
LEASE AGREEMENT

between

HUDSON RIVER PARK TRUST

LANDLORD

and

SUPER P57 LLC

TENANT

Premises

Pier 57, Borough of Manhattan

March 31, 2016

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AGREEMENT OF LEASE, made as of the 31st day of March, 2016, between HUDSON RIVER PARK TRUST (the “**Trust**” or “**Landlord**”) and SUPER P57 LLC (“**Tenant**”).

W I T N E S S E T H

WHEREAS, pursuant to the Hudson River Park Act, approved and enacted as of September 8, 1989 under Chapter 592, Section 7845 of McKinney’s Session Laws of New York (such act, as same may be amended from time to time, the “**Act**”), the Trust is responsible for the planning, design, development, construction, operation and maintenance of the Hudson River Park and the improvements therein (collectively, the “**Park**”), which is located along West Street in the Borough of Manhattan, City and State of New York;

WHEREAS, Section 3(e) of the Act describes the full extent of the boundaries of the Park;

WHEREAS, pursuant to Section 7.3(b) of the Act, the State of New York, by and through its Office of Parks, Recreation and Historic Preservation and its Department of Environmental Conservation, and the Trust entered into a long term lease agreement, dated as of April 3, 1999 (such lease agreement, as same may be amended, modified or supplemented from time to time, the “**State Lease**”), conveying to the Trust a possessory interest in the State-owned property within the Park and confirming the Trust’s right to properly exercise the powers and responsibilities provided to the Trust under the Act;

WHEREAS, the property known as Pier 57, located on West Street at West 15th Street in the Borough of Manhattan, City and State of New York, together with certain adjacent upland and in-water areas as more particularly described in this Lease (such property and areas being hereinafter collectively referred to as the “**Pier 57 Property**”), is a part of the State-owned property within the Park and is thereby included in the State Lease to the Trust;

WHEREAS, the Act permits the development, leasing and use of the Pier 57 Property for certain commercial, educational, cultural and maritime recreational purposes;

WHEREAS, the Trust wishes to advance its public purpose and mission by securing the development, leasing and use of the Pier 57 Property consistent with the provisions of the Act;

WHEREAS, the Trust issued a Request for Proposals (the “**RFP**”) for the development, leasing and use of the Pier 57 Property on June 30, 2008;

WHEREAS, the Trust entered into a Conditional Designation Letter, dated July 23, 2010 (the “**CDL**”), with Hudson Eagle, LLC, predecessor in interest to Tenant (“**CDL Party**” or “**Hudson**”) to, *inter alia*, conditionally designate CDL Party as the exclusive developer of the Pier 57 Property and cause CDL Party to undertake certain due diligence and predevelopment activities in furtherance of the project described in that certain development proposal entitled “**Pier 57 Culture, History, Innovation,**” submitted by CDL Party’s affiliate, Young Woo & Assoc., LLC in response to the RFP, which proposal has been modified in accordance with the CDL and the Amended MOU (as hereinafter defined);

WHEREAS, pursuant to the terms of the CDL, the Trust and CDL Party entered into a Memorandum of Understanding, dated as of October 21, 2010 (such Memorandum of Understanding, as amended or modified by the parties thereto prior to April 3, 2014, being hereinafter referred to as the “Original MOU”), to memorialize the terms, conditions and time frames upon which parties to the MOU would proceed with the development, leasing and use of the Pier 57 Property;

WHEREAS, the Original MOU was assigned by CDL Party to YWA-BP P57 Investors, LLC (the “JV”) pursuant to the Assignment and Assumption of MOU, dated as of April 3, 2014, between CDL Party and the JV, which assignment was consented to by the Trust by Consent Agreement, dated as of April 3, 2014, among the Trust, CDL Party and the JV;

WHEREAS, the Original MOU (as amended or modified by the Trust and the JV from and after April 3, 2014) was further amended pursuant to an MOU Amendment, dated as of September 22, 2014 (the “Amended MOU”), between the Trust and the JV to memorialize, *inter alia*, (i) certain modifications to the Original MOU, including without limitation, changes to the MOU Schedule (as defined in the Original MOU) and changes to the conditions precedent to the execution of the Lease (as defined in the Original MOU), and (ii) the agreement reached between the Trust and the JV as to the form of the Lease, which form of Lease includes changes to certain lease terms described in the Original MOU;

WHEREAS, on March 6, 2013, the New York City Planning Commission (“CPC”), approved the application dated October 23, 2012 (as revised by further application filed on November 7, 2012) (such applications being hereinafter collectively referred to as the “Initial ULURP Applications”), by CDL Party and the Trust under the Uniform Land Use Review Procedure for a special permit to modify the use restrictions, the waterfront yard requirements, the height and setback requirements, the waterfront public access requirements and the visual corridor requirements applicable to the Pier 57 Property;

WHEREAS, on April 9, 2013, the New York City Council approved the Initial ULURP Applications;

WHEREAS, on December 14, 2015, CPC approved the application dated December 4, 2014 (the “Subsequent ULURP Application”) by the JV and the Trust under the Uniform Land Use Review Procedure to modify the special permit pursuant to the Initial ULURP Applications to allow for the introduction of office uses and to make certain minor rooftop design changes (the Initial ULURP Applications and the Subsequent ULURP Application, as so approved, being hereinafter collectively referred to as the “Approved ULURP Applications”);

WHEREAS, by letter agreement, dated as of the same date as this Lease, between the Trust and the JV, (i) the JV designated Tenant, the direct and indirect owners of which, as of the date of this Lease, are affiliated with entities directly or indirectly owning the JV, to enter into this Lease, (ii) the Trust agreed to accept Tenant as the designee of the JV to enter into this Lease and the Trust, (iii) the Trust and the JV agreed that the conditions precedent under the Amended MOU to the execution of the Lease have been satisfied or waived; and (iv) the Trust and the JV agreed that the Amended MOU is terminated and of no further force or effect;

WHEREAS, Tenant wishes to lease the Pier 57 Property for the purpose of undertaking the development, operation, maintenance, subleasing and use of the Pier 57 Property in accordance with the terms and conditions set forth herein (such development, operation, maintenance, subleasing and use of the Pier 57 Property, the “Project”);

WHEREAS, the Trust has requested, and Tenant has agreed that, as further consideration for the lease of the Pier 57 Property, Tenant undertake (a) certain obligations, the performance and cost for which would otherwise be the responsibility of the Trust, including but not limited to (i) the construction, maintenance, repair and operation of new public open space, including new public waterfront esplanades, and (ii) the maintenance and repair of bulkheads and certain other Park infrastructure, and (b) the construction, maintenance, repair and operation of new rooftop Park space as an additional public benefit, all as more particularly set forth in this Lease; and

WHEREAS, as of the date of this Lease, (i) Tenant is governed by the terms of that certain Second Amended and Restated Limited Liability Company Operating Agreement of Super P57 LLC, dated as of March 31, 2016 (the “Initial Tenant Operating Agreement”), in which the members are P57 Investors LLC, a Delaware limited liability company (the “JV SPE”) and the HTC Master Tenant (as hereinafter defined) and (ii) the JV SPE is governed by the terms of the Amended and Restated Limited Liability Company Operating Agreement, dated September 16 2014, as amended by that certain First Amendment to the Amended and Restated Limited Liability Company Agreement, dated December 2, 2014, as further amended by that certain Second Amendment to the Amended and Restated Limited Liability Company Agreement, dated March 31, 2016 (collectively, the “Initial Joint Venture Agreement”), by and among RXR VAF Pier 57 LLC, a Delaware limited liability company (“RXR Parent”), P57 Investment LLC, a Delaware limited liability company (“YW P57”), P57 Management LLC, a Delaware limited liability company (“YW Management”);” and together with YW P57, collectively, the “YWA SPE”) and Baupost Private Investments A-1, L.L.C., a Delaware limited liability company (“BP A-1”), Baupost Private Investments B-1, L.L.C., a Delaware limited liability company (“BP B-1”), BP Pier C Investors, L.L.C., a Delaware limited liability company (“BP Pier C”), Baupost Private Investments BVII-1, L.L.C., a Delaware limited liability company (“BP BVII”) and BP-P57 Holdings, L.L.C., a Delaware limited liability company (“BP-P57”);” and together with BP A-1, BP B-2, BP Pier C, BP BVII, collectively, the “Institutional Investor”), which Initial Tenant Operating Agreement and Initial Joint Venture Agreement have been submitted by Tenant to, and accepted (to the extent applicable) by, the Trust].

NOW THEREFORE, in consideration of the premises, and other good and valuable consideration, the mutual receipt and sufficiency of which the parties hereby acknowledge, the parties hereto, for themselves, their legal representative, successors and assigns, hereby covenant as follows:

ARTICLE 1

DEFINITIONS

Section 1.01 Definitions. As used herein, the following terms shall have the following meanings (all terms defined in this Article 1 or in other provisions of this Lease in the singular to have the same meanings when used in the plural and vice versa):

“14-day Period” as defined in Section 7.02(d).

“50(d) Adverse Determination” as defined in Section 3.03(g).

“50(d) Adverse Determination Amount” as defined in Section 3.03(g).

“50(d) Adverse Determination Amount Estimate” as defined in Section 3.03(g).

“Abatement Trigger Date” as defined in Section 3.04(c)(v).

“Above Grade Enclosed Space” means, as shown on the Permitted Use Floor Plans, (i) the Head House Interior, (ii) Pier Shed Level 1, Pier Shed Level 2, Pier Shed Level 3 and Pier Shed Level 4, and (iii) Rooftop Enclosure.

“Acceptance Notice” as defined in Section 2.05(b).

“Act” as defined in the Preamble hereof.

“Additional Development” as defined in Section 3.02(d)(v).

“Additional Insured” as defined in Section 9.01(a)(i).

“Adjusted for Inflation” means, with respect to any sum, that there shall be added to such sum (as the same may have been previously adjusted), beginning on the Commencement Date unless otherwise specified, on an annual or such other basis as may be specified in this Lease (such annual or other period, the “Specified Interval”), an amount equal to the product of (A) such sum (as the same may have been previously adjusted) and (B) a fraction (1) the numerator of which is the difference between (a) the Price Index for the calendar month in which the current Specified Interval falls and (b) the Price Index immediately preceding the commencement of the Specified Interval (the “Measuring Month”), and (2) the denominator of which is the Price Index for the Measuring Month; provided, however, if for any Specified Interval the difference between the index numbers in clauses (a) and (b) above is less than zero (0), such numerator shall be deemed to be zero (0) for purposes of calculating the applicable adjustment.

“Adjusted Gross Sales Proceeds” as defined in Section 3.05(c).

“Adverse Food Service Market Conditions” as defined in Section 7.03(b)

“Affiliate” means an entity which directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with Tenant.

“Agreed-Upon Number” as defined in Section 3.03(g).

“Alteration” as defined in Section 15.01(a).

“Alternative Disposition” as defined in Section 3.05(d).

“Amended MOU” as defined in the Preamble hereof.

“Anchor Occupant” as defined in Section 7.01(a).

“Anchor Occupant Premises” as defined in Exhibit L.

“Ancillary Parking Area” as defined in Section 7.05.

“Annual Cash Return” as defined in Section 3.04(c)(ix).

“Annual Contingent PILOT Factor” as defined in Section 3.04(c)(x).

“Annual Operating Statement” as defined in Section 3.06(h).

“Applicable In-Water Area” as defined in Section 2.05(a).

“Approved NFP Occupant” as defined in Section 12.14.

“Approved Plans and Specifications” as defined in Section 16.02(a).

“Approved ULURP Applications” as defined in the Preamble hereof.

“Architect” means an architect or engineer, architectural or engineering firm, or combined practice or association licensed and registered in the State of New York, selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. Landlord hereby approves Handel Architects and LOT_EK as an Architect.

“Army Corps” as defined in “Requirements.”

“Article 78 Proceeding” means a proceeding under Article 78 of the Civil Practice Laws and Rules of the State of New York with respect to the Project.

“Assignment” as defined in Section 3.05(e).

“Assignment of Construction Contract” as defined in Section 16.05(b).

“Assumptions” as defined in Section 3.02(d)(v).

“Available Annual Cash” as defined in Section 3.03(b).

“Available Dates” as defined in the Cooperation Agreement.

“Backup Guaranty” as defined in Section 16.06(a).

“Base Rent” as defined in Section 3.02(a).

“Base Rent Credit” as defined in Section 3.01(c).

“Base Rent Period” as defined in Section 3.02(a).

“Base Rent Period Commencement Date” as defined in Section 3.01(a).

“Base Rent Year” as defined in Section 3.02(a).

“Bond” as defined in Section 16.06(a).

“Bonds” as defined in Section 16.06(a).

“BP A-1” as defined in the Preamble hereof.

“BP B-1” as defined in the Preamble hereof.

“BP BVII” as defined in the Preamble hereof.

“BP-P57” as defined in the Preamble hereof.

“BP Pier C” as defined in the Preamble hereof.

“bulkhead” as defined in Section 2.04.

“Business Day” means a day that is not a Saturday, Sunday, legal holiday in the City, a day on which the City is closed for business, or a day on which banking institutions in the City are authorized by law or executive order to close.

“Caissons” means the below-grade portion of the improvements on the Pier 57 Property, consisting of the Pier Shed Caissons 1, 2 and 3 and the Head House Caisson as shown on the Permitted Use Floor Plans.

“Capital Expenses” as defined in Section 3.03(e).

“Casualty” as defined in Section 10.02(a).

“Casualty Restoration” as defined in Section 10.02(a).

“CDL” as defined in the Preamble hereof.

“CDL Party” as defined in the Preamble hereof.

“CEE Use” as defined in Section 7.01(a).

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. § 9601 et seq. (West).

“Certified Public Accountant” means any one of the largest four (4) accounting firms in the United States from time to time, Berdon LLP, Marcum LLP, Janover LLC or any other qualified independent certified public accountant or accounting firm selected by Tenant with experience performing services for businesses of the same or similar type as Tenant’s, provided that Tenant has provided prior written notice to Landlord of the identity and experience of such entity.

“City” means the City of New York, New York.

“Clause (iii) Default” as defined in Section 13.03(b)(iii).

“Commencement Date” as defined in Section 2.02.

“Commercial Space” as defined in Section 7.03(a).

“Commercial Use” as defined in Section 7.01(a).

“Completion Guaranty” as defined in Section 16.06(a).

“Comprehensive Inspection” as defined in Section 14.03(a).

“Condemnation Restoration” as defined in Section 11.01(d).

“Consent Agreement” means that certain Consent to Sublease and Ground Lessor Estoppel, dated March 31, 2016, among Landlord, Tenant, HTC Master Tenant and HITC Investors.

“Construction Contracts” as defined in Section 16.04(e).

“Construction Lender” as defined in Section 16.06(a).

“Construction Loan” as defined in Section 3.05(f).

“Construction Loan Guaranty” as defined in Section 16.06(b).

“Construction Period” as defined in Section 3.01(a).

“Construction Period Rent” as defined in Section 3.01(a).

“Construction Schedule” as defined in Section 17.03(c).

“Construction Work” means any Alterations performed by Tenant during the Term with respect to the Premises, including, without limitation, the performance of a repair, a Restoration, and the Required Tenant Improvements, but specifically excluding ordinary maintenance or repair.

“Contingent PILOT” as defined in Section 3.04(c).

“Contingent PILOT Threshold” as defined in Section 3.04(c)(viii).

“Control” or “control” means, when used with respect to any specified Person, the power to direct the management and policies of such Person, directly or indirectly, whether through the

ownership of voting securities or other beneficial interest, by contract or otherwise; and the terms “Controlling” and “Controlled” have the meanings correlative to the foregoing. A Person shall be deemed to “Control” another notwithstanding that a third party may have the right to participate in “major decisions”.

“Control Person” as defined in Section 12.06(d).

“Cooperation Agreement” as defined in Section 7.15.

“CPC” as defined in the Preamble.

“CPI” means the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor for the New York-Northern New Jersey, Long Island, NY-NJ-CT-PA Area, not seasonally adjusted, all items (1982-1984=100), or any successor index thereto. As of the Commencement Date, the Price Index is identified by the Bureau of Labor Statistics of the United States Department of Labor as Series ID.

“Current Allocated PILOT” as defined in Section 3.04(c)(i).

“Customary Transfer Requirements” as defined in Section 12.04(b).

“Date of Taking” as defined in Section 11.01(c).

“Debt Service” as defined in Section 3.03(h).

“DEC” as defined in “Requirements” in Section 1.01.

“Decorative Changes” as defined in Section 15.02(a).

“Default” means the occurrence of any specified condition or event, or failure of any specified condition or event to occur, which constitutes, or after the giving of notice or the lapse of time, or both, would constitute, an Event of Default.

“Default Rate” as defined in Section 25.03.

“Deferral PILOT Balance” as defined in Section 3.04(d)(ii).

“Deferred PILOT Interest” as defined in Section 3.04(d)(i).

“Deferred PILOT Principal” as defined in Section 3.04(d)(i).

“Depository” means an Institutional Lender selected by Tenant and, to the extent required pursuant to the terms of the definition of Institutional Lender, approved by Landlord (which approval shall not be unreasonably withheld, conditioned or delayed), provided that any Recognized Mortgagee that is an Institutional Lender shall be deemed approved by Landlord.

“Designated Financing” as defined in Section 3.05(f).

“Designated Person” as defined in Section 3.05(h).

“Designated Sale” as defined in Section 3.05(g).

“DOB” as defined in Section 15.01(a).

“DOT” as defined in Section 14.14.

“Easement Area” as defined in Section 2.06(a).

“Easements” as defined in Section 2.06(a).

“Enclosed Minimum CEE GLA” as defined in Section 7.02(a).

“Engineer” as defined in Section 14.02(a).

“Environmental Laws” as defined in Section 38.01.

“Equipment” means all fixtures now or hereafter incorporated in or attached to and used or usable in the operation of the Premises, including, but not 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, hoists, communication equipment, and all additions or replacements thereof, excluding, however, Trade Fixtures.

“Equity Disposition” as defined in Section 3.05(i).

“Equity Interest” as defined in Section 3.05(j).

“Esplanades” as defined in Section 2.06(b)(i).

“Event of Default” as defined in Section 28.01.

“Excess PILOT Collection” as defined in Section 3.04(c)(xi).

“Excluded Party” shall mean any holder of common stock that is traded on a national securities exchange or in the over the counter securities market, units of participation or interests in a pension fund or collective investment fund or trust containing pension funds, or any holder of direct or indirect interests in Institutional Investor or a Qualified Institutional Investor, as the case may be, having a direct or indirect interest in Tenant.

“Expiration Date” means the date that the Term expires, which date shall be whichever of the Initial Term Expiration Date, the First Renewal Term Expiration Date or the Second Renewal Term Expiration Date is applicable, or such earlier date that this Lease is terminated pursuant to this Lease.

“Fair Market Rent” as defined in Section 3.02(d)(i).

“Fair Market Rental Percentage” as defined in Section 3.02(d)(v).

“Fair Market Value of the Premises” as defined in Section 3.02(d)(v).

“Federal Courts” as defined in Section 30.02.

“FEIS” shall mean the proposed project analyzed in the Final EIS, as supplemented, for the Pier 57 Redevelopment Project, including without limitation the Technical Memorandum dated December 8, 2015.

“Final Completion” as defined in Section 16.02(b).

“First Participation Rent Payment Date” as defined in Section 3.03(g).

“First Renewal Term” as defined in Section 2.03.

“First Renewal Term Base Rent” as defined in Section 3.02(b).

“First Renewal Term Expiration Date” as defined in Section 2.03.

“First Renewal Term Fair Market Rent” as defined in Section 3.02(b).

“Food Service GLA” as defined in Section 7.03(b).

“Food Services” as defined in Section 7.03(b).

“Forbearance Period” as defined in the Consent Agreement.

“Force Majeure” as defined in Section 39.09.

“GAAP” means generally accepted accounting principles and those interpretations set forth by the Financial Accounting Standards Board of the Financial Accounting Foundation (or such successor entity as most nearly performs a similar function).

“GLA” as defined in Section 17.02.

“Google Lease” as defined in Exhibit L.

“Governmental Authority” or “Governmental Authorities” means the United States of America, the State of New York, New York 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 constituting a part of, or immediately adjacent to, the Premises, or any vault in or under the Premises. The Landlord, when acting in its proprietary capacity hereunder, shall not be deemed a Governmental Authority.

“Gross Revenue” as defined in Section 3.03(a).

“Ground Lease Operating Deficits” as defined in the Consent Agreement.

“Guaranty” as defined in the Consent Agreement.

“Hazardous Materials” means (i) any “hazardous waste” as defined under the Resource Conservation and Recovery Act, 42 U.S.C. Section 9601 et seq., or (ii) “hazardous substance” as defined under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq., or (iii) “hazardous materials” as defined under the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101 et seq., or (iv) “hazardous waste” as defined under N.Y. Env'tl. Conserv. Law § 27-0901 et seq., or (v) (McKinney) “hazardous substance” as defined under the Clean Water Act, 33 U.S.C.A. § 1321, or (vi) (West) “petroleum” within the meaning of Article 12 of the New York State Navigation Law.

“Head House” means the portion of the above-grade improvements on the Pier 57 Property extending easterly from the Pier Shed.

“Head House Interior” means the interior of the Head House as shown on the Permitted Use Floor Plans, consisting of Head House Level 1, Head House Level 2, Head House Level 3 and Head House Level 4.

“Head House Roof” means the roof of the Head House.

“Head House Walkway” as defined in Section 2.06(b)(i).

“Historic Building Procedure Consultant” as defined in Section 14.02(c).

“HITC Accountant” as defined in Section 3.03(g).

“HITC Accounting” as defined in Section 3.03(g).

“HITC Documents” as defined in Section 3.03(g).

“HITC Investors” as defined in Section 3.03(g).

“HTC Master Sublease” as defined in Section 12.02(c).

“HTC Master Tenant” means RXR Pier 57 MT LLC, a Delaware limited liability company.

“HTC Master Tenant Managing Member” shall mean the managing member, from time to time, under the Master Tenant Operating Agreement (as defined in the Consent Agreement).

“HTC-Related Outside Date” as defined in Section 3.03(g).

“Hudson” as defined in the Preamble hereof.

“Imposition” or “Impositions” as defined in Section 4.02.

“Improvements” means any and all buildings, structures or other improvements, including, without limitation, the Required Tenant Improvements, and appurtenances of every kind and description now existing on the Premises or hereafter erected, constructed or placed upon the Premises or any portion thereof (other than Trade Fixtures), and any and all Alterations and replacements and substitutions thereof, including, but not limited to, landscaping, and all Equipment incorporated in or attached to the Premises at any time during the Term.

“Including” as defined in Section 39.08.

“Indemnitees” as defined in Section 9.03(j).

“Initial Construction Period Rent Payment” as defined in Section 3.01(a).

“Initial Joint Venture Agreement” as defined in the Preamble hereof.

“Initial Tenant Operating Agreement” as defined in the Preamble hereof.

“Initial Term Expiration Date” as defined in Section 2.02.

“Initial ULURP Applications” as defined in the Preamble hereof.

“Institutional Investor” as defined in the Preamble hereof.

“Institutional Lender” as defined in Section 13.01(d)(i).

“Inter-Creditor Agreement” as defined in Section 13.01(d)(ii).

“In-Water Area Surrender Date” as defined in Section 2.05(g).

“In-Water Area Termination Fee” as defined in Section 2.05(g).

“In-Water Areas” as defined in Section 2.05(a).

“In-Water Areas Commencement Date” as defined in Section 2.05(a).

“In-Water Areas Diagram” as defined in Section 2.05(a).

“In-Water Areas Offer Notice” as defined in Section 2.05(b).

“In-Water Areas Option” as defined in Section 2.05(a).

“In-Water Areas Rent” as defined in Section 3.02(e).

“JV” as defined in the Preamble hereof.

“JV SPE” as defined in the Preamble hereof.

“Landlord” as defined in the Preamble hereof.

“Landlord-designated Successor” as defined in the Consent Agreement.

“Landlord Event” as defined in Section 7.04(e).

“Landlord Offer Period” as defined in Section 2.05(b).

“Landlord Representative” as defined in Section 27.02(b).

“Landlord’s Appraisal” as defined in Section 3.02(d)(i).

“Landlord’s Maritime Determination” as defined in Section 7.06(a).

“Landlord’s Mortgage” as defined in Section 13.09.

“Landlord’s Termination Rights” as defined in Section 13.03(h).

“Lead Institutional Lender” as defined in Section 13.01(d)(i).

“Lease” means this Agreement of Lease and all exhibits hereto and all amendments, modifications and supplements thereof.

“Lender Completion Level” as defined in Section 16.06(b).

“Letter” as defined in Section 3.08(b).

“Letter of Credit” as defined in Section 3.08(b).

“Lien” means any lien (statutory or otherwise), including, any mechanic’s, laborer’s, materialman’s and public improvement lien, security interest, mortgage, deed of trust, priority, pledge, charge, conditional sale, title retention agreement, financing lease or other encumbrance or similar right of others, excluding Permitted Exceptions.

“Lockout Date” as defined in Section 12.04(a).

“Major Construction Work” as defined in Section 16.01.

“Major Litigation” shall mean any Article 78 Proceeding or other litigation commenced by any party, other than Tenant and/or any party that is under common control with Tenant or contracted by Tenant to be involved in the development, financing, design, construction, operation, leasing and/or maintenance of the Project, which litigation (i) results in a temporary restraining order and/or temporary injunction being issued against Tenant and/or Landlord in connection with such litigation, and/or (ii) seeks relief in such litigation which would result in Landlord and/or Tenant being denied the right to proceed with the Project or would prevent Landlord and/or Tenant from proceeding with the Project.

“Mandatory Perimeter Public Access Walkway Platforms” means the two (2) over-water public access platforms, on pile supported platforms, located north and south of the Pier 57 Property (generally paralleling the NYS Department of Transportation bikeway) in accordance with the Approved ULURP Applications and as shown on the Approved Plans and Specifications.

“Maritime Use” as defined in Section 7.01(a).

“Marketplace Manager” as defined in Section 7.03(c).

“Master Sublease” as defined in Section 3.05(k).

“Master Tenant” means a tenant under a Master Sublease.

“Master Tenant Operating Agreement” as defined in the Consent Agreement.

“Maximum GLA” as defined in Section 17.02.

“Measuring Month” as defined in Adjusted Inflation in Section 1.01.

“Mezzanine” shall mean the floor slab of Pier Shed Level 2 and Head House Level 2 (excluding the portion to be included in the Anchor Occupant Premises) to be constructed as part of the Required Tenant Improvements, which floor slab shall consist of no less than (i) thirty thousand (30,000) square feet of GLA in Pier Shed Level 2 and (ii) six thousand (6,000) square feet of GLA in Head House Level 2.

