Premises shall be used for recreational maritime and ancillary uses including retail, event and dining uses, as well as commercial office uses. As stated in the Lease, it is currently contemplated that, provided that the City, BPCA and the applicable third party or parties can mutually agree to terms and conditions in compliance with the terms hereof, the Premises shall become the primary embarkation/debarkation point for ferry services to the Statue of Liberty National Monument and Ellis Island. Additionally, the City reserves the right to require BPCA to permit or license on then-commercially reasonable terms any or all of the Premise's then-available docking slips to City-designated recreational ferry services traveling to various other sites in the New York harbor.

Rent: Rent is \$1 per annum during the term of the Lease.

Redevelopment: BPCA is to redevelop the Premises in accordance with a redevelopment plan and substructure plan to which the City shall have consented. The improvements will include renovation of the shed and substructure of the Premises, improvement of the upland plaza area and fit-out of the space within the pier shed. The fit-out may include an on-site visitors' center. The redevelopment work is expected to be funded through City capital under a funding agreement at a projected cost of \$30,000,000.

Annual Operating and Annual Capital Budgets: For each City fiscal year of the Lease, BPCA is required to submit an annual capital budget and an annual expense budget for the subsequent fiscal year for the City's approval.

Material Decisions: Pursuant to the Lease, there are certain material decisions that are subject to prior written approval of the City, which the City may withhold in its reasonable discretion. Material decisions include material changes to the agreed-upon redevelopment plan or substructure plan, material changes to an annual operating or annual capital budget or tenancies.

Operating Expenses and Maintenance: The Lease is a "triple-net" lease. BPCA is entirely responsible for paying all operating expenses relating to the Premises, including, electricity and other utilities, insurance, security and repairs. BPCA is also responsible for the on-going maintenance of the Premises (including, without limitation, underwater pilings and the deck, roof, systems, exterior and interior of the Premises).

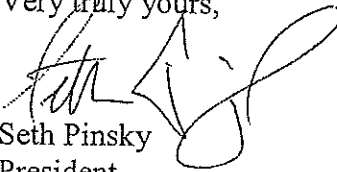
Events of Termination: The Lease enumerates certain potential events of default that, if not cured, give the City the right to terminate the Lease. An event of default includes, among other things, BPCA's failure to complete the redevelopment within stated milestone dates, to maintain the Premises and to comply with other agreements contained in the Lease. In addition, if BPCA's governing body is no longer appointed by the Governor of New York, or if certain other payments under the Amendment to Settlement Agreement between the City and BPCA are no longer subject to Mayoral participation in expenditure determinations, the City has the right to terminate the Lease.

SEQRA: the proposed redevelopment has received a negative declaration under SEQRA from BPCA.

This is a maritime lease under Section 1301.2(f) of the City Charter. Accordingly, the Council has 45 days from the date of receipt in which to act on the Lease. If the Council fails to act on the Lease within the 45 days, then the Lease is deemed approved.

If you have any questions or concerns, please feel free to contact Patrick O'Sullivan, Vice President (212) 312-3883 or myself (212) 312- 3878. Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Seth Pinsky', written over a horizontal line.

Seth Pinsky
President

cc: Honorable Melinda R. Katz
Honorable Jessica S. Lappin
Honorable Alan J. Gerson
Gail Benjamin, Director, City Council of New York Land Use Division
Patrick Wehle, Director, Mayor's Office of City Legislative Affairs
Jed Howbert, Office of the Deputy Mayor for Economic Development
Patrick O'Sullivan, NYCEDC
James Harris, NYCEDC

AGREEMENT OF LEASE

between

THE CITY OF NEW YORK,

Landlord,

and

BATTERY PARK CITY AUTHORITY,

Tenant.

Premises

Real property formally known as "Pier A" and certain lands under water and an upland area contiguous to Pier A
Block 16, Lot 1 on the Tax Map of the Borough of Manhattan, City and State of New York

CITY COUNCIL
LAND USE DIVISION
2008 JUN 27 PM 3:35

Dated as of _____, 2008

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EXHIBITS

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A-2	Adjacent Underwater Area, Breakwater, Upland Area
B	Title Matters
C	Subtenant Non-Disturbance
D	Employment and Benefits Report
E	Fire Access Lane

AGREEMENT OF LEASE ("Lease"), made as of the [] day of [], 2008 between **THE CITY OF NEW YORK** (the "City"), a municipal corporation of the State of New York, having an address at City Hall, New York, New York 10007, as landlord, and **BATTERY PARK CITY AUTHORITY** ("BPCA"), a body corporate and politic constituting a public benefit corporation of the State of New York having an office at One World Financial Center, New York, New York 10281, as tenant.

WITNESSETH:

WHEREAS, the City is the owner of the Premises (as hereinafter defined);
and

WHEREAS, the redevelopment of Pier A for recreational maritime and ancillary uses, will further the City's goal of promoting the development of the City's waterfront and ferry services to various sites in the Harbor District; and

WHEREAS, the City and BPCA contemplate that the Pier can become the primary ticket sales and embarkation/debarkation point for ferry services to the Statue of Liberty National Monument and Ellis Island, if acceptable terms with applicable third parties can be mutually agreed; and

WHEREAS, the City and BPCA desire to enter into this Lease with respect to the Premises and cause said Premises to be developed in accordance with the terms hereof and in connection therewith, the City desires to promote commercial activities thereon so as to produce new employment opportunities for its citizens and generate new revenues for the City;

NOW THEREFORE, it is hereby mutually covenanted and agreed by and between the parties hereto that this Lease is made upon and subject to the terms, covenants and conditions hereinafter set forth.

ARTICLE 1.

DEFINITIONS

For all purposes of this Lease and all agreements supplemental hereto the terms defined in this Article shall have the following meanings:

"**Accounting Principles**" means the then current generally accepted accounting principles consistently applied.

"**Adjacent Underwater Area**" means certain lands under water adjacent to Pier A, as shown on Exhibit A-2.

"**Adjustment (or Adjusted) for Inflation**" has the meaning provided in Article 5 hereof.

"**Administrator**" means NYCEDC or such other Person as Landlord may designate to administer this Lease.

"**Annual Material Capital Expenditure**" has the meaning provided in Section 12.02(a).

"Approved Annual Capital Budget" has the meaning provided in Section 12.02(b).

"Approved Annual Operating Budget" has the meaning provided in Section 12.01(b).

"Approved Redevelopment Plan and Budget" has the meaning provided in Section 13.01(d)(ii).

"Approved Substructure Plan and Budget" has the meaning provided in Section 13.02(c).

"Architect" means H³ Collaboration Architecture LLC, or any other registered architect, architectural firm, professional engineer, or combined practice or association registered in the State of New York selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld or delayed.

"Assignee" has the meaning provided in Section 10.01(b) hereof.

"Assignment" has the meaning provided in Section 10.01(b) hereof.

"Base Rent" has the meaning provided in Section 3.02 hereof.

"BCA" has the meaning provided in the recitals hereof.

"Breakwater" means the breakwater adjacent to Pier A, as shown on Exhibit A-2.

"Building" means the existing three-story landmark structure designated in the National Register of Historic Places and situated on Pier A, consisting of approximately 34,183 gross square feet, and any and all Equipment situated therein, alterations thereto, replacements thereof and substitutions therefor in accordance with this Lease.

"Building Index" has the meaning provided in Section 7.11(c) hereof.

"Capital Improvement" has the meaning provided in Section 15.01(c).

"Casualty Restoration" has the meaning provided in Section 8.02(a) hereof.

"CERCLA" has the meaning provided in Article 19 hereof.

"Certificate of Occupancy" means the earlier to be issued of a temporary or permanent certificate of occupancy issued by DOB.

"Certified Public Accountant" means any independent certified public accountant or accounting firms selected by Tenant and approved by Landlord, which approval shall not unreasonably be withheld *or* delayed; provided, however, that no accountant or accounting firm which shall have been disqualified from doing business with the City shall be the Certified Public Accountant.

A **"Change in Control"** of Tenant shall mean an event that results in either of the following:

- (i) the membership of the governing body of Tenant, which as of the date hereof constitutes seven members, is no longer appointed by the Governor of the State of New York; or
- (ii) "Other Payments", as that term is defined in an Amendment to Settlement Agreement between the City and Tenant dated August 15, 1986 (as such document has been or may be further amended from time to time), are no longer subject to Mayoral participation in expenditure determinations as provided in Section 7.A.(ii) of such Amendment;

provided, however, any such event resulting in the City controlling the Tenant or substantially all of the Tenant's property shall not constitute a Change in Control.

"**City**" means The City of New York, a municipal corporation of the State of New York.

"**City Comptroller**" means the Comptroller of the City of New York.

"**City's Borrowing Rate**" the City's most recent cost of long-term (i.e., thirty year) taxable borrowing.

"**City Fiscal Year**" means a 12 month period commencing on July 1 and ending on the next succeeding June 30, or if the City shall adopt a different fiscal year, the fiscal year then used by the City.

"**Commencement Date**" has the meaning provided in Article 2 hereof.

"**Condemnation Restoration**" has the meaning provided in Section 9.01(d) hereof.

"**Construction Agreement(s)**" has the meaning provided in Section 13.10(b) hereof.

"**Construction of the Project**" means the construction, rehabilitation, preservation, and reconstruction (as applicable) of the Project substantially in accordance with the Plans and Specifications and this Lease.

"**Construction Work**" means any work performed under this Lease including, without limitation, construction of the Pier and the Substructure Work, as well as all repairs, Restorations, Capital Improvements, or other construction work performed on or within the Premises.

"**Consumer Price Index**" has the meaning provided in Article 5 hereof.

"**Date of Taking**" has the meaning provided in Section 9.01 (c) hereof.

"**Default**" means any condition or event, or failure of any condition or event to occur, which constitutes or would, after notice or the lapse of time, or both, constitute an Event of Default.

"Depository" means an Institutional Lender selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld or delayed, which (a) has an office in the City of New York, and (b) has entered into a written agreement with Tenant and Landlord to hold funds as provided in this Lease.

"DOB" means the New York City Department of Buildings.

"DPR" means the New York City Department of Parks and Recreation, or successor agency.

"Employment and Benefits Report" has the meaning provided in Section 21.02(a).

"Equipment" means all fixtures and personal property incorporated in or attached to and used or usable in the operation of the Premises and shall include, but shall not be limited to, all machinery, apparatus, devices, motors, engines, dynamos, compressors, pumps, boilers and burners, heating, lighting, plumbing, ventilating, air cooling and air conditioning equipment; chutes, ducts, pipes, tanks, fittings, conduits and wiring; incinerating equipment; elevators, escalators and hoists; partitions, doors, cabinets, hardware; floor, wall and ceiling coverings of the public areas only; washroom, toilet and lavatory equipment; windows, window washing hoists and equipment; and all additions thereto or replacements thereof, and shall exclude any trade fixtures or other personal property not listed above which is owned by any Subtenant or contractors engaged in maintaining same.

"Event of Default" has the meaning provided in Section 24.01 hereof.

"Excess Development Rights" has the meaning provided in the definition of the Premises.

"Expiration of the Term" means the Termination Date.

"Federal Courts" has the meaning provided in Section 42.15 hereof.

"Fire Department" means the New York City Fire Department or its successor.

"Fixed Expiration Date" has the meaning provided in Section 2.02(b) hereof.

"Governmental Authority or Authorities" means the United States of America, the State of New York, the City and any agency, department, legislative body, commission, board, bureau, instrumentality or political subdivision of any of the foregoing, now existing or hereafter created, having or claiming jurisdiction over the Premises or any portion thereof or any street, road, avenue, sidewalk or water immediately adjacent to the Premises, or any vault in or under the Premises.

"Harbor District" has the meaning provided in Section 23.01(b) hereof.

"HUD" has the meaning provided in Section 3.04 hereof.

"Imposition" or "Impositions" has the meaning provided in Section 4.01(b) hereof.

"Improvements" means the Building, the Public Plaza, Equipment, improvements to Pier A and the Breakwater, and any and all other improvements now or hereafter situated on the Premises, or any portion thereof, including, but not limited to, landscaping, and any and all alterations thereto, replacements thereof, and substitutions therefor.

"Indemnitees" has the meaning provided in Section 20.01 hereof.

"Initial Material Capital Expenditure" has the meaning provided in Section 13.01(d)(i).

"Initial Material Substructure Capital Expenditure" has the meaning provided in Section 13.02(b).

"Institutional Lender" means a savings bank, a savings and loan association, a commercial bank or trust company (whether acting individually or in a fiduciary capacity), a private pension fund, a credit union or company, an insurance company organized and existing under the laws of the United States or any state thereof, a religious, educational or eleemosynary institution, a federal, state or municipal employee's welfare, benefit, pension or retirement fund, any governmental agency or entity insured by a governmental agency or any syndicate, joint venture, or other combination of Institutional Lenders, provided that each member of any such syndicate, joint venture, or other combination would qualify individually as an Institutional Lender, a real estate investment trust that is publicly-traded, an investment bank and such other entities as may be approved in writing by Landlord, which approval will not be unreasonably withheld or delayed; provided, that each of the above entities shall qualify as an Institutional Lender only if it shall (a) be subject to the jurisdiction of the courts of the State of New York in any actions pertaining to this Lease or the Premises, (b) have a net worth of not less than \$35,000,000 and assets of not less than \$100,000,000, or such lower amounts as are deemed acceptable in Landlord's sole discretion, (c) be subject to the supervision of the Securities Exchange Commission, the Comptroller of the Currency of the United States, the Insurance Department or the Banking Department or the Comptroller of the State of New York, the Board of Regents of the University of the State of New York, or the City Comptroller and any federal state or municipal agency or public benefit corporation or public authority advancing or assuring mortgage loans or making payments which, in any manner, assist in the financing or development of the Improvements and (d) not be a Prohibited Person.

"Landlord" means the City, provided, however, that if the City or any successor to its interest hereunder transfers or assigns its interest in the Premises or its interest under this Lease, then from and after the date of such assignment or transfer, the term "Landlord" shall mean the assignee or transferee.

"Landlord Delays" means any delays caused by any action or inaction of Landlord acting solely in its proprietary capacity (provided such are not themselves the result of action or inaction by Tenant) which result in delays in Tenant's performance of its construction obligations hereunder.

"Landlord's Agent" means Apple Industrial Development Corp. or such other entity, if any, as the Landlord may from time to time designate as its agent hereunder.

"**Late Charge Rate**" has the meaning provided in Article 6 hereof.

"**Lease**" means this Agreement of Lease and all Exhibits hereto and all amendments, modifications and supplements hereof and thereof.

"**Lease Execution Date**" means the first date on which this Lease has been executed by both Tenant and Landlord.

"**LPC**" means The New York City Landmarks Preservation Commission, or its successor.

"**Material Decision**" has the meaning provided in Section 14.02(a).

"**Mortgage**" has the meaning provided in Section 11.01(b) hereof.

"**Mortgagee**" means the holder or holders of a Mortgage, provided that any notice or cure period required to be given to the holder of any Mortgage shall be adequately given if given to one such holder designated by Tenant.

"**New York State Courts**" has the meaning provided in Section 42.15 hereof.

"**Non-Permissible Person**" has the meaning provided in Section 10.01(b).

"**NYCEDC**" means the New York City Economic Development Corporation, a local development corporation formed pursuant to Section 1411 of the Not-for-Profit Corporation Law of the State of New York..

"**Partial Taking**" has the meaning provided in Section 9.02(b) hereof.

"**Permit Application**" means the completed joint permit application, approved and submitted jointly by Landlord and Tenant, to the Army Corps of Engineers and New York State Department of Environmental Conservation with respect to the Substructure Work described in the letter of Ocean and Coastal Consultants Engineering, P. C. to the Administrator, dated May 18, 2007, including all required forms for the New York State Department of State, New York City Department of City Planning and any other applicable government agency

"**Person**" means an individual, corporation, limited liability company, limited liability partnership, general partnership, joint venture, estate, trust, stock company, unincorporated association, business association, tribe, firm, governmental authority, governmental agency, or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

"**Pier Redevelopment**" means the renovation, improvement and equipping of the Pier, including the Public Plaza to be undertaken in accordance with the Approved Substructure Plan and Budget and the Approved Redevelopment Plan and Budget, all in accordance with the provisions of this Lease.

"**Plans and Specifications**" means the drawings and plans and specifications for the Project and the Breakwater prepared by the Architect, approved as part of the Approved Redevelopment Plan and Budget and the Approved Substructure Plan and Budget,

and as approved by any applicable Governmental Authorities, including, without limitation, LPC and SHPO, as they may be amended in accordance with Section 13.05(b).

"Premises" or **"Pier"** means the property known as Pier A in Manhattan, New York and certain lands under water and an upland area contiguous to Pier A, including the Building, underwater pilings, deck and interior and exterior systems, all designated as Block 16 , Lot 1 on the Tax Map of the City of New York for the Borough of Manhattan, all as shown on Exhibit A-1, and all Improvements now or hereafter located thereon, and including the Breakwater, but specifically excluding any and all development rights appurtenant to the foregoing property that are not utilized for the Project in accordance with the terms hereof (the "Excess Development Rights").

"Preservation Covenant" has the meaning provided in Section 39.01(a) hereof.

"Principals" means with respect to (i) a corporation, the chief executive officer, the chief financial officer and the president (and, if two of these three are the same individual, the most senior vice president or other officer), (ii) a partnership, the individual partners or officers of a general partner of the partnership, and (iii) a limited liability company, the managing member and the officers of a managing member.

"Project" means the Pier Redevelopment.

"Proposed Annual Capital Budget" has the meaning provided in Section 12.02(a).

"Proposed Annual Operating Budget" has the meaning provided in Section 12.01(a).

"Proposed Redevelopment Plan and Budget" has the meaning provided in Section 13.01(d)(i).

"Proposed Substructure Plan and Budget" has the meaning provided in Section 13.02(b).

"Public Plaza" means the area to be developed hereunder on the Upland Area.

"Questionnaire" has the meaning provided in Section 21.02(a) hereof.

"Rental" means all of the amounts payable by Tenant pursuant to this Lease, including, without limitation, Base Rent, Impositions, the amounts, if any, payable pursuant to Article 20 hereof and any other sums, costs, expenses or deposits which Tenant is obligated, pursuant to any of the provisions of this Lease, to pay and/or deposit.

"Replacement Value" has the meaning provided in Section 7.11 hereof.

"Reporting Period" has the meaning provided in Section 21.02(a) hereof.

"Requirements" has the meaning provided in Section 16.01(b) hereof.

"Restoration" means either a Casualty Restoration or a Condemnation

Restoration, or both.

"Restoration Costs" has the meaning provided in Section 8.03(b)(i) hereof.

"Restoration Funds" means (a) any moneys that may be received by Depository or Tenant pursuant to the provisions of Sections 7.02(a), 7.02(b), 9.02(b)(iii), or 9.03(a)(iii) hereof, as a result of property loss or condemnation, together with the interest and dividends, if any, earned thereon, and (b) the proceeds of any security deposited with Depository pursuant to Section 8.05 hereof, together with the interest and dividends, if any, earned thereon.

"Section 108 loan" has the meaning provided in Section 3.04

"SHPO" means The New York State Historic Preservation Office, or successor.

"State Project Agreement" has the meaning provided in Section 39.01(a) hereof.

"Sublease" has the meaning provided in Section 10.01(b) hereof.

"Substantial Completion" or **"Substantially Complete(d)"** means that (A) the Project shall have been substantially completed in accordance with the plans and specifications, as certified by Landlord; (B) DOB shall have issued a Certificate of Occupancy for eighty percent (80%) of the Building; and (C) Landlord shall have received the certificates and plans referred to in clauses (a), (b), (c) and, if such are available, (d) of Section 13.07 hereof.

"Substantial Completion Date" means the date on which the Construction of the Project shall have been Substantially Completed.

"Substantially All of the Premises" has the meaning provided in Section 9.01(b) hereof.

"Substructure Work" has the meaning provided in Section 13.02(a).

"Subtenant" has the meaning provided in Section 10.01(b) hereof.

"Taking" has the meaning provided in Section 9.01(a) hereof.

"Taxes" means the real property taxes assessed and levied against the Premises or any part thereof (or, if the Premises or any part thereof or the owner or occupant thereof is exempt from such real property taxes then the real property taxes assessed and which would be levied if not for such exemption) pursuant to the provisions of Chapter 58 of the Charter of New York City and Title 11, Chapter 2 of the Administrative Code of New York City, as the same may now or hereafter be amended, or any statute or ordinance in lieu thereof in whole or in part, provided, however that Taxes shall in no event include any real property or other taxes on the Excess Development Rights, any Impositions or any franchise, estate, inheritance, successor, capital levy, transfer, income, sales, excess profits or gains tax assessed, levied or imposed on Tenant, Tenants' Affiliates, any operator or Subtenant, and provided further that if by law any Tax or assessment may be divided into installments then

the same shall be divided into the maximum number of installments so that Taxes shall be deemed to include only the current installment thereof.

"Tax Year" means each tax fiscal year of New York City.

"Temporary Taking" has the meaning provided in Section 9.03(a) hereof.

"Tenant," on the Commencement Date, means BPCA, and thereafter Tenant shall mean the holder of the leasehold estate created by this Lease.

"Term" has the meaning provided in Section 2.02(a) hereof.

"Termination Date" has the meaning provided in Section 2.02(b).

"Threshold Amount" means \$100,000, as Adjusted for Inflation.

"Title Matters" has the meaning provided in Section 2.01 hereof.

"Transient Docking" has the meaning provided in Section 23.01(d) hereof.

"Unavoidable Delays" means delays beyond the reasonable control of Tenant which have the effect of delaying Tenant's performance of its construction obligations hereunder and which are due to Landlord Delays, strikes, slowdowns, walkouts, lockouts, acts of God, catastrophic weather conditions (such as floods, extraordinary high water conditions, unusually high tides, or extraordinary rain, snow, or sleet), inability to obtain labor and comparable materials (at competitive prices and rates), court orders enjoining commencement or continuation of the Project, delays in insurance adjustment or collection, denial of physical access to the Premises by Landlord unless such access is reasonably denied due to actions or inaction of Tenant or its employees or contractors, enemy action (including undeclared wars), civil commotion, fire, casualty, the failure of any Governmental Authority to grant any discretionary approvals required for the advancement of the Project within a reasonable period, provided that Tenant has made a complete application for such approval and has made diligent and good faith efforts to comply with all conditions of any Governmental Authority required for the granting of any such approval, or other cause not within Tenant's control which, in Landlord's sole reasonable discretion, is causing a delay in Tenant's performance of its construction obligations hereunder, of which Tenant shall have notified Landlord in writing, stating when such delay commenced, not later than ten (10) business days after Tenant has first received knowledge of the occurrence of any of the foregoing conditions, provided, however, that in no event shall Tenant's financial condition or inability to obtain financing or any delay arising out of disputes among or between shareholders of or partners in Tenant constitute an Unavoidable Delay.

"Upland Area" means a certain unimproved upland area adjacent to Pier A comprised of approximately 34,000 gross square feet, as shown on Exhibit A-2.

"Zoning Resolution" has the meaning provided in Section 16.01(b)(i) hereof.

ARTICLE 2

DEMISE OF PREMISES AND TERM OF LEASE.

Section 2.01. Demise of Premises.

Landlord does hereby demise and lease to Tenant, and Tenant does hereby hire and take from Landlord, the Premises, together with all improvements thereon and all easements, appurtenances and other rights and privileges now or hereafter belonging or appertaining to the Premises, except for the Excess Development Rights, subject to the terms and conditions hereof, and subject also to the Preservation Covenant, if any, and those matters affecting title set forth in Exhibit B hereto (the "Title Matters")

TO HAVE AND TO HOLD unto Tenant, its permitted successors and assigns, for the term specified in Section 2.02.

Section 2.02. The Term.

(a) The term ("Term") of this Lease shall commence and this Lease shall be effective on the date (the "Commencement Date") as of which both of the following shall have occurred: (i) this Lease has been executed by both parties, and (ii) the City has received the "State Approvals", as such term is defined in Section 39.01(c) hereof, and shall continue until the Termination Date. The City shall provide a copy of the State Approvals to Tenant upon receipt of same.

(b) Definitions:

(i) Termination Date shall mean first to occur of (i) the Fixed Expiration Date, (ii) the date, if any, on which Landlord purchases the property described in the Option to Purchase dated June 6, 1980 (as it has been or may be amended from time to time) to which Landlord and Tenant are parties, pursuant to the option described therein, or (iii) such earlier date upon which Landlord may terminate this Lease pursuant to Section 13.01(f) or Section 24.03, or (iv) such earlier date upon which this Lease may be terminated as otherwise hereinafter provided.

(ii) The "Fixed Expiration Date" shall mean the forty-ninth (49th) anniversary of the Commencement Date, or if the term shall have been extended pursuant to Section 2.03, the final date of the latest Renewal Term for which such option has been exercised.

(iii) The Initial Term shall mean the period from the Commencement Date until midnight on the day immediately preceding the 49th anniversary of the Commencement Date.

Section 2.03. Renewal Terms.

Tenant shall have the option to renew this Lease for five additional ten (10) year periods (each, a "Renewal Term") on the same terms and conditions contained herein provided that at the time of each exercise of such option and at the commencement of any such Renewal Term, Tenant shall not be in Default hereunder beyond any applicable grace

period and a Change in Control shall not have occurred. Tenant may exercise such option by giving written notice to the Administrator of its desire to renew the Lease not less than 180 days or more than 270 days prior to the expiration of the Initial Term or the preceding Renewal Term, as the case may be, in accordance with Article 25.

ARTICLE 3

RENT.

Section 3.01. Method and Place of Payment.

Except as otherwise specifically provided herein, all Rental shall be paid without setoff or deduction and without prior notice or demand. All Rental (except Impositions, if the rules and regulations of the City governing such payment are to the contrary) shall be paid by good checks payable to the order of Landlord and drawn on an account at a bank that is a member of the New York Clearing House Association or any successor body. Rental (other than Impositions) shall be payable at the following address or at such other place as Landlord shall direct by notice to Tenant:

New York City Economic Development Corporation
110 William Street
New York, N.Y. 10038
Attn: Executive Vice President, Property Management

Impositions shall be payable in the form and to the location provided by rules and regulations governing the payment thereof.

Section 3.02. Base Rent.

Tenant shall pay Landlord annual rent ("Base Rent") in an amount equal to \$1.00 per annum, payable annually in advance.

Section 3.03. Net Lease.

It is the intention of Landlord and Tenant that except as provided in Section 4.05 of this Lease (a) Rental be absolutely net to Landlord without any abatement, diminution, reduction, deduction, counterclaim, credit, setoff or offset whatsoever (except as expressly provided in this Lease and where not so expressly provided as may be required in any proceeding where the right to assert any claim against Landlord would be extinguished unless such a counterclaim, set off, or deduction is asserted in such proceeding) so that each Lease Year of the Term shall yield, net to Landlord, all Rental, and (b) Tenant shall pay all costs, expenses and charges of every kind relating to the Premises (except Taxes) that may arise or become due or payable during or after (but attributable to a period falling within) the Term.