“Mezzanine Loan Agreement Certification” as defined in Section 13.01(d)(vi).

“Mezzanine Pledge” as defined in Section 13.01(d)(iii).

“Mezzanine Pledge Certification” as defined in Section 13.01(d)(vii).

“Minimum PILOT” as defined in Section 3.04(b).

“month” as defined in Section 3.01(a)

“Mortgage” as defined in Section 13.01(d)(iv).

“Mortgage Certification” as defined in Section 13.01(d)(ix).

“Mortgagee” as defined in Section 13.01(d)(iv).

“Net Annual Cash” as defined in Section 3.03(c).

“Net Financing Proceeds” as defined in Section 3.05(b).

“Net Food Service GLA Requirement” as defined in Section 7.03(b).

“Net Project Development Cost” as defined in Section 3.03(g).

“New Survey” as defined in Section 2.01.

“New York State Courts” as defined in Section 30.02.

“NFP” as defined in Section 12.14.

“NFP Factor” as defined in Section 3.04(c)(vii).

“Noise Effect” as defined in Section 7.15.

“Noise Restricted Portions” as defined in Section 7.15.

“Non-Designated Person” as defined in Section 3.05(l).

“Non-SPE” as defined in Section 3.05(m).

“Non-Structural Alterations” as defined in Section 15.02(b).

“North Head House Oil Spill” as defined in Section 22.02(j).

“North In-Water Areas” as defined in Section 2.05(a).

“NPS Standards” as defined in Section 14.02(b).

“NYCDOF” as defined in Section 1.01, “Requirements”.

“Occupant” or “Occupants” means any subtenant, licensee, permittee, concessionaire or other Person entitled to occupy and/or use any portion of the Premises by, through or under Tenant or any such subtenant, licensee, permittee, concessionaire or other Person.

“Occupant Design Guidelines” as defined in Section 15.07.

“Operating Standard” as defined in Section 7.01(a).

“Option Fee” as defined in Section 2.05(d).

“Option Fee Difference” as defined in Section 2.05(e).

“Option Fee Modification Date” as defined in Section 2.05(d).

“Option Period” as defined in Section 2.05(a).

“Original MOU” as defined in the Preamble hereto.

“Other Assurance” as defined in Section 16.06(a).

“Qualified Property Manager” as defined in the Consent Agreement.

“Park” as defined in the Preamble hereof.

“Park Rules” as defined in Section 7.09.

“Parking Use” as defined in Section 7.01(a).

“Partial Sale” as defined in Section 3.05(c).

“Partial Taking” as defined in Section 11.02(b).

“Participation Rent” as defined in Section 3.03.

“Participation Rent Threshold” as defined in Section 3.03(f).

“Paving Areas” as defined in Section 2.06(b)(ii).

“PEP” as defined in Section 2.06(d).

“Permitted Exceptions” as defined in Section 2.01.

“Permitted Operating Expenses” as defined in Section 3.03(d).

“Permitted Substitute” as defined in Section 13.03(e)(ii).

“Permitted Use” or “Permitted Uses” as defined in Section 7.01(a).

“Permitted Use Floor Plans” as defined in Section 7.01(a).

“Person” means an individual, corporation, partnership, joint venture, estate, trust, unincorporated association; any federal, state, county or municipal government or any bureau, department or agency thereof; and any fiduciary acting in such capacity on behalf of any of the foregoing.

“Pier” means the pier area extending outside the footprint of the Pier Shed and Head House, which area comprises a portion of the Premises.

“Pier 54/55 Lease” as defined in Section 7.15.

“Pier 54/55 Property” as defined in Section 7.15.

“Pier 54/55 Tenant” as defined in Section 7.15.

“Pier 57 Building” means the improvements on the Pier 57 Property from time to time.

“Pier 57 Culture, History, Innovation” as defined in the Preamble hereof.

“Pier 57 Property” as defined in the Preamble hereof.

“Pier Shed” mean the portion of the above-grade improvements on the Pier 57 Property extending westerly from the Head House.

“Pier Shed Roof” means the roof of the Pier Shed.

“Pier Shed Roof Open Space” means the opens space, as shown on the Permitted Use Floor Plans, located in the unenclosed area on the Pier Shed Roof.

“PILOT” as defined in Section 3.04(a).

“PILOT Abatement” as defined in Section 3.04(c)(iii).

“PILOT Abatement Base” as defined in Section 3.04(c)(v).

“PILOT Abatement Percentage” as defined in Section 3.04(c)(vi).

“PILOT Credit” as defined in Section 3.04(e).

“Preamble” means the introduction and recitals to this Agreement.

“Preliminary Plans and Specifications” as defined in Section 16.03(a).

“Premises” as defined in Sections 2.01.

“Preservation Notice” as defined in Section 2.05(e).

“Price Index” means the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor for the New York-Northern New Jersey, Long Island, NY-NJ-CT-PA Area, not seasonally adjusted, all items (1982-1984=100), or any successor index thereto. As of the Commencement Date, the Price Index is identified by the Bureau of Labor Statistics of the United States Department of Labor as Series ID.

“Professional Mixed-Use Developer” as defined in Section 12.03(d).

“Professional Mixed-Use Manager” as defined in Section 12.06(c).

“Prohibited Big Box Retailers” as defined in Section 7.03(e).

“Prohibited Nightclubs/Cabarets” as defined in Section 7.03(e).

“Prohibited Party” means:

(a) any Person that is in default or in breach, beyond any applicable grace period, of its obligations under any material written agreement with the City or State (or any agency or instrumentality thereof), unless (A) such default or breach has been waived in writing or settled by the City or State (or any agency or instrumentality thereof), as applicable, or (B) such Person is bona fide contesting the default or breach, and no final and binding judgment, after the exhaustion of all appeals, has been rendered holding such Person in default or breach of its obligations under any material written agreement with the City or State (or any agency or instrumentality thereof), as applicable, or if an unappealable judgment is rendered, the judgment is fully satisfied;

(b) any Person (i) that has been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) years, (ii) that has been convicted in a criminal proceeding in the United States for a felony in the past ten (10) years, (iii) that has 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, (iv) that has received written notice of default in the payment to the City of any taxes, sewer rents or water charges that has not been cured or satisfied, unless such default is then being contested with due diligence in proceedings in a court or other appropriate forum, or (v) has owned at any time in the preceding three (3) years any property which, while in ownership of such Person, was acquired by the City by in rem tax foreclosure, other than a property in which the City has released or is in the process of releasing its interests to such Person pursuant to the administrative code of the City; provided, however, in order for such Person to constitute a Prohibited Party, the circumstance(s) described

in clauses (i) and/or (iii) above, must have a material and adverse effect on the business reputation of Tenant;

(c) any government, or any Person that is directly or indirectly controlled by a government, that is finally determined to be in violation of (including, but not limited to, any participant in an international boycott in violation of) the Export Administration Act of 1979, or its successor, or the regulations issued pursuant thereto, or any government that is, or any Person that, directly or indirectly, is controlled (rather than only regulated) by a government that is, subject to the regulations or controls thereof; or

(d) any government, or any Person that, directly or indirectly, is controlled (rather than only regulated) by a government, the effects of or the activities of which are regulated or controlled pursuant to regulations of the United States Treasury Department or executive orders of the President of the United States of America issued pursuant to the Trading with the Enemy Act of 1917, as amended.

“Project” as defined in the Preamble hereof.

“Project Development Cost” as defined in Section 3.03(g).

“Promotion Notice” as defined in Section 37.02.

“Promotional Activities” as defined in Section 37.02.

“Promotional Contracts” as defined in Section 37.02.

“Proposed Modified Permitted Use Floor Plans” as defined in Section 7.01(b).

“Promotional Period” as defined in Section 37.02.

“Public Access and Public Benefit Use” as defined in Section 7.01(a).

“Public Approvals” shall mean any governmental approvals, permits, consents, certifications and actions necessary for Tenant to commence, perform and complete any Construction Work hereunder and to operate the Project.

“Public Marketplace” as defined in Section 7.03(a).

“Public Marketplace Premises” as defined in Exhibit L.

“Public Open Space” means public access and public benefit space as shown on the Permitted Use Floor Plans, including but not limited to (a) an unenclosed (i) perimeter esplanade at the first floor Pier level around the Pier Shed and on the north and south ends of the Head House in accordance with the Approved ULURP Applications, which esplanade on the north and south ends of the Head House shall be on pile-supported platforms, and (ii) the Mandatory Perimeter Public Access Walkway Platforms; and (b) the Pier Shed Roof Open Space (including the roof of the Rooftop Enclosure).

“Public Viewing Areas” means the areas within the interior of Pier Shed Level 1 and Pier Shed Level 2, depicted and labeled as “Public Viewing Areas” on the Permitted Use Floor Plans, that allow for unobstructed views of the water.

“Purchase Price” as defined in Section 4.11.

“Put Price” as defined in Section 3.03(g).

“Put Price Estimate” as defined in Section 3.03(g).

“Qualified Institutional Investor” as defined in Section 12.03(c).

“Quarterly Construction Period Rent Payment” as defined in Section 3.01(a).

“Receivables” as defined in Section 28.11.

“Recognized Mezzanine Loan” as defined in Section 13.01(d)(v).

“Recognized Mezzanine Loan Agreement” as defined in Section 13.01(d)(vi).

“Recognized Mezzanine Loan Default Notice” as defined in Section 13.01(d)(vi).

“Recognized Mezzanine Pledge” as defined in Section 13.01(d)(vii).

“Recognized Mezzanine Pledgee” as defined in Section 13.01(d)(viii).

“Recognized Mortgage” as defined in Section 13.01(d)(ix).

“Recognized Mortgage Default Notice” as defined in Section 13.01(d)(ix).

“Recognized Mortgagee” as defined in Section 13.01(d)(x).

“Renewal Term” as defined in Section 2.03.

“Rental” means all of the amounts payable by Tenant pursuant to this Lease, including, without limitation, Construction Rent, Base Rent, Participation Rent, PILOT, Transaction Rent, Impositions, and any and all other sums, costs, expenses or deposits which Tenant is obligated to pay to and/or deposit with Landlord pursuant to the terms, covenants and conditions of this Lease.

“Rent Differential” as defined in Section 3.05(c).

“Repair Work” as defined in Section 14.06(a).

“Replacement Assumptions” as defined in Section 3.02(d)(v).

“Replacement Letter” as defined in Section 3.08(b).

“Replacement Value” means the actual cost (including, without limitation, soft costs and the costs of debris removal) to repair, rebuild or replace an item or structure damaged or destroyed by casualty or condemnation with an item or structure of comparable size, material and quality and used for comparable purposes and in the same location as the item or structure being repaired, rebuilt or replaced.

“Required Commercial Area” as defined in Section 7.03(b).

“Required Restaurant” as defined in Section 7.03(b).

“Required Security Deposit” has the meaning provided in Section 3.09.

“Required Tenant Improvements” as defined in Section 17.01.

“Requirements” means the following, as same may be amended, modified or supplemented from time to time: (i) any and all laws, rules, regulations, orders, ordinances, statutes, codes, executive orders, resolutions and requirements of all Governmental Authorities applicable (now or at any time during the Term) to the Premises, or any street, road, avenue or sidewalk constituting a part of the Premises, or in front of or in the general vicinity of the Premises to the extent the owner of the Premises would have legal responsibility therefor (including without limitation the requirements and restrictions contained in or established by the Park Rules, the New York City Noise Control Code (N.Y.C. Admin. Code Sections 24-201, et seq.), as amended, and the regulations of the Department of Environmental Protection (N.Y.C. Admin. Code Sections 24-230, 24-242), the Building Code of New York City (Admin. Code Section 27-101 et seq., the U.S. Army Corps of Engineers (the “Army Corps”), the New York State Department of Environmental Conservation (“DEC”), the New York State Historic Preservation Office (“SHPO”), the New York City Department of Finance (“NYCDOF”), the New York City Department of Transportation, the New York State Department of Transportation, the New York City Zoning Resolution and the requirements of the New York City Department of City Planning, including but not limited to waterfront public access area maintenance and operations provisions, the Approved ULURP Applications, any applicable requirements of the State Environmental Quality Review Act, the final, approved FEIS, including without limitation the Traffic Management Plan, the General Project Plan for the Park and the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of 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; (iii) all final actions taken by the City, pursuant to Section 1301 of the City Charter with respect to the Premises; (iv) any Certificate of Completion issued for the Improvements as then in force; and (v) the Act.

“Restoration” means either a Casualty Restoration or a Condemnation Restoration, or both.

“Restoration Costs” has the meaning provided in Section 10.03(b).

“Restoration Funds” means (a) any moneys that may be received by Depository and/or Landlord pursuant to the provisions of Articles 10 or 11, as the case may be, together with the interest, if any, earned thereon and (b) the proceeds of any security deposited with Depository and/or

Landlord pursuant to the provisions of Articles 10 or 11, together with the interest, if any, earned thereon.

“Reviewing Party” as defined in Section 25.03.

“Reviewing Parties” as defined in Section 25.03.

“RFP” as defined in the Preamble hereof.

“RTI Substantial Completion” as defined in Section 17.03(a).

“RTI Substantial Completion Date” as defined in Section 17.03(a).

“RXR Parent” as defined in the Preamble hereof.

“Sales Taxes” means New York State and City sales and compensating use taxes imposed by New York Tax Law Section 1115(a)(15).

“Second Public Event Request” as defined in Section 7.04(d).

“Second Renewal Term” as defined in Section 2.03.

“Second Renewal Term Base Rent” as defined in Section 3.02(c).

“Second Renewal Term Expiration Date” as defined in Section 2.03.

“Second Renewal Term Fair Market Rent” as defined in Section 3.02(c).

“Security Deposit” as defined in Section 3.08(a).

“SHPO” as defined in Section 1.01, “Requirements.”

“SNDA Agreement” as defined in Section 12.10.

“South In-Water Areas” as defined in Section 2.05(a).

“SPE” as defined in Section 3.05(n).

“Specified Interval” as defined in Adjusted Inflation in Section 1.01.

“State” means the State of New York.

“State Lease” as defined in the Preamble hereof.

“Structural Alteration” as defined in Section 15.01(a).

“Subsequent ULURP Application” as defined in the Preamble hereof.

“Substantial Completion” as defined in Section 16.02(c).

“Substantially All of the Premises” as defined in Section 11.01(b).

“Substantially Complete(d)” as defined in Section 16.02(c).

“Surrender Notice” as defined in Section 2.05(g).

“Syndicate” shall mean a group of lenders that also has, as a part of such group, a Lead Institutional Lender.

“Taking” as defined in Section 11.01(a).

“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 fee owner thereof is exempt from such real property taxes then the real property taxes which would be so assessed and levied if not for such exemption) pursuant to the provisions of Chapter 58 of the Charter of the City, and Title 11, Chapter 7 of the Administrative Code of the City and Chapter 50-a of the Consolidated Laws of the State of New York, each as the same may now or hereafter be amended, or any statute or ordinance in lieu thereof in whole or in part.

“Tax Year” as defined in Section 3.04(c)(i).

“Tax Year AV” as defined in Section 3.04(c)(ii).

“Tax Year PILOT” as defined in Section 3.04(c)(ii).

“TCO” as defined in Exhibit L.

“TCO Date” as defined in Exhibit L.

“TCO Work” as defined in Exhibit L.

“Temporary Taking” as defined in Section 11.03.

“Tenant” has the meaning provided in the Preamble hereof.

“Tenant Affiliate(s)” as defined in Section 3.03(a).

“Tenant Election Notice” as defined in Section 2.05(a).

“Tenant Operating Agreement” means any Limited Liability Company Operating Agreement or other governing document of Tenant SPE, including without limitation the Initial Tenant Operating Agreement.

“Tenant SPE” as defined in Section 12.02(b).

“Tenant’s Appraisal” as defined in Section 3.02(d)(i).

“Term” means the Initial Term, together with (i) the First Renewal Term if Tenant exercises the option related to the First Renewal Term in accordance with Section 2.02(d), and (ii) the Second

Renewal Term if Tenant exercises the option related to the Second Renewal Term in accordance with Section 2.02(d).

“TFF” shall mean Tribeca Film Festival, as Tribeca Film Festival is operated as of the date of this Lease or as Tribeca Film Festival may be operated after the date of this Lease provided such operation is substantially similar to Tribeca Film Festival’s operation as of the date of this Lease.

“TFF/Substitute TFF License Agreement” as defined in Section 7.02(d).

“TFF/Substitute TFF Licensee” as defined in Section 7.02(d).

“Third Appraisal” as defined in Section 3.02(d)(iii).

“Three Appraisers Appointment Notice” as defined in Section 3.02(d)(iii).

“Three Appraisers Selection Notice” as defined in Section 3.02(d)(iii).

“Threshold Amount” means (i) prior to RTI Substantial Completion, the amount of One Million Dollars (\$1,000,000), and (ii) thereafter, the amount of Two Million Dollars (\$2,000,000), in each case as such amount shall be Adjusted for Inflation.

“Trade Fixtures” means moveable items of personal property installed in the Premises for use in the trade or business of Tenant or any Occupant.

“Traffic Management Plan” as defined in Section 7.07.

“Traffic Monitoring Plan” as defined in Section 14.14.

“Transaction Rent” as defined in Section 3.05(a).

“Trust” as defined in the Preamble hereof.

“Trust Payables” as defined in Section 11.02(a)(ii).

“Vendex” shall mean the provisions of NYC Administrative Code § 6-116.2, as amended.

“Vendex disclosure requirements” shall mean the disclosure requirements of Vendex to the extent prescribed by the New York City Mayor’s Office of Contract Services (or any successor thereto), if applicable, and any similar disclosure requirements imposed by the State, if applicable, it being agreed that any reference contained herein to Vendex disclosure requirements or any obligations with respect to Vendex shall also be deemed to refer to any such similar disclosure requirements imposed by the State to the extent then in effect.

“Vessels” as defined in Section 7.06(a).

“Waterfront Public Access Areas” as defined in Section 2.06(b)(i).

“YW Management” as defined in the Preamble hereof.

“YW P57” as defined in the Preamble hereof.

“YWA SPE” as defined in the Preamble hereof.

ARTICLE 2

DEMISE OF PREMISES AND TERM

Section 2.01 Demise of Premises/Block and Lot Designation. Landlord does hereby demise and lease to Tenant, and Tenant does hereby hire and take from Landlord, the premises (the “Premises”) described in the legal description annexed hereto as Exhibit A and made a part hereof and shown on the Survey, dated October 23, 2015, prepared by Gallas Surveying Group and annexed hereto as Exhibit B and made a part hereof (the “New Survey”), which Premises are depicted visually on the conceptual drawings annexed hereto as Exhibit C and made a part hereof, together with all easements, appurtenances and other related rights and privileges now or hereafter belonging or appertaining to the Premises, subject only to the encumbrances, exceptions, reservations, conditions of title and other matters now or hereafter affecting Landlord’s interest in the Premises including those annexed hereto as Exhibit D and made a part hereof (collectively, the “Permitted Exceptions”), provided that any such encumbrances, exceptions, reservations, conditions of title and other matters affecting Landlord’s interest in the Premises that arise or are placed on the Premises by or through Landlord after the Commencement Date shall, to the extent the same has an adverse effect on the value of Tenant’s interest in the Premises pursuant to this Lease, or Tenant’s Permitted Use, of the Premises, be subject to Tenant’s approval and, to the extent approved by Tenant, shall be included in the Permitted Exceptions. Tenant shall make use of the Premises solely for the purposes set forth in Article 7. As of the date of this Lease, the Premises have a tax lot designation of Block 662, Lot 3. Landlord and Tenant acknowledge that, to the extent any boundary of the Premises is contiguous with the boundary of Route 9A (West Side Highway), such boundary of the Premises is subject to modification to conform to the boundary of such Route 9A as finally determined by the New York State Department of Transportation in its comprehensive drawings filed of record upon completion of the reconstruction of such Route 9A (and upon such filing of record, the boundary of the Premises shall ipso facto be deemed to have been modified to be consistent with the boundary shown on such comprehensive drawings).

Section 2.02 Initial Term. The initial term of this Lease shall commence on the date of this Lease (the “Commencement Date”) and shall end at 11:59 pm on the last day of the calendar month in which occurs the day immediately prior to the sixtieth (60th) anniversary of the Commencement Date (the “Initial Term Expiration Date”).

Section 2.03 Renewal Options. Tenant shall have the right, at its option, to renew (i) the initial term of this Lease for all of the Premises for one additional term of twenty (20) years (the “First Renewal Term”) commencing on the day following the Initial Term Expiration Date and ending at 11:59 pm on the last day of the calendar month in which occurs the day immediately prior to the eightieth (80th) anniversary of the Commencement Date (the “First Renewal Term Expiration Date”), by delivering to Landlord written notice of such renewal for the First Renewal Term not later than the date that is twenty (20) months prior to the date upon which the First Renewal Term shall commence (time being of the essence with respect to the date upon which

Tenant deliver to Landlord such notice of renewal), and (ii) the Term of this Lease for all of the Premises for one additional term of seventeen (17) years (the “Second Renewal Term”) commencing on the eightieth (80th) anniversary of the Commencement Date and ending at 11:59 pm on the date immediately preceding the ninety-sixth (96th) anniversary of the Commencement Date (the “Second Renewal Term Expiration Date”), by delivering to Landlord written notice of such renewal for the Second Renewal Term not later than the date that is twenty (20) months prior to the date upon which the Second Renewal Term shall commence (time being of the essence with respect to the date upon which Tenant deliver to Landlord such notice of renewal) (each of the First Renewal Term and Second Renewal Term being a “Renewal Term”); provided that the valid exercise of each of the aforesaid options for the First Renewal Term and the Second Renewal Term, as the case may be, shall be conditioned upon there being no default on the part of Tenant under this Lease which shall have occurred and then be continuing beyond any applicable notice and cure period on the date of the exercise of the applicable renewal option and on the commencement date of the applicable Renewal Term. If Tenant fails to validly exercise the option for the First Renewal Term as aforesaid, the Term shall expire on the Initial Term Expiration Date and Tenant shall have no further rights or options to extend the initial term of this Lease to include either the First Renewal Term or the Second Renewal Term. If Tenant validly exercises the option for the First Renewal Term as aforesaid, but fails to validly exercise the option for the Second Renewal Term as aforesaid, the Term shall expire on the First Renewal Term Expiration Date, or such earlier date upon which the First Renewal Term shall terminate in accordance with this Lease, and Tenant shall have no further rights or options to extend the Term to include the Second Renewal Term. If Tenant validly exercises the options for the First Renewal Term and the Second Renewal Term as aforesaid, the Term shall expire on the Second Renewal Expiration Date, or such earlier date upon which the Second Renewal Term shall terminate in accordance with this Lease. In the event the Term is so extended pursuant to one or both of the aforesaid options, (A) the annual Base Rent payable by Tenant during the First Renewal Term and the Second Renewal Term, as applicable, shall be at the rates set forth and determined in accordance with Sections 3.02(b) and 3.02(c), respectively, (B) the Participation Rent shall be as provided in Section 3.03, and (C) the Participation Rent Threshold shall be determined in accordance with Section 3.03(f). If the Term of this Lease is extended pursuant to one or both of the aforesaid options, all of the provisions of this Lease shall continue in full force and effect until the Expiration Date.

Section 2.04 Premises AS IS. Tenant acknowledges and agrees that Tenant (i) has inspected the condition of the Premises and the Easement Area (including the caissons, pier piles and the bulkhead associated therewith), (ii) accepts the Premises and the Easement Area (including the caissons, pier piles and the bulkhead associated therewith) “AS IS” (including, without limitation, with respect to the presence of Hazardous Materials), (iii) will not at any time make any claim that the Premises and the Easement Area (including the caissons, pier piles and the bulkhead associated therewith) are not in suitable repair or condition for the Permitted Use and purposes contemplated and permitted by this Lease and (iv) accepts the Premises and the Easement Area (including the caissons, pier piles and the bulkhead associated therewith) subject to the Permitted Exceptions set forth on Exhibit D hereto. Without in any way limiting the foregoing, Tenant acknowledges and agrees to enter into this Lease and to accept the Premises and the Easement Area (including the caissons, pier piles and the bulkhead associated therewith) with knowledge that (w) marine borers may be present, and rot may have occurred, in the pier piles associated with the Premises and the Easement Area, (x) the stress capacity of the marine

structure in the Premises and the Easement Area may be severely impaired and may deteriorate and (y) as a result thereof, structural failure and collapse is possible. As used in this Lease, the term “bulkhead” shall mean the bulkhead wall, supporting piles, adjacent relieving platforms and associated structures that are located in the Premises and/or the Easement Area.

Section 2.05 In-Water Areas.

(a) During the Option Period and provided no Event of Default shall have occurred and be continuing, Tenant shall have the exclusive option (the “In-Water Areas Option”) in its sole and absolute discretion to lease certain in-water areas to the north (the “North In-Water Areas”) and/or the south (the “South In-Water Areas”) of the Premises as shown on the In-Water Areas Diagram annexed hereto as Exhibit E and made a part hereof (the “In-Water Areas Diagram”; the South In-Water Areas and the North In-Water Areas, collectively, the “In-Water Areas”) on the terms and subject to the conditions set forth in this Section 2.05. Tenant, at its option, shall have the right to lease the North In-Water Areas and the South In-Water Areas separately or to lease the entire In-Water Areas. The “Option Period” shall mean the period commencing on the Commencement Date and ending on the day that is the tenth (10th) anniversary of the Commencement Date. If Tenant elects to exercise the In-Water Areas Option, then Tenant shall give Landlord notice (the “Tenant Election Notice”) thereof and shall designate in the Tenant Election Notice the In-Water Areas Tenant elects to lease, i.e., the North In-Water Areas, the South In-Water Areas or the entire In-Water Areas (the In-Water Areas designated in a Tenant Election Notice or designated in an In-Water Areas Offer Notice pursuant to Section 2.05(b), the “Applicable In-Water Area”). If Tenant exercises the In-Water Areas Option by giving Landlord a Tenant Election Notice, then the Applicable In-Water Area shall be leased and become a part of the Premises on the later to occur of (x) the date all permits pursuant to the Requirements have been obtained and (y) the date possession of the Applicable In-Water Area is delivered to Tenant (the date the Applicable In-Water Area is leased by Tenant pursuant to this Section 2.05(a), the “In-Water Areas Commencement Date”) on the terms and conditions hereinafter set forth. If Tenant gives a Tenant Election Notice and elects to lease only the North In-Water Areas or the South In-Water Areas, as the case may be, then provided Tenant shall have continued paying to Landlord the Option Fee as provided in Section 2.05(d) to preserve Tenant’s right to exercise the In-Water Areas Option, Tenant shall have the right to lease the portion of the In-Water Areas that Tenant did not lease in such Tenant Election Notice by giving Landlord another Tenant Election Notice, provided such Tenant Election Notice is given by Tenant to Landlord within the Option Period and otherwise pursuant to the terms and provisions of this Section 2.05.

(b) In addition to the In-Water Areas Option, at any time solely during the last five (5) years of the Option Period (the “Landlord Offer Period”), Landlord may, at its option, offer to Tenant for leasing by Tenant as part of the Premises the entire In-Water Areas or only the North In-Water Areas or only the South In-Water Areas by giving written notice thereof to Tenant (the “In-Water Areas Offer Notice”) which In-Water Areas Offer Notice shall designate the Applicable In-Water Area. Landlord shall have the right to give Tenant more than one (1) In-Water Areas Offer Notice if the first (1st) In-Water Areas Offer Notice designated only a portion of the In-Water Areas. If Landlord gives Tenant an In-Water Areas Offer Notice during the Landlord Offer Period, then Tenant shall have the right to lease as part of the Premises the Applicable In-Water Area designated therein by giving notice thereof to Landlord (an

“Acceptance Notice”) on or prior to the ninetieth (90th) day after Tenant’s receipt of such In-Water Areas Offer Notice, in which event the “In-Water Areas Commencement Date” for the Applicable In-Water Area shall be the date possession of the Applicable In-Water Area is delivered to Tenant. Landlord shall not, at any time from and after the Commencement Date through the expiration of the Option Period, transfer or lease (or negotiate for the transfer or lease of) any In-Water Areas to or with any Person except as expressly provided in this Section 2.05(b). If Landlord gives an In-Water Areas Offer Notice to Tenant during the Landlord Offer Period and Tenant fails to give Landlord an Acceptance Notice on or prior to the ninetieth (90th) day after Tenant’s receipt of the In-Water Areas Offer Notice with respect to the Applicable In-Water Area designated therein or Tenant otherwise gives notice to Landlord electing not to lease the Applicable In-Water Area designated therein, then Landlord shall have no further obligations to Tenant with respect to such Applicable In-Water Area and may use itself or offer to any other Person the right to use or lease the Applicable In-Water Area in Landlord’s sole and absolute discretion (provided that such use or lease shall not materially and adversely affect the Premises or the Project or any of Tenant’s rights under this Lease or any Occupant’s rights under such Occupant’s sublease, it being agreed that any of the following shall not at any time constitute a material adverse effect on the Premises, the Project or any of Tenant’s rights under this Lease or any Occupant’s rights under such Occupant’s sublease: (i) any construction, maintenance, dredging and similar activities performed by or on behalf of Landlord in connection with any In-Water Areas or surrounding areas, (ii) waterborne transportation, (iii) mooring or docking of historic and non-motorized vessels, educational barges and floating equipment in connection therewith, including without limitation any barge used as part of a cultural, educational, historic or other public programming in the Park provided that no more than two (2) such barges may be moored or docked per year and provided further that the duration of any such mooring or docking of a barge shall be limited to six (6) months per year at any location within the boundaries of the Park, (iv) a mooring field for privately owned sailboats or other small pleasure craft and (v) any use required in the event of an emergency situation which Landlord may have to address) and the In-Water Areas Option solely with respect to such Applicable In-Water Area shall be deemed terminated and of no further force or effect with respect to such Applicable In-Water Area. In addition, nothing contained herein shall prevent Tenant from thereafter participating in any public bidding process initiated by Landlord for the use or leasing of the Applicable In-Water Area. Nothing contained in this Section 2.05(b) shall preclude Landlord from using an Applicable In-Water Area for a temporary use in Landlord’s sole and absolute discretion (or permitting another party to use an Applicable In-Water Area for a temporary use) prior to the date an Applicable In-Water Area is leased by Tenant pursuant to an In-Water Areas Offer Notice or a Tenant Election Notice, as the case may be, provided that such use shall not materially and adversely affect the Premises or the Project or any of Tenant’s rights under this Lease or any Occupant’s rights under such Occupant’s sublease and Tenant is promptly notified of any such use. Should Landlord, or any entity operating through or under Landlord, make use of the In-Water Areas for the uses set forth above in clauses (i) through (v) in this Section 2.05(b), then Tenant shall cooperate, in a commercially reasonable manner, in allowing Landlord or such entity, as the case may be, to place a ramp, dock, float or other device, at Landlord’s or such entity’s sole cost and expense, to facilitate access from the perimeter walkway around the Pier 57 Property to such use in the In-Water Areas and to allow individuals to traverse such perimeter walkway, without obstruction or limitation, to gain access to such use. Tenant shall not grant to any Occupant under such Occupant’s sublease any rights that would conflict or

interfere with Landlord's rights to use the In-Water Areas as referred to in this Section 2.05(b) or that might be materially and adversely affected if Landlord exercises Landlord's rights to use the In-Water Areas as referred to in this Section 2.05(b) (it being agreed that Tenant providing the right to the Anchor Occupant to exercise the In-Water Option in accordance with Section 2.05(g) shall not, in and of itself, be deemed to violate this sentence).

(c) Tenant's use of the In-Water Areas pursuant to this Section 2.05 shall be governed by the applicable terms and provisions of this Lease (including, without limitation, those set forth in Section 7.06(b)). Notwithstanding anything to the contrary contained in this Lease, upon any exercise by Tenant of the In-Water Areas Option pursuant to Section 2.05(a) and/or any exercise by Tenant of the right to lease any portion of the Applicable In-Water Area pursuant to Section 2.05(b), Tenant shall promptly undertake, at Tenant's sole cost and expense and in a continuous and diligent manner, complete all steps necessary to cause the New York City Department of Finance to modify the area included in the then-current tax lot designation of Block 662, Lot 3 to be identical to the area within the Premises after such exercise, which modification shall be a condition precedent to the inclusion of the Applicable In-Water Area to the Premises under this Lease. Landlord shall reasonably cooperate with Tenant in the aforesaid modification of the area included in the then-current tax lot designation of Block 662, Lot 3.

(d) Tenant shall pay to Landlord, as a fee (the "Option Fee") for the In-Water Areas Option granted by Landlord to Tenant pursuant to this Section 2.05, an amount equal to (i) Five Thousand Dollars (\$5,000) per annum with respect to the period commencing on the Commencement Date and ending on the earlier to occur of (1) the end of the Option Period and (2) the date immediately preceding the next occurring anniversary date of the Commencement Date after the date of Tenant's first exercise of the In-Water Areas Option (such next occurring anniversary date, the "Option Fee Modification Date"), and (ii) if Tenant leases only a portion of the In-Water Areas pursuant to this Section 2.05, Two Thousand Five Hundred Dollars (\$2,500) per annum with respect to the period commencing on the Option Fee Modification Date and ending on the earlier to occur of (A) the end of the Option Period and (B) the date immediately preceding the next occurring anniversary of the Commencement Date after the date of Tenant's exercise of the In-Water Areas Option for any remaining Applicable In-Water Area. The Option Fee shall be paid annually by Tenant to Landlord during the Option Period, in advance, on the Commencement Date and on each anniversary of the Commencement Date. If Tenant fails to pay any installment of the Option Fee to Landlord within ten (10) days after notice thereof from Landlord, then the In-Water Areas Option and Tenant's rights pursuant to this Section 2.05 shall thereafter be null and void and Landlord shall have no further obligations to Tenant with respect to the In-Water Areas and may use itself or offer to any other Person the right to use or lease the In-Water Areas in Landlord's sole and absolute discretion. It is agreed that Tenant's failure to pay the Option Fee, however, shall not constitute a default or an Event of Default by Tenant under this Lease. If Tenant leases the entire In-Water Areas pursuant to this Section 2.05 after designating such entire In-Water Areas in the Tenant Election Notice, then the Option Fee shall no longer be payable by Tenant from and after the In-Water Areas Commencement Date and any portion of the annual Option Fee paid for any period of time after the In-Water Areas Commencement Date shall promptly be refunded by Landlord to Tenant. If Tenant leases only a portion of the In-Water Areas pursuant to this Section 2.05 after designating either the North In-Water Areas or the South In-Water Areas, as the case may be, in the Tenant Election Notice, then no portion of the Option Fee paid by Tenant prior to the Tenant Election Notice shall be

refunded to Tenant and Tenant shall retain the In-Water Areas Option for whichever of the North In-Water Areas or the South In-Water Areas is not so leased by Tenant as long as the Option Fee is paid by Tenant in accordance with this Section 2.05. If Landlord gives an In-Water Areas Offer Notice to Tenant during the Landlord Offer Period and Tenant fails to exercise the In-Water Areas Option by giving Landlord an Acceptance Notice on or prior to the ninetieth (90th) day after Tenant's receipt of the In-Water Areas Offer Notice with respect to the In-Water Areas or otherwise gives notice to Landlord electing not to lease the In-Water Areas, then the Option Fee shall no longer be payable by Tenant from and after the ninetieth (90th) day after the giving of such In-Water Areas Offer Notice or the date of Tenant's notice if Tenant gave notice electing not to lease the In-Water Area offered to Tenant in the In-Water Areas Offer Notice and any portion of the Option Fee paid for any period of time after such ninetieth (90th) day or the date of such notice given by Tenant shall promptly be refunded by Landlord to Tenant, it being agreed, however, that if such In-Water Areas Offer Notice designated only a portion of the In-Water Areas, then Tenant shall continue to pay the Option Fee (in the same manner as if Tenant had exercised the In-Water Areas Option for a portion of the In-Water Areas) in order to preserve the In-Water Areas Option for the portion of the In-Water Areas not designated in the In-Water Areas Offer Notice.

(e) Tenant shall pay to Landlord In-Water Areas Rent as provided in Section 3.02(b) hereof. If, pursuant to Section 3.02(e), Tenant elects to withdraw a Tenant Election Notice or an Acceptance Notice, as the case may be, Landlord thereafter shall have no further obligations to Tenant with respect to such Applicable In-Water Area and may use itself or offer to any other Person the right to use or lease the Applicable In-Water Area in Landlord's sole and absolute discretion and the In-Water Areas Option solely with respect to such Applicable In-Water Area shall be deemed terminated and of no further force or effect with respect to such Applicable In-Water Area, it being agreed that nothing contained herein shall prevent Tenant from thereafter participating in any public bidding process initiated by Landlord for the use or leasing of the Applicable In-Water Area. Notwithstanding anything to the contrary contained in this Lease, if pursuant to Section 3.02(e), Tenant elects to withdraw a Tenant Election Notice, Tenant shall have the right to preserve the In-Water Areas Option for the Applicable In-Water Area by (i) giving Landlord, simultaneously with Tenant's notice of election to withdraw a Tenant Election Notice, written notice (the "Preservation Notice") of Tenant's election to preserve the In-Water Areas Option for the Applicable In-Water Area and (ii) paying to Landlord, simultaneously with the giving of the Preservation Notice, an amount (the "Option Fee Difference") equal to the difference between (1) Twenty-Seven Thousand Five Hundred Dollars (\$27,500) and the Option Fee most recently paid to Landlord, and thereafter, the Option Fee shall be deemed, for all purposes under this Lease, to be Twenty-Seven Thousand Five Hundred Dollars (\$27,500). If Tenant elects to withdraw a Tenant Election Notice and Tenant does not give to Landlord the Preservation Notice and/or pay the Option Fee Difference as aforesaid, Landlord thereafter shall have no further obligations to Tenant with respect to such Applicable In-Water Area and may use itself or offer to any other Person the right to use or lease the Applicable In-Water Area in Landlord's sole and absolute discretion and the In-Water Areas Option solely with respect to such Applicable In-Water Area shall be deemed terminated and of no further force or effect with respect to such Applicable In-Water Area, it being agreed that nothing contained herein shall prevent Tenant from thereafter participating in any public bidding process initiated by Landlord for the use or leasing of the Applicable In-Water Area.

(f) If Tenant leases the In-Water Areas in whole or in part pursuant to this Section 2.05, then, from and after the applicable In-Water Areas Commencement Date, the term “Premises” as used in this Lease shall be deemed to include the Applicable In-Water Area so leased by Tenant and all applicable terms and provisions of this Lease shall apply to such Applicable In-Water Area. Upon the request of either party, the parties agree to execute and deliver a document in recordable form confirming the foregoing.

(g) Notwithstanding anything to the contrary contained herein, if Tenant shall have exercised an In-Water Areas Option upon the request of the Anchor Occupant (as confirmed and evidenced by Tenant’s inclusion of the following statement in any written notice to Landlord exercising the In-Water Areas Option: “*The undersigned is exercising the In-Water Areas Option pursuant to this notice at the request of the Anchor Occupant*”) and provided no Event of Default by Tenant shall have occurred and is continuing at the time of the giving of the surrender notice and the effective date of the surrender, all as referred to in this Section 2.05(g), Tenant shall have the right, upon the expiration or earlier termination of such Anchor Occupant’s sublease, to surrender the applicable In-Water Areas to Landlord by giving written notice to Landlord (the “Surrender Notice”), which surrender shall not become effective until the date which is one hundred and eighty (180) days after the giving of the Surrender Notice (and in no event shall such surrender be effective prior to the expiration or earlier termination of such Anchor Occupant’s sublease) (the “In-Water Area Surrender Date”), together with a payment to Landlord, simultaneously with the giving of the Surrender Notice, in an amount equal to the In-Water Rent which would have been payable with respect to the applicable In-Water Areas but for such surrender during the three (3) year period from and after the In-Water Area Surrender Date (the “In-Water Area Termination Fee”); provided that if, within ninety (90) days after the giving of the Surrender Notice by Tenant to Landlord, Landlord shall enter into a lease or license with another party covering the applicable In-Water Areas to be surrendered by Tenant, which lease or license provides for the applicable In-Water Areas to be used as a marina, then Landlord shall give to Tenant a rent credit against Base Rent in the amount of twenty-five percent (25%) of any rent paid to Landlord by such other party under such lease or license during the three (3) year period covered by the In-Water Area Termination Fee (but in no event shall such rent credit exceed the amount of In-Water Rent used in calculating the In-Water Area Termination Fee). Under no other circumstances shall Tenant be entitled to any rent credit or other sharing of any payments made to Landlord relating to any re-leasing, licensing and/or use of In-Water Areas surrendered by Tenant to Landlord pursuant to a Surrender Notice. Any Surrender Notice shall not be given by Tenant to Landlord later than thirty (30) days after the expiration or earlier termination of such Anchor Occupant’s sublease (as to which outside date for the giving of any Surrender Notice, time shall be of the essence). On or prior to the In-Water Area Surrender Date, (i) Tenant shall surrender the applicable In-Water Areas in accordance with Section 29.01 and (ii) if, in connection with any plans and specifications submitted by Tenant, on behalf of the Anchor Occupant, to Landlord for Landlord’s approval or consent for Improvements, if any, to the In-Water Areas (which submission shall require the notation thereon as follows: “*In any approval or consent to these Improvements, Landlord shall have the right to inform Tenant that these Improvements must be removed upon any surrender of the In-Water Areas pursuant a Surrender Notice given in accordance with Section 2.05(g) of the Ground Lease*”), Landlord specifies in writing that Landlord’s approval or consent is conditioned upon Tenant’s removal of such improvements upon any surrender of the In-Water Areas pursuant to a Surrender Notice, then Tenant shall remove (or cause the removal of) all such Improvements. As of the In-Water

Area Surrender Date, and provided Tenant shall have paid to Landlord the In-Water Area Termination Fee in connection with the Surrender Notice, Tenant shall have no obligation to pay the In-Water Areas Rent for the applicable In-Water Areas that relates to the period after the In-Water Area Surrender Date, and the term “Premises,” as used in this Lease, shall no longer include the applicable In-Water Areas. Upon the request of either Landlord or Tenant, the parties agree to execute and deliver a document in recordable form confirming any surrender of the applicable In-Water Areas in accordance with this Section 2.05(g).

Section 2.06 Easements.

(a) Subject to the terms of this Lease, Landlord hereby grants to Tenant, Occupants, Recognized Mortgagees, Mezzanine Lenders and each of their respective contractors, agents, employees and invitees, the right to the use and benefit of the following easements (collectively, the “Easements”) within the area described on Exhibit Q attached hereto and made a part hereof (the “Easement Area”), provided that, in the use of such Easement Area, Tenant, Occupants, Recognized Mortgagees, Mezzanine Lenders and each of their respective contractors, agents, employees and invitees shall not materially obstruct the north-south flow of pedestrians and other Park users in any portions of such Easement Area that are public circulation areas. Except as otherwise set forth in this Section 2.06, the obligations of Tenant, Occupants, Recognized Mortgagees, Mezzanine Lenders and each of their respective contractors, agents, employees and invitees with respect the Easements and the Easement Area shall be governed in all respects by the applicable provisions of this Lease as if the Easement Area were deemed part of the Premises, including without limitation Tenant’s obligation to repair and maintain, pursuant to the provisions of Article 14, the Easement Area, including the bulkheads located therein.

(b) The Easements are as follows:

(i) temporary easements to construct, alter, repair, replace, restore and rebuild the waterfront public access areas comprising the perimeter walkway adjoining the Head House (the “Head House Walkway”) and the esplanades continuing to the north and south of the Head House (the “Esplanades”) (the Head House Walkway and the Esplanades, collectively, the “Waterfront Public Access Areas”), each in accordance with the Approved ULURP Application and the plans and specifications to be approved by Landlord pursuant to Articles 15 and 16, and provided further that the requirements of clauses (a), (b) and (c) of Section 7.13 shall apply;

(ii) temporary easements to construct, alter, repair, replace, restore and rebuild the driveways, pedestrian walkways, sidewalks, landscaping, sitework and other areas to the east of the Head House (collectively, the “Paving Areas”) in accordance with the plans and specifications to be approved by Landlord pursuant to Articles 15 and 16, and provided further that the requirements of clauses (a), (b) and (c) of Section 7.13 shall apply at all times;

(iii) temporary easements to perform the rights and obligations under this Lease of Tenant in constructing, altering, repairing, replacing, restoring and rebuilding the Pier 57 Building, including, without limitation, erecting scaffolding, staging and performing other construction-related activities within the Easement Area, in

accordance with the plans and specifications to be approved by Landlord pursuant to Articles 15 and 16, and provided further that the requirements of clauses (a), (b) and (c) of Section 7.13 shall apply at all times;

(iv) permanent, non-exclusive easements to use, maintain, operate and repair the Waterfront Public Access Areas, including but not limited to maintenance or repairs of the bulkhead area outside of the Head House Caisson and the bulkhead areas within the Esplanades, provided that clauses (a), (b) and (c) of Section 7.13 shall apply with respect to any maintenance and repair activity;

(v) permanent, non-exclusive easements to use, maintain, operate and repair the Paving Areas (including, without limitation, providing a right-of-way, ingress and egress for pedestrians and vehicles to and from adjoining sidewalks and streets), provided that the requirements of clauses (a), (b) and (c) of Section 7.13 shall apply with respect to any maintenance and repair activity; and

(vi) permanent, exclusive easements to locate, operate and maintain utilities servicing the Pier 57 Building, Waterfront Public Access Areas and Paving Areas in accordance with Article 5, provide that during any repair and maintenance of such utilities the requirements of Section 7.13 shall apply.

(c) The Waterfront Public Access Areas and Paving Areas shall be open and accessible by the public during normal hours of the Park consistent with Park Rules (except when necessary to be closed in connection with construction, maintenance or repairs), provided that Tenant may restrict access to the Head House Walkway at the times that the Pier Shed Roof Open Space is closed.

(d) Tenant shall be responsible to provide, at its sole cost and expense, a sufficient number of experienced and trained security personnel to ensure the safety of the public on or about the Waterfront Public Access Areas, Paving Areas and the Public Open Space. If Tenant fails to provide such personnel as provided in this Section 2.06(d) on the Esplanades and/or the Paving Areas, or if Landlord determines that such personnel are not adequately performing their security functions in accordance with this Section 2.06(d) on the Esplanades and/or the Paving Areas, or under any other written agreement providing for such security functions on the Esplanades and/or the Paving Areas, Landlord shall give to Tenant written notice of such failure or inadequate performance and Tenant shall be obligated to remedy, in a prompt and expeditious manner and to Landlord's reasonable satisfaction, such failure or inadequate performance. If Tenant fails to remedy, in a prompt and expeditious manner, such failure or inadequate performance to Landlord's reasonable satisfaction after Landlord has given Tenant notice thereof, or if in Landlord's determination, the imminent threat to public health or safety resulting from such failure or inadequate performance is such that immediate action is required (and in such case, Landlord shall still give to Tenant written notice of such failure or inadequate performance), then in addition to any other right and remedy under this Lease, Landlord shall have the right to provide New York City Parks Enforcement Patrol ("PEP") officers or such successor security entity designated by Landlord as part of its overall security for the Park to perform the security functions required to be performed by Tenant in accordance with this Section 2.06(d) on the Esplanades and/or the Paving Areas, and Tenant shall pay to Landlord

Landlord's actual cost (without markup or profit) of providing such PEP security services until Tenant can remedy such failure or inadequate performance by Tenant's security. Tenant acknowledges that Landlord currently employs PEP officers to maintain public safety and security and enforce Park Rules and Regulations and other applicable laws throughout the Park, and Tenant agrees that it shall at all times abide by the directives of PEP officers acting in their official capacity (or officers of such successor security entity designated by the Landlord) and shall use commercially reasonable efforts to cause its employees, agents, concessionaires, vendors, contractors and invitees to obey such health and safety directives to the extent legally required. Tenant further agrees that Landlord's employment of PEP (or successor entity) officers do not relieve, reduce or substitute for Tenant's own obligation to provide security personnel. Notwithstanding any provision hereof to the contrary, the security service provided by Landlord as set forth herein shall cooperate with Tenant's security, and not, except in the case of an imminent threat to public health or safety, interfere with Tenant's possession and quiet enjoyment of the leasehold estate demised to Tenant pursuant to this Lease. Landlord and Tenant shall cooperate with each other and coordinate efforts with regard to security matters and shall establish lines of communication to effectuate the same.

(e) Tenant shall, in conjunction with its security obligation, be responsible, at Tenant's sole cost and expense, to employ a sufficient number of experienced and trained traffic management personnel to implement the Traffic Management Plan for the driveways and all intersections between the driveways and (i) pedestrian crossings and walkways and (ii) bikeways. Landlord has notified Tenant that Landlord will not employ PEP (or successor entity) officers to perform this function on behalf of Tenant, except as provided in Section 2.06(d).

(f) Tenant's maintenance and repair standards for the Waterfront Public Access Areas and Paving Areas are attached hereto as Exhibit R and made a part hereof.

ARTICLE 3

RENTAL; NET LEASE

Section 3.01 Construction Period Rent.

(a) Tenant shall pay to Landlord fixed rent during the Construction Period in the following amounts: (i) on the Commencement Date an amount equal to Six Million Five Hundred Thousand Dollars (\$6,500,000), which amount shall constitute a lump sum payment of fixed rent for the first twenty-four (24) months of the Initial Term and the Construction Period following the Commencement Date (such lump sum payment, the "Initial Construction Period Rent Payment"); and (ii) on the first day of the twenty-fifth (25th) month (the term "month" as used in this Article 3 shall be deemed to refer only to a full calendar month) following the Commencement Date and every three (3) months thereafter, on the first day of the third (3rd) month after the month that began with the last preceding payment date, the amount of One Hundred Eighty Seven Thousand Five Hundred Dollars (\$187,500), which amount shall constitute an installment payment of fixed rent in advance for the succeeding three (3) month period (each a "Quarterly Construction Period Rent Payment"); and together with the Initial Construction Period Rent Payment, the "Construction Period Rent"). The "Construction Period" means the period commencing on the Commencement Date and ending on the day prior to the

date (the “Base Rent Period Commencement Date”) that is the earliest to occur of (1) the date that is thirty (30) calendar months after the Commencement Date, (2) the date upon which the payment of rent commences under the sublease with Anchor Occupant and (3) the first date on which not less than sixty percent (60%) of GLA is leased to Occupants and such Occupants are open for business or eligible to be open for business (with Tenant being obligated to deliver to Landlord during the Term until the Base Rent Period Commencement Date occurs a written monthly report listing the subleases that have been executed by Tenant and Occupants prior thereto and the applicable percentage of GLA covered by such subleases and the total of all percentages shown on such report, together with evidence as reasonably required by Landlord that such Occupants are open for business or eligible to be open for business; which Base Rent Period Commencement Date shall be memorialized in a written agreement signed by Landlord and Tenant promptly after the occurrence thereof, but the failure to so execute or deliver said instrument shall not in any way reduce Tenant’s or Landlord’s obligations or rights under this Lease). If the Construction Period expires prior to the end of the twenty-fourth (24th) month following the Commencement Date, then Quarterly Construction Period Rent Payments shall not be due after the date the Construction Period so expires. If the Construction Period is extended by Force Majeure pursuant to Section 39.09 or any other reason, then notwithstanding anything to the contrary contained in this Lease, the Base Rent Period Commencement Date, for all purposes under this Lease, shall be deemed to occur on the date that is thirty (30) months after the Commencement Date and no further Quarterly Construction Period Rent Payment shall be due after the date that is thirty (30) months after the Commencement Date.

(b) A rent credit shall be granted to Tenant against the Construction Period Rent payable pursuant to Section 3.01(a), (1) if the Construction Period expires prior to the end of a quarter for which Tenant has made a Quarterly Construction Period Rent Payment, in which event the excess portion of such Quarterly Construction Period Rent Payment shall be calculated by multiplying One Hundred Eighty Seven Thousand Five Hundred Dollars (\$187,500) by a fraction the numerator of which is the number of calendar days remaining in such quarter and the denominator of which is the number of calendar days in the full quarter for which such Quarterly Construction Period Rent Payment was made, or (2) if the Construction Period expires prior to the end of the twenty-fourth (24th) month following the Commencement Date, in which event a rent reduction shall be calculated by multiplying One Million Five Hundred Thousand Dollars (\$1,500,000) by a fraction the numerator of which is the number of calendar days remaining in such twenty-four (24) month period and the denominator of which is seven hundred thirty (730).

(c) The amount of either (1) the excess portion of such Quarterly Construction Period Rent Payment, if any or (2) the rent reduction, if any, each calculated pursuant to Section 3.01(b), shall be a credit (the “Base Rent Credit”) to be applied against the first installments of Base Rent due hereunder by Tenant pursuant to Section 3.02(a).