Section 3.04. HUD 108 requirements.

Tenant acknowledges that in connection with that certain \$8 million Section 108 loan approved on April 16, 1996 ("Section 108 Loan") by the United States Department of Housing and Urban Development ("HUD") in connection with previous work on the Pier, Landlord is obligated to require that Tenant must comply with a national objective as such

objectives are generally described in 24 C.F.R. Section 570.200(a)(2) (or successor regulations thereto). Tenant further acknowledges that the national objective with which it will comply shall be satisfied by causing the requirements set forth in 24 C.F.R. Section 570.208(a)(4) (or successor regulations thereto) to be fulfilled. Accordingly, Tenant covenants to satisfy said requirements, including but not limited to relevant reporting obligations (if any) to HUD, and to supply such information and reports as Landlord may from time to time reasonably request for the purpose of ascertaining Tenant's compliance with such requirements..

ARTICLE 4

IMPOSITIONS.

Section 4.01. Payment of Impositions.

(a) Obligation to Pay Impositions. Tenant shall pay, in the manner provided in Section 4.01(c) hereof, all Impositions that, with respect to any period occurring during the Term, are, or would be, if the Premises or any part thereof or the owner thereof were not exempt therefrom, assessed, levied, confirmed, imposed upon, or would be charged to the owner of the Premises with respect to (i) the Premises, or (ii) the sidewalks, streets, or waterways in front of or adjoining the Premises, or (iii) any vault, passageway or space in, over or under such sidewalk, street, or waterway, or (iv) any other appurtenances of the Premises, or (v) any personal property or other facility used in the operation thereof, or (vi) the Rental (or any portion thereof) or any other amount payable by Tenant hereunder, or (vii) any document to which Tenant is a party creating or transferring an interest or estate in all or any part of the Premises, or (viii) the use and occupancy of the Premises, or (ix) this transaction. For the avoidance of doubt, notwithstanding the foregoing, Tenant shall be entitled to utilize any exemptions otherwise available to it other than by reason of the identity of the owner of the Premises or the site of the Premises.

(b) Definition. "Imposition" or "Impositions" means:

(i) real property general and special assessments (including, without limitation, any special assessments for or imposed by any business improvement district or by any special assessment district) other than Taxes,

(ii) personal property taxes,

(iii) occupancy and rent taxes,

(iv) water, water meter and sewer rents, rates and charges,

(v) excises,

(vi) levies,

(vii) license and permit fees,

(viii) except for Taxes, any other governmental levies, fees, rents, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, now or hereafter enacted, of any kind whatsoever, and

(ix) any fines, penalties and other similar governmental charges applicable to the foregoing, together with any interest or costs with respect to the foregoing, excluding therefrom any such fines, penalties or charges which may be imposed solely as a result of Landlord's acts or omissions in its proprietary capacity only.

(c) Payments of Impositions.

(i) Subject to the provisions of Section 35.01 hereof, Tenant shall pay each Imposition or installment thereof not later than the date the same may be paid without interest or penalty. However, if by law, at Tenant's option, any Imposition may be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition). Tenant may exercise the option to pay the Imposition in such installments and shall be responsible for the payment of such installments when due with such interest as may be required by law.

(ii) If Tenant twice fails within any twenty-four month period to make any payment of an Imposition (or installment thereof) on or before the date due, Tenant shall, at Landlord's request, and notwithstanding (i) above, pay all Impositions or installments thereof thereafter payable by Tenant not later than ten (10) days before the due date thereof. However, if Tenant thereafter makes all such payments as required in this paragraph (ii) for twenty-four consecutive months without failure, the Imposition payment date in (i) above shall again become applicable, unless and until there are two such further failures. Nothing in this paragraph shall be construed to limit Landlord's default remedies as set forth elsewhere in this Lease after failure by Tenant to timely pay any Imposition.

(d) Income and Similar Taxes of Landlord. Tenant shall not be required to pay any municipal, state or federal corporate income, franchise, inheritance, estate, succession or gift taxes or any other tax or governmental charge imposed upon Landlord which is based upon the income or capital of Landlord.

Section 4.02. Evidence of Payment.

Tenant shall furnish Landlord, within thirty (30) days after the date when an Imposition is due and payable, official receipts of the appropriate taxing authority or other proof reasonably satisfactory to Landlord, evidencing the payment thereof.

Section 4.03. Evidence of Non-Payment.

Any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition asserting non-payment of such Imposition shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill, at the time or date stated therein. This Section 4.03 is not intended to be in derogation of Tenant's rights under Section 35.01 hereof.

Section 4.04. Apportionment of Imposition.

Any Imposition relating to a fiscal period of the taxing authority, a part of which is included within the Term and a part of which is included in a period of time before the Commencement Date or after the Expiration of the Term, shall be apportioned pro rata between Landlord and Tenant as of the Commencement Date or the Expiration of the Term

(unless the Termination Date has occurred as a result of an Event of Default, in which case Tenant shall not be entitled to an apportionment except for the purpose of applying such amount as a credit pursuant to Section 24.03(c)(ii) hereof).

Section 4.05. Taxes.

Provided the City is Landlord, Landlord shall pay, cancel, or otherwise satisfy and discharge of record any and all Taxes on or before the due date thereof (which may be by bookkeeping entry, interdepartmental direction or other manner or procedure selected by Landlord).

ARTICLE 5

INFLATION ADJUSTMENT.

Wherever this Lease provides that a dollar amount shall be "Adjusted For Inflation" or subject to "Adjustment For Inflation," such amount shall be adjusted by multiplying the dollar amount to be adjusted by a fraction, the numerator of which shall be the Consumer Price Index for the month prior to the month to which the amount is to be adjusted and the denominator of which shall be the Consumer Price Index for the month from which the amount is to be adjusted. The "Consumer Price Index" shall mean the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor - New York - Northeastern New Jersey Area (2007 = 100) , or any successor index thereto, appropriately adjusted. If the Consumer Price Index ceases to be published, and there is no successor thereto, such other similar index as Landlord designates and Tenant approves, which approval shall not be unreasonably withheld, shall be substituted for the Consumer Price Index. If the Consumer Price Index is not immediately available, payments requiring such index for calculation shall be paid based on a reasonable estimate of the index, and any deficiency shall be paid along with, or overpayment credited against, the next Base Rent installment payment due immediately after the index is available.

ARTICLE 6

LATE CHARGES.

If (a) any payment of Rental, or any other payment due hereunder, is not received by Landlord within ten (10) days after the day on which it first becomes due, or (b) Landlord has reasonably made a payment required to be made by Tenant hereunder, after the giving of any notice that is expressly required to be given under the terms of this Lease with respect to the making of such payment, if any, then a late charge on the sums so overdue or paid by Landlord, calculated at the rate of interest charged by the City during the period in question for delinquent Taxes (the "Late Charge Rate") from the date such Rental first becomes due or the date of payment by Landlord, as the case may be, to the date on which actual payment of such sums is received by Landlord, shall become due and payable to Landlord as liquidated damages for the administrative costs and expenses incurred by Landlord by reason of Tenant's failure to make payment on or before the dates such payments are due. Subject to all other provisions of this Lease, Tenant shall pay Landlord, within ten (10) days after demand, which may be made from time to time, all late charges. No failure by Landlord to insist upon the strict performance by Tenant of its obligations to pay late charges shall constitute a waiver by Landlord of its right to enforce the provisions of this Article 6 in any instance

thereafter occurring. The provisions of this Article 6 shall not be construed in any way to extend the grace periods or notice periods provided for in Article 24 hereof.

ARTICLE 7

INSURANCE.

Section 7.01. Insurance Requirements.

(a) At all times during the Term (unless otherwise provided below), Tenant, at its sole cost and expense, shall carry or cause to be carried and maintained insurance coverage of the following types and limits:

(i) Commercial General Liability Insurance. Commercial general liability insurance written on coverage form ISO CG0001 or its equivalent with respect to the Premises and the Improvements and the operations related thereto, whether conducted on or off the Premises, in an amount of not less than ten million dollars (\$10,000,000) per occurrence and (subject to Section 7.06 hereof) twenty million dollars (\$20,000,000) annual per location aggregate, designating Tenant as named insured and Landlord, Landlord's Agent and the Administrator as additional insureds. Such insurance shall meet all of the standards, limits, minimums and requirements described in Section 7.07.

(ii) Property Insurance. "All Risk" property damage insurance covering the Premises and the Improvements against loss or damage by fire and loss or damage by all other risks now or hereafter embraced by extended coverage and "all risk" endorsement, in an amount not less than the full replacement value of the Premises and all improvements, protecting Tenant and Landlord against loss to the Improvements and meeting all of the standards, limits, minimums and requirements described in Section 7.08. For purposes of this Lease, "All Risk" shall mean the causes of loss in ISO form CP 1030, CAUSES OF LOSS—SPECIAL FORM, or its equivalent.

(iii) Automobile Liability. Automobile liability insurance providing coverage for claims resulting from vehicles owned, hired, operated, maintained or used by Tenant in an amount not less than one million dollars (\$1,000,000) per occurrence.

(iv) Construction Insurance. Prior to the commencement of any Construction of the Project and also from the commencement of any other Construction Work, Tenant shall carry or cause its contractor to carry, until final completion of such work, in addition to and not in lieu of the insurance required by the foregoing subsections (i), (ii) and (iii), the insurance described in Section 7.09.

(v) Workers' Compensation. Statutory Workers' Compensation and Disability Benefits Insurance and any other insurance required by law covering all persons employed by Tenant, contractors, subcontractors, or any entity performing work on or for the Premises or the Improvements (unless and to the extent provided by such other parties), including Employers Liability coverage, all shall be provided in amounts not less than the statutory minimum, except that Employers Liability coverage shall be in an amount not less than \$500,000;

(vi) Boiler and Machinery Insurance. Boiler and Machinery Insurance shall be provided covering the entire heating, ventilating and air-conditioning systems, in all

its applicable forms, including Broad Form, boiler explosion, extra expense and loss of use in an amount not less than the replacement cost of such heating, ventilating and air-conditioning systems, located on any portion of the Premises and other machinery located- on such portion of the Premises, which shall name Landlord and Tenant, as insureds and the Depository as loss payee for the benefit of Landlord and Tenant, as their interests may appear.

(vii) Jones Act Insurance and U.S. Harbor Workers' and Long Shoremens' Compensation Act Insurance. Such insurance shall be provided in statutory amounts, if Tenant or any of its subcontractors utilizes floating equipment, barges or floats, or performs marine-related construction in connection with this Lease.

(viii) Marine Protection and Indemnity Insurance. Marine Protection and Indemnity Insurance incorporating U.K. Rules or the equivalent shall be provided with a limit of liability of not less than twenty million dollars (\$20,000,000) per occurrence, at all times when the Tenant or any of its contractors or subcontractors utilizes floating equipment, barges or floats, or performs marine-related construction, covering any and all claims for personal injury, death and property damage arising out of or in connection with the Pier.

(ix) To the extent environmental exposure is an issue for the business operations in connection with the premises of Tenant or any subtenant, licensee or concessionaire, Pollution Liability Insurance policy, on an occurrence basis, providing coverage for bodily injury liability, property damage or environmental damage caused by pollution conditions with a limit of liability of not less than five million dollars (\$5,000,000) per occurrence and in the aggregate. The policy shall include coverage for environmental clean-up on land, in air and on water. The policy shall include coverage for gradual and sudden and accidental pollution coverage, with a time element of no less than seven (7) days' notice and thirty (30) days' reporting. The policy shall not contain a sunset provision, or any other provision, which would prohibit the reporting of a claim and the subsequent defense and indemnity that would normally be provided by the policy. The policy shall provide transportation coverage for the hauling of hazardous materials from the Pier to the final disposition location.

(x) Such other insurance, in such amounts as from time to time reasonably may be required by the Landlord.

(b) Additionally, Tenant shall cause any individual, company, corporation or entity, including, but not limited to subtenants, licensees and concessionaires, subletting or otherwise occupying space on the Premises or docking at or on the Pier to procure and maintain the following insurance policies:

(i) Commercial General Liability Insurance. Commercial general liability insurance in an amount to be approved by Landlord prior to the commencement of the relevant sublease, license, permit or concession taking into account the nature and scope of the business of such individual, company, corporation or entity at the Premises, and the amount of space to be occupied by the same, which amount shall be not less than five million to twenty million dollars (\$5,000,000--\$20,000,000) per occurrence, five million to twenty million dollars (\$5,000,000--\$20,000,000) annual aggregate, per location. Such insurance shall meet all of the standards, limits, minimums and requirements described in Section 7.07.

(ii) Automobile Liability. Automobile liability for a combined single limit per occurrence for bodily injury and property damage of not less than one million dollars (\$1,000,000).

(iii) Statutory Worker's Compensation and Employer's Liability Insurance.

(iv) Marine Protection and Indemnity Insurance. If applicable in light of the nature of the business activities of the subtenant, licensee, permittee or concessionaire, Marine protection and indemnity insurance in an amount not less than twenty million dollars (\$20,000,000), per occurrence.

(v) Liquor Law Liability and Host Liquor Law Liability. If applicable in light of the nature of the business activities of the subtenant, licensee or concessionaire, Liquor law liability and host liquor law liability coverage in an amount not less than twenty million dollars (\$20,000,000), per occurrence.

(vi) Miscellaneous Insurance. Such other insurance, in such amounts as from time to time reasonably may be required by the City.

Notwithstanding anything herein to the contrary, since the National Park Service, as a bureau of the United States Department of the Interior, is self-insured, said agency (as a subtenant under such lease as may be entered into for operation of the Liberty Island ferry service from Pier A, as contemplated by Section 23.01(a)) shall not be required to comply with the above insurance requirements.

Section 7.02. Treatment of Proceeds.

(a) Proceeds of Insurance in General. Insurance proceeds payable with respect to a property loss shall be payable to Depository if greater than or equal to the Threshold Amount, or to Tenant, if less than the Threshold Amount. In either case, the insurance proceeds with respect to such loss shall be held in trust for the purpose of paying the cost of the Restoration, and such proceeds shall be applied to the payment in full of the cost of such Restoration in accordance with Article 8 hereof.

(b) Cooperation in Collection of Proceeds. Tenant and Landlord shall cooperate in connection with the collection of any insurance moneys that may be due in the event of loss, and Tenant and Landlord shall as soon as practicable execute and deliver such proofs of loss and other instruments as may be required of Tenant or Landlord, respectively, for the purpose of obtaining the recovery of any such insurance moneys.

(c) Adjustments for Claims. All property insurance policies required by this Article shall provide that all adjustments for claims with the insurers involving a loss be made with Landlord and Tenant.

Section 7.03. General Requirements Applicable to Policies.

(a) Insurance Companies. All of the insurance policies required by this Article shall be procured from companies licensed or authorized to do business in the State of New York that have a rating in the latest edition of "Bests Key Rating Guide" of "A:VII" or better or another comparable rating reasonably acceptable to Landlord and Tenant considering market conditions.

(b) Required Forms. All references to forms and coverages in this Article shall be those used by the Insurance Services Office of New York or equivalent forms satisfactory to Landlord and Tenant in all material respects.

(c) Required Certificates. Certificates of insurance evidencing the issuance of all insurance required by this Article, describing the coverage and guaranteeing thirty (30) days' prior notice to Landlord by the insurance company of cancellation or non-renewal, shall have been delivered to Landlord by the Commencement Date, and in the case of any policies replacing or renewing any policies expiring during the Term, not later than thirty (30) days before the expiration dates of any expiring policies. The certificates of insurance shall be issued by the insurance company and shall bear the original signature of an officer or duly authorized agent having the authority to issue the certificate. The insurance company issuing the insurance shall also deliver to Landlord, together with the certificates, proof reasonably satisfactory to Landlord that the premiums for at least the first year of the term of each policy (or installment payments to the insurance carrier then required to have been paid on account of such premiums) have been paid. Upon request, Tenant shall deliver a copy of each entire original policy, or other evidence satisfactory to Landlord of the validity and accuracy of said certificate, immediately after the date each such policy is available, but no later than four (4) months after the date each such policy takes effect.

(d) Compliance With Policy Requirements. Tenant shall not violate or permit to be violated any of the conditions, provisions or requirements of any insurance policy required by this Article, and Tenant shall perform, satisfy and comply with or cause to be performed, satisfied and complied with all conditions, provisions and requirements of all such insurance policies.

(e) Required Insurance Policy Clauses. Each policy of insurance required to be carried pursuant to the provisions of this Article shall contain (i) a provision that no act or omission of Tenant shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained by Landlord, Landlord's Agent and/or the Administrator, other than those acts which are committed by Landlord, Landlord's Agent and/or the Administrator, respectively, (ii) a written waiver of the right to subrogation with respect to all of the named insureds and additional insureds, including Landlord, Landlord's Agent and the Administrator, (iii) a clause designating Landlord, Landlord's Agent and the Administrator as loss payee or additional insured, as their interests may appear, and (iv) an agreement by the insurer that such policy shall not be cancelled, modified, or denied renewal without at least thirty (30) days' prior written notice to Landlord, Landlord's Agent and the Administrator, specifically covering, without limitation, cancellation or non-renewal for non-payment of premium.

Section 7.04. Additional Coverage.

(a) Other Insurance. Subject to the provisions of Section 7.12, Tenant shall maintain such other insurance in such amounts as from time to time reasonably may be required by Landlord against such other insurable hazards as at the time are commonly insured against in the case of premises similarly situated to the Premises or business operations of a size, nature and character similar to the size, nature and character of the business operations being conducted at the Premises.

(b) Adjustment of Limits. All of the limits of insurance required pursuant to this Article 7 shall be subject to review by Landlord and, in connection therewith, Tenant shall carry or cause to be carried such additional amounts as Landlord may reasonably require from time to time. Any request by Landlord that Tenant carry or cause to be carried additional amounts of insurance shall not be deemed reasonable unless such additional amounts are commonly carried in the case of premises similarly situated to the Premises, or business operations of a size, nature or character similar to the size, nature and character of the business operations being conducted at the Premises; provided, however, that in no event shall the provisions of this subsection (b) relieve Tenant of its obligation to carry or to cause to be carried All Risk property damage insurance in an amount not less than the Replacement Value as provided in Section 7.01(a)(ii) hereof; and provided further, however, that in no event shall Tenant be required to carry or to cause to be carried All Risk insurance in an amount which is greater than the Replacement Value. Landlord shall also have the right, throughout the Term, to approve the amount of any loss deductible contained in any insurance policy required pursuant to the provisions hereof, which approval Landlord shall not unreasonably withhold or delay, taking into account Tenant's financial capability to pay such deductible, market conditions, and the deductible commonly included in insurance coverages obtained with respect to premises similarly situated to the Premises or business operations of a size, nature, or character similar to the size, nature, or character of the business operations being conducted on the Premises. A request by Landlord that Tenant reduce or cause to be reduced the amount of any such loss deductible shall not be deemed reasonable unless loss deductibles of such lower amounts are commonly included in policies insuring premises similarly situated to the Premises, or business operations of a size, nature and character similar to the size, nature and character of the business operations being conducted at the Premises.

(c) Equivalent Protection. The parties acknowledge that over the Term of this Lease, further changes in the forms of insurance policies and in insurance practices are likely to occur. In such event, Landlord shall have the right to require Tenant to furnish, at Tenant's sole expense, such additional coverages, policy terms and conditions, or limits of liability, as may be reasonably necessary or prudent to assure to Landlord a degree of insurance protection practically equivalent to that provided by Tenant prior to the advent of the change, provided such coverage is commercially available.

Section 7.05. No Representation as to Adequacy of Coverage.

The requirements set forth herein with respect to the nature and amount of insurance coverage to be maintained or caused to be maintained by Tenant hereunder shall not constitute a representation or warranty by Landlord or Tenant that such insurance is in any respect adequate.

Section 7.06. Blanket or Umbrella Policies.

Amounts in excess of \$1,000,000 of the insurance required to be carried or caused to be carried by Tenant pursuant to the provisions of this Lease may be effected by blanket and/or umbrella policies covering the Premises and other properties owned or leased by Tenant or the Person required by Tenant to carry the applicable insurance, provided, such policies otherwise comply with the provisions of this Lease and allocate to the Premises the specified coverage, including, without limitation, the specified coverage for all insureds required to be named as insured hereunder, without possibility of reduction of co-insurance

by reason of, or damage to, any other premises named therein, and if the insurance required by this Lease shall be effected by any such blanket or umbrella policies, Tenant shall, upon request, furnish to Landlord certified copies of such policies as provided in Section 7.03(c) hereof, together with schedules annexed thereto, setting forth the amount of insurance applicable to the Premises and proof reasonably satisfactory to Landlord that the premiums for at least the first (1st) year of the term of each of such policies (or installment payments then required to have been paid on account of such premiums) shall have been paid. If applicable, Umbrella/Excess Liability insurance must specifically list Commercial General Liability and Comprehensive Automobile Liability as primary coverages and the certificate of insurance must indicate that the insurance afforded is on a 'Per Occurrence' basis.

Section 7.07. Liability Insurance Requirements.

The insurance required by Section 7.01(a)(i) and (b)(i) shall consist of commercial general liability insurance, written on an occurrence basis with respect to the Premises and all operations related thereto, with deductibles of not more than \$50,000 per loss and \$25,000 per loss, respectively, protecting against liability for bodily injury, death, property damage, and personal injury. Such insurance shall contain no exclusions beyond those provided in Form ISO CG 0001 unless specifically approved in each instance by Landlord, which approval will not be unreasonably withheld or delayed.

Tenant shall cause any catering establishment permitted to cater an event to be held at the Premises to carry appropriate liability insurance, including, without limitation, liquor liability coverage naming Landlord, Tenant and Administrator as additional insureds.

Section 7.08. Property Insurance Requirements.

The insurance required by Section 7.01(a)(ii) shall consist at least of property damage insurance under an "All Risk" policy or its equivalent covering the Premises and all Improvements with replacement cost valuation and an agreed value endorsement in an amount not less than the full Replacement Value (determined in accordance with Section 7.11) and including the following coverages or clauses, with a deductible of not more than \$50,000 per loss (except that the deductible for flood and earthquake coverage shall be not more than \$500,000 per loss):

- (a) a replacement cost valuation without depreciation or obsolescence clause;
- (b) debris removal coverage;
- (c) flood and earthquake coverage (with no exclusion for wind); it being understood, however, that such coverages (i) shall have sublimits in amounts less than the full Replacement Value, with said sublimits to be reasonably agreed to by the Parties (concurrently with the determination of Replacement Value pursuant to Section 7.11(a) hereof) based on generally prevailing underwriting practices of domestic carriers customarily insuring premises similar to the Premises and business operations of a size, nature and character similar to the size, nature and character of the business operations being conducted by Tenant at the Premises, and (ii) in the case of flood coverage, shall exclude the cost of foundation and excavation;
- (d) contingent liability from operation of building laws;

- (e) demolition cost for undamaged portion coverage;
- (f) increased cost of construction coverage;
- (g) an agreed or stipulated amount endorsement negating any coinsurance clauses;
- (h) equipment breakdown coverage (which coverage may be provided under a separate policy reasonably approved by Landlord);
- (i) a clause designating Landlord as loss payee as its interests may appear; and
- (j) contain no exclusion or deductible unless approved in writing by Landlord, which approval will not be unreasonably withheld or delayed.

Tenant and Landlord shall be named as their interests may appear, and the Depository shall be designated loss payee on such "All Risk" property damage insurance policy for the benefit of Landlord and Tenant. If not included within the "All Risk" coverage above, Tenant shall also carry or cause to be carried coverage against damage due to water and sprinkler leakage and collapse, flood and earthquake, which shall be written with limits of coverage of not less the full Replacement Value per occurrence.

Section 7.09. Construction Insurance Requirements.

The insurance required by Section 7.01(a)(iv) shall consist at least of the following:

- (a) Builder's Risk Insurance (standard "All Risk" property damage or equivalent coverage) in an amount not less than the cost of reconstruction, written on a completed value (non-reporting) basis, for property damage protecting Tenant, Landlord, the Administrator and the general contractor against all insurable legal liability claims resulting from any work being performed on the Premises.
- (b) Automobile liability insurance covering any automobile or other motor vehicle used in connection with work being performed on or for the Premises in an amount not less than one million dollars (\$1,000,000) per occurrence.
- (c) Pollution Liability Insurance, to the extent applicable to the Construction of the Project or other Construction Work, on an occurrence basis, providing coverage for bodily injury liability, property damage or environmental damage caused by pollution conditions with a limit of liability of not less than five million dollars (\$5,000,000) per occurrence and in the aggregate. The policy shall include coverage for environmental clean-up on land, in air and on water. The policy shall include coverage for completed operations for two (2) years after the completion of the performance of the Work, gradual and sudden and accidental pollution coverage, with a time element of no less than seven (7) days' notice and thirty (30) days' reporting. The policy shall not contain a sunset provision, or any other provision, which would prohibit the reporting of a claim and the subsequent defense and indemnity that would normally be provided by the policy. The policy shall provide transportation coverage for the hauling of hazardous materials from the Pier to the final disposition location.

(d) Professional Liability Insurance, to the extent applicable to the Construction of the Project or other Construction Work, in the amount of five million dollars (\$5,000,000). Tenant agrees to require any contractor performing the Work to maintain such coverage for at least three years after the completion of the Work.

(e) The insurance specified in subsections (a) and (b) above shall contain (i) independent contractors coverage and (ii) no exclusions other than those included in the basic forms described unless approved by Landlord.

Section 7.10. Annual Aggregates.

If there is imposed under any commercial general liability insurance policy required hereunder an annual aggregate which is applicable to claims other than products liability and completed operations, such an annual aggregate shall not be less than two (2) times the per occurrence limit required for such insurance.

Section 7.11. Determination of Replacement Value.

(a) Definition. The current replacement value of the Premises (the "Replacement Value") shall be the full cost of replacing the Premises, including, without limitation, all hard costs of construction as well as the costs of post-casualty debris removal, and soft costs, including without limitation, architect's and development fees. Replacement Value shall be determined periodically by an appraiser, selected and paid by Tenant and reasonably approved by Landlord, initially on the Substantial Completion Date and thereafter on each Revaluation Date and at such additional times as Landlord, may reasonably request. If the insurance required by Section 7.01(a)(ii) above is not sufficient to cover the Replacement Value, then within fifteen (15) days after such appraisal, said insurance shall be increased or supplemented to fully cover such Replacement Value. In no event shall such Replacement Value be reduced by depreciation or obsolescence of the Improvements. Any dispute with respect to the determination of Replacement Value shall be subject to the provisions of Section 34.01.

(b) Adjustment. The amount of Replacement Value shall be adjusted on each anniversary of the initial determination of Replacement Value and of each subsequent decennial redetermination of Replacement Value throughout the Term by a percentage equal to the percentage change in the Building Index in effect on such anniversary date as compared to the Building Index in effect on the date of Substantial Completion or prior redetermination, whichever is latest.