(d) A rent credit shall also be granted to Tenant against fifty percent (50%) of the Construction Period Rent payable pursuant to Section 3.01(a), which rent credit shall be in the amount of fifty percent (50%) of any reasonable attorneys’ fees, court costs and disbursements funded by Tenant (including any attorneys’ fees, court costs and disbursements incurred by Landlord and funded by Tenant) relating to any Major Litigation that delays Tenant’s construction of the Required Tenant Improvements; provided, however, that if the Construction Period Rent shall be insufficient to use the entire rent credit described in this Section 3.01(d),

such that any portion of such rent credit shall remain unused after the application, as aforesaid, against fifty percent (50%) of the Construction Period Rent payable pursuant to Section 3.01(a), then the remaining unused balance thereof shall be deemed part of the Base Rent Credit except that the Base Rent Credit attributable to such remaining unused balance may only be applied against fifty percent (50%) of the first installments of Base Rent due hereunder by Tenant pursuant to Section 3.02(a).

(e) Pursuant to Paragraph 13(b) of the Original MOU or the Amended MOU, as the case may be, a rent credit shall also be granted to Tenant against Construction Period Rent in an amount equal to (i) forty-eight and six/tenths percent (48.6%) of \$1,118,531, the total amount paid to Landlord by Hudson Eagle, LLC under the Original MOU with respect to “authorizing permits” entered into between Landlord and Hudson Eagle, LLC prior to April 3, 2014 under the MOU, which credit pursuant to this clause (i) was agreed to by Landlord and P57 Investors LLC, as successor to Hudson Eagle, LLC, in the Amendment to Memorandum of Understanding, dated as of October 1, 2014, and is binding upon Tenant as assignee of P57 Investors LLC, and (ii) any other amounts to be credited against Construction Period Rent pursuant to the Amended MOU relating to any period from and after April 3, 2014.

Section 3.02 Base Rent and In-Water Areas Rent.

(a) Tenant shall pay to Landlord fixed rent (“Base Rent”) during the period (the “Base Rent Period”) from the Base Rent Period Commencement Date to the Initial Term Expiration Date as follows: (1) on the Base Rent Period Commencement Date an amount of Seven Million Dollars (\$7,000,000) less the Base Rent Credit, if any, pursuant to Section 3.01(c), and (2) commencing on the Base Rent Period Commencement Date and continuing during each Base Rent Year through the Initial Term Expiration Date, in equal quarterly installments in advance due upon the first (1st) day of each quarter occurring during such period at the following annual rates:

(i) One Million Dollars (\$1,000,000) per annum, during the first (1st) Base Rent Year through and including the fifth (5th) Base Rent Year;

(ii) One Million One Hundred Thousand Dollars (\$1,100,000) per annum, during the sixth (6th) Base Rent Year through and including the tenth (10th) Base Rent Year;

(iii) One Million Two Hundred Ten Thousand Dollars (\$1,210,000) per annum, during the eleventh (11th) Base Rent Year through and including the fifteenth (15th) Base Rent Year;

(iv) One Million Three Hundred Thirty One Thousand Dollars (\$1,331,000) per annum, during the sixteenth (16th) Base Rent Year through and including the twentieth (20th) Base Rent Year;

(v) Two Million Nine Hundred Twenty-Eight Thousand Two Hundred Dollars (\$2,928,200) per annum, during the twenty-first (21st) Base Rent Year through and including the twenty-fifth (25th) Base Rent Year;

(vi) Three Million Two Hundred Twenty-One Thousand and Twenty Dollars (\$3,221,020) per annum, during the twenty-sixth (26th) Base Rent Year through and including the thirtieth (30th) Base Rent Year;

(vii) Three Million Five Hundred Forty-Three Thousand One Hundred and Twenty Two Dollars (\$3,543,122) per annum, during the thirty-first (31st) Base Rent Year through and including the thirty-fifth (35th) Base Rent Year;

(viii) Three Million Eight Hundred Ninety-Seven Thousand Four Hundred Thirty Four Dollars (\$3,897,434) per annum, during the thirty-sixth (36th) Base Rent Year through and including the fortieth (40th) Base Rent Year;

(ix) Four Million Two Hundred Eighty-Seven Thousand One Hundred Seventy Eight Dollars (\$4,287,178) per annum, during the forty-first (41st) Base Rent Year through and including the forty-fifth (45th) Base Rent Year;

(x) Four Million Seven Hundred Fifteen Thousand Eight Hundred Ninety-Five Dollars (\$4,715,895) per annum, during the forty-sixth (46th) Base Rent Year through and including the forty-ninth (49th) Base Rent Year;

(xi) Five Million Four Hundred Twenty-Three Thousand Two Hundred Seventy-Nine Dollars (\$5,423,279) per annum, during the fiftieth (50th) Base Rent Year through and including the fifty-fourth (54th) Base Rent Year; and

(xii) Six Million Two Hundred Thirty-Six Thousand Seven Hundred Seventy-One Dollars (\$6,236,771) per annum, during the fifty-fifth (55th) Base Rent Year through and including the fifty-ninth (59th) Base Rent Year.

“Base Rent Year” shall mean the period commencing on the Base Rent Period Commencement Date and ending on the date immediately preceding the first (1st) anniversary of the Base Rent Period Commencement Date and each succeeding twelve (12) month period thereafter through the Expiration Date.

(b) If Tenant exercises the option for the First Renewal Term as provided in Section 2.03, Tenant shall pay to Landlord Base Rent during each Base Rent Year during the First Renewal Term (the “First Renewal Term Base Rent”), in equal quarterly installments in advance due upon the first (1st) day of each quarter occurring during the First Renewal Term, as follows: (i) during the first five (5) years of the First Renewal Term, the fair market rent per annum, as determined in accordance with Section 3.02(d), for the First Renewal Term (the “First Renewal Term Fair Market Rent”), provided, however, the First Renewal Term Base Rent payable by Tenant for each Base Rent Year during the first five (5) years of the First Renewal Term shall not be less than one hundred fifteen percent (115%) of the sum of the Base Rent and the Participation Rent payable during the fifty-ninth (59th) Base Rent Year; and (ii) during each five (5) year period thereafter during the First Renewal Term, at the First Renewal Term Base Rent payable per annum during the immediately preceding five (5) year period, multiplied by the greater of (x) fifteen percent (15%) and (y) the percentage amount which equals the CPI during the five-year period immediately preceding the commencement of the First Renewal Term.

(c) If Tenant exercises the option for the Second Renewal Term as provided in Section 2.03, Tenant shall pay to Landlord Base Rent during each Base Rent Year during the Second Renewal Term (the “Second Renewal Term Base Rent”), in equal quarterly installments in advance due upon the first (1st) day of each quarter occurring during the Second Renewal Term, as follows: (i) during the first five (5) years of the Second Renewal Term, the fair market rent per annum, as determined in accordance with Section 3.02(d), for the Second Renewal Term (the “Second Renewal Term Fair Market Rent”); provided, however, the Second Renewal Term Base Rent payable by Tenant for each Base Rent Year during the first five (5) years of the Second Renewal Term shall not be less than one hundred fifteen percent (115%) of the sum of the Base Rent and the Participation Rent payable during the last Base Rent Year during the First Renewal Term; and (ii) during each five (5) year period thereafter (and during the four (4) year period immediately prior to the Second Renewal Term Expiration Date) during the Second Renewal Term, at the Second Renewal Base Rent payable per annum during the immediately preceding five (5) year period, multiplied by the greater of (x) fifteen percent (15%) and (y) the percentage amount which equals the CPI during the five-year period immediately preceding the commencement of the Second Renewal Term.

(d) If, as provided in Section 2.03, Tenant exercises the option for the First Renewal Term, and if Tenant exercises the option for the Second Renewal Term, as the case may be, then the First Renewal Term Fair Market Rent and the Second Renewal Term Fair Market Rent, respectively, shall be determined in accordance with the following provisions:

(i) Not later than the date that is nineteen (19) months prior to the applicable Renewal Term, Landlord and Tenant shall each appoint, by written notice given to each other, an appraiser, in accordance with this Section 3.02(d), to determine the fair market rent for the Premises during the applicable Renewal Term in accordance with this Section 3.02(d) (the “Fair Market Rent”) (the determination of Fair Market Rent by the appraiser appointed by Landlord being hereinafter referred to as the “Landlord’s Appraisal” and the determination of the Fair Market Rent by appraiser appointed by Tenant being hereinafter referred to as the “Tenant’s Appraisal”). If either Landlord or Tenant shall fail to appoint an appraiser as aforesaid, then within twenty (20) days after written notice by the appointing party to the non-appointing party (which notice shall expressly request an appointment of an appraiser by such non-appointing party and shall state that a failure of the non-appointing party to so appoint an appraiser within such twenty (20) day period shall result in the appraiser appointed by the appointing party determining the Fair Market Rent in accordance with this Section 3.02(d)), and the failure of such party to appoint its appraiser within such twenty (20) day period, the appraiser appointed by the appointing party shall make the determination of the Fair Market Rent in accordance with this Section 3.02(d) and such determination shall become the First Renewal Term Fair Market Rent or the Second Renewal Term Fair Market Rent, as the case may be, for all purposes under this Lease, subject to the adjustment provided in Section 3.02(d)(viii).

(ii) If each of Landlord and Tenant timely appoint their respective appraisers, then not later than the date that is seventeen (17) months prior to the commencement of the applicable Renewal Term, the appraiser appointed by Landlord shall complete Landlord’s Appraisal and the appraiser appointed by Tenant shall complete Tenant’s Appraisal, and promptly thereafter, Landlord and Tenant shall schedule and conduct a

face-to-face meeting to review and exchange Landlord's Appraisal and Tenant's Appraisal. If Landlord's Appraisal and Tenant's Appraisal are within ten percent (10%) or less of each other, the First Renewal Term Fair Market Rent or the Second Renewal Term Fair Market Rent, as the case may be, shall be equal to the quotient determined by dividing (1) the total of the Landlord's Appraisal and Tenant's Appraisal by (2) two (2), subject to the adjustment provided in Section 3.02(d)(viii).

(iii) If Landlord's Appraisal and Tenant's Appraisal are greater than ten percent (10%) of each other, then within thirty (30) days after the occurrence of the meeting between Landlord and Tenant at which the Landlord's Appraisal and Tenant's Appraisal are exchanged as aforesaid, Landlord shall give written notice (the "Three Appraisers Appointment Notice") to Tenant of three (3) appraisers, in accordance with this Section 3.02(d) (and who are different from the appraisers appointed by Landlord and Tenant as aforesaid), selected by and acceptable to Landlord, to make a third determination of the Fair Market Rent as provided in this Section 3.02(d). Within ten (10) days after receipt of the Three Appraisers Appointment Notice, Tenant shall give written notice (the "Three Appraisers Selection Notice") to Landlord of Tenant's choice, from such three appraisers selected by and acceptable to Landlord, of a third appraiser to make a determination of the Fair Market Rent as provided in this Section 3.02(d) (the determination of Fair Market Rent by such third appraiser being hereinafter referred to as the "Third Appraisal"). If Landlord shall fail to give the Three Appraisers Appointment Notice to Tenant, as aforesaid, and Tenant thereafter gives written notice to Landlord stating that (i) Landlord failed to give the Three Appraisers Appointment Notice to Tenant as aforesaid and (ii) a failure by Landlord to give the Three Appraisers Appointment Notice to Tenant within twenty (20) days after the giving of Tenant's notice shall result in Tenant's Appraisal being deemed to be the First Renewal Term Fair Market Rent or the Second Renewal Term Fair Market Rent, as the case may be, then if Landlord fails to give the Three Appraisers Appointment Notice to Tenant within such twenty (20) day period, Tenant's Appraisal shall be deemed to be the First Renewal Term Fair Market Rent or the Second Renewal Term Fair Market Rent, as the case may be, for all purposes under this Lease. If Tenant shall fail to give the Three Appraisers Selection Notice to Landlord, as aforesaid, and Landlord thereafter gives written notice to Tenant stating that (1) Tenant failed to give the Three Appraisers Selection Notice to Landlord as aforesaid and (2) a failure by Tenant to give the Three Appraisers Selection Notice to Landlord within twenty (20) days after the giving of Landlord's notice shall result in Landlord's Appraisal being deemed to be the First Renewal Term Fair Market Rent or the Second Renewal Term Fair Market Rent, as the case may be, then if Tenant fails to give the Three Appraisers Selection Notice to Landlord within such twenty (20) day period, Landlord's Appraisal shall be deemed to be the First Renewal Term Fair Market Rent or the Second Renewal Term Fair Market Rent, as the case may be, for all purposes under this Lease. Not later than the date that is thirteen (13) months prior to the commencement of the applicable Renewal Term, the third appraiser shall complete the Third Appraisal and deliver a copy of the Third Appraisal to Landlord and Tenant, and promptly thereafter, Landlord and Tenant shall schedule and conduct a face-to-face meeting to review the Third Appraisal. Upon the completion of the Third Appraisal, the First Renewal Term Fair Market Rent or the Second Renewal Term Fair Market Rent, as the case may be, shall be equal to the quotient determined by dividing (1) the total of the

Third Appraisal and whichever of the Landlord's Appraisal or the Tenant's Appraisal is closest to the Third Appraisal by (2) two (2), subject to the adjustment provided in Section 3.02(d)(x). Landlord and Tenant acknowledge and agree that, in the case where a Third Appraisal is undertaken, whichever of Landlord's Appraisal or Tenant's Appraisal is not the closest to the Third Appraisal shall be disregarded for purposes of determining the First Renewal Term Fair Market Rent or the Second Renewal Term Fair Market Rent, as the case may be.

(iv) The appraisal process under this Section 3.02(d) shall be conducted in accordance with the then-current Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation (or equivalent professional standards issued by any then-existing successor organization or similar professional organization governing the appraisal profession). Appraisers appointed by the parties under this Section 3.02(d) shall be independent real estate appraisers with at least ten (10) years' experience in the fixing and valuation of ground lease rentals in the Borough of Manhattan, City and State of New York particular to commercial real estate similar to the Premises and a member of the American Institute of Appraisers of the National Association of Real Estate Boards and the Society of Real Estate Appraisers (or then-existing successor or similar professional organizations). Each party shall bear the cost of its own appraiser, and the costs of appointing any third appraiser and obtaining the Third Appraisal shall be shared equally by Landlord and Tenant. Tenant shall pay to Landlord Tenant's one-half (1/2) share of the cost of appointing any third appraiser and obtaining the Third Appraisal within fifteen (15) days after receipt of a written invoice from Landlord for such cost.

(v) For purposes of this Section 3.02(d), Landlord and Tenant acknowledge and agree that (i) the Fair Market Rent for the applicable Renewal Term shall be expressed in Landlord's Appraisal, Tenant's Appraisal and any Third Appraiser, for consistency, comparison and utilization during the process outlined in this Section 3.02(d), as a dollar number for the total Base Rent payable during the applicable Renewal Term, and (ii) the Fair Market Rent shall be equal to the product of (1) the Fair Market Value of the Premises (as hereinafter defined) multiplied by (2) the Fair Market Value Rental Percentage (as hereinafter defined). Fair Market Value of the Premises shall mean the fair market value of the fee simple interest of the Pier 57 Property (including the improvements then-existing on the Pier 57 Property) at its highest and best use, together with any potential development or redevelopment of the Pier 57 Property that is legally permissible on an "as of right" basis after obtaining all administrative approvals from Governmental Authorities (but excluding any development or redevelopment of the Pier 57 Property that requires discretionary approvals from Governmental Authorities) (any such development or redevelopment to be considered as part of the appraisal process being hereinafter referred to as "Additional Development"), subject to the following restrictions, limitations, qualifications and adjustments (such restrictions, limitations, qualifications and adjustments listed above as (a) through (g) of this Section 3.02(d)(v), the "Assumptions": (a) the fee simple interest shall be unencumbered by this Lease, any agreement relating to any Occupant of the Premises, any lien, any financing, or any other encumbrance except for any restriction or title exception placed upon the Pier 57 Property by a Governmental Authority or other entity which is not susceptible to removal

before the commencement of the applicable Renewal Term, (b) the Additional Development shall only be considered to the extent that the total GLA following completion of any Additional Development shall not exceed four hundred twenty thousand sixty-four (420,064) square feet, (c) there shall be no consideration as to any limitation on the period of ownership and control subsequent to the appraisal date, except that, with respect to the value of the Additional Development, the appraiser shall take into account, in evaluating potential income from the Premises and the availability and cost of financing to support the necessary investment for the Additional Development, that the period for deriving income from such Additional Development would be approximately thirty-nine (39) years (in the case of the determination of the First Renewal Term Fair Market Rent) or nineteen (19) years (in the case of the determination of the Second Renewal Term Fair Market Rent), as the case may be, (d) highest and best use of the Pier 57 Property shall not include any uses which are not permissible under the Lease, (e) if PILOT is payable during any Renewal Term in an amount which is different than real estate taxes, then an adjustment shall be made to reflect that PILOT is applicable in lieu of real estate taxes, (f) the cost of maintaining Public Open Space shall be a recognized expense should the appraiser employ the income approach, and, for the comparable sales approach, such cost of maintaining Public Open Space may be used in determining an adjustment to the extent that comparable sale properties do not have a similar obligation for either public or private use of open space or common areas, and (g) the condition of the Premises shall be as of the inspection date by the appraiser, provided however that should Landlord have provided prior notice to Tenant of its obligation to undertake any repair pursuant to the Lease, then the condition of the Premises shall be assumed to be the repaired state as specified in such notice. “Fair Market Rental Percentage” shall mean the percentage rate (or selected “going-in” rate of return reflecting risk inherent in an unsubordinated ground lessor position) then prevalent for new ground leases for commercial properties (whether land, land and improvements, or land and partial improvements) which are comparable to the Premises and located in the New York City metropolitan area market which, when multiplied by the fair market value of such properties, is used by ground lessors and tenants in arms-length transactions to establish net annual rental for long term leases of forty-nine or more years. Landlord and Tenant may jointly agree, prior to the appointment of their respective appraisers pursuant to this Section 3.02(d), to modify, supplement or replace the Assumptions and to replace the Assumptions with another set of written instructions (the “Replacement Assumptions”) to be given to and used by all appraisers referred to in this Section 3.02(d). If Landlord and Tenant agree to the Replacement Assumptions, the Replacement Assumptions shall be given to and used by each appraisers appointed pursuant to this Section 3.03(d) and the Assumptions contained in this Section 3.02(d)(v) shall be disregarded by such appraisers. If Landlord and Tenant do not agree to any Replacement Assumptions, then the Assumptions contained in this Section 3.02(d)(v) shall be used by such appraisers in determining the Fair Market Rent for the applicable Renewal Term. Landlord and Tenant acknowledge and agree that neither party is under any obligation to agree to any Replacement Assumptions.

(vi) Each appraiser shall use the income approach and/or the comparable sales approach to establish Fair Market Value of the Premises.

(vii) Any appraisal pursuant to this Section 3.02(d) shall assume that values are determined in an arm's length transaction, that neither Tenant nor Landlord is under any compulsion to enter into the transaction which is the subject of the appraisal, and that each is acting prudently and knowledgeably.

(viii) Once the Fair Market Rent for the applicable Renewal Term has been determined in accordance with this Section 3.02(d), the First Renewal Term Fair Market Rent or the Second Renewal Term Fair Market Rent, as the case may be, shall be equal to the sum of (1) the Fair Market Rent determined in accordance with this Section 3.02(d) and (2) the product of such Fair Market Rent multiplied by the CPI for the period from the date of the determination of such Fair Market Rent and the date thirty (30) days prior to the commencement of the First Renewal Term or the Second Renewal Term, as the case may be.

(ix) Notwithstanding anything to the contrary contained in this Section 3.02(d), Landlord shall have the right to object to (1) the qualifications of the appraiser appointed by Tenant if such appraiser does not meet the requirements set forth in Section 3.02(d)(iv), and (2) any of Tenant's Appraisal and/or the Third Appraisal if same do not follow the provisions of this Section 3.02(d) in determining the Fair Market Rent, if the appraiser preparing Tenant's Appraisal or any Third Appraisal does not consider any of the Assumptions (or, if applicable, the Replacement Assumptions) or if there are factual or methodological mistakes or errors in such determination. Notwithstanding anything to the contrary contained in this Section 3.02(d), Tenant shall have the right to object to (a) the qualifications of the appraiser appointed by Landlord if such appraiser does not meet the requirements set forth in Section 3.02(d)(iv), (b) the qualifications of any of the three appraisers set forth in the Three Appraisers Appointment Notice if such appraisers do not meet the requirements set forth in Section 3.02(d)(iv), and/or (c) any of the Landlord's Appraisal and/or the Third Appraisal if same do not follow the provisions of this Section 3.02(d) in determining the Fair Market Rent, if the appraiser preparing Landlord's Appraisal or any Third Appraisal does not consider any of the Assumptions (or, if applicable, the Replacement Assumptions) or if there are factual or methodological mistakes or errors in such determination. Any such objection by Landlord or Tenant as aforesaid must be made by written notice given by the objecting party to the other party promptly after the objecting party receives information giving rise to a basis for such objection. Upon a notice of objection pursuant to this Section 3.02(d)(ix), Landlord shall promptly consider the matter and render a decision in writing (detailing the basis for such decision) stating whether or not such objection is valid, and shall promptly deliver a copy of such decision to Tenant. Landlord's decision as to whether or not such objection is valid shall be binding upon Landlord and Tenant. If such objection is found to be valid, then Landlord and Tenant shall cooperate with one another to remedy the objection and complete the process of determining the Fair Market Rent in accordance with this Section 3.02(d) in a timely manner so as not to prejudice Tenant's obligation to pay the First Renewal Term Fair Market Rent or the Second Renewal Term Fair Market Rent, as applicable, on the first date same is due.

(x) Landlord and Tenant acknowledge and agree that, in order to maintain the integrity of the process outlined in this Section 3.02(d), the contents and conclusions of

Landlord's Appraisal and Tenant's Appraisal shall be kept confidential and shall not be shared with or disclosed to any third party, other than Landlord and Tenant and their respective counsel, accountants and consultants (who shall likewise be obligated to maintain the contents of Landlord's Appraisal and Tenant's Appraisal as confidential) until the entire appraisal process is concluded in accordance with this Section 3.02(d) and the First Renewal Term Fair Market Rent or the Second Renewal Term Fair Market Rent, as the case may be, has been definitely determined pursuant to this Section 3.02(d). Landlord and Tenant further acknowledge and agree that, notwithstanding the immediately preceding sentence, any appraiser preparing the Third Appraisal, if applicable, shall not be informed by either Landlord or Tenant (or any third party engaged by or under the control of Landlord or Tenant) of the contents or conclusions of Landlord's Appraisal or Tenant's Appraisal until the Third Appraisal has been prepared and delivered to Landlord and Tenant as provided in this Section 3.02(d). If the appraiser preparing any Third Appraisal is informed by either Landlord or Tenant (or by any third party engaged by or under the control of Landlord or Tenant), prior to the completion of the Third Appraisal, of the contents or conclusions of Landlord's Appraisal and/or Tenant's Appraisal, then notwithstanding anything to the contrary contained in this Section 3.02(d), whichever of Landlord's Appraisal and/or Tenant's Appraisal was disclosed to the appraiser preparing the Third Appraisal shall be disregarded for all purposes in determining the Fair Market Rent for the applicable Renewal Term upon the completion of the Third Appraisal.

(e) Tenant shall pay to Landlord rent (the "In-Water Areas Rent") for the Applicable In-Waters Area leased by Tenant pursuant to the terms contained in Section 2.05, which In-Water Areas Rent shall escalate using the same percentage rate increases, and in the same manner and on the same dates as, the increases to Base Rent set forth in Section 3.02(a), and amounts received by Tenant from Occupants of the In-Water Areas shall be included in Gross Revenue. The first installment of the In-Water Areas Rent shall be paid on the In-Water Areas Commencement Date (or in arrears retroactive to the In-Water Areas Commencement Date within ten (10) business days after the determination of the In-Water Areas Rent if such determination is not completed until after the applicable In-Water Areas Commencement Date) and shall be for the period of time commencing on the applicable In-Water Areas Commencement Date and ending on the last day of the quarter during the Base Rent Year during which such applicable In-Water Areas Commencement Date occurs or the last day of the next succeeding quarter during which the In-Water Areas Rent is determined. The In-Water Areas Rent shall be the annual fair market rent for the Applicable In-Waters Area as determined in accordance with the following procedure: (i) within forty-five (45) days after the date of its receipt of either the Tenant Election Notice or Acceptance Notice, as the case may be, Landlord shall provide Tenant with a draft scope of services for a fair market rent appraisal of the Applicable In-Water Area (taking into consideration the Maritime Uses) that is the subject of such notice from an independent licensed appraiser reasonably acceptable to Tenant with experience in appraising commercial real estate similar to the Applicable In-Water Area; (ii) Tenant may, within thirty (30) days after its receipt of the draft scope of services, provide comments to Landlord with respect to such draft scope, which comments Landlord agrees to consider in good faith but which Landlord may accept, modify or reject in Landlord's sole and absolute discretion, reasonably applied; (iii) Tenant shall, within ten (10) days after its receipt of the final scope of services from Landlord, make payment to Landlord for Landlord's reasonably

anticipated cost of the fair market rent appraisal, or elect to withdraw the previously submitted Tenant Election Notice or Acceptance Notice, as the case may be; (iv) Landlord agrees that the selected appraiser shall use the final scope of services set forth in the immediately preceding clause (iii) and Tenant agrees that Landlord shall be solely responsible for selecting, contracting, and communicating with the appraiser (provided that Landlord shall provide copies of all such written communications regarding the scope of services to Tenant); (v) upon receipt of the completed appraisal Landlord shall forward a copy to Tenant together with a statement setting forth the required In-Water Areas Rent for the Applicable In-Water Area; and (6) Tenant shall, within ten (10) days after its receipt of the appraisal and Landlord's statement of the required In-Water Areas Rent either accept the rental amount set forth therein or elect to withdraw the previously submitted Tenant Election Notice or Acceptance Notice, as the case may be. It is understood and agreed that (1) the cost of the construction of the Mandatory Perimeter Public Access Walkway Platforms undertaken by Tenant pursuant to Article 17 shall not be a consideration in either the aforesaid appraisal or Landlord's determination of the In-Water Areas Rent, and (2) Tenant's sole remedy in the event that it disagrees with the value conclusion of the appraisal and/or Landlord's determination of the In-Water Areas Rent shall be to withdraw the previously submitted Tenant Election Notice or Acceptance Notice, as the case may be.

Section 3.03 Participation Rent. Tenant shall pay to Landlord for each Base Rent Year participation rent ("Participation Rent") in an amount equal to the lesser of (a) five percent (5%) of Gross Revenue, and (b) Available Annual Cash, such amount to be not less than zero (0). The dates and manner of payment for Participation Rent shall be as set forth in this Section 3.03.