(c) Building Index. As used herein, the "Building Index" shall mean the Dodge Building Cost Index or such other published index of construction costs which shall be selected from time to time by Landlord and reasonably agreed to by Tenant, provided that such index shall be a widely recognized measure of construction costs in the insurance industry and appropriate to the type and location of the Improvements.

Section 7.12. Unavailability.

If any of the insurance required to be carried under this Lease shall not, after diligent efforts by Tenant, and through no act or omission on the part of Tenant, be obtainable from domestic carriers customarily insuring premises similar to the Premises and business operations of a size, nature and character similar to the size, nature and character of the

business operations being conducted by Tenant at the Premises, then Tenant shall promptly notify Landlord of Tenant's inability to obtain such insurance and Landlord shall have the right, but not the obligation, to arrange for Tenant to obtain such insurance. If Landlord shall be able to arrange for Tenant to obtain such insurance, Tenant shall obtain the same up to the maximum limits provided for herein. If Landlord shall be unable to arrange for Tenant to obtain the insurance required hereunder, Tenant shall promptly obtain the maximum insurance obtainable, and in such case, the failure of Tenant to carry the insurance which is unobtainable shall not be a Default hereunder for as long as such insurance shall remain unobtainable. Types or amounts of insurance shall be deemed unobtainable if such types or amounts of insurance are (a) actually unobtainable, or (b) virtually unobtainable as a result of commercially unreasonable premiums for such insurance with respect to premises similar to the Premises, located in New York City and used for purposes similar to those for which the Premises are used.

ARTICLE 8

DAMAGE, DESTRUCTION AND RESTORATION.

Section 8.01. Notice to Landlord.

Tenant shall notify Landlord and Administrator immediately if the Improvements are damaged or destroyed in whole or in part by fire or other casualty.

Section 8.02. Casualty Restoration.

(a) Obligation to Restore. Subject to the provisions of Section 8.02(d), if all or any portion of the Improvements are damaged or destroyed by fire or other casualty, ordinary or extraordinary, foreseen or unforeseen, Tenant shall, in accordance with the provisions of this Article and Article 13 hereof, restore the Improvements to the extent of the value and as nearly as possible to the character of the Improvements as they existed immediately before such casualty and otherwise in substantial conformity with the Plans and Specifications (a "Casualty Restoration"), whether or not (i) such damage or destruction has been insured or was insurable, (ii) Tenant is entitled to receive any insurance proceeds, or (iii) the insurance proceeds are sufficient to pay in full the cost of the Construction Work in connection with the Casualty Restoration. No holder of any Mortgage shall have the right to apply any insurance proceeds paid in connection with any casualty of the Improvements toward payment of the sum secured by or owed pursuant to its Mortgage unless and until the Casualty Restoration has been completed and the conditions set forth in Section 8.03(c) below are met.

(b) Estimate of Construction Work Cost. Before commencing any Construction Work in connection with a Casualty Restoration and within thirty (30) days of the damage or destruction, Tenant shall furnish Landlord with an estimate, prepared by a Cost Estimator, of the cost and duration of such Construction Work. Landlord, at its election and at Tenant's cost, which cost shall be reasonable, may engage a Cost Estimator to prepare its own estimate of the cost of such Construction Work. If Landlord shall fail to disapprove Tenant's estimate of such cost within thirty (30) days of receipt of such estimate, Tenant's estimate shall be deemed approved. If Landlord shall dispute the estimated cost of such Construction Work, the dispute shall be resolved by a Cost Estimator chosen by agreement of Landlord and Tenant (or if the parties cannot agree, in accordance with Article 34 hereof), which

dispute, in either case, shall be resolved by choosing either Landlord's or Tenant's estimate, which choice shall be binding on the parties.

(c) Commencement of Construction Work. Tenant shall commence such Construction Work promptly after adjustment of the insurance claim, if any, relating to the damages or destruction (which settlement will be diligently prosecuted), but in any event within two hundred seventy (270) days of the damage or destruction, subject to Unavoidable Delays relating to the Construction Work in connection with a Casualty Restoration for an aggregate period of six months for each such Casualty Restoration, provided that during any such period after the occurrence of a casualty Tenant shall have secured the damaged portion of the Improvements against further damage, injury to persons, and/or damage to other property.

(d) Option not to Restore. Notwithstanding the foregoing, if (i) all or substantially all of the Building is destroyed by casualty, and insurance proceeds (including applicable deductibles to be paid for by Tenant), through no fault of Tenant, are insufficient to pay in full the cost of the Construction Work in connection with the Casualty Restoration, or (ii) all or substantially all of the immediately adjacent area within one hundred (100) yards of the Premises is destroyed by casualty and the City does not agree within eighteen months of such casualty to restore such immediately adjacent area, commence such restoration within two years after the casualty, and complete such restoration within five (5) years after the casualty, thus, in effect, making the Premises inaccessible for all practical purposes, or (iii) at any time during the last five (5) years of the Term, all or substantially all of the Premises are damaged or destroyed by casualty and the insurance policies required pursuant to Article 7 are in effect, then Tenant may, at its option, in lieu of performing the Casualty Restoration required by Section 8.02(a) hereof, terminate this Lease within sixty (60) days after it is finally determined that the conditions in clause (i), (ii) or (iii) have been met. Such termination shall be made by (A) serving upon Landlord, at any time within said sixty (60) day period, a ten (10) days' written notice of Tenant's election to so terminate; (B) with respect to termination under clause (i) and, if Pier A has been damaged in whole or in part, clause (ii), rebuilding Pier A (including all necessary substructure elements but excluding the Building) prior to such termination; (C) assigning over to Landlord all of Tenant's right, title and interest in and to all available insurance and other proceeds payable due to such damage or destruction but subject to the continuing obligation of Tenant to assist in the prosecution of all insurance and other claims, and (D) paying to Landlord concurrently with the service of such notice an amount equal to all Rental due up to and including said date of termination whether or not otherwise payable at such time. Upon the service of such notice and the making of such assignment and payment within the period aforesaid, this Lease shall terminate on the date specified in such notice with the same force and effect as if such date were the Fixed Expiration Date, and Tenant shall comply with all surrender requirements of Article 31 hereof. For the purposes of this Section 8.02(d), "substantially all" of the Building shall mean 90% thereof.

Section 8.03. Restoration Funds.

(a) Reimbursement of Depository's and Landlord's Expenses. Before paying the Restoration Funds to Tenant, Depository shall reimburse itself, Tenant, and Landlord therefrom to the extent of all documented necessary and proper expenses (including, without limitation, reasonable and customary attorneys' fees and disbursements) paid or incurred by each of them respectively in the collection of such Restoration Funds.

(b) Disbursement of Restoration Funds.

(i) Application for Disbursement. Landlord shall direct Depository to pay to Tenant the Restoration Funds from time to time as the Restoration proceeds. Subject to the provisions of Sections 8.03(a) . 8.03(b) (ii) , 8 . 04 and 8.05 hereof, Restoration Funds held by Depository shall be paid to Tenant in installments as the Restoration progresses, after application to be submitted by Tenant to Depository and Landlord stating Restoration costs, including architects' and engineers' fees, construction labor costs and the cost of materials, fixtures and equipment that either have (A) been incorporated in the Improvements since the last previous application and paid for by Tenant (or payments that are then due and owing), or (B) not been incorporated in the Improvements but have been purchased since the last previous application and paid for by Tenant (or payments that are then due and owing) and insured by Tenant for one hundred percent (100%) of the cost thereof and stored at a secure and safe location on the Premises or at such other location as shall be reasonably satisfactory to Landlord (such costs collectively referred to as "Restoration Costs"). The Depository shall not make any installment payment to Tenant for materials, fixtures and equipment purchased but not yet incorporated in the Improvements until Tenant shall have delivered to Landlord certificates of insurance evidencing that such materials, fixtures and equipment are insured for one hundred percent (100%) of the cost thereof.

(ii) Holdback of Restoration Funds. The amount of any installment of the Restoration Funds to be paid to Tenant for Restoration Costs shall be equal to the amount by which (A) ninety percent (90%) of the total Restoration Costs already paid or owed (including any amounts that may have been retained by Tenant from any contractors), exceeds (B) all prior installments of Restoration Funds paid to Tenant. The ninety percent (90%) figure in the preceding sentence shall increase to ninety-five percent (95%) after the Architect certifies that the Restoration is at least fifty percent (50%) complete. Upon completion of the Restoration, and upon application for final payment submitted by Tenant to Depository and Landlord and compliance with the conditions set forth in Section 8.04 hereof, the remaining portions of the Restoration Funds shall be first paid to each of Tenant's contractors in payment of the amounts due and remaining unpaid on account of work performed in connection with the Restoration and not disputed by Tenant and any amounts retained under such contracts and then according to the provisions of subparagraph (c).

(iii) Disbursement of Remaining Restoration Funds. Provided that no Default or Event of Default exists, any Restoration Funds, together with any interest earned thereon, remaining after the completion of a Casualty Restoration in accordance with the provisions of Sections 13.03 and 13.07 hereof shall be paid to Tenant.

Section 8.04. Conditions Precedent to Disbursement of Restoration Funds.

If the Restoration Funds are, pursuant to Section 7.02(a) hereof, being held by Tenant, Tenant shall apply said funds to the Restoration, but during the pendency of any Default or Event of Default, Tenant shall not disburse any Restoration Funds except as provided in Section 8.08 below. If the Restoration Funds are being held by Depository pursuant to Section 7.02(a) hereof, the following conditions shall apply to each payment of Restoration Funds to be made to Tenant pursuant to Section 8.03(b) hereof:

(a) Certificate of Architect. A certificate of the Architect shall be submitted to Depository and Landlord stating that:

(i) The sum then requested to be withdrawn either has been paid by Tenant or is justly due to contractors, subcontractors, materialmen, engineers, architects or other Persons (whose names and addresses shall be stated) who have rendered or furnished services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of such Persons with respect thereto, and stating, in reasonable detail, the progress of the Construction Work in connection with the Restoration up to the date of the certificate;

(ii) No part of such expenditures has been or is being made the basis, in any previous or then pending request, for the withdrawal of Restoration Funds or has been paid out of any of the Restoration Funds previously received by Tenant;

(iii) The sum then requested does not exceed the cost of the services and materials described in the certificate;

(iv) The materials, fixtures and equipment, for which payment is being requested pursuant to Section 8.03(b)(i) hereof, are equal in quality and character to the materials, fixtures, and equipment being restored or replaced;

(v) Except in the case of the final request for payment by Tenant, the balance of the Restoration Funds held by Depository (including any bond, cash or other security provided by Tenant in accordance with Section 8.05 hereof) shall in the reasonable opinion of the Architect be sufficient, upon completion of the Construction Work in connection with the Restoration, to pay for the Construction Work in full, and estimating, in reasonable detail, the total and remaining costs to complete such Construction Work;

(vi) The Construction Work has been performed substantially in accordance with the Plans and Specifications, as such may be required to be modified in the course of construction in order to adapt to field conditions, and fully in accordance with all Requirements; and

(vii) In the case of the final request for payment by Tenant, the Construction Work in connection with a Restoration shall have been completed, except for punch list items, in accordance with the provisions of Sections 13.03 and 13.07 hereof.

(b) Certificate of Title Insurance. There shall be furnished to Landlord a report or a certificate of a title insurance company reasonably satisfactory to Landlord, or other evidence satisfactory to Landlord, showing that there are no (i) vendor's, mechanic's, laborer's or materialman's statutory or other similar liens filed against the Premises or any part thereof, or (ii) public improvement liens created or caused to be created by Tenant affecting Landlord or the assets of, or any funds appropriated to, Landlord, except those as will be discharged upon payment of the amount then requested to be withdrawn or the discharge of which is guaranteed to the satisfaction of Landlord by a bond, letter of credit or similar security instrument.

(c) Defaults. No Event of Default shall then exist (except to the extent that any condition directly resulting from the casualty in and of itself would otherwise be construed as an Event of Default).

Section 8.05. Restoration Fund Deficiency.

If the estimated cost (determined as provided in Section 8.02(b) hereof) of any Construction Work in connection with any Restoration exceeds the net Restoration Funds (i.e., Restoration Funds available after the reimbursement provided for in Section 8.03(a) above) received by Depository pursuant to Section 7.02(a) hereof, then, before the commencement of such Construction Work or at any time after commencement of such Construction Work if it is reasonably determined by Landlord that the cost to complete such Construction Work exceeds the unapplied portion of the Restoration Funds, Tenant shall, within twenty (20) days of Landlord's request, deposit with Depository a bond, cash, letter of credit or other security, reasonably satisfactory to Landlord, in the amount of such excess, to be held and applied by Depository in accordance with the provisions of Section 8.03 hereof.

Section 8.06. Effect of Casualty on This Lease.

Except as specifically provided in Section 8.02(d), this Lease shall neither terminate, be forfeited nor be affected in any manner, nor shall there be a reduction or abatement of Rental, by reason of damage to, or total, substantial or partial destruction of, the Improvements, or by reason of the untenability of the Improvements or any part thereof, nor for any reason or cause whatsoever. Tenant's obligations hereunder, including the payment of Rental, shall continue as though the Improvements had not been damaged or destroyed and shall continue without abatement, suspension, diminution or reduction whatsoever. To the extent Landlord receives rent insurance proceeds, the same shall be applied in the manner set forth in Section 7.02(b) hereof.

Section 8.07. Waiver of Rights Under Statute.

The existence of any present or future law or statute notwithstanding, Tenant waives all rights to quit or surrender the Premises or any part thereof by reason of any casualty to the Improvements. It is the intention of Landlord and Tenant that the provisions of this Article 8 are an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York.

Section 8.08. Effect of Events of Default.

Notwithstanding anything to the contrary contained herein, if an Event of Default shall have occurred and be continuing, the Tenant and Depository shall pay any Restoration Funds then held by them in accordance with Landlord's directions.

Section 8.09. Effect of Lease Termination.

Notwithstanding anything to the contrary contained herein, if this Lease has been terminated (and such termination, if challenged by Tenant, is upheld by a court of competent jurisdiction and, if applicable, final appeal) the Depository shall pay any Restoration Funds then held by it in accordance with Landlord's directions (and this provision shall survive the termination of this Lease).

ARTICLE 9

CONDEMNATION.

Section 9.01. Certain Definitions.

(a) "Taking" shall mean a taking of the Premises or any part thereof for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among Landlord, Tenant and those authorized to exercise such right irrespective of whether the same affects the whole or Substantially All of the Premises or a lesser portion thereof but shall not include a taking of the fee interest in the Premises or any portion thereof if, after such taking, Tenant's rights under this Lease are not affected.

(b) "Substantially All of the Premises" shall be deemed to mean such portion of the Premises as would leave remaining after a Taking a balance of the Premises which would not readily accommodate a facility to support the uses described in Section 23.01 hereof on a commercially reasonable basis due either to the area so taken or the location of the part so taken in relation to the part not so taken in light of economic conditions, zoning laws, physical constraints, or building regulations then existing or prevailing and after performance by Tenant of all covenants, agreements, terms and provisions contained herein or by law required to be observed by Tenant. The determination of "commercially reasonable basis" shall be subject to arbitration in accordance with Section 34.01.

(c) "Date of Taking" shall be deemed to be the date on which title to the whole or Substantially All of the Premises or a lesser portion thereof, as the case may be, shall have vested in any lawful power or authority pursuant to the provisions of applicable federal, state, or local condemnation law or the date on which the right to the temporary use of the same has so vested in any lawful power or authority as aforesaid.

(d) "Condemnation Restoration" shall mean a restoration of any portion of the Premises remaining after a partial Taking and/or a restoration of any portion of the Premises which have been changed or altered as a result of a temporary Taking or as a result of any governmental action not constituting a Taking but creating a right to compensation as provided in Section 9.04 hereof so that such portions shall contain complete structures, in good condition and repair, consisting of self-contained architectural units and, to the extent practicable, of a size and condition of, and having a character similar to, the character of the Premises existing immediately prior to the Date of Taking or the date of such other governmental action.

Section 9.02. Permanent Taking.

(a) Taking of the whole etc. If during the Term there shall be a Taking of the whole or Substantially All of the Premises (other than a temporary Taking), the following consequences shall result:

(i) this Lease and the Term shall terminate and expire on the Date of Taking and the Rental payable by Tenant hereunder shall be apportioned to the Date of Taking, and all such Rent shall be paid to Landlord on the Date of Taking; and

(ii) the award payable in respect of such Taking shall be paid as follows:
(A) there shall first be paid to Landlord so much of the award which is equal to the sum of outstanding amounts due and payable under this Lease to the date of the Taking and the value of the Upland Area, all lands under water included in the Premises, and the Excess Development Rights appurtenant to the Upland Area and all lands under water included in the Premises, unless and to the extent accounted for in a separate award or agreement; (B)

then to Landlord so much of the award which is equal to the sum of the State Grant Funds and any present or future funding from any federal, state or municipal government agency or instrumentality to the extent that (x) the same has not been repaid by Tenant and (y) the governing documents require repayment from said award; (C) then, to the extent proceeds are available, there shall next be paid to Landlord so much of the balance of such award as shall equal the value of the Premises and the Excess Development Rights appurtenant thereto (unless and to the extent accounted for in a separate award or agreement) other than (1) the Upland Area, all lands under water included within the Premises, and the Excess Development Rights appurtenant to the Upland Area and all lands under water included within the Premises, and (2) the Improvements made and paid for by Tenant; (D) then, to the extent proceeds are available there shall next be paid to Landlord so much of the balance of such award which is for or attributable to the value of Landlord's reversionary interest in the Improvements made and paid for by Tenant; and (E) then Tenant shall receive the balance of the award, if any.

(b) "Partial Taking". If there shall be a Taking of less than Substantially All of the Premises (other than a temporary Taking), the following consequences shall result:

(i) this Lease and the Term shall continue without diminution of any of Tenant's obligations hereunder, except that this Lease shall terminate as to the portion of the Premises so taken, and from and after the Date of Taking, a just proportion of Base Rent as fixed by mutual agreement of Landlord and Tenant, according to the extent and nature of such Taking, shall abate for the remainder of the Term;

(ii) Tenant shall at its sole cost and expense proceed with diligence (subject to Unavoidable Delays) to effect a Condemnation Restoration of the remaining portion of the Premises not so taken, whether or not the award, if any, shall be sufficient for the purpose of paying for such Condemnation Restoration in full, but Landlord shall in no event be called upon to restore any remaining portion of the Premises not so taken or to pay any costs or expenses thereof; and

(iii) any award greater than or equal to the Threshold Amount shall be paid to Depositary and any award less than the Threshold Amount shall be paid to Tenant and, in either case, shall be disbursed in accordance with the provisions hereof first to the cost of a Restoration and thereafter as provided in Section 9.02(a)(ii).

Section 9.03. Temporary Taking.

(a) Not extending beyond Term. If during the Term there shall be a Taking of the temporary use of the whole or Substantially all of the Premises or a lesser portion thereof for a period not extending beyond the Term (a "Temporary Taking"), the following consequences shall result:

(i) this Lease and the Term shall continue without reduction or diminution of any of Tenant's obligations hereunder and Tenant shall continue to pay in full the Rental payable by Tenant hereunder without reduction or abatement, but Tenant shall be entitled to receive for itself any award or payments for such use to the extent provided in Section 9.03(a)(iii) hereof; provided, however, that (A) if a Temporary Taking shall extend for a period longer than one (1) week, then such portion of Base Rent as is reasonably allocable to the portion of the Premises taken shall be deferred until an award with respect to such

Temporary Taking is received, provided Tenant diligently proceeds to obtain such award, and (B) if a Temporary Taking shall be made or caused solely by the City, and such Taking shall extend for a period longer than one (1) week, then such portion of Base Rent as is reasonably allocable to the portion of the Premises taken shall be abated to the extent it is not covered by an award with respect to such Temporary Taking, provided Tenant diligently proceeds to obtain such an award.

(ii) if such Taking results in changes or alterations to the Premises or any part thereof, Tenant shall effect a Condemnation Restoration with respect thereto;

(iii) the award or payment payable with respect to such Taking shall be paid to and held by the Depositary and (X) shall first be disbursed by the Depositary to Landlord on account of the Rental payable by Tenant as and when the same shall become due and payable hereunder, and the balance shall be disbursed to Tenant; provided however, that if Tenant shall be required to effect a Condemnation Restoration pursuant to Section 9.03 (a) (ii) hereof, then (Y) a portion of such award or payment equal to the estimated cost (calculated as provided in Section 8.02(b) hereof) of such Condemnation Restoration shall instead be retained by the Depositary, for the purpose of paying the cost of said Condemnation Restoration and shall be disbursed by the Depositary to Tenant in accordance with the terms and conditions contained in Section 9.05(a) hereof with any balance remaining thereafter to be applied in accordance with Section 9.03(a)(iii)(X) hereof.

(b) Extending Beyond Lease Term. If during the Term there shall be a Taking of the temporary use of the whole or Substantially all of the Premises or a lesser portion thereof for a period extending beyond the Term, the consequences specified in clauses(i), (ii) and (iii) of Section 9.03(a) hereof shall result, except that the award or payment payable with respect to such Taking shall be apportioned between Landlord and Tenant as of the last day of the Term. The amount of the award or payment attributable to the period up to and including the last day of the Term shall be paid and applied in accordance with the provisions of Section 9.03(a)(iii) hereof, and the portion of the award attributable to the period after the last day of the Term shall belong to Landlord; provided, however, that the amount of any award or payment allowed or retained to pay for a Condemnation Restoration which shall not have been previously applied for that purpose, shall remain the property of, and shall be paid over to Landlord if this Lease shall terminate for any reason prior to completion of the Condemnation Restoration in accordance with the provisions of this Article.

Section 9.04. Governmental Action Not Resulting in a Taking.

In case of any governmental action not resulting in a Taking but creating a right to compensation therefor, such as the changing of the grade of any street upon which the Premises abut, then this Lease shall continue in full force and effect without reduction or abatement of Rental; provided, however, that if such governmental action results in changes or alterations of the Premises, then Tenant shall effect a Condemnation Restoration with respect thereto. Any award payable in the case of such governmental action shall be paid to and held by the Depositary and shall be applied first to Tenant by Depositary for the purpose of paying for the cost of the Condemnation Restoration in accordance with Section 9.05(a) hereof. Any balance of the award remaining after completion of the Condemnation Restoration shall be shared by Tenant and Landlord based upon the value of their respective interests in the Premises at that time.

Section 9.05. Condemnation Restoration Procedure.

(a) Disbursement of Award. If Tenant shall be required by the terms hereof to effect a Condemnation Restoration, the Depositary shall, subject to the provisions and limitations in this Article 9, make available to Tenant in the manner specified in Section 8.03(b) hereof, as much of that portion of the award or payment payable in respect of a Taking actually received and held by the Depositary, if any (less all necessary and proper expenses paid or incurred by the Depositary in connection with the condemnation proceedings), as may be necessary to pay the cost of such Condemnation Restoration. Any balance of the award held by the Depositary after completion of, and payment for the Condemnation Restoration shall be paid in accordance with the requirements of this Lease.

(b) Performance of Condemnation Restoration. The Construction Work in connection with a Condemnation Restoration, submission of the estimated cost thereof by Tenant and approval thereof by Landlord, Tenant's obligation to provide additional security, and disbursement of the condemnation award by Depositary shall be done, determined, made and governed in accordance with the provisions of Article 13 and Sections 8.02 (c), 8.03 (except Section 8.03(c)), 8.04 and 8.05 hereof. If the portion of the award paid to Depositary or Tenant is insufficient for the purpose of paying for the cost of the Construction Work in connection with the Condemnation Restoration, then, subject to all other applicable provisions of this Lease, Tenant shall nevertheless be required to perform such Construction Work as required hereby and pay any additional sums required for such Construction Work.

(c) Option not to Restore. Notwithstanding the foregoing, if a Partial or Temporary Taking requiring the performance of a Condemnation Restoration occurs in the last five years of the Term, Tenant may elect not to effect such a Condemnation Restoration by so notifying Landlord in writing within fifteen (15) days after the Date of Taking, provided that the following conditions occur concurrently within thirty (30) days after such notice: (i) the award payable in respect to such Taking is assigned in whole to Landlord, (ii) Tenant surrenders the Premises in accordance with Article 31 hereof, and (iii) this Lease is terminated in writing by Tenant.

Section 9.06. Collection of Awards.

Each of the parties shall execute documents that are reasonably required to facilitate collection of any awards made in connection with any condemnation proceeding referred to in this Article and shall cooperate with each other to permit collection of the award.

Section 9.07. Landlord's Right To Award on Termination.

Notwithstanding anything to the contrary contained herein, the amount of any award or payment allowed or retained to effect a Condemnation Restoration which shall not have been previously applied to that purpose shall become the property of and shall be paid over to the Landlord, if this Lease shall terminate for any reason prior to completion of said Condemnation Restoration in accordance with the provisions of this Article 9.

Section 9.08. Allocation of Award.

Upon a Taking, the parties shall make every effort to agree to an allocation of the award or payment as delineated in Section 9.02. If, after a reasonable time, the parties cannot

agree, the dispute shall be resolved in accordance with the arbitration procedure pursuant to Section 34.01 hereof.

Section 9.09. Tenant's Appearance at Condemnation Proceedings.

Tenant shall have the right to appear in any condemnation proceedings and to participate in any and all hearings, trials, and appeals in connection therewith.

Section 9.10. Intention of the Parties.

The existence of any present or future law or statute notwithstanding, Tenant waives all rights to quit or surrender the Premises or any part thereof by reason of any Taking of less than Substantially All of the Premises, except as specifically provided in Section 9.05(d). It is the intention of Landlord and Tenant that the provisions of this Article 9 shall constitute an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York and shall govern and control in lieu thereof.

ARTICLE 10

ASSIGNMENT, AND SUBLETTING.

Section 10.01. Tenant's Right to Assign, Encumber or Sublease.

(a) Limitations on Right to Assign, Encumber or Sublease.

(i) Tenant shall not without the prior written consent of Landlord (to be provided in Landlord's sole and absolute discretion, except where expressly indicated to the contrary in this Article 10) enter into an Assignment or a Sublease.

(ii) Any assignment, encumbrance or sublease to which the Landlord has not given its consent (as provided herein) shall be deemed invalid and, at the sole discretion of the Landlord, shall cause this Lease to terminate immediately.

(b) Definitions.

(i) "Assignment" means the sale, exchange, assignment or other disposition of all or any portion of Tenant's interest in this Lease or the leasehold estate created hereby whether by operation of law or otherwise, including a foreclosure sale or an assignment in lieu of foreclosure, but not including any sale, exchange, assignment or disposition by NYCEDC.

(ii) "Assignee" means an assignee under an Assignment.

(iii) "Sublease(s)" means all subleases (including sub-subleases and any further level of subletting), occupancy, license or concession agreements.

(iv) "Subtenant(s)" means all subtenants, operators, licensees, franchisees, concessionaires and other occupants of the Premises or any portion thereof.