(a) As used herein "Gross Revenue" for a Base Rent Year shall mean all funds, and the fair market value of any non-cash items, actually received by or for the account of Tenant (or, in the case of a Master Sublease, the subtenant thereunder) arising from any and all activity conducted at or from the Premises or any portion thereof, whether by cash, check, electronic transfer, barter, exchange or credit, without deduction, set-off, or exclusion of any kind, except as expressly set forth herein, including, without limitation: (i) as base rent, percentage or other rent, fees and all other amounts of any kind actually received by Tenant from Occupants, including but not limited to any charges and escalations assessed by Tenant with respect to payments for electric, steam, fuel, natural gas, and other utilities, HVAC services and equipment charges, cleaning, maintenance, security, other operating expenses, common area charges, PILOT or for providing any goods or services of any kind in connection with the use and occupation of the Premises, even if such goods or services are provided from a location off the Premises, occupancy buy-out payments made by Occupants, prepaid rents, forfeited deposits, and insurance proceeds and/or damage awards received in lieu of rent, (ii) gross revenue actually received by Tenant from the conduct of any activity at or from the Premises or any portion thereof (whether or not goods and services are delivered, consumed or utilized outside the Premises) either (A) directly by Tenant or any Affiliate thereof or (B) through contractual arrangements (other than subleases or other occupancy agreements already included in subparagraph (i) of this definition) with third parties, (iii) amounts previously included in Permitted Operating Expenses which are released from reserve accounts or refunded, returned, recovered or otherwise received by Tenant (except to any extent that such credit causes Permitted Operating Expenses in the Base Rent Year to be commensurately reduced), and (iv) all other amounts received by Tenant in connection with the operation of the Premises and which are not excluded as set forth below. Notwithstanding the foregoing, the parties acknowledge and

agree that in no event shall Gross Revenue include any (1) proceeds of insurance (other than insurance proceeds received in lieu of rent) or damage awards paid by third parties (except to the extent, but only to the extent, made to compensate for loss of operating revenue); (2) proceeds of condemnation (except to the extent, but only to the extent, made to compensate for loss of operating revenue); (3) litigation awards and settlement proceeds (except to the extent, but only to the extent, made to compensate for loss of operating revenue); (4) proceeds of any sale, assignment or other transfer (other than subleases that are not a Master Sublease or licenses or concessions), or any financing or refinancing of all or any portion of the direct or indirect ownership interests in Tenant or Tenant's leasehold interest in the Premises or any other mortgage, loan or other indebtedness of Tenant or any direct or indirect owner of Tenant, including, without limitation, an Assignment, a Master Sublease, an Equity Disposition, a Designated Sale, a Designated Financing, an Alternative Disposition, or any purchase money financing taken back in connection with an Assignment or Alternative Disposition, to the extent that such proceeds are included in and subject to the calculation of Transaction Rent under Section 3.05; (5) proceeds of the Construction Loan and the first so-called "take out" financing of the Construction Loan (i.e., the first permanent refinancing following the Construction Loan or any "mini-perm" loan); (6) interest earned on funds deposited in Tenant's or its Affiliate's bank accounts; (7) income derived from securities and other property held for investment; (8) gross receipts of Occupants; (9) uncollected accounts receivable and charge backs; (10) proceeds from the sale of any furniture, equipment or other personal property and/or capital assets whose purchase was not previously included as Permitted Operating Expenses; (11) distributions of net operating income from Tenant to its direct or indirect members or constituents; (12) development, construction management and property management fees paid to Tenant or any Affiliate; (13) sublease deposits (except to the extent forfeited or credited against current sublease rent); (14) parking taxes and other sales and use taxes collected under State or City law by Tenant and remitted by Tenant to the applicable Governmental Authority; and (15) capital contributions or advances to Tenant from any of its direct or indirect members or constituents. It is understood that once an item has been included in Gross Revenue, any further distribution or payment of such item shall not be included in Gross Revenue such that each dollar of Gross Revenue shall only be counted once including, without limitation, any payment or rental or other amount to Tenant by a subtenant under a Master Sublease.

(b) As used herein "Available Annual Cash" for any Base Rent Year shall equal (i) Net Annual Cash less (ii) the Participation Rent Threshold, such amount to be not less than zero.

(c) As used herein "Net Annual Cash" for any Base Rent Year shall equal Gross Revenue less the sum of (1) Permitted Operating Expenses, (2) Base Rent, and (3) for the first twenty (20) Base Rent Years, Minimum PILOT, and for the twenty first (21st) Base Rent Year and each Base Rent Year thereafter, Current Allocable PILOT plus Deferred PILOT Principal.

(d) As used herein "Permitted Operating Expenses" for any Base Rent Year shall mean the following items of cost and expense that are actually paid by Tenant or, in the case of the HTC Master Sublease or a Master Sublease, the subtenant thereunder (or allocated to Tenant on a customary arm's length basis that is specifically disclosed in Tenant's accounts by an affiliate thereof or amortized as set forth below) in connection with the use, maintenance, repair, restoration, replacement or operation of the Premises: (i) on-site operating expenses including but not limited to cleaning, security, janitorial, maintenance, and repairs, (ii) fuel, gas, electric,

steam and other utilities, (iii) promotion, advertising and marketing, (iv) Impositions, (v) insurance expenses (including, without limitation, any deductible amount paid), (vi) management fees (but if paid to Tenant or any affiliate of Tenant controlling, controlled by or under common control with Tenant (a “Tenant Affiliate” or, collectively, “Tenant Affiliates”), only to the extent such fees do not exceed that which is customarily paid in arm’s length transactions for management fees for improvements situated in the City of a size and nature comparable to the size and nature of the Premises), (vii) beginning the second (2nd) Base Rent Year or to the extent not included in the calculation of Net Project Development Cost, leasing commissions, advertising expenses and other costs incurred in connection with the negotiation, preparation, and/or entering into of any sublease or other occupancy agreement for all or a portion of the Premises, or any concession, management or other agreement relating to the operation of the Premises, including but not limited to amounts applied by Tenant or any Tenant Affiliate to pay Occupant improvement costs (each such item amortized over the term of the applicable sublease or occupancy agreement in accordance with generally accepted accounting principles, consistently applied) including fees for work performed pursuant to work letters and allowances, (viii) wages, salaries, payroll taxes and fringe benefits of porters and other dedicated building staff (to the extent not otherwise included in management fees or any other category hereunder), (ix) costs of accounting, legal, and other professional services which are properly allocable to the Premises, (x) administration and overhead expenses which are properly allocable to the Premises (whether incurred on-site or off-site), (xi) deposits to reserves to the extent required under any financing and/or otherwise reasonable and customary, including, but not limited to, reserves for operating expenses, capital repairs, tenant improvement work and allowances and leasing commissions, (xii) sublease/occupancy agreement takeover and Occupant buyout expenses paid by Tenant or any Tenant Affiliate, (xiii) any refund of an item included in Gross Revenue in a previous Base Rent Year, (xiv) payments to the HITC Investors to the extent not included in the calculation of Net Project Development Cost, (xv) any other costs and expenses paid by Tenant or any Tenant Affiliate properly allocable to the use, maintenance, repair, restoration, replacement or operation of the Premises, which may include amounts paid to any Tenant Affiliate to the extent the same do not exceed that which is customarily paid in arm’s length transactions in the City for similar items or services in a business operation of a size and nature comparable to that being operated on the Premises by Tenant, and (xvi) all amounts paid by Tenant or any Tenant Affiliate in consideration for the provision of goods and services at the Premises the sales proceeds of which are included as Gross Revenue (and which activity is not for the general operation and maintenance of the Premises). Permitted Operating Expenses shall not include (i) Capital Expenses, except as otherwise set forth above, (ii) Base Rent, (iii) for the first twenty (20) Base Rent Years, Minimum PILOT and Contingent PILOT, and for the twenty-first (21st) Base Rent Year and each Base Rent Year thereafter, Current Allocable PILOT plus Deferred PILOT Principal, (iv) debt service in connection with any mortgage, loan or other indebtedness of Tenant or any direct or indirect owner of Tenant, (v) financing costs and other fees or expenses in connection with any refinancing, sale or transfer including, without limitation, an Assignment, a Master Sublease, an Equity Disposition, a Designated Sale, a Designated Financing, an Alternative Disposition, the initial financing for the purpose of the construction of the Project, or any purchase money financing taken back in connection with an Assignment or an Alternative Disposition, (vi) fines or forfeitures resulting from any violation of law or regulations, and penalties and late charges assessed against Tenant in connection with any payment obligation (except to the extent any of the foregoing shall be caused by Landlord), (vii)

depreciation or any other non-cash expense except as set forth above with respect to tenant improvements and leasing commissions, (viii) the cost of any items for which Tenant is reimbursed by insurance proceeds or condemnation awards or otherwise receives a refund payment from any party and if such reimbursement or refund is not included in Gross Revenue, (ix) prepaid expenses to the extent such prepayment exceeds normal business practice (such excesses to be excluded from Permitted Operating Expenses in the Base Rent Year rendered and not applied until the Base Rent Year to which they pertain), (x) income taxes or other taxes not included as Impositions, (xi) amounts required by Project lenders to be deposited in debt service reserve funds, (xii) investment losses, and (xiii) other expenses not properly allocable, directly or indirectly, to the use, maintenance, repair, restoration, replacement or operation of the Premises. It is understood that once an item has been included in Permitted Operating Expenses, any further payment of such item shall not be included in Permitted Operating Expenses such that each dollar of Permitted Operating Expenses shall only be counted once.

(e) As used herein “Capital Expenses” shall mean those amounts actually paid by Tenant from and including the first day of the second (2nd) Base Rent Year for the acquisition, installation, repair, restoration or replacement of any capital asset at the Premises whose cost is itself classified as a capital asset and subject to depreciation (including as applicable accelerated depreciation and/or tax credit in the year of acquisition) or amortization in accordance with both the accounting rules established by Tenant in its audited financial statements and generally accepted accounting principles, including but not limited to payments made on account of any capital lease or similar agreement. Capital Expenses shall not include any item which is a Permitted Operating Expense or a Net Project Development Cost.

(f) As used herein the “Participation Rent Threshold” shall mean (i) for any Base Rent Year during and after the second (2nd) Base Rent Year through the fifty-ninth (59th) Base Rent Year shall mean Eleven One Hundredths (11/100) multiplied by the Net Project Development Cost, (ii) if Tenant exercises its option for the First Renewal Term, for any Base Rent Year during the First Renewal Term, ten percent (10%) of the Fair Market Value of the Premises used in determining the First Renewal Term Fair Market Rent and (iii) if Tenant exercises its option for the Second Renewal Term, for any Base Rent Year during the Second Renewal Term, ten percent (10%) of the Fair Market Value of the Premises used in determining the Second Renewal Term Fair Market Rent.

(g) As used herein the “Net Project Development Cost” shall mean (without duplication among any of the following): (i) the aggregate amount of all sums paid by Tenant or its Affiliates, during the period commencing with the date of the CDL to and including the last day of the first (1st) Base Rent Year (except as otherwise expressly provided in subclauses (k), (l) and (m) of this clause (i)), in connection with the acquisition of the leasehold estate and the ownership, construction, financing, development, and leasing of the Project in accordance with the provisions of the CDL, the MOU and this Lease, including but not limited to: (a) the hard and soft costs of the construction of Improvements at the Premises; (b) an amount equal to Four Million Four Hundred Fifty Thousand Dollars (\$4,450,000), representing a portion of the fee paid to RXR Development Services LLC for Project development services (with Landlord and Tenant acknowledging that no portion of any fee paid to RXR Development Services LLC for Project development services in excess of such amount shall be included in Net Project Development Costs); (c) leasing, legal, promotional, consulting, surveying and other fees,

commissions and disbursements to third parties in connection with planning, obtaining of Public Approvals, development, financing, construction and leasing of the Project; (d) the Conditional Designation Fee (as defined in the CDL), the MOU Fee (as defined in the MOU), Construction Period Rent, Base Rent, and PILOT; (e) Impositions; (f) insurance; (g) furniture, fixtures and equipment; (h) costs in connection with obtaining construction financing and permanent financing; (i) Debt Service (calculated for all purposes under this Lease as if such Debt Service were paid in the ordinary course without taking into account any default interest, penalties, expense reimbursement, deferred interest, equity participation in lieu of payments of interest and/or principal or other remedies in the event of a default under the documentation providing for such Debt Service, the purpose for disregarding such items being to avoid a circumstance, not contemplated by the parties upon the execution of this Lease, whereby Landlord is deprived of the financial return envisioned by this Lease upon any restructuring of the debt between Tenant and its lenders); (j) costs incurred prior to the date of this Lease in connection with securing funding from historic tax credit investors (the "HITC Investors") pursuant to the documents evidencing and/or relating to such funding, including without limitation the Master Tenant Operating Agreement (as defined in the Consent Agreement), the Master Landlord Operating Agreement (as defined in the Consent Agreement) and the Guaranty (as defined in the Consent Agreement) (such documents being hereinafter collective referred to as the "HITC Documents"), provided such HITC Documents shall have been furnished by Tenant to Landlord prior to the date of this Lease and, after the date of this Lease, if Tenant shall modify, amend or supplement the HITC Documents in connection with any matter covered by this Section 3.03(g), that would have a material adverse effect on Landlord by increasing any amount to be included in Net Project Development Costs beyond that which is already contemplated in the HITC Documents prior to such modification, amendment or supplement, without obtaining Landlord's prior written approval thereto, which approval may be withheld, condition or delayed in the sole discretion of Landlord, then such modification, amendment or supplement shall be disregarded for purposes of calculating New Project Development Costs as provided in this Section 3.03(g), but Tenant shall nevertheless promptly furnish to Landlord a copy of any such modification, amendment or supplement for informational purposes (and Landlord and Tenant acknowledge and agree that term "HITC Document," as used in this Lease, shall include for all purposes under this Lease any such modification, amendment or supplement so approved by Landlord); (k) payments to the HITC Investors made pursuant to the HITC Documents until the date (the "HITC-Related Outside Date"), which is the date thirty (30) days after the sixty-third (63rd) month anniversary of the date upon which the improvements relating to the last Qualifying Rehabilitation Expenditure (as defined in the HITC Documents) are placed in service; (l) the amount of the put price (the "Put Price") that may be paid to the HITC Investors pursuant to the "put option/exit option" set forth in the HITC Documents on or prior to the HITC-Related Outside Date, which Put Price initially shall be deemed to be Twelve Million Nine Hundred Five Thousand One Hundred Thirty-Seven Dollars (\$12,905,137) (the "Put Price Estimate") for purposes of any applicable calculations pursuant to this Lease prior to the actual determination of the Put Price, if any (and Landlord and Tenant acknowledge and agree the Put Price Estimate has been calculated by the HITC Accountant (as hereinafter defined), pursuant to an accounting prepared by the HITC Accountant and furnished to Landlord prior to the date of this Lease, and is included in the Agreed-Upon Number (as defined below) set forth in the last sentence of this definition), but shall be subject to recalculation, from time to time prior to such actual determination of such put price, in accordance with the HITC Accounting (as hereinafter

defined); (m) the amount, if any (the “50(d) Adverse Determination Amount”) of the HITC Investor’s liability that is due and paid to the HITC Investors pursuant to the HITC Documents for increased taxes, plus interest, penalties, fees, costs and expenses (calculated on an after tax basis if so provided in the HITC Documents), resulting from an adverse determination (the “50(d) Adverse Determination”), with respect to Section 50(d)(5) of the Internal Revenue Code, which 50(d) Adverse Determination Amount shall initially be deemed to be Twenty-one Million Five Hundred Seventy-nine Thousand Two Hundred Thirty-three Dollars (\$21,579,233) (the “50(d) Adverse Determination Amount Estimate”) for purposes of any applicable calculations pursuant to this Lease prior to any actual determination of such amount (and Landlord and Tenant acknowledge and agree that the 50(d) Adverse Determination Amount Estimate has been calculated by the HITC Accountant, pursuant to an accounting prepared by the HITC Accountant and furnished to Landlord prior to the date of this Lease, and is included in the Agreed-Upon Number set forth in the last sentence of this definition), but shall be subject to recalculation, from time to time prior to such actual determination, in accordance with the HITC Accounting; (n) work performed for Occupants but excluding costs which are reimbursed by such Occupants and not included in Gross Revenue; and (o) other costs and expenses which are customarily incurred in connection with the development of a project in the City of the same type as the Project (including fees paid to RXR Property Management, RXR Development Services LLC and RXR VAF Pier 57 LLC, provided that Tenant demonstrates to the reasonable satisfaction of Landlord that a development fee for Project development services has been paid to RXR Development Services LLC in an amount equal to or in excess of three and 50/100 percent (3.5%) of the hard and soft costs of the Project, even though only a portion of such development fee shall be included in Net Project Development Costs as provided in subclause (b) of clause (i) of this definition), plus (ii) the absolute value of the Net Annual Cash less Participation Rent for the first Base Rent Year if such amount is a negative number or the product of minus one (-1) multiplied by the Net Annual Cash less Participation Rent for the first Base Rent Year if such amount is a positive number, less (iii) the amount payable by the HITC Investors to Tenant or otherwise to be invested by the HITC Investors in the Project in accordance with the HITC Documents, and less (iv) profits, if any, realized by holders of equity interests in the Tenant as a result of any transfers of such interests prior to the last day of the first (1st) Base Rent Year. Net Project Development Cost without adjustment pursuant to subclauses (l) and (m) of clause (i) of this definition, and clause (iii) of this definition shall be defined as “Project Development Cost”. Net Project Development Cost, once determined in accordance with this Section 3.03(g) at the end of the first (1st) Base Rent Year, shall not change during the Term except (x) as provided herein with respect to adjustments related to the HITC Investors during the second (2nd) through fifth (5th) Base Rent Years (and any other period expressly provided in subclauses (k), (l) and (m) of clause (i) of this definition), and (y) as a result of the HITC Accounting mechanism described below; provided, however, that for purposes of determining the Net Project Development Cost as aforesaid, Landlord and Tenant acknowledge and agree that the Net Project Development Cost (excluding the Put Price Estimate and the 50(D) Adverse Determination Amount Estimate) with respect to the period from the date of the CDL to and including the Commencement Date is a number (the “Agreed-Upon Number”), determined by audit after the Effective Date, which shall not be less than \$16,840,619 and shall not be greater than \$27,691,863.

For purposes of this Section 3.03(g), to assure that Landlord and Tenant receive timely notice of any 50(d) Adverse Determination, (AA) Tenant shall annually (and, upon any written request of

Landlord to Tenant made not more frequently than quarterly) inquire of a law firm having a nationally-recognized practice with expertise in historic tax credit investments whether there has been a written final Internal Revenue Service ruling or regulation or a non-appealable written court decision that has resulted in a 50(d) Adverse Determination (or, if a 50(d) Adverse Determination has occurred, whether there has been any reversal or modification of the 50(d) Adverse Determination that will or could affect the 50(d) Adverse Determination Amount), and Tenant shall promptly send to Landlord such law firm's response to such inquiry, and (BB) Tenant shall promptly send to Landlord any written demand received by Tenant, Master Tenant and/or Guarantor from HITC Investors to pay any 50(d) Adverse Determination Amount (or to reverse or refund all or any part of any 50(d) Adverse Determination Amount previously paid to the HITC Investors) and/or any other written communication received by Tenant, Master Tenant and/or Guarantor from the HITC Investors relating to any possibility that a 50(d) Adverse Determination Amount may be due and payable (or to reverse or refund all or any part of any 50(d) Adverse Determination Amount previously paid to the HITC Investors).

"HITC Accounting" shall mean:

(i) with respect to the Put Price, CohnReznick or any other accountant selected by Tenant and reasonably approved by Landlord (in either case, the "HITC Accountant") shall (1) not later than thirty (30) days after the date (the "First Participation Rent Payment Date") upon which the first payment of Participation Rent shall be paid under this Lease, provide to Landlord an accounting, in form and detail reasonably satisfactory to Landlord and reasonably approved by Landlord (which accounting shall be based upon the same methodology used in the determination of the Put Price Estimate, unless definitive guidance has been issued by the Internal Revenue Service, between the determination of the Put Price Estimate and the accounting referred to in this clause (i), that would alter such methodology), of the then-estimated amount of the Put Price and, upon the receipt of the accounting described in this clause (1) and if the then-estimated amount of the Put Price resulting from such accounting is lower than the Put Price Estimate, the amount of Net Project Development Costs shall be adjusted taking into account the difference between the Put Price Estimate and then-estimated amount of the Put Price, and (2) not later than thirty (30) days after the HITC-Related Outside Date, provide to Landlord an accounting, in form and detail reasonably satisfactory to Landlord and reasonably approved by Landlord, of any actual Put Price paid to HITC Investors on or prior to the HITC-Related Outside Date and, upon the receipt of the accounting described in this clause (2), the amount of Net Project Development Costs shall be adjusted taking into account any difference between the Put Price Estimate and the actual Put Price paid to HITC Investors. If no Put Price has been paid to the HITC Investors by the HITC-Related Outside Date, then promptly after the HITC-Related Outside Date, the amount of Net Project Development Costs shall be adjusted to take into account that no Put Price was paid to the HITC Investors;

(ii) with respect to the 50(d) Adverse Determination Amount, as long as no 50(d) Adverse Determination Amount has been paid to the HITC Investors, (I) not later than thirty (30) days after the First Participation Rent Payment Date, the HITC Accountant shall provide to Landlord an accounting, in form and detail reasonably satisfactory to Landlord and reasonably approved by Landlord (which accounting shall be

based upon the same methodology used in the determination of the 50(d) Adverse Determination Amount Estimate, unless definitive guidance has been issued by the Internal Revenue Service, between the determination of the 50(d) Adverse Determination Amount Estimate and the accounting referred to in this clause (ii), that would alter such methodology), of the then-estimated amount of the 50(d) Adverse Determination Amount to be paid to HITC Investors upon a 50(d) Adverse Determination, and if the then-estimated amount of the 50(d) Adverse Determination Amount resulting from such accounting is lower than the 50(d) Adverse Determination Amount Estimate, the amount of Net Project Development Costs shall be adjusted to take into account the difference between the 50(d) Adverse Determination Amount Estimate and the then-estimated amount of the 50(d) Adverse Determination Amount, and (II) promptly after the HITC-Related Outside Date, the amount of Net Project Development Costs shall be adjusted to remove the 50(d) Adverse Determination Amount Estimate (or, as the case may be, the estimated amount of the 50(d) Adverse Determination Amount set forth in the accounting referred to in subclause (I) of this clause (ii));

(iii) with respect to any 50(d) Adverse Determination Amount paid to the HITC Investors on or prior to the HITC-Related Outside Date, within thirty (30) days after any payment of the 50(d) Adverse Determination Amount to the HITC Investors, the HITC Accountant shall provide to Landlord an accounting, in form and detail reasonably satisfactory to Landlord and reasonably approved by Landlord, of the 50(d) Adverse Determination Amount paid to the HITC Investors, and the amount of Net Project Development Costs shall be adjusted from the most-recent prior estimate (including, if applicable, the 50(d) Adverse Determination Amount Estimate) of the 50(d) Adverse Determination Amount;

(iv) if no 50(d) Adverse Determination Amount shall have been paid to the HITC Investors on or prior to the HITC-Related Outside Date, then with respect to any 50(d) Adverse Determination Amount paid to the HITC Investors during the period from (aa) the date immediately after the HITC-Related Outside Date and (bb) the last day of the thirtieth (30th) month after the HITC-Related Outside Date, within thirty (30) days after any payment of the 50(d) Adverse Determination Amount to the HITC Investors during such period, the HITC Accountant shall provide to Landlord an accounting, in form and detail reasonably satisfactory to Landlord and reasonably approved by Landlord, of the 50(d) Adverse Determination Amount paid to the HITC Investors during such period, and the amount of Net Project Development Costs shall be adjusted to take into account the payment of the 50(d) Adverse Determination Amount to the HITC Investors during such period. In no event shall there be any adjustment in the amount of the Net Project Development Costs as result of any 50(d) Adverse Determination Amount paid to the HITC Investors after the end of such period;

(v) if, after any adjustment in the Net Project Development Costs pursuant to clauses (iii) or (iv) above shall have occurred, any reversal of any 50(d) Adverse Determination and/or any reversal or refund relating to all or any part of any payment of the 50(d) Adverse Determination Amount paid to the HITC Investors shall occur (regardless of when such reversal or refund shall occur), then within thirty (30) days after any such reversal or refund, the HITC Accountant shall provide to Landlord an

accounting, in form and detail reasonably satisfactory to Landlord and reasonably approved by Landlord, of the reversed or refunded 50(d) Adverse Determination Amount paid to the HITC Investors, and the amount of Net Project Development Costs shall be adjusted from the 50(d) Adverse Determination Amount originally paid to the HITC Investors; and

(vi) with respect to any of the accountings referred to in clauses (i) - (v) above, such accountings shall also recalculate the Participation Rent and Contingent PILOT that would have been payable, based upon any changes resulting from such accountings, from the Participation Rent and Contingent PILOT that was actually paid for the applicable period. In the event that any such recalculation indicates that Tenant has underpaid Participation Rent and/or Contingent PILOT for any period, then Tenant shall, within thirty (30) days after such accounting pay to Landlord the amount of such deficiency, together with interest at the rate of five and one-half (5.5%) percent per annum accruing, as applicable, to and from each period in which Participation Rent or Contingent PILOT was underpaid to the date of payment.

(h) As used herein, “Debt Service” shall mean the payment of interest to (a) the holder of a construction loan or a construction bridge loan, or line of credit used for Project Development Costs, or if in the first Base Rent Year, a mini-perm loan or permanent mortgage that “takes out” the construction loan, and (b) the holder of mezzanine debt, if any, secured by a pledge of any membership interests in Tenant, provided that (i) all of the proceeds of such mezzanine debt are used to pay Project Development Costs, (ii) such mezzanine debt is not convertible into equity (provided that this clause (ii) shall not preclude the foreclosure of a pledge securing such mezzanine debt), and (iii) in the event that the holder of such mezzanine debt directly or indirectly controls the borrower under such mezzanine debt, then “Debt Service” shall include only the portion of interest on such mezzanine debt, if any, which does not exceed fifteen percent (15%) per annum (compounded as may be applicable), it being acknowledged and agreed that the interest rate limitation set forth in this clause (iii) is solely for the purpose of determining permitted Debt Service related to the calculation of Net Project Development Cost and is not intended to restrict the contractual rate of interest established between lender and borrower with respect to such mezzanine debt or to prohibit Tenant or its owners from obtaining any mezzanine financing. For the purpose of the immediately preceding clause (iii) only, “controls” shall mean, with respect to a lender or holder of mezzanine debt and the borrower under such mezzanine debt that such lender or holder is controlling, controlled by, or under common control with such borrower, the indices of control being direct or indirect majority ownership and/or direct or indirect power and authority to direct day-to-day management and affairs.

Section 3.04 PILOT.