(v) "Non-Permissible Person" means any Person that, or that directly or indirectly Controls, is Controlled by or is under common Control with a Person that:

A. is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Administrator or the City, unless such default or breach has been waived in writing by the Administrator or the City, as the case may be;

B. shall have been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) years;

C. shall have been convicted of a felony in the past ten (10) years;

D. shall have received formal written notice from a federal, state or local governmental agency or body that such Person is currently under investigation for a felony criminal offense; or

E. shall have received written notice of default in the payment to the City of any taxes, sewer rents or water charges, which have not been paid, unless such defaults is currently being contested with due diligence in proceedings in court or other appropriate forum.

(c) Notice to Landlord. Tenant shall notify Landlord of its intention to enter into any Assignment or Sublease of or encumber all or any portion of this Lease or the Premises not less than ninety (90) days before the proposed effective date of such transaction.

(d) Contents of Notice.

(i) The notice required by Section 10.01(c) hereof shall contain the name and address of the proposed Assignee or Subtenant and the following information:

A. in the case of a proposed corporate Assignee or Subtenant, or in the case of a corporate general partner or joint venturer of a partnership or joint venture that is the proposed Assignee or Subtenant (other than a corporation whose common stock is traded over the New York Stock Exchange, the American Stock Exchange or any other exchange now or hereafter regulated by the Securities and Exchange Commission), a certificate of an authorized officer of such corporation giving the names and addresses of all current directors and officers of the corporation and Persons having more than a five percent (5%) interest in such Assignee or Subtenant;

B. in the case of a proposed corporate Assignee or Subtenant, or in the case of a corporate general partner or joint venturer of a partnership or joint venture that is the proposed Assignee or Subtenant whose common stock is traded over the New York Stock Exchange, the American Stock Exchange or any other exchange now or hereafter regulated by the Securities and Exchange Commission, all of the periodic reports required to be filed with the Securities and Exchange Commission by such corporation pursuant to the Securities Exchange Act of 1934, any amendments thereto, and the regulations promulgated thereunder within the last twelve (12) months, including, without limitation, its most recently filed annual report on form 10-K and all reports required to be filed by any Person owning stock of such corporation with the Securities and Exchange Commission pursuant to the reporting requirements of Sections 13(d), (e), (f) and (g) of the Securities Exchange Act of 1934, any amendments thereto, and the regulations promulgated thereunder;

C. in the case of a proposed partnership or joint venture Assignee

or Subtenant, a certificate of the managing general partner or other authorized general partner or managing venturer of the proposed Assignee or Subtenant giving the names and addresses of all current general and limited partners and joint venturers of the partnership or joint venture and describing their respective interests in said partnership or joint venture;

D. in all cases, a certification by an authorized officer, managing general partner, or other authorized general partner or managing venturer, whichever shall be applicable, of the proposed Assignee or Subtenant to the effect that to his or her knowledge the proposed transaction will not, as of the date of closing, violate the provisions of Section 10.01 (a) hereof;

E. in the case of an Assignment, a proposed form of assumption agreement from the Assignee to Landlord, which assumption agreement shall be reasonably satisfactory to Landlord; and

F. any other information or documents which Landlord may reasonably request.

(ii) If any change in circumstances prior to the closing of the transaction renders the information provided in (i) above incomplete or incorrect, Tenant shall notify Landlord of the change, which notification, if relating to a change which is material in any respect in Landlord's reasonable judgment, shall recommence the period for Landlord's notification to Tenant under Section 10.01 (e) below.

(e) Objections and Waiver. Landlord shall notify Tenant, within ninety (90) days after receipt of notice from Tenant pursuant to the provisions of Section 10.01(b) hereof and submission of all necessary information, whether the consummation of a proposed assignment, sublease or encumbrance would violate the provisions of Section 10.01(a) hereof and whether Landlord's consent is given or denied. Landlord shall be deemed to have waived its objections to the proposed transaction and identity of the proposed parties thereto if Landlord shall fail to notify Tenant as provided in this Section 10.01(a), provided that Tenant specifies such condition of waiver in its notice to Landlord pursuant to the provisions of Section 10.01(b) hereof.

(f) Transaction Instruments. Tenant shall deliver to Landlord, or shall cause to be delivered to Landlord, within fifteen (15) days after execution, an executed counterpart of the operative documents effecting an assignment and assumption, a Sublease or an encumbrance, as the case may be

(g) Cooperative and Condominium Conversion. Tenant shall not, without the prior consent of Landlord, which consent may not be unreasonably withheld provided that appropriate adjustments are made to the terms of this Lease, convert Tenant's leasehold estate in the Premises, or any part thereof, into a cooperative corporation or condominium form of leasehold.

Section 10.02. Sublease Requirements.

(a) Subject to the provisions of Section 10.01(a) hereof, any Sublease shall be for uses in accordance with Article 23 and shall include the provisions set forth in Section 10.05. In addition:

(i) Tenant shall furnish Landlord with the name of each proposed Subtenant and its Principals, as provided in Section 10.01(d)(i); and

(ii) unless waived, for such Subtenant, in Landlord's sole discretion, such proposed Subtenant and Principals shall submit to the City's "Vendex" background investigation (or successor system serving the same function) at least forty-five (45) days prior to the proposed commencement date of a Sublease.

(b) Tenant's Obligations. During the Term, Tenant shall make reasonable and diligent efforts to cause all Subtenants to comply with their obligations under their respective Subleases as such obligations relate to the obligations of Tenant hereunder. A violation or breach of any of the terms, provisions or conditions of this Lease that results from, or is caused by, an act or omission by a Subtenant shall not prevent such violation or breach from being an Event of Default hereunder nor relieve Tenant of Tenant's obligation to cure such violation or breach, provided that Landlord shall provide Tenant with a reasonable period to cause such Subtenant to cure such violation or breach, and further provided that, subject to the first sentence of this subsection (b), any Subtenant's failure to pay Impositions shall not result in an Event of Default hereunder if such payment is by law the obligation of such Subtenant and not the obligation of Tenant.

(c) Schedule of Subleases. At any time upon Landlord's demand, and in any event, no less frequently than once per year, Tenant shall deliver to Landlord, within fifteen (15) days of such demand, (i) a schedule of all Subleases giving the names of all Subtenants, a description of the space that has been sublet, expiration dates, rentals and such other information as Landlord reasonably may request, and (ii) a photostatic copy of all Subleases and any amendments thereto. In addition, upon entering into a Sublease at any time Tenant shall deliver to Landlord, within fifteen (15) days after the date of such Sublease, the information and documents(s) described in clauses (i) and (ii). Upon reasonable request of Landlord, Tenant shall permit Landlord and its agents and representatives to inspect original counterparts of all Subleases.

Section 10.03. Subtenant Non-Disturbance.

(a) Landlord, for the benefit of any Subtenant having a Qualifying Sublease (hereinafter defined) that was made in accordance with the applicable provisions of this Article, shall recognize (and at the Subtenant's request execute an agreement in form substantially as attached hereto as Exhibit C confirming such recognition) such Subtenant as the direct tenant of Landlord upon the termination of this Lease pursuant to the provisions of Article 24 hereof, provided that (i) the Subtenant is determined by Landlord not to be a Non-Permissible Person and either (A) Tenant has delivered to Landlord, at the time the Sublease was executed, a certificate of an independent real estate appraiser that is a member of the American Institute of Real Estate Appraisers or any similar organization reasonably satisfactory to Landlord, certifying that in the opinion of the appraiser, as of the date of the execution of such Sublease, the rent and other moneys payable by the Subtenant throughout the term of its Sublease, after taking into account any escalation, renewal rent, credits, offsets or deductions to which such Subtenant may be entitled thereunder, constitutes not less than the then fair rental value of the space demised thereunder or (B) the Sublease is to the National Park Service for the Liberty Island ferry service, as contemplated by Section 23.01(a) and the Landlord has approved the terms of such Sublease; (ii) the Sublease confers no greater rights upon Subtenant than are conferred upon Tenant under this Lease nor

imposes more onerous obligations upon landlord under the Sublease than are imposed upon Landlord under this Lease; (iii) if this Lease is terminated, Landlord's recognition of such Subtenant shall expire not later than the Fixed Expiration Date; and (iv) at the time of the termination of this Lease (1) no default exists under such Sublease, which at such time would permit the landlord thereunder to terminate the Sublease or to exercise any remedy for dispossession provided for therein, and (2) such Subtenant delivers to Landlord an instrument confirming the agreement of the Subtenant to attorn to Landlord and to recognize Landlord as the Subtenant's landlord under its Sublease, which instrument shall provide that neither Landlord, nor anyone claiming by, through or under Landlord, shall be:

(i) liable for any act or omission of any prior landlord (including, without limitation, the then defaulting landlord),

(ii) subject to any offsets or defenses that such Subtenant may have against any prior landlord (including, without limitation, the then defaulting landlord),

(iii) bound by any payment of rent that such Subtenant might have paid for more than the current month (unless Landlord has given its reasonable consent to payments for a longer period) to any prior landlord (including, without limitation, the then defaulting landlord) other than security deposits and any other amounts deposited with any prior landlord (including, without limitation, the then defaulting landlord) in connection with the payment of insurance premiums, assessments and other similar charges or expenses, to the extent such security deposits or other deposits have actually been transferred to Landlord,

(iv) bound by any covenant to undertake or complete any construction on the Premises or any portion thereof demised by the Sublease,

(v) bound by any obligation to make any payment to the Subtenant which accrues prior to the attornment, or

(vi) bound by any amendment thereto or modification thereof which reduces the basic rent, additional rental, supplemental rent or other charges payable under the Sublease or changes the term thereof, or otherwise materially affects the rights of landlord thereunder, made without the written consent of the Landlord; provided, *however*, that Landlord shall not unreasonably withhold its consent to any commercially reasonable amendment or modification if after the same is effective (x) the Sublease shall comply in all respects with all applicable provisions of this Article 10, including, without limitation, this subparagraph (F) and (y) the rental thereunder shall be a fair market rental.

(b) Landlord agrees to deliver to any Subtenant entitled to the benefit of this Section 10.06 a non-disturbance agreement in recordable form within forty-five (45) days after request by Tenant, confirming the rights and subject to the limitations described herein. Such request by Tenant shall be accompanied by (i) a duplicate original or photocopy of the Sublease and a certificate of an independent real estate appraiser that complies with the provisions of clause (a) (i) of this Section 10.03, and (ii) execution copies of the non-disturbance agreement to be signed by Landlord and Subtenant.

(c) As used herein, a “Qualifying Sublease” means a Sublease that provides the following:

(i) it is subordinate and subject to this Lease;

(ii) except for security deposits and any other amounts deposited with Tenant in connection with the payment of insurance premiums, assessments and other similar charges or expenses, the Subtenant shall not pay rent or other sums payable under the Sublease to Tenant for more than two (2) months in advance (unless Landlord gives its consent to a period of three (3) months, which consent will not be unreasonably withheld);

(iii) at Landlord's option, on the termination of this Lease pursuant to Article 24 hereof, the Subtenant shall attorn to, or shall enter into a direct lease on terms identical to its Sublease with Landlord for the balance of the unexpired term of the Sublease;

(iv) Subtenant shall maintain full and accurate books of account and records of Subtenant's business operation or enterprise, which books and records shall be so kept and maintained for at least six (6) years after the end of the relevant fiscal period of Subtenant;

(v) Subtenant shall comply with the applicable requirements of Article 21 hereof; and

(vi) Subtenant shall comply with all Requirements.

ARTICLE 11

MORTGAGES.

Section 11.01. Effect of Mortgages.

(a) Tenant shall have the right, at any time and from time to time during the Term, to mortgage the leasehold estate created hereby to an Institutional Lender for the purpose of obtaining financing related to the Project. Notwithstanding the foregoing, no Mortgage shall extend to, affect, or be a lien or encumbrance upon, the estate and interest of Landlord in the Premises or any part thereof.

(b) “Mortgage” means any mortgage or deed of trust that now or hereafter constitutes a lien on Tenant's interest in this Lease and the leasehold estate created hereby.

Section 11.02. Mortgagee's Rights Not Greater than Tenant's.

The execution and delivery of a Mortgage shall not give nor shall be deemed to give a Mortgagee any greater rights against Landlord than those granted to Tenant hereunder.

Section 11.03. Application of Proceeds from Insurance or Condemnation Awards.

To the extent that this Lease requires that insurance proceeds paid in connection with any damage or destruction to the Improvements, or the proceeds of an award paid in

connection with a Taking referred to in Article 9 hereof be applied to restore any portion of the Improvements, no Mortgagee shall have the right to apply the proceeds of insurance or such condemnation awards toward the payment of the sum secured by its Mortgage and Landlord shall not have the right to apply such proceeds on account of any Rental coming due hereunder unless and until the Improvements have been restored in accordance with this Lease.

Section 11.04. Landlord's Right to Mortgage its Interest.

Landlord shall have the right to mortgage its fee interest in the Premises, as long as such mortgage is subject and subordinate to (i) this Lease and (ii) all Subleases with respect to which non-disturbance agreements are delivered by Landlord pursuant to Section 10.06.

ARTICLE 12

BUDGET APPROVAL.

Section 12.01. Annual Operating Budget.

(a) By not later than each March 30, commencing March 30, 2009 (or if the City shall change its fiscal year, 90 days prior to the commencement of each City Fiscal Year), Tenant shall submit to the City for its approval an annual operating budget for the Premises for the immediately following City Fiscal Year ("Proposed Annual Operating Budget"), which shall provide an estimate of the aggregate operating expenses for the Premises for such City Fiscal Year.

(b) The City shall have 45 days to approve or reject the Proposed Annual Operating Budget. If the City fails to respond to Tenant within the 45 days, the Proposed Annual Operating Budget shall be deemed approved and shall be considered the "Approved Annual Operating Budget". If the Proposed Annual Operating Budget is rejected, the Parties shall work in good faith to agree upon an Approved Annual Operating Budget. Until such agreement, the prior fiscal year's Approved Annual Operating Budget shall remain in effect.

Section 12.02. Annual Capital Budget.

(a) By not later than each March 30, commencing March 30, 2009 (or if the City shall change its fiscal year, 90 days prior to the commencement of each City Fiscal Year), Tenant shall submit to the City an annual capital budget for capital expenditures for the Premises for the immediately following City Fiscal Year ("Proposed Annual Capital Budget") for the City's approval. A Proposed Annual Capital Budget for the Pier shall not be required for capital expenditures in connection with construction of the Project, which shall have been included in the Approved Redevelopment Plan and Budget or the Approved Substructure Plan and Budget. The Proposed Annual Capital Budget shall include, without limitation, itemization of the Annual Material Capital Expenditures expected for such City Fiscal Year. "Annual Material Capital Expenditure" shall be defined as any single capital item representing at least 5% of the overall amount of the Approved Annual Capital Budget in effect at the time.

(b) The City shall have 45 days to approve or reject the Proposed Annual Capital Budget. If the City fails to respond to Tenant within the 45 days, the Proposed Annual Capital Budget shall be deemed approved and shall be considered the "Approved Annual

Capital Budget”. If the Proposed Annual Capital Budget is rejected, the Parties shall work in good faith to agree upon an Approved Annual Capital Budget. Until such agreement, the prior fiscal year’s Approved Annual Capital Budget shall remain in effect.

ARTICLE 13

THE PROJECT.

Section 13.01. Pier Redevelopment and Initial Fit-Out.

(a) Within ninety 90 days following the date hereof, Tenant shall submit to the City for review scaled schematic drawings, and a preliminary construction timeline and budget (together, the “Proposed Schematics”), for the Pier Redevelopment (excluding Substructure Work).

(b) Within thirty (30) days after delivery of the Proposed Schematics, the City shall notify Tenant as to whether it approves or rejects said submission. A notice of rejection shall specify in reasonable detail those items to which the City objects, and the Parties shall thereafter work together in good faith to agree upon revised Proposed Schematics which, upon agreement, shall be deemed the “Approved Schematics.” The date upon which said agreement is reached is referred to herein as the “Schematics Approval Date.”

(c) (i) Within ninety (90) days following the Schematics Approval Date, Tenant shall submit to the City design development plans and outline specifications, and a revised preliminary construction timeline and budget (together, the “Proposed DDs”), for the Pier Redevelopment (excluding Substructure Work). Said submission shall identify, in reasonable detail, changes (if any) between the Approved Schematics and the Proposed DDs.

(ii) Within thirty (30) days after delivery of the Proposed DDs, the City shall determine whether the Proposed DDs conform to the Approved Schematics, and shall notify Tenant of such determination. If the City determines that the Proposed DDs do not conform to the Approved Schematics, the City may reject the Proposed DDs, and shall notify Tenant of such determination, specifying in reasonable detail those items which do not so conform, and the Parties shall thereafter work together in good faith to agree upon revised Proposed DDs which, upon agreement, shall be deemed the “Approved DDs.” The date upon which said agreement is reached is referred to herein as the “DDs Approval Date.”

(d) (i) Within ninety (90) days following the DDs Approval Date, Tenant shall submit to the City proposed final contract plans and specifications, and a proposed final budget and construction timeline (together, the “Proposed Redevelopment Plan and Budget”) for the Pier Redevelopment Work (excluding Substructure Work). Said submission shall identify, in reasonable detail, changes (if any) between the Approved DDs and the Proposed Redevelopment Plan and Budget. The Proposed Redevelopment Plan and Budget shall include, without limitation, itemization of all Initial Material Capital Expenditures. “Initial Material Capital Expenditure” shall be defined as any single capital item representing at least 5% of the overall amount of the said Budget.

(ii) Within thirty (30) days after delivery of the Proposed Redevelopment Plan and Budget, the City shall determine whether the Proposed Redevelopment Plan and Budget conform to the Approved DDs and shall notify Tenant of such determination. If the

City determines that the Proposed Redevelopment Plan and Budget do not conform to the Approved DDs, the City may reject the Proposed Redevelopment Plan and Budget, and shall notify Tenant of such determination, specifying in reasonable detail those items which do not so conform, and the Parties shall thereafter work together in good faith to agree upon a revised Proposed Redevelopment Plan and Budget which, upon agreement, shall be deemed the "Approved Redevelopment Plan and Budget." The date upon which said agreement is reached is referred to herein as the "Final Approval Date."

(e) If the City fails to respond to any submission or resubmission of the Proposed Schematics, Proposed DDs or Proposed Redevelopment Plan and Budget within a period of thirty (30) days, it shall be deemed to have approved the applicable submission.

(f) If the City rejects the Proposed Schematics, the Proposed DDs, or the Proposed Redevelopment Plan and Budget (as applicable) and the Parties fail to mutually agree upon Approved Schematics, Approved DDs or an Approved Redevelopment Plan and Budget (as applicable) within one hundred (120) days of initial submission of the Proposed Schematics, Proposed DDs or Proposed Redevelopment Plan and Budget (as applicable), the Lease shall be terminable by the City in its sole discretion.

(g) Upon agreement on the Approved Substructure Plan and Budget and the Approved Redevelopment Plan and Budget, Tenant shall work with due diligence to complete the Pier Redevelopment and initial fit-out consistent therewith within 12 months after the Final Approval Date. While the Premises are being redeveloped, representatives from the City and from the Tenant shall communicate at least once every two weeks to discuss the status of the Pier Redevelopment and address any issues that arise with respect to such Redevelopment.

(h) The Parties hereby acknowledge that the Pier's previous lessee estimated the cost of Pier Redevelopment to be approximately \$30 million, including the amount such lessee deemed necessary for Substructure Work. The Parties agree to cooperate with each other and negotiate in good faith to determine the amount required for redevelopment of the Upland Area. Tenant will use its best efforts to prepare the Proposed Substructure Plan and Budget and the Proposed Redevelopment Plan and Budget in accordance with the aforesaid cost parameters. Any obligation of Tenant under this Lease requiring the expenditure of funds for Pier Redevelopment costs shall not arise prior to the first date on which either (i) Tenant has obtained the approval of the Mayor of the City and the City Comptroller of a modification of Tenant's Five-Year Capital Plan (a) to fund Pier Redevelopment costs in accordance with the foregoing, and (b) to fund any Pier Redevelopment costs in excess of the foregoing from amounts available for other projects in Tenant's Five-Year Capital Plan, or (ii) the parties identify and procure reasonably satisfactory alternative or additional funding source(s) for Pier Redevelopment that does not require such approval. With respect to City capital allocated to the Pier Redevelopment, such amount shall not exceed \$30 million.

Section 13.02. Substructure Work

(a) Capital expenditures and work related to the Pier's timber piles, timber pile caps, timber bracing, concrete piers, composite pier deck, concrete breakwater and other substructure ("Substructure Work") shall be addressed separately from the Proposed Redevelopment Plan and Budget. On March 18, 2008, Tenant and the City executed the requisite permit applications and notices for the Substructure Work, including all required

forms for the Army Corps of Engineers, New York State Department of Environmental Conservation State, and New York City Department of City Planning (collectively, the "Substructure Permits"). The applications and notices were filed on or about March 28, 2008

(b) By not later than May 12, 2008, Tenant shall submit detailed plans relating to the Substructure Work ("Proposed Substructure Plan and Budget"), which shall include construction plans and specifications for the Substructure Work as well as a timeline and budget including, without limitation, itemization of all Initial Material Substructure Capital Expenditures. "Initial Material Substructure Capital Expenditure" shall be defined as any single capital item representing at least 5% of the overall amount of the Proposed Substructure Plan and Budget. The City shall have 30 days to approve or reject the Proposed Substructure Plan and Budget. If the Proposed Substructure Plan and Budget is rejected, the Parties shall work together in good faith to agree upon a revised Proposed Substructure Plan and Budget, which, upon agreement, shall be deemed the "Approved Substructure Plan and Budget". If the Parties fail to mutually agree upon the Proposed Substructure Plan and Budget by July 15, 2008, this Lease shall be terminable by the City in its sole discretion.

Section 13.03. Construction of the Project.

(a) Compliance with Requirements, Etc. The Plans and Specifications and any Construction Work shall comply with and be performed in accordance with all Requirements. It is Tenant's responsibility to effect such compliance. Neither Landlord's nor the Administrator's approval in accordance with this Article of the Plans and Specifications shall be, nor shall be construed as being, or relied upon as, a determination that such comply with the Requirements or are structurally, architecturally or by any other standard technically correct.

(b) Landlord's Right to Use Field Personnel. Landlord reserves the right to, without interfering with the construction of the Project, maintain its or its representatives' field personnel at the Premises to observe Tenant's construction means, methods, procedures and techniques solely for the purpose of ensuring the Construction of the Project in accordance with the Approved Redevelopment Plan and Budget, the Approved Substructure Plan and Budget and all Requirements, and Landlord shall be entitled to have its field personnel or other designees receive reasonable prior notice of and attend Tenant's job and/or safety meetings, if any. No such observation or attendance by Landlord's personnel or designees shall impose upon Landlord responsibility for any failure by Tenant to observe any Requirements or safety practices in connection with such construction, or constitute an acceptance of any work which does not comply in all respects with Requirements or with the provisions of this Lease.

(c) Tenant to Keep Landlord Informed. Tenant shall keep Landlord fully informed of Tenant's progress in construction of the Project. Upon request of Landlord, Tenant shall promptly provide Landlord with copies of all materials normally or actually provided to a construction lender including, but not limited to, scheduling of payments, projections and certifications of construction costs and sources of funds on a monthly basis, and all construction documents and all plans and specifications reasonably specified by Landlord to assist Landlord in monitoring said progress by Tenant.

(d) Development Risks. All risks of demolition, removal, and reconstruction of the Premises are hereby expressly assumed by Tenant. The redevelopment of the Premises

will be designed, constructed, maintained, secured and insured entirely at Tenant's expense without reimbursement by Landlord or credit or offset of any kind to Tenant for cost overruns or otherwise, and Tenant shall pay all municipal fees and impositions in connection therewith.

(e) Materiality. The term "material" as used in this Article 13 shall include, without limitation, anything that affects the historic character of the Premises, or public health and safety.

Section 13.04. Commencement and Completion of All Construction Work.

All Construction Work, once commenced, shall be performed and completed promptly, in a good and workmanlike manner and, if applicable, in accordance with the plans and specifications therefor, approved in accordance with this Article, and all Requirements. All materials, equipment, and workmanship utilized or furnished in connection with any and all Construction Work shall be in new (unless otherwise specified in applicable plans and specifications approved in accordance with this Lease) and good condition, fully operational without defects, in accordance with such plans and specifications.

Section 13.05. Approval and Amendment of Plans and Specifications.

(a) Tenant shall not (i) commence Construction of the Project unless and until the Plans and Specifications have been approved as required in Section 13.01(d) or 13.02(b), as applicable, above, nor (ii) commence any Construction Work that would constitute a Material Decision unless and until such Material Decision is approved as provided in Section 14.02.

(b) If Tenant desires to materially modify the Plans and Specifications in connection with Construction of the Project, Tenant shall submit the proposed modifications to Landlord and the Administrator. Such modifications shall not be incorporated into the Approved Plans and Specifications until they have been approved in accordance with Section 14.02, if applicable, and, if required, by any relevant Governmental Authority, including SHPO and LPC.

Section 13.06. Conditions Precedent to Tenant's Commencement of All Construction Work.

(a) Permits and Insurance. Tenant shall not commence any Construction Work unless and until (i) Tenant shall have obtained and delivered to Landlord copies of all permits, consents, certificates and approvals of all Governmental Authorities which are necessary for the work to be done, certified by Tenant or the Architect, (ii) Tenant shall have delivered to Landlord certified copies, certificates or memoranda of the policies of insurance required to be carried pursuant to the provisions of Article 7 hereof, and (iii) Tenant shall have obtained the bonds required by subsection (c) of this Section 13.06.

(b) Cooperation of Landlord in Obtaining Permits. Landlord, in its proprietary capacity, shall cooperate with Tenant in obtaining the permits, consents, certificates and approvals required by Section 13.06(a) hereof and any necessary utility easements, and shall not unreasonably withhold its consent to signing any accurate application made by Tenant required to obtain such permits, consents, certificates, approvals and easements. Tenant shall reimburse Landlord within ten (10) days after Landlord's demand for any reasonable out-of-pocket cost or expense incurred by Landlord (in its proprietary capacity) in obtaining the

permits, consents, certificates and approvals required by Section 13.06(a) hereof and any necessary utility easements.

(c) Bonds. Prior to commencement of any Construction Work, Tenant shall obtain (i) a performance or completion bond naming Landlord as obligee in an amount equal to one hundred percent (100%) of the cost and expense of such work to secure the faithful performance and completion of such Construction Work; and (ii) a payment bond in an amount equal to one hundred per cent (100%) of the cost and expense of such work guaranteeing prompt payment of monies due to all persons furnishing labor or materials for such Construction Work. Each bond shall contain such terms and conditions as are approved by Landlord, shall be with a surety company licensed or authorized to do business in New York State, and such surety company shall have been approved by the City Comptroller.

Section 13.07. Completion of Construction Work.