(a) Prior to the Base Rent Period Commencement Date, no PILOT shall be payable by Tenant. For each Base Rent Year, Tenant shall make payments in lieu of real estate taxes as set forth in this Section 3.04 (“PILOT”), consisting of (i) for the first (1st) through twentieth (20th) Base Rent Years, the sum of Minimum PILOT and, as applicable, Contingent PILOT, and (ii) for the twenty-first (21st) Base Rent Year and each Base Rent Year thereafter, the sum of Current Allocated PILOT and, if applicable, Deferred PILOT Principal, and Deferred PILOT

Interest. PILOT shall be paid by Tenant on an annual basis as follows and upon the dates and in the manner set forth in this Section 3.04. Tenant shall not be required to pay PILOT payments if Tenant is paying real estate taxes assessed against and imposed upon the Property or Tenant's leasehold interest in the Property pursuant to Article 4.

(b) During each of the first twenty (20) Base Rent Years, not less than a certain minimum payment ("Minimum PILOT") equal to:

(i) For Base Rent Years one through five, Seven Hundred Fifty Thousand Dollars (\$750,000) in Base Rent Year one increasing thereafter by three percent (3%) annually;

(ii) For Base Rent Years six through ten, One Million Dollars (\$1,000,000) in Base Rent Year six increasing thereafter by three percent (3%) annually;

(iii) For Base Rent Years eleven through fifteen, One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000) in Base Rent Year eleven increasing thereafter by three percent (3%) annually; and

(iv) For Base Rent Years sixteen through twenty, One Million Five Hundred Thousand Dollars (\$1,500,000) in Base Rent Year sixteen increasing thereafter by three percent (3%) annually.

(c) During each of the second (2nd) through and including twentieth (20th) Base Rent Years, a contingent payment ("Contingent PILOT") equal to (1) the Annual Contingent PILOT Factor for such Base Rent Year multiplied by amount by which Current Allocated PILOT exceeds Minimum PILOT for such Base Rent Year, plus (2) the amount, if any, by which Net Annual Cash less Participation Rent for such Base Rent Year exceeds the sum of (x) the Contingent PILOT Threshold, plus (y) the amount calculated pursuant to the immediately preceding clause (1) of this Section 3.04(c) for such Base Rent Year, plus (3) the amount, if any, of the Excess PILOT Collection for such Base Rent Year.

(i) As used herein, "Current Allocated PILOT" for a Base Rent Year shall equal (x) the sum of (1) the product of the allocable portion of a Tax Year which is included in a Base Rent Year (expressed as a fraction the numerator of which is the number of calendar days in such portion and whose denominator is 365) multiplied by the Tax Year PILOT for such Tax Year, plus (2) the identical calculation as set forth in (1) above performed for the partial second Tax Year included in the Base Rent Year (unless the Base Rent Year coincides with the Tax Year in which case only one such calculation shall be made), such sum (y) multiplied by one minus the NFP Factor. A "Tax Year" shall be the period established by NYCDOF for the payment of annual property taxes, which as of the date hereof is July 1 to June 30 of the following calendar year, and whose taxable status date is the day fixed by applicable Requirements upon which the condition and value of the property is determined for purposes of property tax assessment, which as of the date hereof is the January 5 that precedes the beginning of the applicable Tax Year. By way of example, the Current Allocated PILOT for a Base Rent Year which coincides with a calendar year shall equal fifty percent (50%) of the Tax Year PILOT for the Tax

Year which commences on July 1 of the preceding calendar year (and whose taxable status date is January 5 of such preceding calendar year) plus fifty percent (50%) of the Tax Year PILOT for the Tax Year which commences on July 1 of the Base Rent Year (and whose taxable status date is January 5 of the calendar year coinciding with the Base Rent Year).

(ii) As used herein, “Tax Year PILOT” for each Tax Year falling in whole or in part within a particular Base Rent Year shall equal (1) subject to the limitation set forth in this Section 3.04(c)(ii), the product of the Tax Year AV multiplied by the property tax rate for Class 4 property for such Tax Year, less (2) for each of the successive twenty five (25) Tax Years whose taxable status dates are after the Abatement Trigger Date, the PILOT Abatement. The “Tax Year AV” shall equal the sum of (1) the lower of transitional and actual assessments for the land included in the Premises plus the (2) lower of transitional and actual assessments for the building or buildings included in the Premises. Each such assessment of land and building, actual and transitional, shall be as determined by NYCDOF in accordance with its standards, regulations and procedures and shall be performed by NYCDOF as if Tenant is fee owner of the entire Premises, both land and building or buildings. Tenant shall submit when due an annual income and expense statement to NYCDOF together with any other information required by NYCDOF in connection with establishing the Tax Year AV. Tenant shall be afforded the same right as all NYCDOF property tax payers to contest the Tax Year AV pursuant to applicable law, and may enjoy the benefit of transitional versus actual assessments as determined by NYCDOF. Landlord shall serve as the nominal applicant or petitioner for review of the assessment if Tenant is deemed to lack the required legal standing to act on its own.

(iii) As used herein, the “PILOT Abatement” for each of the successive twenty five (25) Tax Years whose taxable status date is after the Abatement Trigger Date shall equal the PILOT Abatement Base multiplied by PILOT Abatement Percentage for such Tax Year.

(iv) Notwithstanding the building assessment determination by NYCDOF for any Tax Year whose taxable status date precedes the Abatement Trigger Date, the building assessment used for purpose of calculating Current Allocated PILOT for such Tax Year shall be deemed to equal Six Million Three Hundred Thousand Dollars (\$6,300,000). The land assessment for such Tax Year shall be as determined by NYCDOF subject to Tenant’s right to contest such assessment.

(v) As used herein, the “PILOT Abatement Base” shall equal the amount remaining after calculating (1) the building actual assessment established by NYCDOF for the Tax Year with the first taxable status date that follows the earlier to occur of (a) the first (1st) anniversary of the date upon which not less than sixty percent (60%) of GLA is leased to subtenants and such subtenants are open for the conduct of business, and (b) the date that is the later to occur of four (4) years after (I) the Commencement Date, and (II) the date of issuance of the first (1st) building permit for construction of the Required Tenant Improvements (the earlier to occur of (a) and (b), the “Abatement Trigger Date”) multiplied by the tax rate then in effect for Class IV property for such Tax

Year, less (2) the product of Seven Million Two Hundred Forty-Five Thousand Dollars (\$7,245,000) (an amount equal to the building assessment deemed applicable for each Tax Year whose taxable status date precedes the commencement of the first Base Rent Year as set forth in this Section 3.04(c)(v) multiplied by one hundred and fifteen percent (115%)) multiplied by the tax rate in effect for Class IV property at the commencement of the Base Rent Period, provided that the PILOT Abatement Base so determined shall not be less than zero. Landlord shall, as soon as practical after January 15th of the calendar year immediately following the Abatement Trigger Date and notice from Tenant, provide information relating to the income and expenses of the Project and cost of construction to NYCDOF and request that NYCDOF initiate an administrative review of the building assessment and complete its review such that its determination of the building assessment, taking into account the information provided, is included in the tax rolls for the Tax Year commencing July 1 of such calendar year.

(vi) As used herein, the “PILOT Abatement Percentage” shall be (1) for the Tax Year with the first taxable status date that follows the commencement of the Abatement Trigger Date and the following fourteen (14) Tax Years, one hundred percent (100%), and (2) for the following nine (9) Tax Years, the applicable PILOT Abatement Percentage for the immediately preceding Tax Year less ten percent (10%) such that in the twenty-fifth (25th) Tax Year following the Tax Year with the first taxable status date that follows the Abatement Trigger Date the PILOT Abatement Percentage shall be zero (0). As set forth herein, the PILOT Abatement Percentage shall be in effect for twenty-five (25) Tax Years commencing upon the Tax Year the first taxable status date for which follows the commencement of the first Base Rent Year.

(vii) As used herein, the “NFP Factor” for each Base Rent Year shall mean a fraction, the numerator of which shall be the GLA designated for not-for-profit Occupants approved by Landlord as provided in Article 12, taking into account all of the considerations in the next succeeding sentence, including, without limitation, adjusting the GLA for Approved NFP Occupants pursuant to the weighting factors, and the denominator of which shall be the total GLA in the Project, taking into account all of the considerations in the next succeeding sentence, including, without limitation, adjusting such total GLA pursuant to the weighting factors. In calculating the NFP Factor, the following considerations shall be applicable:

(A) The weighting factors shall be: (i) GLA not located in the caissons, in enclosed or unenclosed roof or balcony areas, or leased areas comprising exterior water area, shall receive a weight of 1.0, (ii) GLA located in caisson areas and enclosed roof and balcony areas shall receive a weight of 0.5, and (iii) GLA located in un-enclosed roof or balcony areas and exterior water areas shall receive a weight of 0.1.

(B) GLA shall include only space designated for sublease or occupancy under the Permitted Use Floor Plans and shall exclude any area not so designated for sublease or occupancy, including but not limited to building circulation areas, common areas, mechanical areas, loading and unloading areas, Public Open Space, and water areas not subject to sublease, occupancy agreement, permit or license.

(C) Tenant shall be prohibited from passing through PILOT as an expense or charge back, or including PILOT in base rent, for Approved NFP Occupants and the sublease or occupancy agreement for Approved NFP Occupants shall specify the prohibition described above in a manner reasonably satisfactory to Landlord.

(D) The NFP Factor shall be calculated from the commencement of the Base Rent Period for Approved NFP Occupants and shall be prorated for each Base Rent Year based on the commencement and expiration dates for each such sublease.

(viii) As used herein, the “Contingent PILOT Threshold” shall mean for each Base Rent Year from and including the second (2nd) Base Rent Year the amount remaining after calculating: (1) the product of twelve and one quarter one hundredths (.1225) multiplied by the Net Project Development Cost, such product multiplied by the number of Base Rent Years from and including the second (2nd) Base Rent Year to and including the current Base Rent Year, less (2) the sum of the Annual Cash Return for each of Base Rent Years from and including the second (2nd) Base Rent Year to and including the immediately preceding Base Rent Year, and less (3) the amount paid as Participation Rent for the such current Base Rent Year. For the second (2nd) Base Rent year, the subtraction specified in (2) above shall not be applicable in the determination of the Current PILOT Threshold.

(ix) As used herein, “Annual Cash Return” for any Base Rent Year shall equal Net Annual Cash less the sum of (x) amounts paid on account of Participation Rent for such Base Rent Year plus (y) for the first twenty (20) Base Rent Years, the amount paid on account of Contingent PILOT for such Base Rent Year.

(x) As used herein, “Annual Contingent PILOT Factor” shall equal (1) for the second (2nd) Base Rent Year through and including the seventh (7th) Base Rent Year, zero percent (0%); (2) for the eighth (8th) Base Rent Year through and including the tenth (10th) Base Rent Year, twenty percent (20%); (3) for the eleventh (11th) Base Rent Year through and including the thirteenth (13th) Base Rent Year, forty percent (40%); (4) for the fourteenth (14th) Base Rent Year though and including the seventeenth (17th) Base Rent Year, sixty percent (60%); and (5) for the eighteenth (18th) Base Rent Year through and including the twentieth (20th) Base Rent Year, seventy percent (70%).

(xi) As used herein, “Excess PILOT Collection” means, during each of the second (2nd) through and including the twentieth (20th) Base Rent Year: (1) the amount collected by Tenant from any individual Occupant during the applicable Base Rent Year in respect of PILOT (whether as an expressly specified escalation against a base year or other reference year of such sublease, or as an expressly specified component of sublease rent, or as another charge in a base year and/or any subsequent year of such sublease) in accordance with such Occupant’s sublease that is greater than the product of (i) such Occupant’s allocable share of PILOT (as such allocable share is defined and measured in the applicable Occupant’s sublease) for such Base Rent Year multiplied by (ii) the PILOT due by Tenant under this Lease for the same Base Rent Year, plus (2) the amount, if any, collected from all Occupants during the applicable Base Rent Year in respect of PILOT pursuant to all subleases that exceeds one hundred five percent (105%) of the

amount of actual PILOT otherwise payable by Tenant under this Lease for the same Base Rent Year; it being agreed that Tenant covenants to (A) calculate any payments due and owing by any Occupant in respect of any such Occupant's share of PILOT in accordance with the provisions of such Occupant's sublease reflecting Tenant's and such Occupant's agreement as to the measurement of all space available for sublease in the Premises and measurement of such Occupant's premises, and (B) not charge any Occupant, nor accept payment by any Occupant, of an amount of PILOT greater than such Occupant's allocable share thereof, as such allocable share is defined and measured in the applicable Occupant's sublease.

(d) Commencing on the first day of the twenty first (21st) Base Rent Year and continuing for each Base Rent Year thereafter, Tenant shall pay PILOT in the amount of full Current Allocated PILOT, plus Deferred PILOT Principal and Deferred Pilot Interest. The payment obligations for Minimum PILOT and Contingent PILOT shall not be applicable for such period.

(i) As used herein "Deferred PILOT Principal" and "Deferred PILOT Interest" in a Base Rent Year shall be the amount of principal and interest respectively payable beginning the twenty first (21st) Base Rent Year which are necessary to fully amortize in even annual payments the Deferral PILOT Balance as of the end of the twentieth (20th) Base Rent Year through and including the forty-ninth (49th) Base Rent Year at an annual interest rate of five and one half percent (5.5%).

(ii) The "Deferral PILOT Balance" shall mean for each of the first twenty (20) Base Rent Years, the amount remaining after calculating (1) the remainder of (a) the Current Allocated PILOT for such Base Rent Year, less (b) the sum of the Minimum PILOT and Contingent PILOT paid for such Base Rent Year, plus (2) the remainder amounts from previous Base Rent Years determined in the same manner as set forth in (1) above, plus with respect to each such amount, interest accrued and compounded thereon at an annual rate of three percent (3%) from the end of the Base Rent Year in which the remainder was first calculated, less (3) the amount of any Participation Rent payment for such Base Rent Year. The Deferral PILOT Balance at the end of any of the first nineteen (19) Base Rent Years may be less than zero and such negative number (a) may be carried forward and applied to the Deferral PILOT Balance calculated as of the end of next succeeding Base Rent Year, but (b) may not be applied to Current Allocated PILOT or any payment obligation with respect to Minimum PILOT or Contingent PILOT. The Deferral PILOT Balance at the end of the twentieth (20th) Base Rent Year shall be not less than zero (0) and no negative number shall be carried forward or otherwise applied to any payment obligation of Tenant.

(e) Tenant shall have the right to contest the valuation of the Premises in accordance with Article 4. If any such proceeding shall result in a final determination in Tenant's favor, the amount of PILOT shall be recomputed by Landlord based on the revised Tax Year AV for the period(s) in dispute, and Tenant shall be granted a credit representing the amount by which PILOT paid by Tenant exceeds PILOT so recomputed (the "PILOT Credit"). Tenant may apply the PILOT Credit against the next succeeding installment(s) of Contingent PILOT (during the first twenty (20) Base Rent Years) and Current Allocated PILOT (beginning on the twenty-first

(21st) Base Rent Year), provided, however, that the maximum amount of PILOT Credit applied against any such single installment of PILOT shall not exceed one-third (1/3rd) of the amount due under such installment of PILOT prior to the application of such credit, but any unapplied portion of the PILOT Credit shall accrue and be available for application (subject to the aforesaid 1/3rd limitation) against future installments that come due and payable. If, at the end of the term of this Lease, Tenant has any remaining unapplied PILOT Credit, the amount of any such remaining unapplied PILOT Credit shall be paid by Landlord to Tenant.

Section 3.05 Transaction Rent.

(a) Upon the occurrence of (A) a Designated Sale that occurs at any time on or after the first (1st) day of the sixth (6th) Base Rent Year, or (B) a Designated Financing, Tenant shall make a payment ("Transaction Rent") to Landlord in an amount equal to one and one-quarter percent (1.25%) of the Adjusted Gross Sales Proceeds of the first Designated Sale to occur and thereafter one and one-half percent (1.5%) of the Adjusted Gross Sales Proceeds of any such subsequent Designated Sale or one and one-half percent (1.5%) of the Net Financing Proceeds of such Designated Financing, as applicable. This Section 3.05 relates only to Transaction Rent, and does not, and shall not be construed to, permit any sale or other transaction that is not otherwise permitted under this Lease.

(b) As used herein, "Net Financing Proceeds" means the cash proceeds received in connection with a Designated Financing, after deducting therefrom (without duplication and without deducting any items which are treated as Permitted Operating Expenses) the amount of the Designated Financing attributable to the original outstanding principal indebtedness (with respect to which Transaction Rent shall have been previously paid and without taking into account any accrual of interest that may have been added to such indebtedness) of the financing being satisfied or paid off by the Designated Financing and any expenses incurred in effecting such Designated Financing which are reasonable and customary, including, but not limited to, brokerage commissions, attorneys' fees (Tenant's (or other borrower's) and lender's), mortgage recording and transfer taxes, exit fees, breakage costs, prepayment penalties, yield maintenance premiums and other similar fees and costs with respect to any existing indebtedness being refinanced pursuant to such Designated Financing, title insurance premiums, appraisal fees, recording charges, points, commitment fees and other financing charges, provided, however, that with respect to any such expenses paid to Tenant Affiliates, such amounts shall be no more than would have been paid to an unrelated party in an arm's length transaction in the City for similar items or services. It is understood that once an item has been included in Net Financing Proceeds, any further distribution or payment of such item shall not be included in Net Financing Proceeds such that each dollar of Net Financing Proceeds shall only be counted once in determining Transaction Rent.

(c) As used herein, "Adjusted Gross Sales Proceeds" means the following amounts received as, or deemed to be, consideration for any Designated Sale, computed as of the closing date thereof, including, but not limited to: (1) all cash proceeds, (2) the fair market value of any property, other than cash or debt obligations, (3) the principal amount of any mortgages assumed by the purchaser at such Designated Sale or to which the Designated Sale is made subject, or a proportionate share of such mortgage in the case of a Designated Sale affecting only a portion of the leasehold estate (a "Partial Sale"), (4) the face amount of any purchase money note or debt

obligation (with interest thereon) made in connection with such Designated Sale and (5) in the case of a Master Sublease (other than the HTC Master Sublease), the difference (the “Rent Differential”) between (a) all rental payments received by Tenant SPE under such Master Sublease and (b) the rental payable by Tenant SPE under this Lease allocable to that part of the Premises subleased under the Master Sublease (pro-rata on a square foot basis) for the term of the Master Sublease, deducting from the amounts set forth in clauses (1) through (5) above any reasonable and customary expenses incurred in effecting such Designated Sale, including, but not limited to, brokerage commissions, attorneys’ fees, transfer and transfer gains taxes and title insurance premiums (provided that any such costs shall not constitute Permitted Operating Expenses); provided however, that with respect to any such expenses paid to Tenant Affiliates, such amounts shall not exceed the amounts that would have been paid to an unrelated party in an arm’s length transaction in the City for similar items or services. Notwithstanding the foregoing, in the case of any Designated Sale involving consideration described in (4) and/or (5) above or in the case of any installment sale, “Adjusted Gross Sales Proceeds” as of the closing of such Designated Sale shall be deemed to include only that consideration actually received as of that date, but each time a subsequent payment on the note or debt obligation or payment of the Rent Differential on the Master Sublease is received, it shall constitute an additional Designated Sale, and a Transaction Rent payment shall be payable with respect to such payment. It is understood that once an item has been included in Adjusted Gross Sale Proceeds, any further distribution or payment of such item shall not be included in Adjusted Gross Sale Proceeds such that each dollar of Adjusted Gross Sale Proceeds shall only be counted once in determining Transaction Rent.

(d) As used herein, an “Alternative Disposition” means any transaction which, by virtue of transfer of control or other incidents of ownership, constitutes the functional equivalent of a Designated Sale as otherwise defined herein.

(e) As used herein, an “Assignment” means an assignment of all or any portion of Tenant SPE’s interest in this Lease or the leasehold estate created thereby.

(f) As used herein, a “Designated Financing” means (x) any Recognized Mortgage or other financing by Tenant of its interest in this Lease or the leasehold estate created thereby, other than construction bridge financing or any construction line of credit, (y) any Mezzanine Loan and (z) any refinancing of debt covered by the foregoing clauses (x) and (y). Notwithstanding the foregoing, “Designated Financing” shall not include any of the following: (1) the initial financing for the purpose of the construction of the Project (the “Construction Loan”) and the first so-called “take out” financing of the Construction Loan (i.e., the first refinancing into a permanent loan following any so-called “mini-perm” loan), (2) mezzanine financing the proceeds of which are used to pay Project Development Costs and the first refinancing of such debt, (3) any purchase money financing taken back in connection with an Assignment or Alternative Disposition, (4) any mezzanine financing of any direct or indirect ownership interest in a Non-SPE, (5) any mezzanine financing of any direct or indirect ownership interest in Tenant owned by a Non-Designated Person for which no Net Financing Proceeds are received by a Designated Person (e.g., a mezzanine financing secured by a pledge of a Non-Designated Person’s ownership interests in JV SPE, the proceeds of which are not shared with a Designated Person) or (6) any refinancing of debt that does not constitute new or further indebtedness.

(g) As used herein, a “Designated Sale” means (x) any Assignment, (y) any Master Sublease, and (z) any Equity Disposition or Alternative Disposition pursuant to which any direct or indirect ownership interest in Tenant SPE is transferred by a Designated Person unilaterally, or by a Non-Designated Person in connection with a transfer by a Designated Person (including without limitation pursuant to any contractual provision (including a “drag-along” or “tag-along” provision) that requires or permits one or more Designated Persons to make such a transfer in connection with such a transfer by one or more non-Designated Persons). Notwithstanding the foregoing, “Designated Sale” shall not include any of the following: (1) any transfer of all or a portion of the direct or indirect ownership interests in Tenant SPE between or among any of the direct or indirect members of Tenant SPE (regardless of whether they are Designated Persons or Non-Designated Persons) so long as there is no change in the control of Tenant SPE (except in accordance with the exercise of customary rights to remove the Control Person on account of certain defaults), (2) any transfer of all or a portion of the direct or indirect ownership interests in Tenant SPE by a Non-Designated Person unilaterally and for which no Adjusted Gross Sale Proceeds are received by a Designated Person (e.g., a sale of a Non-Designated Person’s ownership interests in the JV SPE to a third party, the proceeds of which are not shared with any Designated Person), (3) any transfer of all or a portion of the direct or indirect ownership interests in any Non-SPE, (4) any foreclosure or assignment in lieu thereof in favor of any mortgagee or mezzanine lender, or (5) the HTC Master Sublease.

(h) As used herein, a “Designated Person” means (1) JV SPE for as long as JV SPE is the Control Person of Tenant SPE, (2) any successors to JV SPE as the Control Person of Tenant SPE (or any successors to such successors) pursuant to a transfer made in accordance with Article 12 or (3) any Persons that control, directly or indirectly, the Control Person of Tenant SPE.

(i) As used herein, an “Equity Disposition” means any sale, transfer or issuance of any new or existing Equity Interest (1) of more than five percent (5%) in one or a series of related transactions in Tenant SPE or (2) in any other SPE which would result in a transfer of a more than five percent (5%) Equity Interest in Tenant.

(j) As used herein, “Equity Interest” means the beneficial ownership of (1) outstanding stock of an entity that is a corporation or (2) a partnership, membership or other capital or profits interest in an entity that is a partnership or limited liability company.

(k) As used herein, a “Master Sublease” shall mean a sublease by Tenant or a sub-sublease by HTC Master Tenant of all or substantially all of the Premises that creates a leasehold interest superior to the interests of existing and future subleases or sub-subleases, as applicable, with end-users (meaning tenant-occupants) of the leasable units in the Premises, the subtenant or sub-subtenant under such Master Sublease being the landlord under the subleases or sub-subleases, as applicable, with such end-users.

(l) As used herein, a “Non-Designated Person” means any Person that is not a Designated Person.

(m) As used herein, a “Non-SPE” means any Person that is not an SPE (e.g., RXR Parent, Institutional Investor, Qualified Institutional Investor, a public corporation which is listed

on any national or regional stock exchange or is listed in the NASDAQ system, multi-asset investment funds and other multi-asset investment vehicles).

(n) As used herein, an “SPE” means (1) Tenant SPE, (2) any Person that is a single purpose entity formed solely for the purpose of owning a direct or indirect ownership interest in Tenant SPE and the HTC Master Tenant (e.g., the JV SPE) or (3) any Person for which direct or indirect ownership interests in Tenant SPE constitute all or substantially all of such Person’s assets.

Section 3.06 Manner and Calculation of Rental, Timing of Payments, Reports. The order of calculation of Rental, timing of payments and reporting obligations of Tenant shall be substantially as follows:

(a) Construction Period Rent shall be payable as set forth in Section 3.01;

(b) Base Rent shall be payable as set forth in Section 3.02(a) and In-Water Areas Rent shall be payable as set forth in Section 3.02(b);

(c) Minimum PILOT shall be payable quarterly in advance during the first twenty (20) Base Rent Years with payments equal to one quarter (1/4) of the annual amounts for Base Rent Years set forth in Section 3.04(b);

(d) Participation Rent shall, except as provided below, be payable, on a quarterly basis in arrears within thirty (30) days of the close of each Base Rent Year quarter. Each payment of quarterly Participation Rent shall be accompanied by a statement detailing the basis for the determination of the amount then due certified by the chief financial officer or equivalent of Tenant, provided that the statement accompanying the last quarterly payment for the Base Rent Year shall detail the cumulative payments of Participation Rent for such Base Rent Year and be certified by Tenant’s Certified Public Accountant or another accounting firm reasonably acceptable to Landlord, and subject to adjustment as set forth below:

(i) For the last Base Rent Year which includes four (4) full quarters and the immediately following Base Rent Year if such Base Rent Year has fewer than four (4) full quarters, Tenant shall pay estimated Participation Rent on a quarterly basis in advance in an amount equal to one quarter (1/4) of the annual Participation Rent due for the immediately preceding Base Rent Year.

(ii) Payment of Participation Rent, whether quarterly in arrears or estimated in advance, shall be subject to adjustment annually upon submission of the Annual Operating Statement.

(iii) Participation Rent shall be calculated as (a) first determining Net Annual Cash by subtracting Permitted Operating Expenses, Base Rent, Minimum PILOT (during the first twenty (20) Base Rent Years) or the sum of Current Allocable PILOT and Deferred PILOT Principal (from and after the twenty-first Base Rent Year) from Gross Revenue, (b) then next subtracting from Net Annual Cash the Participation Rent Threshold to yield Available Annual Cash, and (c) then next, provided Available Annual

Cash is greater than zero (0), selecting the lesser of (x) Gross Revenue multiplied by five percent (5%) and (y) Available Annual Cash;

(e) Contingent PILOT due pursuant to clause (1) of Section 3.04(c) shall be payable quarterly in advance from and including the eighth (8th) Base Rent Year through and including the twentieth (20th) Base Rent Year in an amount equal to one quarter (1/4) of the Annual Contingent PILOT Factor for such Base Rent Year multiplied by the amount by which Current Allocated PILOT exceeds Minimum PILOT for such Base Rent Year. For the second (2nd) Base Rent Year, Contingent PILOT due pursuant to clause (2) of Section 3.04(c) shall be payable annually in arrears upon submission by Tenant of its Annual Operating Statement. From and including the third (3rd) Base Rent Year to and including the twentieth (20th) Base Rent Year, estimated Contingent PILOT due pursuant to clause (2) of Section 3.04(c) shall be payable quarterly in advance in an amount equal to one quarter (1/4) of the annual Contingent PILOT due pursuant to clause (2) of Section 3.04(c) for the immediately preceding Base Rent Year. From and including the third (3rd) Base Rent Year to and including the twentieth (20th) Base Rent Year, estimated Contingent PILOT due pursuant to clause (3) of Section 3.04(c) shall be payable annually in arrears upon submission by Tenant of Tenant's Annual Operating Statement.

(i) Payment of Contingent PILOT due pursuant to clause (2) of Section 3.04(c), whether paid annually in arrears or estimated and paid quarterly in advance based on the annual Contingent PILOT due pursuant to clause (2) of Section 3.04(c) for the immediately preceding Base Rent Year, shall be subject to adjustment annually upon submission of the Annual Operating Statement and Tenant's Audited Financial Statement for the applicable Base Rent Year.

(ii) Contingent PILOT due pursuant to clause (2) of Section 3.04(c) shall be calculated by (a) first determining the Contingent PILOT Threshold as set forth in Section 3.04(c)(viii), (b) then next determining whether Net Annual Cash less the sum of (x) Participation Rent for such Base Rent Year and (y) the Contingent Rent Threshold is greater than zero (0), (c) then next if the result of the calculation in (b) above is greater than zero (0), selecting the lesser of (x) Current Allocable PILOT minus the sum of Minimum PILOT for such Base Rent Year plus the amount of Contingent PILOT due pursuant to clause (1) of Section 3.04(c) for such Base Rent Year, and (y) Net Annual Cash minus the sum of Participation Rent and the Contingent Rent Threshold for such Base Rent Year. If the result of the calculation in (b) above is less than zero (0), then no Contingent PILOT due pursuant to clause (2) of Section 3.04(c) shall be payable for such Base Rent Year;

(f) Current Allocated PILOT, Deferred PILOT Principal and Deferred PILOT Interest shall be payable quarterly in advance from the commencement of the twenty first (21st) Base Rent Year until the end of the Base Rent Period. PILOT for the partial final quarter of the Base Rent Period shall be prorated proportionally to the remaining term. Current Allocated PILOT shall be adjusted during a Base Rent Year to reflect changes in Tax Year PILOT;

(g) Transaction Rent shall be payable on the closing date of a Designated Sale or Designated Financing and any additional Designated Sale date, subject to the penultimate sentence of Section 3.05(c);

(h) Within one hundred and twenty (120) days after the end of each Base Rent Year, Tenant shall provide Landlord with (a) Tenant's annual audited financial statement prepared by Tenant's Certified Public Accountant, (b) an annual operating statement for such Base Rent Year (the "Annual Operating Statement") prepared on a cash basis by Tenant's Certified Public Accountant which presents in reasonable detail the calculation and determination of all elements of Rental set forth in this Article 3 including the sources from which the same were derived and the deductions therefrom, (c) a statement prepared by Tenant's Certified Public Accountant which reconciles categories used in the Annual Operating Statement with categories used in Tenant's annual audited financial statement (including a cash to accrual reconciliation if Tenant's annual audited financial statement is prepared on an accrual basis), and (d) a statement listing all parties holding a direct interest in the Tenant SPE and all parties holding a direct or indirect interest in each Control Person to the extent discoverable by such Control Person. The Annual Operating Statement for the first Base Rent Year shall include as a supplemental statement the calculation of Net Project Development Cost detailing all elements thereto, and the next ensuing four (4) Annual Operating Statements shall set forth revisions, if any, resulting solely from adjustments to the amount set forth in initial calculation of Net Project Development Cost as paid to the HITC Investors in the second (2nd) through fifth (5th) Base Rent Years; and

(i) Should the Annual Operating Statement indicate an underpayment of Participation Rent, Contingent PILOT or any other component of rental for the subject Base Rent Year, Tenant shall remit such underpayment at the time of submission of the Annual Operating Statement. Should the Annual Operating Statement indicate an overpayment of Participation Rent, Contingent PILOT or any other component of rental for the subject Base Rent Year, Tenant shall receive a rent credit in the amount of such overpayment at the next due date for payment of Participation Rent or PILOT. In the event an overpayment of Participation Rent is indicated upon submission of the final Annual Operating Statement, Landlord shall refund such overpayment within sixty (60) days.

Section 3.07 Miscellaneous Rent Provisions.

(a) If (i) any installment of Base Rent or PILOT is not paid within ten (10) Business Days after the day on which it first becomes due or (ii) any other Rental payment hereunder is not paid within ten (10) Business Days following notice from Landlord that such payment is due, then Tenant shall pay Landlord, in addition to such overdue Rental, within ten (10) Business Days following demand, a late charge in the amount of One Thousand Dollars (\$1,000) for each such overdue payment and interest (x) in the case of Tenant's failure to pay PILOT, at the rate of interest charged from time to time by the City for delinquent Taxes of the sum so overdue and (y) in all other cases, at the Default Rate on the sum so overdue from the due date of such Rental to the date on which actual payment of any such amount by Tenant is received by Landlord. Tenant understands and agrees that any such late charge and interest imposed on Tenant hereunder shall constitute liquidated damages payable to Landlord for the administrative costs and expenses incurred by Landlord by reason of Tenant's failure to make payment of Rental as required hereby on or before such payments are due.

(b) The failure by Landlord to insist upon the performance by Tenant of its obligations to pay late charges in one or more instances shall not constitute a waiver by Landlord of its right to enforce the provisions of this Article 3 in any other instance thereafter occurring.

The provisions of this Article 3 shall not be construed to extend any grace periods or notice periods regarding any Rental payments required to be made by Tenant under this Lease. The provisions of this Article 3 shall survive the expiration or earlier termination of this Lease.

(c) The acceptance by Landlord or Tenant of any partial performance of any obligation hereunder on the part of any party to be performed hereunder, or the failure by Landlord or Tenant to enforce any provision of this Lease shall not be considered a waiver of any of said Party's rights either under this Lease, at law or in equity.

(d) It is the intention of Landlord and Tenant that, except as expressly provided in this Lease, (A) Rental shall be absolutely net to Landlord without any abatement, diminution, reduction, deduction, counterclaim, credit, setoff, or offset whatsoever so that each 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 that may arise or become due or payable during or after (but attributable to a period falling within) the Term; provided, however, that Tenant shall not be responsible for payment of (x) without in any way limiting the liability arising out of any acts or omissions of Tenant, any Affiliate of Tenant, or their agents, consultants, representatives or contractors, during any early access pursuant to any permits issued by Landlord to Hudson Eagle, LLC or the JV, any costs, expenses and charges of any kind relating to the Premises which are attributable to any period prior to the Effective Date or (y) any costs, expenses and charges of any kind to the extent arising out of a default by Landlord under the terms of this Lease or the gross negligence or intentional misconduct of Landlord, its agents, employees or contractors.

(e) In the event Tenant's performance of its construction obligations is delayed by Force Majeure such that the RTI Substantial Completion Date occurs later than thirty (30) months after the Commencement Date, then: (1) the Base Rent Period Commencement Date shall be extended to be the same date as the RTI Substantial Completion Date, (2) the Construction Period shall be extended from the last date of the thirtieth (30th) month following the Commencement Date to the day prior to the RTI Substantial Completion Date, (3) Quarterly Construction Period Rent Payments shall continue to be payable quarterly in advance at the rate set forth in this Article 3, and (4) Base Rent, Minimum PILOT and the "deemed to equal" building assessment prior to improvement used in the calculation of the PILOT Abatement Base, shall each be adjusted by a percentage amount equal to the percentage increase in the CPI for the period of extension of the Base Rent Period by reason of Force Majeure, provided that the annual rate of increase in CPI shall not exceed three percent (3%).

Section 3.08 Security for Late Payment of Rental.

(a) If more than three (3) times in any thirty-six (36) month period of time during the Term, Tenant shall make payments of any recurring amount of Rental after the respective due date set forth in this Lease for such Rental, then Landlord shall have the right, in addition to all other remedies afforded Landlord by reason thereof pursuant to this Lease or applicable Requirements, to require Tenant to post a security deposit in an amount equal to six (6) months of the then payable installments of Base Rent due hereunder and, if any of the three (3) late payments as aforesaid were on account of a late payment of PILOT, then, in addition to such Base Rent amount, six (6) months of the then payable installments of PILOT due hereunder

(collectively, the “Security Deposit”). Landlord shall exercise such right by giving Tenant notice thereof, which notice shall set forth the aggregate amount of the Security Deposit due from Tenant in accordance with the terms of this Section 3.08(a). Tenant shall be obligated to post the Security Deposit pursuant to Section 3.08(b) to Landlord within twenty (20) Business Days after the date Landlord gives such notice to Tenant. Landlord shall hold the Security Deposit pursuant to the provisions of Section 3.08(b). Notwithstanding the foregoing, if a Recognized Mortgagee succeeds to the interests of Tenant under this Lease by foreclosure or transfer in lieu of foreclosure, then such Recognized Mortgagee shall not be obligated to fund the Security Deposit by reason of Tenant’s late payments as aforesaid and/or Tenant’s failure to fund the Security Deposit and shall succeed to Tenant’s interest in the Security Deposit as set forth herein; provided that from and after the date of such foreclosure or transfer in lieu thereof, such Recognized Mortgagee shall be obligated to fund the Security Deposit by reason of any such late payments by Recognized Mortgagee pursuant to this Section 3.08(a).

(b) Tenant shall furnish the Security Deposit to Landlord, at Tenant’s sole cost and expense, in the form of a clean, irrevocable and unconditional letter of credit (the “Letter of Credit”) drawn in favor of Landlord substantially in the form attached hereto as Exhibit F and made a part hereof or in such other form reasonably acceptable to Landlord. The Letter of Credit shall have a face amount equal to the amount of the Security Deposit and shall be assignable, upon request, to the holder of any Mortgage or successor to Landlord at no additional charge to Landlord. Any Letter of Credit which replaces the initial Letter of Credit delivered hereunder is referred to as a “Replacement Letter”. Any Replacement Letter shall be in a face amount at least equal to the Security Deposit then required hereunder. The initial Letter of Credit and any Replacement Letter are herein sometimes referred to simply as a “Letter”. Each Letter shall be issued by and drawn on a commercial bank acceptable to Landlord in its reasonable discretion and at a minimum having a long-term issuer credit rating from Standard & Poor’s Professional Rating Service of A or a comparable rating from Moody’s Professional Rating Service. If the issuer’s credit rating is reduced below A, or if the financial condition of such issuer changes in any other materially adverse way, then Landlord shall have the right to require that Tenant obtain from a different issuer a Replacement Letter that complies in all respects with the requirements of this Section within twenty (20) Business Days following Landlord’s written demand. If the issuer of any Letter held by Landlord is placed into receivership or conservatorship by the Federal Deposit Insurance Corporation or any successor or similar entity then, effective as of the date such receivership or conservatorship occurs, said Letter shall be deemed not to meet the requirements of this Section, and Tenant shall obtain from a different issuer a Replacement Letter that complies in all respects with the requirements of this Section within twenty (20) Business Days following the date such receivership or conservatorship occurs. In any event, Tenant shall, not later than thirty (30) days prior to the expiration of the term of the initial Letter of Credit or any Replacement Letter, deliver to Landlord a Replacement Letter such that a Letter shall be in effect at all times after the date of this Lease until thirty (30) days beyond the end of the Term and any extensions or renewals thereof or as otherwise provided in Section 3.08(d), and thereafter so long as Tenant is in occupancy of any part of the Premises. If Tenant fails to deliver to Landlord a Replacement Letter within the time limits set forth in this Section 3.08, Landlord may, without limiting Landlord’s other rights or remedies under this Lease on account of such failure, draw down the full amount of the existing Letter without notice or demand and retain and apply the proceeds thereof as substitute security subject to the provisions of this Section 3.08. Tenant shall be responsible for the payment of any and all costs incurred with the

review of any Replacement Letter (including without limitation Landlord's reasonable attorneys' fees). Any and all fees or costs charged by the issuer in connection with the issuance, maintenance or transfer of the Letter shall be paid by Tenant. If a Letter is lost, mutilated, stolen, or destroyed, Tenant shall cooperate with Landlord, at Landlord's cost and expense, to have the Letter replaced. The Security Deposit (whether a Letter, cash or other collateral) will not operate as a limitation on any recovery to which Landlord may be entitled.

(c) Landlord shall hold the Letter as security for the performance by Tenant of all obligations on the part of Tenant hereunder. If Tenant defaults (following the expiration of any notice and cure periods as set forth herein) in respect of any of Tenant's obligations hereunder, including but not limited to payment of any Rental, or if Tenant remains in occupancy of any part of the Premises beyond the expiration of the Term, Landlord shall have the right from time to time, without additional notice and without prejudice to any other remedy Landlord may have under this Lease on account thereof, and upon presentation of a certificate of demand, to draw upon any Letter and apply any funds so drawn to Landlord's damages arising from, or to cure, any default by Tenant, whether such damages accrue before or after summary proceedings or other reentry by Landlord. If Landlord shall so apply any funds, Tenant shall, within twenty (20) Business Days following Landlord's written demand, restore the Letter to the face amount required hereunder. Landlord shall have the right, subject to Section 3.08(d), to hold and draw upon the Letter pursuant hereto until thirty (30) days after (i) the expiration of the Term (or the applicable extension or renewal period, if any) or (ii) the date Tenant has vacated the Premises, whichever is later. If there then exists no monetary default by Tenant under this Lease, Landlord shall return the Letter, or, if applicable, the remaining proceeds thereof, to Tenant. If Landlord conveys Landlord's interest under this Lease, any Letter or, if applicable, the proceeds thereof, shall be turned over and assigned by Landlord to Landlord's grantee (or, at Landlord's election, Tenant shall furnish Landlord's successor with a new Replacement Letter showing such successor as payee, provided that the original Letter then outstanding shall be simultaneously returned to Tenant, together with a letter to the issuer of such Letter authorizing the cancellation thereof). From and after any such transfer, assignment or return, Tenant agrees to look solely to such grantee for proper application of the funds in accordance with the terms of this Section 3.08 and the return thereof in accordance herewith. No holder of any Mortgage shall be responsible to Tenant for the return or application of any such Letter, or, if applicable, the proceeds thereof, whether or not it succeeds to the position of Landlord hereunder, unless such Letter shall have been received by, and assigned to, such holder.

(d) If, during the two (2) year period of time commencing on the date that Tenant posts the Security Deposit with Landlord, Tenant pays all amounts of Rental to Landlord no later than the applicable due date therefor pursuant to this Lease, then, provided there is then no Default or Event of Default then continuing (or promptly after a Default or Event of Default is cured), Landlord shall return the applicable Letter to Tenant (together with a letter to the issuer of such Letter authorizing the cancellation thereof) within thirty (30) days following the end of such two (2) year period. It is agreed, however, that the terms of this Section 3.08 shall continue to be applicable throughout the Term with respect to any other recurring late payments of Rental described in Section 3.08(a) above on the terms contained in this Section 3.08.

Section 3.09 Security for Lease Obligations. Notwithstanding the Security Deposit, if any, required to be posted by Tenant pursuant to Section 3.08, Tenant shall at all times maintain the

Required Security Deposit in the minimum amounts as set forth in this Section 3.09. Tenant shall deliver to Landlord for the performance of Tenant's obligations under this Lease a Letter of Credit in the amount of Three Million Dollars (\$3,000,000) which shall be furnished and held under the same terms and conditions as set forth in Sections 3.08(b)-(c) (in the minimum amounts as set forth in this Section 3.09, the "Required Security Deposit") except that this Required Security Deposit shall be held for the entire term of this Lease. On the fifth (5th) anniversary of the Commencement Date, the Required Security Deposit shall be reduced to One Million Five Hundred Thousand Dollars (\$1,500,000) provided that there is then no monetary default which remains uncured or an Event of Default. From and after the fifth (5th) anniversary of the Commencement Date, the Required Security Deposit shall increase on every fifth (5th) year anniversary thereafter (up to and including the forty-fifth (45th) anniversary of the Commencement Date) by the amount of ten percent (10%) of the then Required Security Deposit. On every fifth (5th) anniversary of the Commencement Date after the forty-fifth (45th) anniversary of the Commencement Date through and including the Expiration Date, the Required Security Deposit shall be in an amount equal to the product of (i) the Required Security Deposit for the immediately preceding five (5) year period multiplied by (ii) the sum of one hundred percent (100%) plus the percentage increase in the Base Rent payable during the immediately preceding five (5) year period compared to the Base Rent payable during the five (5) year period commencing on the applicable fifth (5th) anniversary date upon which such Required Security Deposit is being determined (but in no event shall such percentage increase be less than zero (0)). In the event the Security Deposit is required to be posted by Tenant after the fifth (5th) anniversary of the Commencement Date, the Required Security Deposit shall be applied towards such Security Deposit, provided that Tenant shall immediately deliver to Landlord any shortfall against the Security Deposit and provided further that the Security Deposit and Required Security Deposit (as aggregated in this last sentence of Section 3.09) shall at all times be maintained at the greater of (x) the Security Deposit and (y) the minimum amount as set forth in this Section 3.09.

Section 3.10 Survivability. The provisions of this Article 3 shall survive the expiration or sooner termination of this Lease.

ARTICLE 4

IMPOSITIONS AND TAXES

Section 4.01 Obligation to Pay Impositions. Subject to Section 36.02, Tenant shall pay, in the manner provided in Section 4.03(c) hereof, all Impositions that at any time thereafter during the Term are assessed, levied, confirmed, imposed upon, or would become due and payable out of, or with respect to, or would be charged with respect to, the ownership, leasing, operation, use, occupancy or possession of: (a) the Premises or any part thereof; (b) the streets immediately adjacent to or adjoining the Premises or any part thereof; (c) any passageway or space in or over such streets; (d) easements, licenses or any other appurtenances of the Premises or any part thereof; (e) any personal property of Tenant or other facility used in the operation of the Premises; (f) the Rental (or any portion thereof) or any other amount payable by Tenant hereunder; (g) any documents to which Tenant is a party creating or transferring an interest or estate in the Premises, or any portion thereof; (h) the use and occupancy of the Premises; or (i) to the extent applicable, the transaction contemplated by this Lease. Tenant shall have the right

upon prior notice to Landlord, and at its sole cost and expense, to contest Taxes or Impositions assessed against the Premises as provided in Section 4.07. Notwithstanding the above, Tenant shall not be obligated to pay any Impositions that Landlord has voluntarily agreed to pay and which are not in lieu of any Impositions that Landlord would have an obligation to pay but for Landlord's voluntary agreement to pay such Imposition.

Section 4.02 Certain Definitions. For the purposes hereof "Imposition" or "Impositions" means:

(a) Real property 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 or PILOT;

(b) personal property taxes, if any;

(c) occupancy and rent taxes;

(d) water, water meter and sewer rents, rates and charges;

(e) license and permit fees;

(f) service charges with respect to police and fire protection, street and highway construction, maintenance and lighting, sanitation and water supply which affect the Premises;

(g) except for Taxes, any other governmental levies, fees, rents, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind whatsoever now or hereafter enacted, except for (i) taxes on Landlord's income, franchise taxes, excise taxes, corporate taxes or any similar taxes imposed on Landlord, unless such taxes are levied, imposed or assessed in lieu of or as a substitute for the whole or (ii) any municipal, state or federal inheritance, estate, succession, transfer or gift taxes of Landlord; and

(h) any fines, penalties and other similar governmental charges applicable to the foregoing, together with any interest or costs with respect to the foregoing, incurred by reason of Tenant's failure to make any payments as herein provided, excluding any such fines, penalties and similar governmental charges which may be imposed solely as a result of Landlord's default under the terms of this Lease (however, if Tenant has actual knowledge of any such fines, penalties and similar governmental charges imposed solely as a result of Landlord's default under the terms of this Lease, Tenant shall promptly give Landlord written notice thereof).

Section 4.03 Payments of Impositions.

(a) Subject to the provisions of Sections 4.06 and 36.02, during the Term, Tenant shall pay or cause to be paid each Imposition or installment thereof not later than the last date the same may be paid pursuant to applicable Requirements without incurring any interest or penalty. However, if pursuant to applicable Requirements, at the payer'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 such Imposition in installments over the maximum period allowed pursuant to applicable Requirements and shall be responsible for the

payment of such installments with interest, if any, as may be required pursuant to applicable Requirements.

(b) If Tenant fails to make any payment of an Imposition (or installment thereof) within the time required in the preceding subsection (a), Tenant shall, at Landlord's request, and notwithstanding (a) above, pay all Impositions or installments thereof payable by Tenant during the next twelve (12) months not later than the earlier to occur of (x) ten (10) days before the due date thereof or (y) if any installment payments are permitted, notwithstanding Tenant's failure to pay, on a quarterly basis but in any event ten (10) days in advance of any such installment due date. Nothing in this paragraph shall be construed to limit any remedies available to Landlord under this Lease and otherwise upon Tenant's Default to timely pay any Imposition.

(c) Tenant shall pay Impositions in the form, to the entity and at the location provided by the rules and regulations governing the payment of such Impositions pursuant to applicable Requirements as if Tenant owned the Premises.

Section 4.04 Evidence of Payment. Tenant shall, upon Landlord's request, furnish to Landlord, within thirty (30) days after the later of the date when an Imposition is due and payable and the date upon which such request is made, canceled checks or official receipts of the appropriate taxing authority or other proof reasonably satisfactory to Landlord, evidencing the payment thereof.

Section 4.05 Evidence of Non-Payment. Any certificate, advice or bill of the appropriate official designated pursuant to applicable Requirements 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, provided that the foregoing shall not be construed to qualify Tenant's rights pursuant to Sections 3.04, 4.07 or Article 36.

Section 4.06 Apportionment of Impositions. 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 either before the Commencement Date or after the Expiration Date shall be apportioned pro rata between Landlord and Tenant as of the Commencement Date or the Expiration Date, as the case may be, so that Tenant shall pay that portion of such Imposition which that part of such fiscal period included in the Term bears to the fiscal period of the taxing authority. Landlord shall cooperate at Tenant's expense in Tenant's application for a refund of any sums paid by Tenant not attributable to periods within the Term.

Section 4.07 Tax or Imposition Contests. Tenant or its designees shall have the right to contest or review all Taxes and Impositions assessed against the Premises by appropriate legal proceedings, or in such other manner as it may deem suitable (which, if instituted, Tenant or its designees shall conduct promptly at its own cost and expense, and free of any expense to Landlord, and, if necessary, in the name of and with the cooperation of Landlord, and Landlord shall execute all documents necessary to accomplish the foregoing). Notwithstanding the foregoing, Tenant shall promptly pay all Taxes and/or Impositions if at any time the Premises or any part thereof shall then be immediately subject to forfeiture, or if Landlord shall be subject to any criminal liability, arising out of the nonpayment thereof. The legal proceedings referred to

in this Section 4.07 shall include appropriate proceedings and appeals from orders therein and appeals from any judgments, decrees or orders. In the event of any reduction, cancellation or discharge, Tenant shall pay the amount finally levied or assessed against the Premises or adjudicated to be due and payable on any such contested Taxes or Impositions.

Section 4.08 Exemption From Taxes. Notwithstanding anything to the contrary contained in this Article or elsewhere in this Lease to the contrary, to the extent that the Premises, or any part thereof, or Landlord are exempt from the payment of any Taxes pursuant to Section 4.02(a), Tenant shall be entitled to the benefit of such exemption. However, if at any time during the Term any Taxes under Section 4.02(a) that were previously exempt become assessed, levied, confirmed or imposed upon the Premises or Landlord, then Tenant, in addition to its other obligations hereunder, shall be required to pay such Taxes that were previously exempt unless such Taxes become assessed, levied, confirmed or imposed upon the Premises due to a voluntary assignment or transfer by Landlord of its interest in this Lease in which case Tenant's obligations under this Section 4.08 to pay Taxes that were previously exempt shall toll until the twentieth (20th) anniversary of the Commencement Date (it being agreed that Tenant's obligations in respect of Taxes through the twentieth (20th) anniversary of the Commencement Date shall be limited to PILOT payments as provided under this Lease and during such period until the twentieth (20th) anniversary of the Commencement Date, Landlord shall be obligated to pay Taxes that are assessed by a Governmental Authority against the Premises or any part thereof or take other actions as may be required to discharge same).

Section 4.09 Assessment of Taxes. Notwithstanding anything to the contrary contained in this Article 4 or elsewhere in this Lease, in the event that Taxes are directly assessed by a Governmental Authority against the Premises, or any part thereof, and, accordingly, are thereafter payable by Tenant, then, from and after the day immediately after the date that the Premises are so assessed, Tenant shall no longer be required to pay PILOT payments pursuant to Article 3, except to the extent that Deferred PILOT Principal and Deferred PILOT Interest shall be due pursuant to the terms of this Lease.

Section 4.10 Savings. In connection with any Improvements constructed by Tenant during the Term in accordance with this Lease (together with any Improvements existing on the date of this Lease), Landlord shall make available to Tenant the exemption from sales tax available to Landlord as a result of Landlord's interest in the Premises and any risk of the availability of such exemption shall be borne solely by Tenant. Tenant acknowledges that, to the extent available, the sales tax exemption shall be limited to materials incorporated into the Premises and other Improvements on the Premises. In connection with the grant of such exemption, Landlord shall provide to Tenant an appropriate letter setting forth the exemptions contained in this Section 4.10. Except for such Improvements, neither Tenant nor any Occupant (nor their contractors, subcontractors or materialmen) may claim any sales tax exemption solely by virtue of the State's ownership or Landlord's interest in the State Lease with respect to any other improvements either performed by Tenant or its Occupants. All risk associated with the availability and/or applicability of such exemption from sales tax shall be borne solely by Tenant.