Upon Substantial Completion of the Project and/or the substantial completion of any other Construction Work for which plans are required to be submitted to the Administrator, Tenant shall furnish the Administrator with (a) a certification of the Architect or a licensed professional engineer acceptable to the Administrator (certified to Landlord and the Administrator) that it has examined the applicable plans and specifications and that, in its best professional judgment, after diligent inquiry, to its best knowledge and belief, the Construction Work has been substantially completed in accordance with the plans and specifications applicable thereto and, as constructed, the Project complies with the Building Code of New York City and all other Requirements, (b) if requested by the Administrator, a copy or copies of the temporary or permanent (whichever is applicable) Certificate(s) of Occupancy for the Project (or the relevant portion thereof) issued by DOB, (c) copies of official certificates evidencing compliance with all Requirements, and (d) the most current set of available architectural plans and a survey of the Premises showing the Project and appurtenant easements. Tenant shall further furnish the Administrator with a complete set of "as built" plans, as of the date a permanent Certificate of Occupancy is issued, as soon as such are prepared, but in no event later than thirty (30) days after a permanent Certificate of Occupancy is issued. Landlord shall have an unrestricted, non-exclusive, irrevocable license to use such "as built" plans and survey for any purpose related to Landlord's interest in the Premises without paying any additional cost or compensation therefor, subject to copyright and similar rights under applicable law of the Architect and other Persons who prepared such plans and surveys. Landlord shall at all times during the Term exercise good faith efforts to maintain the plans, specifications, and surveys at any time furnished by Tenant to Landlord in strict confidence, except as otherwise provided herein, subject, however, to the City's obligation by law to make information available to the public.

Section 13.08. Title to the Project and the Materials.

Title to the Premises and all improvements thereto shall be and vest in Landlord. Materials to be incorporated in the Project shall, effective upon their purchase and at all times thereafter, constitute the property of Landlord, and upon construction of the Project or any other Construction Work, or the incorporation of such materials therein, title thereto shall be and continue in Landlord. However, (a) Landlord shall not be liable in any manner for payment or for damage or risk of loss or otherwise to any contractor, subcontractor, laborer or supplier of materials in connection with the purchase or installation of any such materials, and (b) Landlord shall have no obligation to pay any compensation to Tenant by reason of its

acquisition of title to the materials. Notwithstanding the foregoing or anything to the contrary elsewhere contained in this Lease, for income tax purposes, Landlord hereby agrees that Tenant shall be treated as the owner of the Improvements (inclusive of the materials incorporated therein) during the Term and Tenant may, during the Term, take all depreciation deductions and tax credits to which it may be entitled, if any, with respect to the Premises (inclusive of the materials incorporated therein) and the Improvements thereon.

Section 13.09. Names of Contractors, Materialmen, etc.: Approval of Consultants, etc.

(a) Tenant shall furnish Landlord with a list of all Persons entering into contracts to perform any labor or supply any materials in connection with any Construction Work costing in excess of \$750,000. The list shall state the name and address of each such Person and the capacity in which such Person is under contract performing work at the Premises. All persons employed by Tenant with respect to any Construction Work shall be paid, without subsequent deduction or rebate unless expressly authorized by law, not less than the minimum hourly rate required by law.

(b) All architects, engineers, and consultants retained by Tenant (other than the selection of the Architect as architect) shall be subject to the prior written approval of the Administrator, which approval shall not be unreasonably withheld or delayed. Tenant shall notify the Administrator three (3) business days in advance of, and permit the Administrator to participate in, meetings with the Architect and such other architects, engineers, and consultants.

Section 13.10. Construction Agreements.

(a) Required Clauses. All Construction Agreements shall include the following provisions:

(i) "[Contractor]/[Subcontractor]/[Materialman]" hereby agrees that immediately upon the purchase from ["contractor"/["subcontractor"/["materialman"] of any building materials to be incorporated in the Project [or other Improvements] (as such terms are defined in the lease pursuant to which the contract purchaser hereunder acquired a leasehold interest in the property (the "Lease")), such materials shall become the sole property of Landlord (as defined in the Lease and subject to the terms thereof), notwithstanding that such materials have not been incorporated in, or made a part of, such Project [or other Improvements] at the time of such purchase; provided, however, that Landlord shall not be liable in any manner for payment or otherwise to ["contractor"/["subcontractor"/["materialman"] in connection with the purchase of any such materials and Landlord shall have no obligation to pay any compensation to ["contractor"/["subcontractor"] / ["materialman"] by reason of such materials becoming the sole property of Landlord."

(ii) "[Contractor]/[Subcontractor]/[Materialman]" hereby agrees that notwithstanding that ["contractor"/["subcontractor"/["materialman"] performed work at or furnished any materials for the Premises (as such term is defined in the Lease) or any part thereof, Landlord shall not be liable in any manner for payment or otherwise to ["contractor"/["subcontractor"] / ["materialman"] in connection with the work performed at or materials furnished for the Premises.

(iii) ["Contractor"/["Subcontractor"/["Materialman"] hereby agrees to make available for inspection by Landlord during reasonable business hours, ["contractor's"/["subcontractor's"/["materialman's"] books and records relating to Construction Work (as defined in the Lease) being performed or the acquisition of any material or Equipment (as such term is defined in the Lease) furnished for the Premises.

(iv) "All covenants, representations, guarantees and warranties of ["contractor"/["subcontractor"/["materialman"] hereunder shall if this contract is taken over by the Landlord (as defined in the Lease) be deemed to be made for the benefit of said Landlord under the Lease and shall be enforceable against ["contractor"/["subcontractor"/["materialman"] by said Landlord."

(v) "Landlord is not a party to this ["agreement"] ["contract"] and will not in any way be responsible to any party for any claims of any nature whatsoever arising or which may arise from such ["contract"] ["agreement"] unless Landlord shall take over this ["agreement"] ["contract"] and then only as to claims arising after this ["agreement"] ["contract"] is so taken over."

(b) Definition. "Construction Agreement(s)" means a written agreement to do any Construction Work.

Section 13.11. Demolition of the Project.

Tenant shall not demolish the Project or any portion thereof unless Landlord shall give its prior written consent thereto.

Section 13.12. Development Sign; Publicity.

Within sixty (60) days after the Commencement Date, Tenant shall furnish and install a project sign, the wording, design and location of which shall be reasonably satisfactory to Landlord and Tenant. Tenant shall extend to Landlord, NYCEDC and any of their designee(s) the privilege of being featured participants in groundbreaking and opening ceremonies to be held at such time and in such manner as Landlord shall reasonably approve and shall use its best efforts to consult with Landlord and NYCEDC concerning any publicity announcements to any news media prior to or upon Substantial Completion.

ARTICLE 14

MAINTENANCE, MATERIAL DECISIONS, ETC.

Section 14.01. Operating Expenses, Net Lease.

This Lease shall be a "triple-net" lease. Tenant shall be entirely responsible to pay all operating expenses relating to the Pier (including, without limitation, electricity and other utilities, insurance, security and repairs) and shall bear all other risks, expenses and responsibilities relating thereto.

Section 14.02. Material Decisions.

Notwithstanding Tenant's responsibility pursuant to Section 14.01 (which responsibility is not diminished hereby), Material Decisions shall be subject to prior written approval of the City, which the City may withhold in its reasonable discretion.

(a) A "Material Decision" means a decision with respect to any of the following:

(i) Deviation in the aggregate of more than 5% from any Approved Annual Operating Budget or any Approved Annual Capital Budget or more than the greater of 10% or \$50,000 in any single Annual Material Capital Expenditure;

(ii) Deviation in the aggregate of more than 5% from the budget contained in the Approved Substructure Plan and Budget, more than the greater of 10% or \$50,000 in any single Initial Material Substructure Capital Expenditure thereon, or any material deviation from the plan contained therein;

(iii) Deviation in the aggregate of more than 5% from the budget contained in the Approved Redevelopment Plan and Budget, more than the greater of 10% or \$50,000 in any single Initial Material Capital Expenditure thereon, or any material deviation from the plan contained therein;

(iv) Agreement (whether written or oral) to permit or terminate any occupancy or use of the Pier by any third party (including, but not limited to, occupancy pursuant to licenses, leases, subleases and assignments) involving, either alone or together with affiliates, (a) more than 1,000 square feet or (b) any Pier docking right;

(v) Any action that would affect the City's ability to comply with the provisions and regulations governing (a) the Section 108 Loan and (b) that certain \$1.6 million Community Development Block Grant Program funding made available by HUD on July 15, 1997, each provided in connection with redevelopment of the Pier (a copy of such provisions and regulations of which Tenant hereby acknowledges having received); or

(vi) Entering into or materially deviating from any plan developed by the City and Tenant with respect to pedestrian and vehicular traffic near the Pier.

Notwithstanding the foregoing, Tenant may take actions with respect to any of the foregoing if there is an emergency that, in Tenant's reasonable opinion, is likely to result in an imminent threat to the physical integrity of the Pier or the life, health or safety of any occupant of the Pier or any member of the general public who is visiting the Pier.

(b) Except with respect to emergencies, Material Decisions shall be submitted to the City and the City shall have 90 days to approve or reject the proposed action if such action falls within (i) through (iv) above and 120 days to approve or reject the proposed action if such action falls within (v) or (vi) above. If the City fails to respond to Tenant within the 90 days for proposed actions falling within (i) through (iv) above or within the 120 days for proposed actions falling within (v) or (vi) above, the proposed action shall be deemed approved.

(c) If a proposed action described in (i) through (iii) is rejected, the Parties shall have 30 days in which to agree upon the proposed action. If the Parties do not reach agreement on the proposed action within such 30 days, the Tenant's proposal and a counter-proposal from the City shall be submitted to baseball arbitration (i.e., the arbitrator must

choose one of the two submitted proposals and cannot select a third alternative). The independent arbitrator shall determine which of the two proposed actions best meets a standard of commercial reasonability given the location, physical condition, tenancy and uses of the Pier, but taking into account the public ownership thereof.

(d) If a proposed action described in (iv) through (vi) is rejected, the Parties shall work in good faith to agree upon a resolution.

Section 14.03. Zoning and Signage.

The Pier and surrounding property must, at all times, be maintained in compliance with applicable zoning rules and regulations (including, without limitation, applicable zoning regulations relating to advertising and exterior signage). "Applicable zoning rules and regulations" for purposes of this paragraph includes those zoning rules and regulations that would be applicable to the Pier but for the involvement of public or government entities or interests in the project.

Section 14.04. Maintenance of the Premises, Etc.

(a) Tenant shall take good care of the Premises, including without limitation, the Pier, the surfaces, roofs, foundations and appurtenances thereto, underwater pilings, deck, systems and interior and exterior of the Pier, all sidewalks, grounds, plazas, vaults, sidewalk hoists, railings, gutters, curbs, flagpoles, flagpole bases, the 1919 war memorial clock, and bodies of water in front of or immediately adjacent to the Premises and the water, sewer and gas connections, pipes and mains appurtenant thereto, except to the extent such is not normally the responsibility of a fee owner or tenant, and shall keep and maintain the Premises (including all of the foregoing) in good and safe order and condition, and shall make all repairs therein and thereon, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary or desirable to keep the Premises in good and safe order and condition, however the necessity or desirability therefor may occur. Tenant's obligations hereunder shall include, without limitation, designing and lighting the Public Plaza to anticipate potential security problems and enhance public safety, providing security services and/or devices for the Premises during the operation of the Project, performing routine maintenance and capital repairs, and securing the Premises during the performance of any and all Construction Work in accordance with Landlord's requirements and standard practice. Tenant shall neither commit nor suffer, and shall use all reasonable precautions to prevent, waste, damage or injury to the Premises. All repairs and maintenance shall be made at no cost or expense to Landlord, shall be made in compliance with the Requirements and, subject to Section 14.02, the then current Approved Annual Operating Budget or Approved Annual Capital Budget, as the case may be, and all materials therefor shall be substantially equal in quality and class to the original work. As used in this Section, the term "repairs" shall include all necessary (a) replacements, (b) removals, (c) alterations, and (d) additions.

(b) Tenant shall perform an inspection of the Pier, ferry landing, Breakwater, bulkhead and fendering at least once every four years in accordance with the NYCEDC Inspection Guidelines Manual as the same may be in effect from time to time (the Tenant hereby acknowledges having received a copy of the current manual) and shall provide to the City a report indicating the results of such inspection within 90 days of such inspection's

completion. Tenant shall make any repairs identified in any such report and comply with the recommendations made therein.

Section 14.05. Removal of Equipment.

Tenant shall not, without the consent of Landlord, which consent will not be unreasonably withheld, remove or dispose of any Equipment unless such Equipment (a) is promptly replaced by Equipment of substantially equal utility and quality, or (b) is removed for repairs, cleaning or other servicing, provided Tenant reinstalls such Equipment on the Premises with reasonable diligence; except, however, Tenant shall not be required to replace any Equipment that has become obsolete, or that performed a function that has become obsolete, unnecessary or undesirable in connection with the operation of the Premises.

Section 14.06. Free of Dirt, Snow, Etc.

Tenant, at its sole cost and expense, shall- at all times keep reasonably clean and free from dirt, snow, ice, rubbish, obstructions and encumbrances the Premises and the sidewalks, sidewalk hoists, railings, gutters, or curbs located in front of, or adjacent to, the Premises or any of such areas or spaces adjacent to the Premises for which Tenant or the fee owner of the Premises has or would have responsibility under applicable law.

Section 14.07. No Obligation of Landlord to Repair or to Supply Utilities.

Landlord shall not be required to supply any facilities, services or utilities whatsoever to the Premises and Landlord shall not have any duty or obligation to make any repair, alteration, change, improvement, replacement, Restoration or repair to the Project, and Tenant assumes the full and sole responsibility for the condition, operation, alteration, change, improvement, replacement, Restoration, repair, maintenance and management of the Premises.

Section 14.08. Window Cleaning.

Tenant shall not clean, nor require, permit, suffer or allow to be cleaned, any window in the Project from the outside in violation of Section 202 of the Labor Law of the State of New York or of the rules of any Governmental Authority.

ARTICLE 15

CAPITAL IMPROVEMENTS.

Section 15.01. Capital Improvements.

(a) Tenant's Right to Make Capital Improvements. Tenant shall be permitted to make Capital Improvements provided that in each case Tenant shall comply with all applicable provisions of Article 13 and Section 14.02 hereof, including, without limitation, provisions concerning Landlord's right to approve material changes to the Plans and Specifications.

(b) Completed Capital Improvements Shall Not Reduce Value of Premises. All Capital Improvements, when completed, shall be of a character that will not reduce the value

of the Premises below its value immediately before commencement of such Capital Improvement.

(c) Definition. "Capital Improvement" means a change, alteration or addition to the Project (including, for purposes of subsection (b) above and with respect to the requirements of Article 16 for any Construction Work, all space tenant work) other than Construction of the Project or a Restoration.

ARTICLE 16

REQUIREMENTS OF GOVERNMENTAL AUTHORITIES.

Section 16.01. Requirements.

(a) Obligation to Comply. In connection with any Construction Work, maintenance, management, use and operation of the Premises and Tenant's performance of each and every of its obligations hereunder, Tenant shall comply promptly with all Requirements, without regard to the nature of the work required to be done, whether extraordinary or ordinary, and whether requiring the removal of any encroachment, or affecting the maintenance, use or occupancy of the Premises, or involving or requiring any structural changes or additions in or to the Premises, and regardless of whether such changes or additions are required by reason of any particular use to which the Premises, or any part thereof, may be put. No actual or deemed consent to, approval of, or acquiescence in any plans or actions of Tenant by NYCEDC, Landlord, in its proprietary capacity as landlord under this Lease, or Landlord's designee, shall be relied upon or construed as being a determination that such are in compliance with the Requirements, or, in the case of construction plans, are structurally sufficient.

(b) Definition. "Requirements" means:

(i) the Zoning Resolution of The City of New York (as the same may be amended and/or replaced) (the "Zoning Resolution"), the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 *et. seq.* and any and all laws, rules, regulations, orders, ordinances, statutes, codes, executive orders, resolutions, and requirements of all Governmental Authorities (currently in force or hereafter adopted) applicable to the Premises or any street, road, avenue, service areas, pier deck, or sidewalk comprising a part of, or lying in front of, the Premises, or any vault in or under the Premises, or any body of water adjacent to, above, or below the Premises (including, without limitation, the Building Code of New York City, and any applicable equivalent, and the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of LPC, SHPO, and any applicable Fire Rating Bureau or other body exercising similar functions).

(ii) any and all provisions and requirements of any property, casualty or other insurance policy required to be carried by Tenant under this Lease, and

(iii) the Certificate or Certificates of Occupancy issued for the Project as then in force.

ARTICLE 17

DISCHARGE OF LIENS; BONDS.

Section 17.01. Creation of Liens.

Tenant shall not create or cause to be created (a) any lien, encumbrance or charge upon this Lease, the leasehold estate created hereby, the income therefrom or the Premises or any part thereof, except such easements as may be necessary or desirable for the development of the Premises in accordance with this Lease and which shall be subject and subordinate to this Lease and the terms hereof, including, without limitation, all rights reserved to Landlord hereunder, and expire on or before the end of the Term, (b) any lien, encumbrance or charge upon any assets of, or funds appropriated to, Landlord, or (c) any other matter or thing whereby the estate, rights or interest of Landlord in and to the Premises or any part thereof might be impaired. Notwithstanding the foregoing, Tenant shall have the right to execute Subleases as provided by, and in accordance with, the provisions of this Lease.

Section 17.02. Discharge of Liens.

If any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including tax liens, provided the underlying tax is an obligation of Tenant by law or by a provision of this Lease) is filed against the Premises or any part thereof, or if any public improvement lien created, or caused or suffered to be created by Tenant shall be filed against any assets of, or funds appropriated to, Landlord, then Tenant shall, within forty-five (45) days after receipt of notice of the filing of such mechanic's, laborer's, vendor's, materialman's or similar statutory lien or public improvement lien, cause it to be vacated or discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. However, Tenant shall not be required to discharge any such liens if Tenant shall have (a) furnished Landlord with, at Tenant's option, a cash deposit, bond, letter of credit from an Institutional Lender (in form reasonably satisfactory to Landlord) or other security (such as personal guaranty reasonably satisfactory to Landlord in an amount sufficient to discharge the lien with interest and penalties) and (b) brought an appropriate proceeding to discharge such lien and is prosecuting such proceeding with diligence and continuity; except that if, despite Tenant's efforts to seek discharge of the lien, Landlord reasonably believes such lien is about to be foreclosed and so notifies Tenant, Tenant shall immediately cause such lien to be discharged of record.

Section 17.03. No Authority to Contract in Name of Landlord.

Nothing contained in this Lease shall be deemed or construed to constitute the consent or request of Landlord, express or implied, by implication or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement of, alteration to, or repair of, the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage or other encumbrance against the Premises or any part thereof or against assets of, or funds appropriated to, Landlord. Notice is hereby given, and Tenant shall cause all Construction Agreements to provide, that to the extent enforceable under New York law, Landlord shall not be liable for any work performed or to be performed

at the Premises or any part thereof for Tenant or any Subtenant or for any materials furnished or to be furnished to the Premises or any part thereof for any of the foregoing, and no mechanic's, laborer's, vendor's, materialman's or other similar statutory lien for such work or materials shall attach to or affect the Premises or any part thereof or any assets of, or funds appropriated to, the City.

ARTICLE 18

REPRESENTATIONS.

Section 18.01. No Brokers.

Landlord and Tenant each represents to the other that it has not dealt with any broker, finder or like entity in connection with this Lease or the transactions contemplated hereby and such mutual representations with regard to this Lease shall survive the termination of this Lease.

Section 18.02. Tenant's Acknowledgement of No Other Representations.

Tenant acknowledges, represents and confirms that it or its authorized representatives have inspected the Premises and are fully familiar therewith and with the physical condition thereof and Title Matters affecting the Premises. Tenant accepts the Premises in its existing condition and state of repair, and Tenant confirms that: (a) except for the representation contained in Section 18.01 hereof, no representations, statements, or warranties, express or implied, have been made by, or on behalf of, Landlord, Landlord's Agent or the Administrator with respect to the Premises or the transactions contemplated by this Lease, the status of title thereto, the physical condition thereof, the zoning or other laws, regulations, rules and orders applicable thereto, the use that may be made of the Premises, or the absence of "hazardous substances" (as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USCA § 9601 et. seq.) on or under the Premises, (b) Tenant has relied on no such representations, statements or warranties, and (c) Landlord shall not be liable in any event whatsoever for any latent or patent defects in the Premises.

Section 18.03. Tenant's Representations, Warranties, and Covenants.

Tenant represents, warrants, and covenants that:

(a) Tenant is duly organized and validly existing in good standing as a body corporate and politic constituting a public benefit corporation under the laws of the State of New York, and has full power and authority to enter into this Lease and the documents named herein or contemplated hereby to which it is a party and to perform its obligations hereunder;

(b) the execution, delivery and performance of this Lease by Tenant will not (i) conflict with, be inconsistent with, or result in any breach or default of any of the terms, covenants, conditions, or provisions of any indenture, mortgage, deed of trust, instrument, document, agreement or contract of any kind or nature to which Tenant is a party or by which Tenant may be bound or (ii) violate any provision of or require any filing, registration,

consent or approval under any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Tenant; and

(c) the execution and delivery of this Lease by Tenant has been duly authorized by all legally required action on behalf of Tenant and this Lease constitutes the legally binding and enforceable obligation of Tenant.

Section 18.04. Hazardous Substances.

Prior to the delivery of the Premises by Landlord to Tenant, Tenant shall have commissioned an environmental survey of the Premises to determine the presence of hazardous substances, such survey to be performed by Jacobs, Edwards & Kelcey (who are environmental engineers licensed in the State of New York, selected by Tenant and approved by Landlord). A copy of such survey shall be delivered to Landlord promptly upon receipt of such survey by Tenant. If it is determined at any time during the Term, as a result of such survey or otherwise, that there exists on or in the Premises any hazardous or toxic waste or substances or petroleum products which must be mitigated or, if necessary, removed from the Premises and disposed of under applicable state and federal environmental laws, the cost of such mitigation or removal and disposal shall be borne by Tenant. Notwithstanding the foregoing, if it is determined during the Construction of the Project that (i) the cost of such mitigation or removal and disposal (not including the cost of mitigating or removing and disposing of any asbestos) shall exceed \$1,500,000, as estimated by Tenant's environmental engineer to the Administrator's reasonable satisfaction, (ii) the presence of such waste, substances, or products pre-dated the Commencement Date and could not reasonably have been discovered by Tenant prior to commencement of construction, (iii) such condition was not exacerbated by Tenant or caused by the negligence of Tenant or its agents, employees, or contractors, and (iv) Landlord does not agree, within a reasonable period, to pay the cost of such mitigation or removal and disposal in excess of \$1,500,000, then Tenant may elect to terminate this Lease upon thirty days' written notice to Landlord.

ARTICLE 19

LANDLORD NOT LIABLE FOR INJURY OR DAMAGE, ETC.

Landlord shall not be liable for any injury or damage to Tenant or to any Person happening on, in or about the Premises or its appurtenances, nor for any injury or damage to the Premises, or to any property belonging to Tenant or to any other Person, that may be caused by fire, by breakage, or by the use, misuse or abuse of any portion of the Premises (including, but not limited to, any of the common areas within the Building or Pier A, hatches, openings, installations, stairways or hallways or other common facilities, the pier deck, the streets, sidewalk or public plaza areas or water within or adjacent to the Premises) or that may arise from any other cause whatsoever, unless, and only to the extent of the proportion of which, (i) any such injury or damage is determined to be caused by Landlord or its agents' or employees' or contractors' negligent or intentional tortious acts or omissions or (ii) Landlord is strictly liable for such injury or damage pursuant to the provisions of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA").

Landlord shall not be liable to Tenant or to any Person for any failure of water supply, gas or electric current, nor for any injury or damage to any property of Tenant or of

any Person or to the Premises caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storm or disturbance or by or from water, rain or snow which may leak or flow from the street, sewer, gas mains or subsurface area or from any part of the Premises, or body of water under or adjacent to the Premises, or by or from leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein or from any other place, nor for interference with light or other incorporeal hereditaments by any Person, or caused by any public or quasi-public work, unless, and only to the extent of the proportion by which, (i) caused by Landlord's, or its agents' or employees' or contractors' negligent or intentional tortious acts or omissions or (ii) Landlord is strictly liable for such injury or damage pursuant to the provisions of CERCLA.

ARTICLE 20

INDEMNIFICATION.

Section 20.01. Obligation to Indemnify.

Tenant shall not do or permit any act or thing to be done upon the Premises, or any portion thereof, which subjects Landlord to any liability or responsibility for injury or damage to Persons or property or to any liability by reason of any violation of law or of any legal requirement of any public authority, but shall exercise such control over the Premises so as to protect fully Landlord against any such liability. The foregoing provisions of this Section shall not modify Tenant's right to contest the validity of any Requirements in accordance with the provisions of Section 35.02 hereof. To the fullest extent permitted by law, Tenant shall indemnify and save Landlord, Landlord's Agent, the Administrator, and their officers, directors, employees, agents and servants (collectively, the "Indemnitees") harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, reasonable architects' and attorneys' fees and disbursements, that may be imposed upon or incurred by or asserted against any of the Indemnitees by reason of any of the following subparagraph (a) through (j), except that no Indemnitee shall be so indemnified and saved harmless to the extent of the proportion by which such liabilities, etc., are caused by the negligent or intentional tortious acts or omissions of such Indemnitee:

(a) Construction Work. Construction Work or any other work or act done in, on, or about the Premises or any part thereof;

(b) Control. The control or use, non-use, possession, occupation, alteration, condition, operation, maintenance or management of the Premises or any part thereof or of any street, plaza, sidewalk, curb, vault, pier deck, body of water, or space comprising a part thereof or adjacent thereto, including, without limitation, any violations imposed by any Governmental Authorities in respect of any of the foregoing;

(c) Acts or Failure to Act of Tenant/Subtenant. Any act or failure to act on the part of Tenant or any Subtenant or any of its or their respective partners, joint venturers, officers, shareholders, directors, agents, contractors, servants, employees, licensees or invitees;

(d) Accidents, Injury to Person or Property. Any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in, on, or

about the Premises or any part thereof, or in, on, or about any street, plaza, sidewalk, curb, vault, pier deck, body of water, or space comprising a part thereof or immediately adjacent thereto;

(e) Lease Obligations. Tenant's failure to make any payment or to perform or comply with any of the other covenants, agreements, terms or conditions contained in this Lease on Tenant's part to be kept, observed, performed or complied with and/or the exercise by Landlord or its designee of any remedy provided in this Lease with respect to such failure;

(f) Lien, Encumbrance or Claim Against Premises. Any lien or claim that may be alleged to have arisen against or on the Premises, or any lien or claim created or permitted to be created by Tenant or any Subtenant or any of its or their partners, joint venturers, officers, shareholders, directors, agents, contractors, servants, employees, licensees or invitees against any assets of, or funds appropriated to, Landlord or any liability that may be asserted against Landlord with respect thereto;

(g) Default of Tenant. Any failure on the part of Tenant to keep, observe and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in the Construction Agreements, the Subleases or other contracts and agreements affecting the Premises, on Tenant's part to be kept, observed or performed;

(h) Execution, Delivery and Recording Fees. Any tax attributable to the execution, delivery or recording of this Lease or a memorandum thereof;

(i) Contest and Proceedings. Any contest or proceeding brought or permitted to be brought pursuant to the provisions of Article 35 hereof; or

(j) Brokerage. Any claim for brokerage commissions, fees or other compensation by any Person who alleges to have acted or dealt with Tenant in connection with this Lease or the transactions contemplated by this Lease.

Section 20.02. Contractual Liability.

The obligations of Tenant under this Article shall not be affected in any way by the absence of insurance coverage, or by the failure or refusal of any insurance carrier to perform an obligation on its part under insurance policies affecting the Premises.

Section 20.03. Defense of Claim, Etc.

If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event to which reference is made in Section 20.01 hereof, then upon demand by Landlord, Tenant shall either resist, defend or satisfy such claim, action or proceeding in such Indemnitee's name, by the attorneys for, or approved by, Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance) or by such other attorneys as Landlord shall reasonably approve. The foregoing notwithstanding, such Indemnitee or another Indemnitee may engage its own attorneys to defend such Indemnitee, or to assist such Indemnitee in such Indemnitee's defense of such claim, action or proceeding, as the case may be, and Tenant shall pay the reasonable fees and disbursements of such attorneys of such Indemnitee if it is determined that Landlord is not at fault in any way.

Section 20.04. Notification and Payment.

Each Indemnitee shall notify Tenant of the incurrence by or assertion against such Indemnitee, or the imposition of any cost or expense as to which Tenant has agreed to indemnify such Indemnitee pursuant to any of the provisions of this Article 20. Tenant agrees to pay such Indemnitee all amounts due under this Article 20 within ten (10) days after such payment is determined to be Tenant's obligation, and any non-payment thereof by Tenant shall constitute a Default for which Landlord may declare an Event of Default in accordance with the provisions of Section 24.01(f) hereof.

Section 20.05. Survival Clause.

The provisions of this Article shall survive the Expiration of the Term.

ARTICLE 21

NO DISCRIMINATION; EMPLOYMENT GOALS.

Section 21.01. No Discrimination.

Tenant agrees that it will comply with all applicable laws, ordinances and regulations relating to civil rights and Tenant agrees that it will not refuse to hire or employ, nor bar or discharge from employment, nor discriminate against any persons in compensation or in terms, conditions or privileges of employment because of age, race, creed, color, national origin, gender, sexual orientation, marital status or handicap.

Section 21.02. Employment Goals.

(a) At the time of the execution of this Lease by Tenant, Tenant, if it has not already done so, shall complete and return to Landlord a questionnaire (the "Questionnaire") presented by Landlord to Tenant, asking, in substance, how many and what types of jobs Tenant in good faith estimates will be created and retained with regard to its activities in or concerning the Premises and its projected timetable for the creation and retention of jobs for the first seven years after the Commencement Date. Tenant further agrees, on behalf of itself and its successors and assigns, that with regard to each July 1 - June 30 period ("Reporting Year") during which any part of the seven years from the Commencement Date falls (together, the "Reporting Period"), Tenant shall submit to Landlord, for each Reporting Year, by August 1 following the end of such Reporting Year, an employment and benefits report (the "Employment and Benefits Report") in the form attached hereto as Exhibit D (with the dates therein updated to reflect the applicable Reporting Year). Tenant shall include in such Employment and Benefits Report information collected by Tenant from Subtenants.

(b) During the Reporting Period, Tenant shall, in good faith, consider such proposals as the City and/or any City-related entities may make with regard to jobs Tenant may seek to fill in relation to its activities on or concerning the Premises and shall provide the City and such entities with the opportunity to (i) refer candidates who are City residents having the requisite experience for the positions in question, and/or (ii) create a program to train City residents for those jobs (it being understood that Tenant shall not be required to hire any candidate which Tenant, in good faith, considers unqualified for the applicable position).

(c) Each Sublease entered into by Tenant prior to the end of the Reporting Period shall include provisions requiring the Subtenant:

(i) with regard to each Fiscal Year during the Reporting Period, to complete with regard to itself and its sub-subtenants items 1-5, 15 and 16 of the Employment and Benefits Report (with the dates therein updated to reflect the applicable Fiscal Year), to sign such report and to submit it to Tenant before August 1 immediately following such Fiscal Year; and

(ii) in good faith, to consider such proposals as the City and/or City-related entities may make with regard to any jobs such Subtenant may seek to fill in relation to its activities on or concerning the Premises, and to provide the City and such entities with the opportunity to (A) refer candidates who are City residents having the requisite experience for the positions in question, and/or (B) create a program to train City residents for those jobs, and to report to Landlord, upon Landlord's request, regarding the status of its consideration of such proposals (it being understood that Tenant shall not be required to hire any candidate which Tenant, in good faith, considers unqualified for the applicable position).

(d) Each Sublease shall provide that both Tenant and Landlord and their respective designees shall be beneficiaries of each such agreement by the Subtenant. Tenant shall reserve the right, on behalf of itself and Landlord, and their respective designees, as such third party beneficiaries, to seek specific performance by such Subtenant, at the expense of such Subtenant, of the obligations set forth in this Section 39.9.

(e) Tenant shall retain for six (6) years all forms completed by Tenant and any Subtenants and, at Landlord's request, shall permit Landlord upon reasonable notice, to inspect such forms and provide Landlord copies thereof.

ARTICLE 22

LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS.

Section 22.01. Landlord's Right to Perform.

If the Tenant shall at any time fail to pay for or maintain any of the insurance policies required to be provided by Tenant pursuant to Article 7 hereof, or to make any other payment or perform any other act on its part to be made or performed hereunder, including, without limitation, the obligation to cause the discharge of liens pursuant to Article 17, then Landlord, after thirty (30) days' notice to Tenant (or, in case of any emergency or any other circumstances which may materially adversely affect Landlord or Landlord's interest in the Premises, on such notice, or without notice, as may be reasonable under the circumstances), and without releasing Tenant from any obligation of Tenant hereunder and without waiving the right to terminate this Lease upon an Event of Default in accordance with the provisions hereof or any other right or remedy permissible hereunder, may (but shall not be required to):

(a) pay for and maintain any of the insurance policies required to be furnished by Tenant pursuant to Article 7 hereof, or

(b) make any other payment or perform any other act on Tenant's part to be made or performed as in this Lease provided (except for (x) any maintenance or repair obligation imposed on Tenant pursuant to Article 14 hereof, or (y) any act which would require

Landlord, its agent, employee, contractor, or any other person acting on Landlord's behalf to enter upon the Premises or any portion thereof for any such purpose), and may take all such action as may be necessary therefor. Notwithstanding the foregoing, neither Landlord nor any agent, employee, contractor or any other person acting on Landlord's behalf may enter upon the Premises or any portion thereof for any such purpose.

Section 22.02. Amount Paid by Landlord as Additional Rental.

All reasonable sums so paid by Landlord and all reasonable costs and expenses incurred by Landlord in connection with the performance of any such act, together with interest thereon at the Late Charge Rate from the respective dates of Landlord's making of each such payment or incurring of each such cost and expense, shall constitute, following notice from Landlord to Tenant, additional rental under this Lease and shall be paid by Tenant to Landlord with and in addition to the Base Rent payable on the first day of the month following the giving of such notice.

Section 22.03. Waiver, Release and Assumption of Obligations.

Landlord's payment or performance pursuant to the provisions of this Article shall not be, nor be deemed to be (a) a waiver or release of the Default or Event of Default with respect thereto (or any past or future Default or Event of Default) or of Landlord's right to terminate this Lease in accordance with the provisions hereof and/or to take such other action as may be permissible hereunder, or (b) Landlord's assumption of Tenant's obligations to pay or perform any of Tenant's past, present or future obligations hereunder.

Section 22.04. Proof of Damages.

Landlord shall not be limited in the proof of any damages that it may claim against Tenant arising out of, or by reason of, Tenant's failure to provide and keep insurance in force in accordance with the provisions of this Lease to the amount of the insurance premium or premiums not paid. However, Landlord shall be entitled to seek, and if successful, to recover, as damages for such Default or Event of Default, the uninsured amount of any loss and damage sustained or incurred by it and the reasonable costs and expenses of any suit in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements.

ARTICLE 23

PERMITTED USE; NO UNLAWFUL OCCUPANCY.

Section 23.01. Permitted Uses.

The Pier shall be used for recreational maritime and ancillary uses including retail, event and dining uses, as well as commercial office uses, including the following:

(a) National Park Ferry Service. It is currently contemplated that, provided that the Landlord, the Tenant and the applicable third party or parties can mutually agree to terms and conditions in compliance with the terms hereof, the Pier shall become the primary embarkation/debarkation point for ferry services to the Statue of Liberty National Monument and Ellis Island. Tenant agrees to use all reasonable efforts to negotiate an agreement with the National Park Service for the Liberty Island ferry service on a sole source basis.

(b) Harbor District Ferry Service. In addition to the foregoing, the City reserves the right to require the Tenant to permit or license on then-commercially reasonable terms any or all of the Pier's then-available docking slips to City-designated recreational ferry services traveling to various other sites in the New York harbor (such sites, together with the Statue of Liberty National Monument and Ellis Island, being referred to collectively as the "Harbor District"), provided that the Pier can safely accommodate such additional ferry services and subject to legally required environmental reviews, if any.

(c) Signage. In connection with any of the above described ferry services, any brand identity developed by the City to unify such Harbor District sites shall be incorporated into signage for the Pier.

(d) Pier A, the Breakwater and the Adjacent Underwater Area. Pier A, the Breakwater, and/or the Adjacent Underwater Area may be used for transient docking and waterborne arrivals and departures ("Transient Docking") ancillary to and in conjunction with commercial operations at the Pier, subject to (i) Tenant's notice to the Administrator for each and every boat which is or is known or anticipated to be docked for a period longer than seven (7) consecutive days, and (ii) any required public easements or rights and all Requirements, including, without limitation, requirements of the Army Corps of Engineers and any appropriate Governmental Authorities; provided, however, that the City may use Pier A and/or the Breakwater for intermittent Transient Docking without notice to Tenant for emergency and other extraordinary uses. Pier A, the Breakwater, and the Adjacent Underwater Area may not be used for any waterborne purposes other than Transient Docking without Landlord's prior written consent, which will be granted or denied in Landlord's sole discretion.

(e) The Public Plaza. The Public Plaza, consisting of approximately 34,000 gross square feet, shall be operated as a public space, open to the general public for passive recreational use during all hours that any portion of the Project or Battery Park is open to the public. Improvements located on the Public Plaza shall be consistent in spirit with the Pier's historic and current maritime use as part of the Harbor District.

(f) No Unlawful Occupancy. Tenant shall not use or occupy the Premises, and neither permit nor suffer the Premises or any part thereof to be used or occupied, for any unlawful or illegal business, use or purpose, or for any purpose, or in any way, in violation of the provisions of Section 23.01 or Article 16 hereof or the Certificate (s) of Occupancy for the Premises, or in such manner as may make void or voidable any insurance then required to be carried under Article 7 hereof. Immediately upon discovery of any such unlawful or illegal business, use or purpose, or use or occupation in violation of Section 23.01 or Article 16 hereof, Tenant shall take all necessary steps, legal and equitable, to compel discontinuance of such business or use, including, if necessary, the removal from the Premises of any Subtenants using any portion of the Premises for any unlawful or illegal business, use or purpose or in violation of Section 23.01 or Article 16 hereof.-

Section 23.02. Excess Development Rights.

Landlord shall not use or permit the use of Excess Development Rights on or over the Premises without the prior written consent of Tenant. Any use or transfer of the Excess Development Rights shall not impair the reasonable access, existing immediately prior to the

time of such use or transfer, between the Premises and major public thoroughfares during the operating hours of the commercial public facilities located on the Premises.

Section 23.03. Adjacent Property; Access.

Tenant shall be advised of any proposed plans made by or in association with the Administrator for the construction of structures or monuments on property adjacent to the Premises, and shall have the opportunity to participate in discussions concerning such proposals in order to coordinate the planning and staging of the Project with such plans for construction on adjacent property. Tenant shall provide reasonable access over the Premises if necessary to obtain access to any adjacent property during any demolition, construction, or reconstruction of any such structure or monuments, or necessary for the intended use, maintenance, or repair thereof, provided such access does not unreasonably interfere with Tenant's use of the Premises.

ARTICLE 24

EVENTS OF DEFAULT. CONDITIONAL LIMITATIONS. REMEDIES. ETC.

Section 24.01. Definition.

Each of the following events shall be an "Event of Default" hereunder:

(a) if Tenant shall fail to make any payment (or any/part thereof) of Rental as and when due hereunder and such failure shall continue for a period of ten (10) days after notice;

(b) if Tenant shall fail to comply with its agreements set forth in Section 14.02 or shall fail to maintain the insurance required by Article 7 and if such failure shall continue for a period of ten (10) days after notice;

(c) if Tenant shall fail to maintain the Premises as provided in Section 14.04 hereof and if such failure shall continue for a period of thirty (30) days after notice (unless such failure requires work to be performed, acts to be done or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed within such thirty (30) day period, in which case no Event of Default shall exist as long as Tenant shall have commenced curing the same within such thirty (30) day period and shall diligently and continuously prosecute the same to completion within a reasonable period);

(d) if Tenant shall fail to commence Construction of the Project within the time period provided for such commencement in Article 13 hereof, and such failure shall continue for a period of ninety (90) days after notice thereof from Landlord (subject to Unavoidable Delays), or if Tenant shall fail to diligently prosecute the Construction of the Project until completion in accordance with the provisions of this Lease and such failure shall continue for thirty (30) days after notice;

(e) if Tenant shall fail to Substantially Complete the Construction of the Project [on or before []] in accordance with the provisions of this Lease and such failure shall continue for a period of sixty (60) days after Landlord's notice thereof to Tenant (subject to Unavoidable Delays);

(f) if Tenant shall enter into an Assignment or Sublease of the Premises in violation of the provisions of this Lease and Tenant fails to cure such violation within thirty (30) business days after Landlord's notice thereof to Tenant;

(g) if Tenant shall fail to observe or perform one or more of the other terms, conditions, covenants or agreements of this Lease not expressly provided for in clauses (a)-(f) above and such failure shall continue for a period of thirty (30) days after Landlord's notice thereof to Tenant specifying such failure (unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed within such thirty (30) day period, in which case no Event of Default shall be deemed to exist as long as Tenant shall have commenced curing the same within the thirty (30) day period and shall diligently and continuously prosecute the same to completion);

(h) to the extent permitted by law, if Tenant shall admit, in writing, that it is unable to pay its debts as such become due;

(i) to the extent permitted by law, if Tenant shall make an assignment for the benefit of creditors;

(j) to the extent permitted by law, if Tenant shall file a voluntary petition under Title 11 of the United States Code or if a petition under Title 11 of the United States Code shall be filed against Tenant and an order for relief shall be entered, or if Tenant shall file a petition or an answer seeking, consenting to or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, or shall seek, or consent to, or acquiesce in, or suffer the appointment of, any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, or of all or any substantial part of its properties, or of the Premises or any interest of Tenant therein, or if Tenant shall take any corporate action in furtherance of any action described in Sections 24.01(i) or this Section 24.01 (j);

(k) to the extent permitted by law, if within sixty (60) days after the commencement of a proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, such proceeding shall not be dismissed, or if, within one hundred twenty (120) days after the appointment, without the consent or acquiescence of Tenant, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, or of all or any substantial part of its properties, or of the Premises or any interest of Tenant therein, such appointment shall not be vacated or stayed on appeal or otherwise, or if, within one hundred twenty (120) days after the expiration of any such stay, such appointment shall not be vacated;

(l) if any of the representations made by Tenant herein is or shall become false or incorrect in any material respect, provided that, if such misrepresentation was unintentionally made, the underlying condition is susceptible to being corrected, and Landlord has not been adversely affected by such misrepresentation or underlying condition, Tenant shall have a

period of thirty (30) days after Landlord's notice of such misrepresentation to correct the underlying condition and thereby cure such Default;

(m) if a levy under execution or attachment shall be made against the Premises or any part thereof, the income therefrom, this Lease or the leasehold estate created hereby and such execution or attachment shall not be vacated or removed by court order, bonding or otherwise within a period of thirty (30) days.

Section 24.02. Enforcement of Performance.

If an Event of Default occurs, Landlord may elect to proceed by appropriate judicial proceedings, either at law or in equity, to enforce performance or observance by Tenant of the applicable provisions of this Lease and/or to recover damages for breach thereof.

Section 24.03. Termination upon Event of Default or Change in Control.

(a) If (i) an Event of Default has occurred and continues to exist or (ii) a Change in Control has occurred, then Landlord may, at any time thereafter, at its option, give Tenant notice stating that this Lease and the Term shall terminate on the date specified in such notice, which date shall not be less than ten (10) days after the giving of the notice, and (unless the Event of Default is cured within the notice period) this Lease and the Term and all rights of Tenant under this Lease shall expire and terminate as if the date specified in the notice were the Fixed Expiration Date, and Tenant shall quit and surrender the Premises forthwith. If such termination is stayed by order of any court having jurisdiction over any case described in Sections 24.01(i) or (j) hereof or by federal or state statute, then following the expiration of any such stay, or if the trustee appointed in any such case, Tenant or Tenant as debtor-in-possession fails to assume Tenant's obligations under this Lease within the period prescribed therefor by law or within thirty (30) days after entry of the order for relief or as may be allowed by the court, or if the trustee, Tenant or Tenant as debtor-in-possession fails to provide adequate protection of Landlord's right, title and interest in and to the Premises and adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease as provided in Section 24.10 hereof, Landlord, to the extent permitted by law or by leave of the court having jurisdiction over such case, shall have the right, at its election, to terminate this Lease on five (5) days' notice to Tenant, Tenant as debtor-in-possession or the trustee. Upon the expiration of the five (5) day period this Lease shall cease and Tenant, Tenant as debtor-in-possession and/or the trustee immediately shall quit and surrender the Premises.

(b) If this Lease is terminated as provided in Section 24.03(a) hereof, Landlord may, without notice, re-enter and repossess the Premises using such force for that purpose as may be necessary without being liable to indictment, prosecution or damages therefor and may dispossess Tenant by summary proceedings or otherwise.

(c) If this Lease shall be terminated as provided in Section 24.03(a) hereof:

(i) Tenant shall pay to Landlord all Rental payable under this Lease by Tenant to Landlord to the Termination Date and Tenant shall remain liable for Rental thereafter falling due on the respective dates when such Rental would have been payable but for the termination of this Lease, less any amount applied under clause (ii)(D) of this subsection (c); and (ii) Landlord may complete all Construction Work required to be

performed by Tenant hereunder and may repair and alter any portion (s) of the Premises in such manner as Landlord may deem necessary or advisable without relieving Tenant of any liability under this Lease or otherwise affecting any such liability, and/or let or relet the Premises or any portion thereof for the whole or any part of the remainder of the Term or for a longer period, in Landlord's name or as agent of Tenant, and out of any rent and other sums collected or received as a result of such reletting Landlord shall (A) first, pay to itself the reasonable cost and expense of termination of what would otherwise have constituted the unexpired portion of the Lease Term, re-entering, retaking, repossessing, repairing, altering and/or completing construction of any portion(s) of the Premises and the reasonable cost and expense of removing all persons and property therefrom, including in such costs reasonable brokerage commissions, legal expenses and attorneys' fees and disbursements, (B) second, pay to itself the reasonable cost and expense of completing any Construction Work required to be performed by Tenant hereunder, (C) third, pay to itself the reasonable cost and expense sustained in securing any new tenants and other occupants, including in such costs, reasonable brokerage commissions, legal expenses and attorneys' fees and disbursements and other expenses of preparing any portion(s) of the Premises and, to the extent that Landlord shall maintain and operate any portion(s) of the Premises, the cost and expense of operating and maintaining same and (D) fourth, pay to itself any balance remaining. Landlord shall in no way be responsible or liable for any failure to relet any portion(s) of the Premises or for any failure to collect any rent due on any such reletting, and no such failure to relet or to collect rent shall operate to relieve Tenant of any liability under this Lease or to otherwise affect any such liability.

Section 24.04. Waiver of Rights of Tenant.

To the extent not prohibited by law, Tenant hereby waives and releases all rights now or hereafter conferred by statute to redemption, re-entry, repossession or restoration if Tenant is dispossessed by a judgment or order of any court or judge. Tenant shall execute, acknowledge and deliver within ten (10) days after request by Landlord any instrument that Landlord may request, evidencing such waiver or release.

Section 24.05. Receipt of Moneys after Notice of Termination.

No receipt of moneys by Landlord from Tenant after the termination of this Lease, or after the giving of any notice of the termination of this Lease, shall reinstate, continue or extend the Term or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Landlord to enforce the payment of Rental payable by Tenant hereunder or thereafter falling due, or operate as a waiver of the right of Landlord to recover possession of the Premises by proper remedy. After the service of notice to terminate this Lease or the commencement of any suit or summary proceedings or after a final order or judgment for the possession of the Premises, Landlord may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting the notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and occupation of the Premises or, at the election of Landlord, on account of Tenant's liability hereunder.

Section 24.06. Waiver of Service.

If an Event of Default has occurred and Landlord has provided Tenant with the notice described in Section 24.03(a) hereof, Tenant hereby expressly waives the service of any

notice of intention to re-enter provided for in any statute, or of the institution of legal proceedings in connection therewith and Tenant, for and on behalf of itself and all Persons claiming through or under Tenant, also waives any and all rights (a) of redemption provided by any law or statute now in force or hereafter enacted or otherwise, or (b) of re-entry, or (c) of repossession or (d) to restore the operation of this Lease, if Tenant is dispossessed by a final, non-appealable judgment or by warrant of a court or judge or in case of re-entry or repossession by Landlord or in case of any expiration or termination of this Lease. The terms "enter", "re-enter", "entry" or "re-entry", as used in this Lease, are not restricted to their technical legal meanings.

Section 24.07. Strict Performance.

No failure by either party to insist upon the other's strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy available to it hereunder, including, without limitation, Landlord's acceptance of full or partial Rental during the continuance of any Default or Event of Default, shall constitute a waiver of any such Default or Event of Default or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by either party, and no Default by Tenant, shall be waived, altered or modified except by a written instrument executed by the other party. No waiver of any Default shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent Default.

Section 24.08. Right to Enjoin Defaults or Threatened Defaults.

In the event of Tenant's Default or threatened Default, Landlord shall be entitled to enjoin the Default or threatened Default and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or by this Lease, other remedies that may be available to Landlord notwithstanding. Each right and remedy of Landlord provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute, and the exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute.

Section 24.09. Payment of All Costs and Expenses.

Tenant shall pay Landlord all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Landlord in any action or proceeding to which Landlord may be made a party by reason of any act or omission of Tenant. Tenant shall also pay Landlord all costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Landlord in enforcing any of the covenants or provisions of this Lease. All of the sums paid or obligations incurred by Landlord, with interest (at the Late Charge Rate, accruing from the date incurred) and costs, shall be paid by Tenant to Landlord within ten (10) days after demand.

Section 24.10. Remedies Under Bankruptcy and Insolvency Codes.

If an order for relief is entered or if any stay of proceeding or other act becomes effective against Tenant or Tenant's interest in this Lease in any proceeding which is commenced by or against Tenant under the present or any future Federal Bankruptcy Code or in a proceeding which is commenced by or against Tenant seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any other present or future applicable federal, state or other bankruptcy or insolvency statute or law, Landlord shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy or insolvency code, statute or law or this Lease, including, without limitation, such rights and remedies as may be necessary to protect adequately Landlord's right, title and interest in and to the Premises or any part thereof and adequately assure the complete and continuous future performance of Tenant's obligations under this Lease. Adequate protection of Landlord's right, title and interest in and to the Premises, and adequate assurance of the complete and continuous future performance of Tenant's obligations under the Lease, shall include, without limitation, all of the following requirements:

- (a) that Tenant shall comply with all of its obligations under this Lease;
- (b) that Tenant shall pay Landlord, on the first day of each month occurring after the entry of such order, or on the effective date of such stay, a sum equal to the amount by which the Premises diminished in value during the immediately preceding monthly period, but, in no event, an amount which is less than the aggregate Rental payable for such monthly period;
- (c) that Tenant shall continue to use the Premises in the manner required by this Lease;
- (d) that Landlord shall be permitted to supervise the performance of Tenant's obligations under this Lease;
- (e) that Tenant shall hire such security personnel as may be necessary to insure the adequate protection and security of the Premises;
- (f) that Tenant shall pay Landlord, within thirty (30) days after entry of such order or the effective date of such stay, as partial adequate protection against future diminution in value of the Premises and adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease, a security deposit in an amount acceptable to Landlord, but in no event less than the Base Rent payable hereunder, for the then current Lease Year;
- (g) that Tenant shall have and will continue to have unencumbered assets after the payment of all secured obligations and administrative expenses to assure Landlord that sufficient funds will be available to fulfill the obligations of Tenant under this Lease;
- (h) that Landlord shall be granted a security interest acceptable to it in property of Tenant to secure the performance of Tenant's obligations under this Lease; and
- (i) that if Tenant's trustee, Tenant or Tenant as debtor-in-possession shall assume this Lease and propose to assign it (pursuant to Title 11 U.S.C. § 365, as it may be amended) to any Person who shall have made a bona fide offer therefor, the notice of such proposed assignment, giving (i) the name and address of such Person, (ii) all of the terms and

conditions of such offer, and (iii) the adequate assurance to be provided Landlord to assure such Person's future performance under the Lease, including, without limitation, the assurances referred to in Title 11 U.S.C. § 365 (b) , as it may be amended, shall be given to Landlord by the trustee, Tenant or Tenant as debtor-in-possession no later than twenty (20) days after receipt by the trustee, Tenant or Tenant as debtor-in-possession of such offer, but in any event no later than ten (10) days before the date the trustee, Tenant or Tenant as debtor-in-possession shall make application to a court of competent jurisdiction for authority and approval to enter into such assignment, and Landlord shall thereupon have the prior right and option, to be exercised by notice to the trustee, Tenant or Tenant as debtor-in-possession, given at any time before the effective date of such proposed assignment, to accept an assignment of this Lease upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such Person, less any brokerage commissions which may be payable by Tenant out of the consideration to be paid by such Person for the assignment of this Lease.

Section 24.11. Funds Held by Depositary.

If this Lease shall terminate as a result of an Event of Default, any funds held by Depositary shall be paid to Landlord free of any claim by Tenant, or any Person claiming through Tenant.

Section 24.12. Funds held by Tenant.

From and after the date, if any, on which Tenant receives notice from Landlord that a Default or an Event of Default shall have occurred hereunder (but only, in the case of a Default, until such Default has been cured) , it shall not pay, disburse or distribute any rents, issues or profits of the Premises, or any portion thereof, the proceeds of any insurance policies covering or relating to the Premises or any portion thereof, or any awards payable in connection with the condemnation of the Premises or any portion thereof (except to the extent such insurance proceeds or condemnation awards are required in connection with any Restoration to be performed pursuant to Article 8 or 9.) , any undistributed cash, certificates of deposit, United States Treasury bills or similar cash equivalents arising out of or in any way connected with the Premises or this Lease or any portion thereof or any other sums or receivables appurtenant to the Premises or this Lease or any portion thereof except to creditors in payment of amounts then due and owing by Tenant to such creditors with respect to work at the Premises; provided, however, that the foregoing provisions of this Section 24.12 shall not prohibit Tenant from making distributions to directors, officers or shareholders of Tenant or to such partners, or tenants-in-common, as may comprise Tenant, provided that, prior to making any such distributions, Tenant shall have placed in escrow an amount which is not less than the amount which Landlord reasonably determines is due and owing in connection with such Default or reasonably determines to be adequate to cure such Default, and provided further that if such amounts due are not susceptible to calculation, Tenant shall have no right to make any such distribution.

Section 24.13. Deposits for Impositions and Insurance Premiums.

(a) Tenant's Obligation to Make Deposits. Subject to the provisions of subsection (f), upon Landlord's demand made at any time after the occurrence of two Events of Default with respect to a monetary obligation under this Lease within a twelve (12) month period, Tenant shall deposit with Depositary on the first day of each month during the remainder of

the Term an amount equal to (i) in the case of Impositions, one-twelfth (1/12) of the amount of annual Impositions as reasonably estimated by Landlord, and (ii) in the case of insurance premiums, one-twelfth (1/12) of the annual premiums for the insurance coverage required to be carried or caused to be carried by Tenant pursuant to the provisions of Article 7 hereof. If, at any time, the moneys so deposited by Tenant shall be insufficient to pay in full the next installment of Impositions or insurance premiums, Tenant shall, not later than the date which is ten (10) days prior to the due date of the Imposition or thirty (30) days prior to the due date of the insurance premium, as the case may be, deposit the amount of the insufficiency with Depository.

(b) Depository's Obligations. Depository shall place all moneys deposited pursuant to the provisions of this Section 24.13 in a special interest-bearing account in the name of Landlord and Tenant in a savings or commercial bank or in city, state or federal government obligations to be used by Depository to pay the Impositions and insurance premiums for which such amounts were deposited. Depository shall apply the amounts deposited and the interest earned thereon to pay (i) such Impositions not later than the last day on which any such Imposition may be paid without penalty or interest, and (ii) such premiums not later than the last day on which such premiums may be paid without penalty, interest or cancellation of the subject policies. Interest earned on such deposits shall be applied to the next required deposit. Upon the occurrence of an Event of Default, Depository shall apply such deposits to the payment of the Impositions or premiums next due, unless this Lease has been terminated, in which event Depository shall apply such deposits in accordance with subsection (h) below or Section 24.11, as applicable.

(c) Increase of Deposits. If the amount of any Imposition or insurance premium is increased, Tenant shall, within ten (10) days of receipt of notice of such increase, increase the amount of such monthly deposits so that sufficient moneys for the payment of such Imposition or insurance premium shall always be available to pay such Imposition or insurance premium at least ten (10) days before the Imposition become due and payable and at least thirty (30) days before the insurance premium becomes due and payable, as the case may be.

(d) Determination of Sufficiency of Deposits. For the purpose of determining whether Depository has on hand sufficient moneys to pay an Imposition or insurance premium, deposits for each category of Imposition or insurance premium shall be treated separately. Depository shall not be obligated to use moneys deposited for the payment of an Imposition or an insurance premium not yet due and payable for the payment of an Imposition or an insurance premium that is due and payable.

(e) Return of Deposits. If the Events of Default that gave rise to Landlord's demand for Tenant to make deposits for Impositions or insurance premiums under the provisions of Section 24.13 (a) hereof have been cured by Tenant and, for a period of twelve (12) consecutive months following such cure, no Default with respect to any monetary obligation of Tenant under this Lease has occurred that has not been cured within the applicable grace period, then, at any time after the expiration of such twelve (12) month period, upon demand by Tenant and provided no Default or Event of Default with respect to any monetary obligation of Tenant under this Lease then exists, Landlord shall cause Depository to return to Tenant all unexpended moneys then held by Depository pursuant to the provisions of Sections 24.13(a) and (c) hereof, with accrued interest thereon which shall not have been applied by Depository pursuant to the provisions of this Section 24.13.

Thereafter, Tenant shall not be required to make any deposits required by this Section 24.13 unless and until there shall occur within a twelve (12) month period two (2) subsequent Events of Default with respect to any monetary obligation of Tenant under this Lease and Landlord has demanded of Tenant to make such deposits.

(f) Effect of Sale or Transfer of Premises by Landlord. In the event of Landlord's sale or transfer of the Premises, Depository shall continue to hold any moneys deposited with it pursuant to the provisions of Sections 24.13 (a) and (c) hereof and shall transfer such deposits to a special account with such Depository established in the name of Tenant and the Person who acquires the Premises and becomes landlord for the purposes provided in the applicable provisions of this Lease. Upon such sale or transfer, the transfer of such deposits and notice thereof to Tenant, Landlord shall be deemed to be released to the extent of the deposits so transferred from all liability with respect thereto and Tenant shall look solely to the Depository and the new landlord with respect thereto. Landlord shall promptly deliver to Tenant a copy of the instrument of transfer to the new landlord. The provisions of this Section shall apply to each successive transfer of such deposits.

(g) Effect of Expiration. Upon expiration of the Term, all deposits then held by the Depository, together with the interest, if any, earned thereon shall be applied by Landlord on account of any and all sums due under this Lease and the balance, if any, remaining thereafter with the interest, if any, earned thereon and remaining after application by Landlord as aforesaid, shall be returned to Tenant or, if there shall be a deficiency, Tenant shall pay such deficiency to Landlord on demand.

ARTICLE 25

NOTICES.

Section 25.01. All Notices, Communications, Etc. in Writing.

Whenever it is provided herein that notice, demand, request, consent, approval or other communication shall or may be given to, or served upon, either of the parties by the other, or whenever either of the parties desires to give or serve upon the other any notice, demand, request, consent, approval or other communication with respect hereto or to the Premises, each such notice, demand, request, consent, approval or other communication shall be in writing and shall be effective for any purpose only if given or served as follows:

(a) If to Tenant, by hand with proof of delivery, by delivery by an overnight courier service which obtains receipts, or by mailing the same to Tenant by express or certified mail, postage prepaid, return receipt requested, addressed to:

Battery Park City Authority
One World Financial Center (24th floor)
New York, NY 10281
Attention: President

with a copy to

Battery Park City Authority
One World Financial Center (24th floor)

New York, NY 10281
Attention: General Counsel

or to such other address as Tenant may from time to time designate by notice given to Landlord by any of the means set forth above.

(b) If to Landlord, by hand with proof of delivery, by delivery by an overnight courier service which obtains receipts, or by mailing the same to Landlord by express or certified mail, postage prepaid, return receipt requested, addressed to

The City of New York
c/o New York City Economic
Development Corporation
110 William Street
New York, New York 10038
Attention: President

with a copy to

The City of New York
c/o New York City Economic
Development Corporation
110 William Street
New York, New York 10038
Attention: General Counsel

and one to

The New York City Law Department
100 Church Street
New York, New York 10007
Attn.: Chief, Economic Development Division

or to such other addresses and attorneys as Landlord may from time to time designate in the manner set forth above.

Section 25.02. Service.

Every notice, demand, request, consent, approval or other communication hereunder shall be deemed to have been given or served (i) in the case of express or certified mail, on the date the receipt is dated by the Post Office or express mail carrier, as the case may be, and (ii) in the case of notice by hand or by overnight courier service, upon delivery, as evidenced by a signed receipt.

ARTICLE 26

NO SUBORDINATION.

Landlord's interest in the Premises and in this Lease, as the same may be modified, amended or renewed, shall not be subject or subordinate to (a) any Mortgage now or

hereafter existing, (b) any other liens or encumbrances hereafter affecting Tenant's interest in this Lease and the leasehold estate created hereby, or (c) any Sublease or any mortgages, liens or encumbrances now or hereafter placed on any Subtenant's interest in the Premises. This Lease and the leasehold estate of Tenant created hereby and all rights of Tenant hereunder are and shall be subject to the Title Matters.

ARTICLE 27

STREET WIDENING.

Section 27.01. Proceedings for Widening Street.

If any proceedings are instituted or orders made for the widening or other enlargement of any street contiguous to the Premises requiring removal of any projection or encroachment from the Premises on, under or above any such street, or any changes or alterations upon the Premises, or in the appurtenant sidewalks, grounds, plazas, areas, vaults, gutters, alleys, curbs or other appurtenances, Tenant shall comply promptly with such requirements, at its sole cost and expense, and if Tenant shall fail to comply with such requirements within thirty (30) days after notice thereof by Landlord to Tenant specifying such failure (or if compliance with such requirements requires work to be performed, acts to be done or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed, as the case may be, within such thirty (30) day period, if, within such thirty (30) day period, Tenant shall fail to commence to remedy such failure or shall fail to diligently and continuously, subject to Unavoidable Delays, prosecute the same to completion), then Landlord, upon notice to Tenant may comply with the same, and the reasonable amount expended therefor, together with any interest, fines, penalties, reasonable architects' and attorneys' fees and disbursements or other costs and expenses incurred by Landlord in effecting such compliance or as a result of Tenant's failure to so comply, shall constitute Rental hereunder and shall be payable by Tenant to Landlord on demand.

Section 27.02. Contest of Proceedings.

Tenant shall be permitted to contest in good faith any proceeding or order to which Section 27.01 pertains, provided that such contest shall be brought in accordance with the provisions of Section 35.02 hereof as though Tenant were contesting a Requirement thereunder.

Section 27.03. Distribution of Award.

Any award made or damages paid in connection with such proceedings shall be deemed to be an award made in connection with a Partial Taking (other than a temporary Taking) and shall be first paid to Tenant to the extent of its reasonable costs and expenses actually incurred in effecting compliance therewith and the remainder shall be paid, distributed and applied in accordance with provisions of Section 9.02(b) hereof.

ARTICLE 28

EXCAVATIONS AND SHORING.

In accordance with Section 26-229 of the Administrative Code of the City, if any excavation is contemplated for construction or other purposes upon property adjacent to the Premises, Tenant, at its option, shall either:

(a) afford to Landlord, or, at Landlord's option, to the Person or Persons causing or authorized to cause such excavation, the right to enter upon the Premises in a reasonable manner upon reasonable notice for the purpose of doing such work, at Landlord's or such other Person's expense, as may be necessary to preserve any of the walls of the Improvements from injury or damage and to support them by proper foundations. If so requested by Tenant, such entry and work shall be done in the presence of a representative of Tenant, provided that such representative is available when the entry and work are scheduled to be done, and in all events such work shall be performed with reasonable diligence, subject to Unavoidable Delays, in accordance with, and subject to, any applicable Requirements and, to the extent possible, with minimum interference with the ongoing operations of Tenant and Subtenants; or

(b) perform or cause to be performed, at Tenant's expense, unless otherwise agreed in writing, all such work as may be necessary to preserve any of the walls of the Improvements from injury or damage and to support them by proper foundations.

Tenant shall not, by reason of such excavation or work, have any claim against Landlord for damages or for indemnity or for suspension, diminution, abatement or reduction of the Rental payable by Tenant hereunder.

ARTICLE 29

CERTIFICATES BY LANDLORD AND TENANT.

Section 29.01. Certificate of Tenant.

Tenant shall, within thirty (30) days after notice by Landlord, execute, acknowledge and deliver to Landlord, or any other Person specified by Landlord, a written statement (which may be relied upon by such Person) (a) certifying (i) that this Lease is unmodified and in full force and effect (or if there are modifications, that this Lease, as modified, is in full force and effect and stating such modifications) , and (ii) the date to which each item of Rental payable by Tenant hereunder has been paid, (b) stating (i) whether Tenant has given Landlord written notice of any event that, with the giving of notice or the passage of time, or both, would constitute a default by Landlord in the performance of any covenant, agreement, obligation or condition contained in this Lease, and (ii) whether, to the best knowledge of Tenant, Landlord is in default in performance of any covenant, agreement, obligation or condition contained in this Lease, and, if so, specifying in detail each such default; and (c) stating such other information as Landlord may reasonably request.

Section 29.02. Certificate of Landlord.

Landlord shall, within thirty (30) days after notice by Tenant, execute, acknowledge and deliver to Tenant, or any other Person specified by Tenant, a written statement (which may be relied upon by such Person) (a) certifying (i) that this Lease is unmodified and in full force and effect (or if there are modifications, that this Lease, as modified, is in full force and effect and stating such modifications) , and (ii) the date to which each item of Rental payable

by Tenant hereunder has been paid, (b) stating (i) whether an Event of Default has occurred and not been cured or whether Landlord has given Tenant notice of any event that, with the giving of notice or the passage of time, or both, would constitute an Event of Default, and (ii) whether, to the best knowledge of Landlord, Tenant is in Default in the performance of any covenant, agreement, obligation or condition contained in this Lease, and, if so, specifying, in detail, each such Default or Event of Default, and (c) stating such other information as Tenant may reasonably request.

Section 29.03. Failure to Deliver Certificate.

Tenant's failure to deliver the certificate required by Section 29.01 hereof within such thirty (30) day period shall be conclusive upon Tenant that (a) this Lease is in full force and effect, without modification except as may be represented by Landlord, (b) there are no uncured defaults on the part of Landlord, (c) not more than two (2) months' rent has been paid in advance, and (d) no notice has been sent to Landlord of any default by Landlord which has not been cured. Landlord's failure to deliver the certificate required by Section 29.02 hereof within such thirty (30) day period shall be conclusive upon Landlord that (a) this Lease is in full force and effect, without modification except as may be represented by Tenant, (b) there are no uncured Defaults on the part of Tenant hereunder, (c) Rental has been paid to date, and (d) no notice has been sent to Tenant of any Default by Tenant which has not been cured.

Section 29.04. Authority of Party Executing Certificate.

If the party delivering a certificate described in this Article 29 shall be other than an individual, the instrument shall be signed by a person authorized to execute such instrument on behalf of said party and the delivery of such instrument shall be a representation to such effect by such person. Any such certificate may be relied upon by any prospective purchaser of the interest of Landlord or Tenant hereunder or by any prospective Mortgagee or Subtenant.

ARTICLE 30

CONSENTS AND APPROVALS.

Section 30.01. Effect of Granting or Failure to Grant Approvals or Consents.

All consents and approvals which may be given under this Lease shall, as a condition of their effectiveness, be in writing. The granting of any consent or approval by a party to perform any act requiring consent or approval under the terms of this Lease, or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the party whose consent was required of its right to require such consent or approval for any further similar act.

Section 30.02. Remedy for Refusal to Grant Consent or Approval.

If, pursuant to the terms of this Lease, any consent or approval by Landlord or Tenant is not to be unreasonably withheld or is subject to a specified standard, then in the event there shall be a final determination that the consent or approval was unreasonably withheld or that such specified standard has been met so that the consent or approval should have been granted, the consent or approval shall be deemed granted and such granting of the consent or

approval shall be the only remedy to the party requesting or requiring the consent or approval.

Section 30.03. No Unreasonable Delay; Reasonable Satisfaction.

If it is provided that a particular consent or approval by Landlord or Tenant is not to be unreasonably withheld, such consent or approval also shall not be unreasonably delayed and any matter required to be done satisfactorily or to the satisfaction of a party need only be done reasonably satisfactorily or to the reasonable satisfaction of that party.

Section 30.04. No Fees, Etc.

Except as specifically provided herein, no fees or charges of any kind or amount shall be required by either party hereto as a condition of the grant of any consent or approval which may be required under this Lease.

ARTICLE 31

SURRENDER AT END OF TERM.

Section 31.01. Surrender of Premises.

Upon the Expiration of the Term (or upon a re-entry by Landlord upon the Premises pursuant to Article 24 hereof), Tenant, without any payment or allowance whatsoever by Landlord, shall surrender the Premises to Landlord in reasonably good order, condition and repair, reasonable wear and tear excepted, free and clear of all Subleases, liens and encumbrances (except, in the case of reentry by Landlord pursuant to Article 24 hereof, Subleases as to which Landlord has entered into non-disturbance agreements pursuant to the provisions of Section 10.06 hereof). Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises on the Expiration of the Term.

Section 31.02. Delivery of Subleases, Etc.

Upon the Expiration of the Term (whether at the Fixed Expiration Date or earlier termination of this Lease) or upon a re-entry by Landlord upon the Premises pursuant to Article 24 hereof, Tenant shall deliver to Landlord Tenant's executed counterparts of all Subleases and any service and maintenance contracts then affecting the Premises, any true and complete maintenance records for the Premises, all original licenses and permits then pertaining to the Premises, permanent or temporary Certificates of Occupancy then in effect for the Premises and all warranties and guarantees then in effect which Tenant has received in connection with any work or services performed or Equipment installed in the Premises, together with a duly executed assignment thereof, without recourse except as provided in Section 42.05(b), to Landlord, and all financial reports, books and records required by Article 37 hereof and any and all other documents of every kind and nature whatsoever relating to the operation of the Premises and the condition of the Project which are in Tenant's control at such time (or copies thereof, to the extent Tenant is required by law or Accounting Principles to retain the originals).

Section 31.03. Personal Property.

Any personal property of Tenant or of any Subtenant which shall remain on the Premises for ten (10) days after the Fixed Expiration Date or earlier termination of this Lease and after the removal of Tenant or such Subtenant from the Premises, may, at the option of Landlord, be deemed to have been abandoned by Tenant or such Subtenant, and either may be retained by Landlord as its property or be disposed of, without accountability in such manner as Landlord may see fit.. Landlord shall not be responsible or any loss or damage occurring to any such property owned by Tenant or any Subtenant after the expiration of such ten (10) day period.

Section 31.04. Survival Clause.

The provisions of this Article shall survive the Expiration of the Term.

ARTICLE 32

ENTIRE AGREEMENT.

This Lease, together with the Exhibits hereto, contains all of the promises, agreements, conditions, inducements and understandings between Landlord and Tenant concerning the Premises, and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, expressed or implied, between them other than as expressly set forth herein.

ARTICLE 33

QUIET ENJOYMENT.

Landlord covenants that, as long as no Event of Default has occurred and has not been remedied, Tenant shall and may (subject to the terms and conditions of this Lease) peaceably and quietly have, hold and enjoy the Premises for the Term without molestation or disturbance by or from Landlord or any Person claiming through Landlord and free of any encumbrances except for Title Matters and those encumbrances created or suffered by Tenant.

ARTICLE 34

ARBITRATION.

Section 34.01. Procedure for Arbitrations.

In such cases where this Lease expressly provides for the settlement of a dispute or question by arbitration (other than as provided in Section 14.02 with regard to Material Decisions), and only in such cases, the party desiring arbitration shall appoint a disinterested person as arbitrator on its behalf and give notice thereof to the other party who shall, within fifteen (15) days thereafter, appoint a second disinterested person as arbitrator on its behalf and give notice thereof to the first party. The two (2) arbitrators thus appointed shall together appoint a third disinterested person within fifteen (15) days after the appointment of the second arbitrator, and said three (3) arbitrators shall, as promptly as possible, determine the matter which is the subject of the arbitration and the decision of the majority of them shall be conclusive and binding on all parties and judgment upon the award may be entered in any court having jurisdiction. If a party who shall have the right pursuant to the foregoing to

appoint an arbitrator fails or neglects to do so, then and in such event, the other party (or if the two (2) arbitrators appointed by the parties shall fail to appoint a third arbitrator when required hereunder, then either party) may apply to the American Arbitration Association (or any organization successor thereto), or in its absence, refusal, failure or inability to act, may apply for a court appointment of such arbitrator. The arbitration shall be conducted in the City and County of New York and, to the extent applicable and consistent with this Section 34.01, shall be in accordance with the commercial Arbitration Rules then obtaining of the American Arbitration Association or any successor body of similar function. Each party shall have the right to present evidence in the arbitration. The expenses of arbitration shall be shared equally by Landlord and Tenant but each party shall be responsible for the fees and disbursements of its own attorneys and the expenses of its own proof. Landlord and Tenant shall sign all documents and to do all other things necessary to submit any such matter to arbitration and further shall, and hereby do, waive any and all rights they or either of them may at any time have to revoke their agreement hereunder to submit to arbitration and to abide by the decision rendered thereunder. The arbitrators shall have no power to vary or modify any of the provisions of this Lease and their jurisdiction is limited accordingly. If the arbitration concerns any Capital Improvement or Restoration, then each of the arbitrators shall be a licensed professional engineer or registered architect having at least ten (10) years' experience in the design of historic and/or maritime structures, and, to the extent applicable and consistent with this Section 34.01, such arbitration shall be conducted in accordance with the Construction Arbitration Rules then obtaining of the American Arbitration Association or any successor body of similar function.

ARTICLE 35

CONTESTS, ETC.

Section 35.01. Imposition Contest Proceedings.

Tenant shall have the right to contest, at its sole cost and expense, the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith, in which event, notwithstanding the provisions of Section 4.01 hereof, payment of such Imposition may be postponed if, and only as long as neither the Premises nor any part thereof, could be, by reason of such postponement or deferment, in the judgment of Landlord, in danger of being forfeited and Landlord is not in danger of being subjected to criminal liability or penalty or civil liability or penalty. Upon the termination of such proceedings, Tenant shall pay the amount of such Imposition or part thereof as finally determined in such proceedings, the payment of which was deferred during the prosecution of such proceedings, together with any costs, fees (including, without limitation, reasonable attorneys' fees and disbursements), interest, penalties or other liabilities in connection therewith.

Section 35.02. Requirement Contest.

Tenant shall have the right to contest the validity of any Requirement or the application thereof. During such contest, compliance with any such contested Requirement may be deferred by Tenant unless the Premises, or any part thereof, are in danger of being forfeited or if Landlord is in danger of being subjected to criminal liability or penalty, or civil liability by reason of noncompliance therewith, or if failure to comply is hazardous to persons or property or would violate any Mortgage or insurance policy provisions.

Any such proceeding instituted by Tenant shall be commenced as soon as is possible after the issuance of any such contested Requirement and shall be prosecuted with diligence to final adjudication, settlement, compliance or other mutually acceptable disposition of the Requirement so contested.

Section 35.03. Landlord's Participation in Contest Proceedings.

Landlord shall not be required to join in any action or proceeding brought by Tenant referred to in this Article or permit the action to be brought by Tenant in Landlord's name unless the provisions of any law, rule or regulation at the time in effect require that such action or proceeding be brought by and/or in the name of Landlord. If so required, Landlord shall join and cooperate in such proceedings or permit them to be brought by Tenant in Landlord's name, in which case Tenant shall pay all costs and expenses (including, without limitation, attorneys' fees and disbursements) incurred by Landlord in connection therewith.

ARTICLE 36

INVALIDITY OF CERTAIN PROVISIONS.

If any term or provision of this Lease or the application thereof to any Person or circumstances shall, to any extent, be invalid and unenforceable, the remainder of this Lease, and the application of such term or provision to Persons or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

ARTICLE 37

FINANCIAL REPORTS.

Section 37.01. Statements.

Tenant shall furnish to Landlord the following:

(a) as soon as practicable after the end of each of Tenant's semi-annual fiscal periods ending during the Term of the Lease, and, in any event, within fifteen (15) days after the end of such semi-annual period, a financial statement (or compilation and review) of the operations of the Premises (including, without limitation, balance sheets, income statements and funds statements showing changes in financial position) for the period commencing with the first day of the such semi-annual period and ending on the last day of such semi-annual period, setting forth, in each case, in comparative form, the figures for the corresponding period of the previous year, all in reasonable detail and certified as complete and correct in all material respects in accordance with Accounting Principles (subject to changes resulting from year-end audit adjustments) by the chief operating officer of Tenant or the designee of such chief operating officer;

(b) as soon as practicable after the end of each fiscal year of Tenant and, in any event, within ninety (90) days thereafter, financial statements of Tenant and of the operations of the Premises (including, without limitation, balance sheets, income statements and funds statements showing changes in financial position), setting forth, in accordance with Accounting Principles, in each case, in comparative form, the corresponding figures for the

previous fiscal year, all in reasonable detail and examined and certified by a Certified Public Accountant in accordance with generally accepted auditing standards; and

(c) For as long as the City is Landlord and to the extent that City Administrative Code Section 11-208.1 (or successor thereto) is then in force and effect, income and expense statements of the type required by such code section (or successor thereto) as if Tenant were the "owner" of the Premises as such term is used in said Section 11-208.1 (or successor thereto), such statements to be submitted within the time periods and to the address provided for in said Section 11-208.1 and shall be submitted notwithstanding that the City holds fee title to the Premises or that the Premises may therefore not be "income-producing property" as that concept is used in Section 11-208.1.

Section 37.02. Maintenance of Books and Records.

Tenant shall keep and maintain at an office in New York City complete and accurate books and records of accounts of the operations of the Premises from which Landlord may determine for each Lease Year the items to be shown or set forth on the statements to be delivered to Landlord pursuant to Section 37.01 hereof and shall preserve, for a period of at least six (6) years after the end of each applicable period of time, the records of its operations of the Premises. However, if, at the expiration of such six (6) year period, Landlord is seeking to contest or is contesting any matter relating to such records or any matter to which such records may be relevant, Tenant shall preserve such records until one (1) year after the final adjudication, settlement or other disposition of any such contest.

Section 37.03. Books and Records.

(a) Inspection and Audits of Books and Records. Landlord, the City Comptroller and/or Landlord's agents or representatives shall have the right from time to time until the sixth (6th) anniversary of the Termination Date during regular business hours, upon five (5) business days' notice, at Landlord's expense except as otherwise expressly provided in this Lease, to inspect, audit, and, at its option, duplicate, at Landlord's expense, all of Tenant's books and records and all other papers and files of Tenant, relating in any manner to the Premises or to this Lease. Tenant shall produce all such books, records, papers and files, upon request of Landlord, the City Comptroller and/or Landlord's agents and representatives.

Section 37.04. Survival Clause.

The obligations of Tenant under this Article shall survive the Expiration of the Term.

ARTICLE 38

RECORDING OF LEASE.

On the Commencement Date, or promptly thereafter, Landlord and Tenant shall execute a memorandum of this Lease and Tenant shall cause such memorandum and any amendments thereto to be recorded in the Office of the Register of the City of New York (New York County) promptly after the execution and delivery of this Lease or any such amendments and shall pay and discharge all costs, fees and taxes in connection therewith.

ARTICLE 39

STATE FUNDING REQUIREMENTS.

Section 39.01. State Project Agreement; Preservation Covenant.

(a) The New York State Office of Parks Recreation and Historic Preservation ("OPRHP") awarded a grant of funds (the "State Grant Funds") to Landlord for certain improvements previously undertaken with respect to Pier A, pursuant to which certain funds have been advanced. In accordance with the requirements of the related project agreement (the "State Project Agreement") entered into in or about January 1998 by OPRHP and Landlord., a preservation covenant (the "Preservation Covenant") relating to the Premises was executed by Landlord and recorded against the Premises.

(b) Tenant and Landlord shall cooperate in connection with obtaining any requisite modification or waiver of the provisions of the State Project Agreement and the Preservation Covenant. Tenant agrees to comply with the requirements of OPRHP in connection with the use, design, preservation or restoration of Pier A.

(c) This Lease shall become effective upon the date as of which the City has received the approvals of the Comptroller and the State of New York, and the written opinion of the Attorney General of the State of New York (collectively, the "State Approvals"), required by paragraph # 2 of Appendix A and paragraphs # IV (A) and (B) of Appendix F of the State Project Agreement, as said requirements may be modified or waived pursuant to Section 39.01(b), above.

ARTICLE 40

INVESTIGATIONS. NONDISCRIMINATION AND AFFIRMATIVE ACTION. SOLICITATIONS, LABOR REQUIREMENTS, ETC.

Section 40.01. Nondiscrimination and Affirmative Action.

So long as New York City shall be Landlord, Tenant shall be bound by the following requirements:

(a) Tenant will not engage in any unlawful discrimination against any employee or job applicant because of race, creed, color, national origin, sex, age, disability, marital status or sexual orientation with respect to all employment decisions including, but not limited to, recruitment, hiring, compensation, fringe benefits, leaves, promotion, upgrading, demotion, downgrading, transfer, training and apprenticeship, lay-off and termination and all other terms and conditions of employment;

(b) Tenant will not engage in any unlawful discrimination in the selection of contractors on the basis of the owner's, partner's or shareholder's race, creed, color, national origin, sex, age, disability, marital status or sexual orientation;

(c) Tenant will state in all solicitations or advertisements for employees placed by or on behalf of Tenant (i) that all qualified job applicants will receive consideration for employment without unlawful discrimination based on race, creed, color, national origin,

sex, age, disability, marital status or sexual orientation, or (ii) that Tenant is an equal opportunity employer;

(d) Tenant will inform its employees in writing that it “treats all employees and job applicants without unlawful discrimination as to race, creed, color, national origin, sex, age, disability, marital status or sexual orientation in all employment decisions, including but not limited to recruitment, hiring, compensation, training and apprenticeship, transfer, lay-off and termination and all other terms and conditions of employment,” and that “[i]f you feel that you have been unlawfully discriminated against, you may call or write the Division of Labor Services of the Department of Business Services, General Counsel’s Office, 110 William Street, New York, New York 10038 (212-513-6300)”;

(e) Tenant, as “Owner” (as such term is used in AIA Form 201), will include, or cause to be included, the following provisions in every construction contract of \$1,000,000 or more or subcontract of \$750,000 or more in such a manner that the provision will be binding upon all contractors and subcontractors, and will cause each contractor or subcontractor engaged in Construction Work to comply with the following provisions. Landlord reserves the right to inspect all contracts and subcontracts prior to execution to ensure that the required language is included:

“By signing this contract, contractor agrees that it:

(i) Will not engage in any unlawful discrimination against any employee or job applicant because of race, creed, color, national origin, sex, age, disability, marital status or sexual orientation with respect to all employment decisions including, but to limited to, recruitment, hiring, compensation, fringe benefits, leaves, promotion, upgrading, demotion, downgrading, transfer, training and apprentice-ship, layoff and termination and all other terms and conditions of employment;

(ii) will not engage in any unlawful discrimination in the selection of contractors on the basis of the owner’s, partner’s or shareholder’s race, creed, color, national origin, sex, age, disability, marital status or sexual orientation;

(iii) will state in all solicitations or advertisements for employees placed by or on behalf of contractor (A) that all qualified job applicants will receive consideration for employment without unlawful discrimination based on race, creed, color, national origin, sex, age, disability, marital status or sexual orientation, or (B) that contractor is an equal opportunity employer; and

(iv) will inform its employees in writing that it “treats all employees and job applicants without unlawful discrimination as to race, creed, color, national origin, sex, age, disability, marital status or sexual orientation in all employment decisions, including but not limited to recruitment, hiring, compensation, training and apprenticeship, transfer, lay-off and termination and all other terms and conditions of employment, ”and that “[i]f you feel that you have been unlawfully discriminated against, you may call or write Division of Labor Services of the Department of Business Services, General Counsel’s Office, 110 William Street, New York, New York 10038 (212-513-6300).”

Section 40.02. Cooperation by Tenant.

Tenant shall cooperate fully and faithfully with any investigation, audit or inquiry conducted by any Governmental Authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a Governmental Authority that is a party in interest to this Lease, when it is the subject of the investigation, audit or inquiry. If:

(a) any Person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other Governmental Authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State of New York or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, NYCEDC or any local development corporation, or any public benefit corporation organized under the laws of the State of New York, or

(b) any Person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a Governmental Authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of a Governmental Authority that is a party in interest in, and is seeking testimony concerning the award of, or performance under this Lease,

then the commissioner or agency head whose agency is a party in interest to the submitted bid, submitted proposal, transaction, contract, lease, permit or license shall convene a hearing, upon not less than five (5) days' written notice to the parties involved, to determine if any penalties should attach for the failure of a Person to testify.

Section 40.03. Adjournments of Hearing, Etc.

If Tenant or any agent, employee or associate of Tenant requests an adjournment in any proceeding investigating the events surrounding the negotiation and consummation of this Lease of up to thirty (30) days, such adjournment shall be granted. If a further adjournment is sought it must be done by a written request to the agency head or commissioner who convened the hearing, at least three (3) business days prior to the scheduled hearing date, setting forth the reasons for the request. If the commissioner or agency head denies the request for an additional adjournment, then Tenant, its agent, employee or associate must appear at the scheduled hearing or commence an action to obtain a court order, pursuant to Article 78 of the Civil Practice Laws and Rules, substantiating a claim that the denial of the adjournment was capricious or arbitrary. If Tenant, its agent, employee or associate fails to appear at the rescheduled hearing or to diligently pursue such judicial relief, as the case may be, then, if in the sole judgment of the commissioner or agency head the failure to appear would have a material adverse effect on the investigation, the commissioner or agency head who convened the hearing may suspend this Lease pending the final determination pursuant to Section 40.04 below without the City's incurring any penalty or damages for delay or otherwise; provided, that the right to suspend this Lease shall not be invoked if Tenant shall have discharged or disassociated itself from such agent, employee or associate and said agent, employee or associate is not reemployed either directly or indirectly or otherwise compensated by Tenant.

Section 40.04. Penalties.

The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:

(a) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any Person, or any entity of which such Person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City or NYCEDC; and/or

(b) The cancellation or termination of any and all such existing City or NYCEDC contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Lease, nor the proceeds of which pledged, to an unaffiliated and unrelated Institutional Lender for fair value prior to the issuance of the notice scheduling the hearing, without the City or NYCEDC incurring any penalty or damages on account of such cancellation or termination.

Section 40.05. Criteria for Determination.

The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in subsections (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in subsections (c) and (d) below in addition to any other information which may be relevant and appropriate:

(a) The entity's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge or disassociation of any Person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

(b) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

(c) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.

(d) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Section 40.03 above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in Section 40.02 above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

Section 40.06. Definitions.

As used in this Article:

(a) The term "license" or "permit" shall mean a license, permit, franchise or concession not granted as a matter of right.

(b) The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as partner, director, officer, principal, or employee.

(c) The term "entity" shall mean any firm, partnership, corporation, association or Person that receives monies, benefits, licenses, leases or permits from or through the City or otherwise transacts business with the City.

(d) The term "member" shall mean any Person associated with another Person or entity as a partner, director, officer, principal or employee.

Section 40.07. Failure to Report Solicitations.

In addition to and notwithstanding any other provision of this Lease, the commissioner or agency head may in his or her sole discretion terminate this Lease upon not less than three (3) days' written notice in the event Tenant fails to promptly report in writing to the Commissioner of Investigation of the City any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Lease by the Tenant, or affecting the performance of this Lease.

Section 40.08. Tenant Covenants. Tenant covenants and agrees to be bound by the following covenants, which shall be binding for the benefit of Landlord and enforceable by Landlord against Tenant to the fullest extent permitted by law and equity: Tenant (and any lessees of the Premises or any part thereof) shall comply with all applicable federal, state, and local laws in effect from time to time prohibiting discrimination or segregation by reason of age, race, creed, religion, sex, color, national origin, ancestry, sexual orientation or affectional preference, disability, or marital status (collectively, "Prohibited Distinctions") in the sale, lease, or occupancy of the Premises.

(b) Tenant shall not effect or execute any agreement, lease, conveyance, or other instrument whereby the sale, lease or occupancy of the Premises, or any part thereof, is restricted upon the basis of any Prohibited Distinction.

(c) Tenant (and any lessees of the Premises or any part thereof) shall include the covenants of (a) and (b) in any agreement, lease, conveyance, or other instrument with respect to the sale, lease or occupancy of the Premises entered into after the date hereof.

(d) Tenant shall comply with the provisions of Executive Order No. 50, as amended, and shall incorporate the language required thereby in any construction contract related to Construction Work.

Section 40.09. Tenant Labor Requirements

In order to comply with the requirements of the Labor Law of the State of New York applicable to it by reason of its status as a Public Benefit Corporation of the State of New

York, Tenant covenants and agrees that all Construction Agreements shall include the following provisions (with capitalized terms used in said provisions to have the meanings assigned to them in said Construction Agreements):

(a) "It is hereby agreed that all applicable provision of the Labor Law of the State of New York shall be carried out in the performance of the Work."

(b) "Contractor specifically agrees, as required by Labor Law, Sections 220 and 220-d as amended, that:

- (1) no laborer, workman or mechanic, in the employ of Contractor, Subcontractor or other person doing or contracting to do the whole or any part of the Work contemplated by the Contract Documents shall be permitted or required to work more than eight (8) hours in any one calendar day or more than five (5) days in any one week, except in the emergencies set forth in the Labor Law.
- (2) the wages paid for a legal day's work shall be not less than the prevailing rate of wages as defined by law;
- (3) the minimum hourly rate of wage to be paid shall be not less than that stated in the Contract Documents and as shall be designated by the Industrial Commissioner of the State of New York; and
- (4) Contractor shall post at appropriate conspicuous points at the Site, a schedule showing all determined minimum wage rates for the various classes of laborers and mechanics to be engaged in the Work and all deductions, if any, required by law to be made from unpaid wages actually earned by the laborers and mechanics so engaged."

(c) "The minimum wage rates, if any, herein specified for apprentices shall apply only to persons working with the tools of the trade which such persons are learning under the direct supervision of journeymen mechanics. Except as otherwise required by law, the number of apprentices in each trade or occupation employed by Contractor or any Subcontractor shall not exceed the number permitted by the applicable standards of the New York State Department of Labor, or, in the absence of such standards, the number permitted under the usual practice prevailing between the unions and the employers' association of the respective trades or occupations."

(d) "All employees of Contractor and each Subcontractor shall be paid in accordance with the provisions of the Labor Law. All payments shall be made in cash, except a payment may be made by check upon a certificate of the Industrial Commissioner of the State of New York."

(e) "Contractor agrees that, in case of underpayment of wages to any worker engaged in the Work by Contractor or any Subcontractor, Owner shall withhold from Contractor out of payments due an amount sufficient to pay such worker the difference between the wages actually paid such worker for the total number of hours worked, and that Owner may disburse such amount so withheld by Owner for and on account of Contractor to the employee to whom such amount is due. Contractor further agrees that the amount to be

withheld pursuant to this paragraph may be in addition to the percentages to be retained by Owner pursuant to other provisions of the Contract Documents.”

(f) “The Labor Law provides that this Agreement may be terminated for cause and no sum paid for any Work done thereunder upon a second conviction for willfully paying less than:

- (1) the stipulated wage scale as set forth in Labor Law, Section 220, subdivision 3, as amended, or
- (2) less than the stipulated minimum hourly wage scale as specified in Labor Law, Section 220-d, as amended.”

(g) “Contractor specifically agrees, as required by the Labor Law, Section 220-e, as amended, that:

- (1) in the hiring of employees for the performance of Work under this Agreement or any subcontract hereunder, or for the manufacture, sale or distribution of materials, equipment or supplies hereunder, but limited to operation performed within the territorial limits of the State of New York, no Contractor, Subcontractor, nor any person acting on behalf of such Contractor or Subcontractor, shall by reason of race, creed, color, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;
- (2) no Contractor, Subcontractor, nor any person on behalf of such Contractor or Subcontractor shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, color, sex or national origin;
- (3) there may be deducted from the amount payable to Contractor, by Owner under this Agreement, a penalty of \$50.00 for each person for each calendar day during which such person was discriminated against or intimidated in violation of the terms of this Agreement; and
- (4) this Agreement may be canceled or terminated for cause by Owner and all monies due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of this Agreement.”

(h) “Where applicable, Contractor agrees to settle labor disputes in accordance with the provisions of The New York Plan For The Settlement of Jurisdictional Disputes Between The Building And Construction Trades Council Of Greater New York And The Building Trades Employers' Association Of The City of New York.”

ARTICLE 41

ACCESS.

Tenant shall provide unobstructed access to and over the Premises for (i) an access lane, substantially as shown on Exhibit E, for the Fire Department and other government agencies for routine and emergency use at all times during the Construction of the Project, (ii) a permanent access lane, substantially as shown on Exhibit E, for the Fire Department and other government agencies for routine and emergency use at all times during the remainder of the Term, (iii) access to adjacent property in accordance with Section 23.04 hereof, and (iv) public pedestrian use. Tenant shall at all times keep such access lanes clear of improvements or obstruction. Landlord and Tenant shall coordinate the scheduling of routine use of the access lane in order to minimize disruption of the operation of the Premises.

ARTICLE 42

MISCELLANEOUS.

Section 42.01. Captions.

The captions of this Lease are for the purpose of convenience of reference only, and in no way define, limit or describe the scope or intent of this Lease or in any way affect this Lease.

Section 42.02. Table of Contents.

The table of contents is for the purpose of convenience of reference only, and is not to be deemed or construed in any way as part of this Lease.

Section 42.03. Reference to Landlord and Tenant.

The use herein of the neuter pronoun in any reference to Landlord or Tenant shall be deemed to include any individual Landlord or Tenant. The use herein of the words "successors and assigns" or "successors or assigns" of Landlord or Tenant shall be deemed to include the heirs, legal representatives, successors and assigns of any individual Landlord or Tenant.

Section 42.04. Person Acting on Behalf of a Party Hereunder.

If more than one Person is named as, or becomes a party hereunder, the other party may require the signatures of all such Persons in connection with any notice to be given or action to be taken hereunder by the party acting through such Persons. Each Person acting through or named as a party shall be fully and jointly and severally liable for all of such party's obligations hereunder. Any notice by a party to any Person acting through or named as the other party shall be sufficient and shall have the same force and effect as though given to all Persons acting through or named as such other party.

Section 42.05. Limitation on Liability.

(a) Landlord Exculpation. The liability of Landlord, or of any other Person who has at any time acted as Landlord hereunder, for damages or otherwise, shall be limited to Landlord's interest in the Premises, the proceeds, payable to Landlord, of any insurance policies covering or relating to the Premises, and any awards payable to Landlord in

connection with any condemnation of part or all of the Premises. In no event, however, shall Landlord's interest in the Premises include:

(i) any rights, claims, or interests of Landlord that at any time may exist pursuant to a loan document to which the Landlord is a party or any note or mortgage given to Landlord in connection with the Premises;

(ii) any rights, claims, or interests of Landlord that at any time may arise from or be a result of Landlord's governmental powers or rights or Landlord's actions in its governmental capacity;

(iii) any rents, issues, or proceeds from or in connection with the Premises, or that would otherwise be within Landlord's interest in the Premises, from and after such time as such items have been received by the Landlord; or

(iv) any proceeds resulting from a levy under execution or attachment against Landlord's fee interest in the Premises (it being understood and agreed that Tenant shall not seek to effect such a levy under execution or attachment). None of the directors, officers, partners, joint venturers, principals, shareholders, employees, agents or servants of Landlord or NYCEDC shall have any liability (personal or otherwise) hereunder or be subject to levy, execution or other enforcement procedure for the satisfaction of any remedies of Tenant available hereunder.

(b) Tenant's Exculpation. Except for (i) liability for conversion, fraud, fraud of creditors, breach of trust, or intentional damage to the Premises, (ii) liability of Tenant when Landlord is acting in or pursuant to its governmental capacity, and (iii) liability with respect to Tenant's obligation to pay any and all Rental that has accrued prior to termination of this Lease but not yet been paid, the liability of Tenant hereunder for damages or other monetary amounts or otherwise by reason of any Default under this Lease shall be limited to Tenant's interest in the Premises, including, without limitation, (A) rents or profits collected or collectible during any period that a Default exists (in the case of non-payment of Rental) or notice of Default has been given and the Default continues to exist (in the case of Defaults other than non-payment of Rental) ; (B) the proceeds of any insurance policies payable to Tenant covering or relating to the Premises; (C) any awards payable to Tenant in connection with any condemnation of the Premises or any part thereof; (D) any other rights, privileges, licenses, franchises, claims, causes of action or other interests, sums or receivables appurtenant to the Premises; and (E) any security pledged hereunder by Tenant from time to time. None of the directors, officers, partners, joint venturers, principals, shareholders, employees, agents or servants of Tenant shall have any liability (personal or otherwise) hereunder, except for liability arising with respect to any individual(s) who have committed conversion, fraud, breach of trust, or intentional damage and with respect to individuals who are individually liable when Landlord is acting in or pursuant to its governmental capacity, beyond Tenant's interest in the Premises, and no other property or assets of Tenant or any of the directors, officers, partners, joint venturers, principals, shareholders, employees, agents or servants of Tenant shall be subject to levy of execution or other enforcement procedure for the satisfaction of Landlord's remedies hereunder.

(c) Governs Lease. The provisions of this Section 42.05 shall govern every other provision of this Lease. The absence of explicit reference to this Section 42.05 in any

particular provision of this Lease shall not be construed to diminish the application of this Section 42.05 to such provision. This Section 42.05 shall survive the Expiration of the Term.

(d) Other Remedies. Nothing in this Section 42.05 is intended to limit the remedies available to any party under this Lease other than by limiting the enforcement of those remedies to a party's interest in the Premises, in the manner and to the extent provided in this Section 42.05. Nothing in this Section 42.05 is intended to prevent or preclude any person from obtaining injunctive or declaratory relief with respect to any claim arising under this Lease or in connection with the Premises.

Section 42.06. Remedies Cumulative.

Each right and remedy of either party provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease, or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by either party of any one or more of the rights or remedies provided for in this Lease, or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by such party of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

Section 42.07. Merger.

Unless Landlord, Tenant and all Mortgagees sign and record an agreement to the contrary, there shall be no merger of this Lease or the leasehold estate created hereby with the fee estate in the Premises or any part thereof by reason of the same Person acquiring or holding, directly or indirectly, this Lease and the leasehold estate created hereby or any interest in this Lease or in such leasehold estate as well as the fee estate in the Premises.

Section 42.08. Performance at Tenant's Sole Cost and Expense.

All of Tenant's obligations hereunder shall be performed at Tenant's sole cost and expense.

Section 42.09. Relationship of Landlord and Tenant.

This Lease is not to be construed to create a partnership or joint venture between the parties, it being the intention of the parties hereto only to create a landlord and tenant relationship.

Section 42.10. Waiver, Modification, Etc.

No covenant, agreement, term or condition of this Lease shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination executed by Landlord and Tenant. No waiver of any Default shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent Default thereof.

Section 42.11. Depositary Charges and Fees.

Tenant shall pay any and all fees, charges and expenses owing to Depository in connection with any services rendered by Depository pursuant to the provisions of this Lease.

Section 42.12. Ownership and Investment of Deposited Funds.

All funds held by Depository pursuant to this Lease shall be and shall be deemed to be trust funds and shall be disbursed only in accordance with the provisions of this Lease. The Depository shall invest all funds deposited with it pursuant to this Lease, in United States Treasury bills or notes, or, at the option of Tenant, in certificates of deposit or bankers' acceptances of any State or United States commercial bank with gross assets in excess of one billion dollars (\$1,000,000,000) and which is reasonably satisfactory to Landlord, or in the notes of corporations, reasonably satisfactory to Landlord, listed on the New York Stock Exchange. The Depository will not be liable for any loss which may be incurred by reason of any such investment of the funds which it holds hereunder. Any income resulting from such investment, including any gains realized on the sales thereof, shall be added to and be deemed to be part of the funds which generated such income, and shall be reinvested in accordance with this Section 42.12.

Section 42.13. Transfer of Lease Interests.

(a) Transfer of Landlord's Interest.

(i) In the event of any sale or sales, assignment or assignments, or transfer or transfers of the Landlord's interest in the Premises and this Lease (any of the foregoing, a "Landlord Transfer"), the seller, assignor or transferor, as the case may be, shall be and hereby is entirely freed and relieved of all agreements, covenants and obligations of Landlord hereunder to be performed whether accruing before or after the date of such sale, assignment or transfer, and it shall be deemed and construed without further agreement between the parties or their successors in interest or between the parties and the Person who acquires or owns the Premises including, without limitation, the purchaser, assignee or transferee on any such sale, assignment or transfer, that such Person has assumed and agreed to carry out any and all agreements, covenants and obligations of Landlord hereunder whether accruing before or after the date of such sale, assignment or transfer.

(ii) From and after the date of consummation of a Landlord Transfer, other than to an agency of or local development corporation or other entity affiliated with the City, the following provisions of this Lease shall cease to apply: (A) the restrictions on subleasing set forth in Sections 10.01 and 10.02 and (B) Article 12 in its entirety.

(b) Transfer of Tenant's Interest. If the named Tenant or any successor to its interest hereunder ceases to have any interest in the leasehold estate hereby created by reason of any authorized and valid sale or sales, assignment or assignments or transfer or transfers of the Tenant's interest hereunder in accordance with the terms of this Lease, the seller, assignor or transferor shall be and hereby is entirely freed and relieved of all agreements, covenants and obligations of Tenant hereunder to be performed whether accruing before or after the date of such sale, assignment or transfer, with the exception of obligations, as limited by the provisions of Section 42.05(b), arising from fraud, fraud of creditors, conversion or breach of trust or intentional damage to the Premises by the seller, assignor or transferor occurring before the sale, assignment or transfer, or from individual liability when Landlord is acting in or pursuant to its governmental capacity, and it shall be deemed and construed without

further agreement between the parties or their successors in interest or between the parties and the Person who acquires or owns the Tenant's interest in the Premises under this Lease, including, without limitation, the purchaser or transferee in any such sale, disposition or transfer, that such Person has assumed and agreed to carry out any and all agreements, covenants and obligations of Tenant hereunder to be performed whether accruing before or after the date of such acquisition, sale or transfer. Notwithstanding the preceding, however, a buyer, assignee or transferee of the tenancy interest in this Lease shall not be required to assume, or be deemed to have assumed, obligations of Tenant accruing before the sale, assignment or transfer, provided the seller, assignor or transferor provides Landlord, at the closing of the sale, assignment or transfer, an agreement, in form and substance satisfactory to Landlord, to continue to be liable for all obligations under this Lease accruing up to the date of the sale, assignment or transfer and security for the seller's, assignor's or transferor's liability under such agreement, such security also to be in form and substance satisfactory to Landlord.

Section 42.14. Governing Law.

This Lease shall be governed by, and be construed in accordance with, the laws of the State of New York.

Section 42.15. Claims.

Any and all claims asserted by or against Landlord arising under this Lease or related hereto shall be heard and determined either in the courts of the United States ("Federal Courts") located in the City of New York or in the courts of the State of New York ("New York State Courts") located in the City of New York. To effect this agreement and intent, Landlord and Tenant agree and, where appropriate, shall require each contractor or consultant to agree, as follows:

(a) If Landlord initiates any action against Tenant in Federal Court or in New York State Court, service of process may be made on Tenant either in person, wherever Tenant may be found, or by registered mail (return receipt requested) addressed to Tenant at its address as set forth in this Agreement, or to such other address as Tenant may provide to Landlord in writing.

(b) With respect to any action between Landlord and Tenant in New York State Court, Tenant hereby expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens, (ii) to remove to Federal Court outside New York City, and (iii) to move for a change of venue to New York State Court outside New York City.

(c) With respect to any action between Landlord and Tenant in Federal Court located in New York City, Tenant expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a Federal Court outside the City of New York.

(d) If Tenant commences any action against Landlord in a court located other than in the City and State of New York, then, upon request of Landlord, Tenant shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot

transfer the action, then Tenant shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

Section 42.16. Successors and Assigns.

The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of, Landlord and Tenant and, except as otherwise provided herein, their respective successors and assigns.

Section 42.17. Effect of Other Transactions.

No Sublease, Mortgage or Capital Transaction, whether executed simultaneously with this Lease or otherwise, and whether or not consented to by Landlord, shall be deemed to modify this Lease in any respect.

Section 42.18. City as Landlord.

The obligations of the City in its governmental capacity are not to be construed as obligations of the City in its capacity as Landlord under this Lease.

Section 42.19. Waivers.

Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, and/or any claim for injury or damages. In the event Landlord commences any proceeding for nonpayment of Rental or any other sums required to be paid by Tenant under the terms of this Lease, Tenant will not interpose any counterclaim of whatever nature or description in any such proceedings.

Section 42.20. Designee.

References to Landlord in this Lease shall be deemed to refer also to any designee named by Landlord to act in its behalf with respect to this Lease. Actions to be taken by the Administrator hereunder may instead, at Landlord's option, be taken by Landlord or Landlord's designee.

Section 42.21. Further Assurances.

At any time and from time to time, upon the request of Landlord and/or the Administrator, Tenant shall execute, deliver, and acknowledge, or cause to be executed, delivered, and acknowledged, such further documents and instruments and do such other acts as Landlord and/or the Administrator may request in order to document Landlord's ownership or quantification of the Excess Development Rights.

Section 42.22. Conferences.

Tenant, and any partners in or Principals of Tenant with input into a decision to be made by Tenant, shall be available to confer with Landlord and/or Administrator regarding issues arising or decisions to be made with respect to the Project during New York business hours within five days of a request for such a conference or such shorter period as may be

necessary in an emergency situation. Landlord shall cause the Administrator to be available for such conferences as may be requested by Tenant within the time frames set forth in the preceding sentence.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

THE CITY OF NEW YORK, acting through
the Department of Small Business Services

By: _____
Name:
Title

THE CITY OF NEW YORK, acting through
its Deputy Mayor for Economic Development

By: _____
Name:

Approved as to Form:

By: _____
Acting Corporation Counsel

BATTERY PARK CITY AUTHORITY

By _____
Name:
Title:

State of New York)
) ss.:
County of New York)

On the ____ day of _____ in the year 2008 before me, the undersigned, a Notary Public/Commissioner of Deeds in and for said State/the City of New York, personally appeared _____, 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)(Commissioner of Deeds)

State of New York)
) ss.:
County of New York)

On the ____ day of _____ in the year 2008 before me, the undersigned, a Notary Public/Commissioner of Deeds in and for said State/the City of New York, personally appeared _____, 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)(Commissioner of Deeds)