Section 4.11 Tax Treatment. For U.S. federal, state and local income tax, New York State real estate transfer tax, New York City real property transfer tax and New York City commercial rent or occupancy tax purposes only, during the Term (i) Landlord shall be deemed to have sold the

Improvements to the Tenant upon commencement of this Lease for an amount equal to (x) the amount payable by Tenant under clause (i) of Section 3.01(a) and (y) the Base Rent payable by Tenant on the Base Rent Period Commencement Date under clause (1) of Section 3.02(a) (without reduction for the Base Rent Credit) (clause (x) and (y) together, the “Purchase Price”) and to have leased the Land to Tenant for the Base Rent (excluding the Purchase Price) and (ii) Tenant shall be deemed the owner of the Improvements. Tenant acknowledges and agrees that the foregoing sentence shall not create any liability or exposure by Landlord for any matter related to the content of such sentence. In connection therewith, throughout the Term, Landlord shall treat itself for such tax purposes as the owner and lessor of the Land and Tenant shall treat itself as the owner of the Improvements and the lessee of the Land, Landlord shall not deduct any depreciation in respect of the Improvements and each of Landlord and Tenant shall treat all Base Rent (excluding the Purchase Price) as rent in respect of this Lease of the Land by Landlord to Tenant, for all U.S. federal, state and local income tax, New York State real estate transfer tax, New York City real property transfer tax and New York City commercial rent or occupancy tax purposes. All parties agree to file their respective tax returns in a manner consistent with this Section 4.11. Except as otherwise set forth herein, legal title to the materials to be incorporated in the Improvements shall vest in Landlord. Notwithstanding anything to the contrary contained in this Section 4.11, Landlord and Tenant acknowledge and agree that the provisions of this Section 4.11 are included in this Lease solely to satisfy the requirements relating to the benefits intended for the HITC Investors and the sales tax exemption referred to in Section 16.15 and shall not be interpreted or applied in any manner to deprive New York State or the City of New York of any tax-related or similar revenues that would otherwise be payable, directly or indirectly, by Tenant in any manner in connection with Tenant’s obligations under this Lease, any transactions contemplated by this Lease, Tenant’s development, leasing, use, operation and maintenance of the Premises and/or any other matter relating to this Lease.

Section 4.12 Survival. The provisions of this Article 4 shall survive the expiration or earlier termination of this Lease.

ARTICLE 5

UTILITIES

Section 5.01 Utility Service to Premises. Tenant must obtain and pay all costs of utilities (including, without limitation, installation thereof, if applicable), including all sewer charges and charges for all water, gas, heat and electricity, consumed and used in, or with respect to, the Premises, and Tenant, at its sole cost and expense, shall install, maintain and repair all meters and procure all permits, approvals and licenses necessary to secure delivery and installation of such utility services to the point of connection to the utility provider. At the reasonable request of Tenant, Landlord shall cooperate with Tenant to the extent reasonably necessary or desirable and at Tenant’s sole cost and expense, to enable Tenant to procure the foregoing (at Tenant’s sole cost and expense), including, without limitation, to the extent within Landlord’s control, providing utility providers with such access and/or licenses, easements and/or other rights necessary to bring utilities to the Premises; provided that Landlord shall not charge Tenant or any utility provider for any such licenses, easements or other rights. Tenant shall pay any utility charges directly to the companies supplying such utility services all charges therefor, as the same shall become due. Tenant must also provide and pay for all traffic monitoring and supervision

services in connection with Tenant's use and operations at the Premises. If, by virtue of Landlord's interest in the Premises, Landlord is entitled to any special or discounted utility rate, Landlord shall use reasonable efforts to provide to Tenant the benefit of such special or discounted utility rate with respect to the Public Open Space, and those portions of the Premises that are leased for not-for-profit uses, but not for any other portion of the Commercial Space, it being agreed that Landlord shall have no liability to Tenant if any such special or discounted utility rate is not available to Tenant.

Section 5.02 No Obligation on the Part of Landlord. Landlord shall have no obligation to provide any utility services to the Premises, or any part thereof, and Landlord shall not have any responsibility or liability to Tenant or any third party in the event any such utility services are not provided to the Premises, or any part thereof; provided that the foregoing shall not negate Landlord's obligation to cooperate with Tenant as set forth in Section 5.01.

ARTICLE 6

DREDGING; SUNKEN CRAFT

Section 6.01 Dredging. Tenant acknowledges and agrees that dredging of any underwater areas of the Premises (other than as expressly included in any Approved Plans and Specifications, if applicable) shall only occur with the prior written approval of Landlord and if permitted by applicable Requirements.

Section 6.02 Sunken Craft. If, during the Term, any of the lands underwater included in the Premises as part of the In-Water Areas, if any, leased by Tenant become obstructed in whole or in part by the sinking of any waterborne craft, other than a waterborne craft owned or operated by Landlord, then Tenant, at Tenant's cost and expense, shall use commercially reasonable and diligent efforts to cause such obstructions to be removed at no expense to Landlord. If, however, any obstruction is caused by waterborne craft owned or operated by Landlord, then Landlord, at Landlord's cost and expense, shall use commercially reasonable and diligent efforts to cause such obstructions to be removed at no cost to Tenant.

ARTICLE 7

USE OF PREMISES

Section 7.01 Permitted Use and Use Areas.

(a) Permitted Use. Subject to the terms of this Article 7, Tenant (and all Occupants) shall use and occupy those portions of the Premises shown on the floor plans included within the Approved Plans and Specifications for the Required Tenant Improvements and annexed to this Lease as Exhibit G and made a part hereof (the "Permitted Use Floor Plans"), which Permitted Use Floor Plans show permitted uses that are allowed within specific areas of the Premises pursuant to this Lease, for the following uses: (1) cultural, educational and/or entertainment uses (collectively, the "CEE Use") pursuant to Section 7.02; (2) general, professional, administrative and executive offices and ancillary uses related directly to the business or other legitimate operations of Tenant and/or any Occupant that are not otherwise expressly prohibited pursuant to

the terms and conditions of this Lease and/or applicable laws, which ancillary uses may include, for any Occupant leasing, as of the date of this Lease (regardless of whether such Occupant is thereafter leasing) the entire rentable area of the third (3rd) and fourth (4th) floors of the Premises as of the date of this Lease (the “Anchor Occupant”), for use by Anchor Occupant, Anchor Occupant’s employees, directors, partners and principals, and any other persons entitled by, through or under the Anchor Occupant, to use the portion of the Premises leased by Anchor Occupant, the uses set forth on Exhibit J attached hereto and made apart hereof; (3) retail and restaurant uses (uses set forth above in clauses (2) and (3) of this Section 7.01(a), collectively “Commercial Use” pursuant to Section 7.03); (4) public access and public benefit uses (collectively, the “Public Access and Public Benefit Use”) pursuant to Section 7.04; (5) ancillary parking uses (collectively, the “Parking Use”) pursuant to Section 7.05; and (6) maritime uses (collectively, the “Maritime Use”) pursuant to Section 7.06; and for purposes of maintaining administrative offices and uses incidental thereto (the CEE Use, the Commercial Use, the Public Access and Public Benefit Use, the Maritime Use, the Parking Use, and incidental uses, individually, a “Permitted Use” and collectively, the “Permitted Uses”). Tenant and/or any Occupants shall not use and occupy the Premises for any use or occupancy, other than as expressly provided in this Lease, without in each instance the express, prior written approval of Landlord, which approval may be withheld, denied or conditioned in Landlord’s sole and absolute discretion. Tenant shall secure (or cause the Occupants to secure), at Tenant’s (or Occupant’s, as the case may be,) sole cost and expense, all Public Approvals and any other approvals which may be required by Governmental Authorities and/or the Requirements relating to the Permitted Uses. Tenant shall (and shall cause all Occupants to) operate and maintain the Premises in a first-class, high quality (subject to ordinary wear, tear and replacement) mixed-use facility, in a manner that is compatible with park use as set forth in the Act, in a safe, clean and reputable manner, in compliance with this Lease and the Requirements and, if applicable, in any manner more specifically provided in this Lease (collectively, the “Operating Standard”).

(b) Use Areas/Demising Areas. The Permitted Use Floor Plans annexed to this Lease as Exhibit G show the demising areas for Occupants’ subleases either entered into as of the date of this Lease and/or contemplated by Tenant as of the date of this Lease, as shown on the Approved Plans and Specifications for the Required Tenant Improvements. Tenant shall use (and shall cause all Occupants to use) the areas of the Premises only for the Permitted Uses as shown on the Permitted Use Floor Plans (and, in the case of Anchor Occupant, the ancillary uses set forth on Exhibit J to this Lease within portions of the Premises subleased by Anchor Occupant), as the Permitted Use Floor Plans may be modified, from time to time, in accordance with the provisions of this Section 7.01(b).

(A) If Tenant or any Occupant desires to add, reconfigure, relocate, contract or expand areas of the Premises utilized by Tenant or such Occupant for a Permitted Use that is either the same as Tenant’s or such Occupant’s use of such areas prior thereto or is a substitution of one Permitted Use to another Permitted Use (or to relocate ancillary uses set forth on Exhibit J to this Lease within a portion of the Premises subleased by Anchor Occupant), then Tenant shall be required to submit proposed modified Permitted Use Floor Plans (“Proposed Modified Permitted Use Floor Plans”) to Landlord. Such Proposed Modified Permitted Use Floor Plans shall depict the modifications to the demising areas for Occupants’ subleases and the same information

with respect to the uses thereof as shown on the Permitted Use Floor Plans attached as Exhibit G to this Lease.

(B) Landlord shall notify Tenant in writing of Landlord's approval or disapproval (and the reasons for such disapproval) of the Proposed Modified Permitted Use Floor Plans within twenty-five (25) days after Landlord's receipt of the Proposed Modified Permitted Use Floor Plans, which approval Landlord shall be obligated to grant only under the circumstances described in clause (C) of this Section 7.01(b). If Landlord shall fail to so approve or disapprove the Proposed Modified Permitted Use Floor Plans within such twenty-five (25) day period, Tenant may give to Landlord a notice of such failure stating the following in bold text and capitalized letters: **"IF LANDLORD FAILS WITHIN FIVE (5) DAYS AFTER THE GIVING OF SUCH NOTICE TO APPROVE OR DISAPPROVE (ALONG WITH THE REASONS FOR ANY DISAPPROVAL) SUCH PROPOSED MODIFIED PERMITTED USE FLOOR PLANS, LANDLORD SHALL BE DEEMED TO HAVE APPROVED SUCH PROPOSED MODIFIED PERMITTED USE FLOOR PLANS,"** and if Landlord shall fail to approve or disapprove (in each case, consistent with clause (C) of this Section 7.01(b)), such Proposed Modified Permitted Use Floor Plans within five (5) day after the giving of such second notice from Tenant, Landlord shall be deemed to have approved such Proposed Modified Permitted Use Floor Plans. In any disapproval by Landlord of the Proposed Modified Permitted Use Floor Plans, Landlord shall set forth in writing and in reasonable detail to Tenant Landlord's reasons for such disapproval (including, if applicable, identifying those portions of the Proposed Modified Permitted Use Floor Plans so disapproved on the basis of being noncompliant with clause (C) of this Section 7.01(a)). If, thereafter, Tenant submits to Landlord revised Proposed Modified Permitted Use Floor Plans, Landlord shall advise Tenant within ten (10) days following Landlord's receipt of the revised Proposed Modified Permitted Use Floor Plans, or any further revised Proposed Modified Permitted Use Floor Plans relating to the same Premises covered by any earlier Proposed Modified Permitted Use Floor Plan that are disapproved by Landlord, of Landlord's approval or disapproval of such revised Proposed Modified Permitted Use Floor Plans, setting forth in writing and in reasonable detail to Tenant Landlord's reasons for any such further disapproval(including, if applicable, identifying those portions of the Proposed Modified Permitted Use Floor Plans so disapproved on the basis of being noncompliant with clause (C) of this Section 7.01(a)). If Landlord fails to approve or disapprove (along with the reasons for any disapproval) the revised Proposed Modified Permitted Use Floor Plans within such ten (10) day period following Landlord's receipt of the revised Proposed Modified Permitted Use Floor Plans, Tenant may give to Landlord a notice of such failure stating the following in bold text and capitalized letters: **"IF LANDLORD FAILS WITHIN TWO (2) BUSINESS DAYS AFTER THE GIVING OF SUCH NOTICE TO APPROVE OR DISAPPROVE (ALONG WITH THE REASONS FOR ANY DISAPPROVAL) SUCH PROPOSED MODIFIED PERMITTED USE FLOOR PLANS, LANDLORD SHALL BE DEEMED TO HAVE APPROVED SUCH PROPOSED MODIFIED PERMITTED USE FLOOR PLANS,"** and if Landlord shall fail to approve or disapprove (along with the reasons for any disapproval) such revised Proposed Modified Permitted Use Floor Plans within such two (2) Business Day period, Landlord shall be deemed to have approved the revised Proposed Modified Permitted Use Floor Plans. Upon approval by Landlord, the

Permitted Use Floor Plans shall be deemed amended by the Proposed Modified Permitted Use Floor Plans.

(C) Landlord shall approve any Proposed Modified Permitted Use Floor Plans if such submission: (1) is in compliance with the other applicable provisions of this Lease and the Requirements, (2) only if such modifications within the Proposed Modified Permitted Use Floor Plans pertain to an area of the Premises that is on the same floor and adjacent to or near Public Open Space or Public Viewing Areas (or is within the viewshed afforded by Public Viewing Areas), the modifications do not, in the reasonable determination of Landlord, encroach upon or adversely affect the adjacent or nearby Public Open Space or the Public Viewing Areas, as the case may be, and (iii) if Tenant desires to reconfigure or relocate a Public Viewing Area, such reconfiguration or relocation does not, in the reasonable determination of Landlord, adversely affect the ability of the public to enjoy free and generally unobstructed views of the water that are generally comparable in quality to the views afforded by the prior configuration or relocation of such Public Viewing Area.

(D) If, within an area of the Premises designated on the Permitted Use Floor Plans for a particular Permitted Use, Tenant desires to replace an Occupant with another Occupant for the same Permitted Use, whether or not the demising walls within such area shall be altered in connection therewith, Tenant shall not be obligated to submit to Landlord, and obtain Landlord's approval of, Proposed Modified Permitted Use Floor Plans in connection with such replacement, provided that (i) such replacement does not result in a material modification of the Permitted Use Floor Plans, (ii) is otherwise in compliance with any other applicable provisions of this Lease, and (iii) Tenant provides written notice to Landlord of such replacement Occupant within ten (10) days after entering into any lease agreement related thereto, together with updated Permitted Use Floor Plans showing any alteration of the demising walls within such area (and after the performance of any such alteration shall provide Landlord with copies of any such plans and specifications that have been provided by Occupant to Tenant and/or, upon request by Landlord, any such filings that may have been submitted to applicable Governmental Authorities, if any in connection therewith).

(E) Nothing in this Section 7.01(b) shall limit the obligation of the Tenant to submit, and the Landlord to approve, (i) Preliminary Plans and Specifications for any Major Construction Work to the extent that Tenant (and/or any Occupant) contemplates performing Major Construction Work in connection with a modification to the Permitted Use Floor Plans, and (ii) material modifications to the Approved Plans and Specifications pursuant to Section 16.03(c). Any such review and approval of the Preliminary Plans and Specifications for Major Construction Work shall be governed by the applicable provisions of Article 16.

(c) Exterior Noise. Notwithstanding anything to the contrary contained in this Lease, in no event shall Commercial Use or CEE Use establishments located in any exterior area of the Premises (i.e., any portion of the Premises that is not within the Above Grade Enclosed Space or Pier Shed Caissons 1 and 2) be used in any manner that will create noise which is plainly audible beyond the Premises and/or in the In-Water Areas without the prior written consent of Landlord,

which consent may be withheld, conditioned or delayed in Landlord's sole and absolute discretion.

Section 7.02 CEE Use.

(a) Subject to the terms of this Section 7.02, at all times during the Term of this Lease following Substantial Completion of the Required Tenant Improvements, no less than the lesser of (i) fifteen percent (15%) of the non-office use GLA located in the Above Grade Enclosed Space from time to time, and (ii) twenty-four thousand (24,000) square feet of GLA (the lesser of the foregoing amounts contained in the immediately preceding clauses (i) and (ii), the "Enclosed Minimum CEE GLA") shall be used for the following CEE Uses in the areas of the Premises shown on the Permitted Use Floor Plans as permitting CEE Uses (provided, however, that not more than fifty percent (50%) of the GLA of CEE Uses in the Premises from time to time shall be located in Pier Shed Caissons 1 and 2): (i) arts and other cultural related uses, including but not limited to art galleries, auction houses, museums, cultural centers, and uses related thereto; (ii) entertainment uses, including but not limited to film screenings, theatrical, musical and cultural performances and uses related thereto; and (iii) educational uses, including but not limited to environmental education, maritime history education, art education, culinary or crafts education, and uses related thereto. The CEE Use may include cultural uses related to entertainment and education uses, entertainment uses related to cultural and education uses, and educational uses related to cultural and entertainment uses. The CEE Use shall not include any uses that are primarily office or retail in nature or that are intended to showcase or feature other uses that are primarily retail in nature. The Enclosed Minimum CEE GLA shall be accommodated within the Above Grade Enclosed Space (excluding the Public Viewing Areas). Landlord hereby acknowledges and agrees that the TFF/TFF Substitute Tenant's use of the Pier Shed Roof Open Space during the 14-day Period and any Available Dates shall constitute a CEE Use for all purposes under this Lease and, even though the Pier Shed Roof Open Space is not included within the Above Grade Enclosed Space, Tenant shall be entitled to a credit, for the TFF/TFF Substitute Tenant's use of the Pier Shed Open Space during the 14-day Period and any Available Dates, equal to four thousand (4,000) square feet toward Tenant's obligation to meet the Enclosed Minimum CEE GLA requirement.

(b) Tenant shall permit (and shall cause any Occupants to permit) access by the general public during normal business hours to the portions of the Premises used for the CEE Use either without any admission charge or by admission at rates comparable to those charged by other similar venues in the City; provided, however, that the CEE Use of the Pier Shed Roof Open Space shall be accessible to the public without charge subject solely to the limitations pursuant to Section 7.04.

(c) Nothing contained in this Lease shall preclude Tenant from placing occupancies that qualify as CEE Uses in the Pier Shed Caissons 1 and 2 and/or, provided the conditions set forth in this Lease are satisfied, the Pier Shed Roof Open Space (including without limitation film screening or any other generally comparable cultural programming or similar substitute event on the Pier Shed Roof Open Space during the 14-day Period and/or any Available Dates as provided in Section 7.04(d)); however, other than as expressly provided in Section 7.02(a), such occupancies in the Pier Shed Roof Open Space shall not be counted toward satisfying Tenant's obligation to meet the Enclosed Minimum CEE GLA requirement. CEE Uses located in Pier

Shed Caissons 1 and 2 (as limited as provided in Section 7.02(a)) shall be counted for purposes of Tenant's satisfaction of the Enclosed Minimum CEE GLA as long as (1) the access for the Occupants, invitees and users of the areas of Pier Shed Caissons 1 and 2 used for CEE Uses from time to time is appropriately visible and convenient, and (2) such access and areas are attractive and inviting.

(d) Tenant may only use the Pier Shed Roof Open Space (or portions thereof, as applicable) for CEE Use for film screening during a 14-day period (the "14-day Period") either (i) within the period April 1 to May 5 or (ii) the last fourteen (14) days in the month of April, as the case may be, as provided in the Cooperation Agreement, and during the six (6) additional days included within the Available Dates as provided in the Cooperation Agreement, which additional dates included within the Available Dates shall consist of three (3) consecutive days in March or April and/or three (3) consecutive days in October, and Tenant may not use the Pier Shed Roof Open Space at any other time for any other purpose other than public access open space without the express prior written consent of Landlord, which consent may be conditioned, withheld or denied in Landlord's sole and absolute discretion or as otherwise expressly provided below in this Section 7.02(d). The unenclosed Pier Shed Roof Open Space GLA designated for film screening use and other cultural programming shall be operated by Tribeca Film Festival or another entity selected by Tenant (in either case, the "TFF/Substitute TFF Licensee") pursuant to a license agreement (the "TFF/Substitute TFF License Agreement"), between Tenant and TFF/Substitute TFF Licensee. Notwithstanding anything to the contrary contained in this Lease, upon the expiration or earlier termination of the TFF/Substitute TFF License Agreement (or any replacement sublease(s) for the space covered by the TFF/Substitute TFF License Agreement), Tenant shall obtain the prior written approval of Landlord (which approval shall not be unreasonably withheld, conditioned or delayed) for any replacement subtenant and replacement sublease for such space, provided that any such film screening or other generally comparable cultural programming or similar substitute event is to take place only during the 14-day Period and the six (6) Available Dates specified above. During the 14-day Period and the six (6) Available Dates specified above, the TFF/Substitute TFF Licensee shall have exclusive use of the Pier Shed Roof Open Space GLA for the TFF/Substitute TFF Licensee festival (as further described below) and shall not be prohibited from causing, generating or otherwise creating a Pier 57 Rooftop Noise Violation. Other than the dates of the 14-day Period and the six (6) Available Dates specified above, any request by Tenant to Landlord for additional rooftop events shall be subject to (1) Landlord's prior written approval, which approval may be withheld or granted in Landlord's sole and absolute discretion, (2) any such additional rooftop events shall only be held on dates, if any, to be specified in a written notice from Landlord to Tenant each year during the Term (with Tenant acknowledging that no dates are required to be specified by Landlord to Tenant at any time during the Term and such notice may state that no such dates are available), which notice shall be given no later than six (6) months prior to the "Landlord's season" (which for purposes of calculating the timing for the giving of Landlord's notice shall be deemed to be May 1 of each year), and Tenant shall be obligated to advise Landlord in writing of Tenant's selection, within fifteen (15) days after Tenant's receipt of Landlord's notice of available dates, of any dates designated by Landlord which Tenant desires to use for additional rooftop events, and (3) any terms and conditions imposed by Landlord from time to time for granting any such approval. Subject to the provisions set forth in this Lease related to use of the Pier Shed Roof Open Space and the express reservation of rights by Landlord with regard to such use, including, without limitation Section 7.04(d), Landlord agrees to consider in good faith

(subject to any limitations imposed on Landlord by the Pier 54/55 Tenant under the Pier 54/55 Lease or any other written agreement between Landlord and Pier 54/55 Tenant) any request by Tenant of additional events on the Pier Shed Roof Open Space and to respond to such requests within a reasonable period, but in no event later than thirty (30) days after Landlord's receipt of any such request by Tenant.

(e) Notwithstanding the Enclosed Minimum CEE GLA requirement set forth in Section 7.02(c), the CEE Uses and the Commercial Uses described in Section 7.03 are not mutually exclusive, it being agreed that a Commercial Use may also be a CEE Use. Nothing contained herein, other than the Maximum GLA set forth in Section 17.02, the space requirements set forth in Section 17.01 relating to Public Access and Public Benefit Use and any other express conditions or requirements set forth in this Lease, shall be deemed to limit the amount of GLA dedicated for CEE Uses or its location within the enclosed portions of the Pier 57 Building shown on the Approved Plans and Specifications for the Required Tenant Improvements.

(f) Notwithstanding anything to the contrary contained in this Lease, Landlord and Tenant acknowledge and agree that, subject to the requirements of this Section 7.02, Tenant shall determine, in Tenant's reasonable judgment but in consultation with Landlord, the identity and mix of Occupants which are occupying and using a portion of the Premises for CEE Uses, taking into account, among other things, appropriate leasing opportunities and the requirements and conditions contained in this Lease.

Section 7.03 Commercial Uses.

(a) At all times during the Term of this Lease following Substantial Completion of the Required Tenant Improvements, Tenant may locate any Commercial Uses within the areas depicted on the Permitted Use Floor Plans for Commercial Uses (such areas, the “Commercial Space”), subject to the following requirements: (i) to maintain each Public Viewing Area shown on the Permitted Use Floor Plans for the public to enjoy free access and generally unobstructed views of the water from each Public Viewing Area and to have access, subject to any limitations set forth in the Requirements, to seating in each such Public Viewing Area (it being agreed that limitations in the Requirements may preclude the placement of such seating), (ii) within the Public Viewing Areas, Tenant may designate, subject to the limitations set forth in the Requirements, not more than twenty-five percent (25%) of the Public Viewing Areas GLA (measured in the same manner as if the entire Public Viewing Areas were GLA) as GLA to be occupied by licensees operating kiosks, mobile vending units, and other moveable commercial units (it being agreed that (1) the limitations set forth in the Requirements may preclude the placement of such kiosks, mobile vending units, and other moveable commercial units, and (2) to the extent permitted by the Requirements, the placement of seating for the public shall take precedence and priority over the placement of such kiosks, mobile vending units, and other moveable commercial units), (iii) utilize for CEE Uses Pier Shed Level 1 and Pier Shed Level 2, and Pier Shed Level 3 and Pier Shed Level 4 if and to the extent Tenant elects not to place office uses therein, and (iv) Pier Shed Level 1 and Pier Shed Level 2 shall be used as a “public marketplace” having a distinctive design and a unique character as a diverse, multi-tenant and specialty use facility (as opposed to a facility having a character similar to an urban or suburban shopping mall with primarily national retailers), which public marketplace shall include specialty retail shops and workshops, and/or showrooms related thereto (“Public Marketplace”), (v) not less than fifty percent (50%) of the Head House Level 1 land-side frontage shall contain storefront retail shops visible and accessible to the public from the sidewalk in front of the Head House and (vi) unless waived or modified by Landlord in Landlord’s sole and absolute discretion, (1) not less than ninety percent (90%) of the total GLA located in Pier Shed Level 1 and Pier Shed Level 2 shall be used for non-office Commercial Uses and CEE Uses, and (2) not less than seventy-five percent (75%) of the GLA located in Head House Level 1 shall be used for non-office Commercial Uses and CEE Uses.

(b) Within the Above Grade Enclosed Space, at all times during the Term of this Lease following Substantial Completion of the Required Tenant Improvements (except as otherwise expressly provided in this Lease), there shall be located restaurants and cafés, culinary establishments, related food service establishments and uses ancillary thereto (collectively, “Food Services”) which shall total not less than twenty percent (20%) of the non-office use GLA located in the Above Grade Enclosed Space from time to time (the “Food Service GLA”); provided, however, that (i) such establishments shall include at least one sit down restaurant having seating capacity in the dining area for no fewer than eighty (80) patrons (the “Required Restaurant”), which Required Restaurant shall be located in the Above Grade Enclosed Space at the western end of the Pier Shed Level 1 and/or Pier Shed Level 2, subject only to Tenant’s right to relocate the Required Restaurant to the Head House Interior at any time during the Term after the expiration or earlier termination of the first sublease for the Required Restaurant if Tenant is unable, after using commercially reasonable efforts, to enter into another Required Restaurant sublease located in the Above Grade Enclosed Space at the western end of Pier Shed Level 1

and/or Pier Shed Level 2 at commercially reasonable rental rates (and subject further to Tenant providing to Landlord documentation reasonably satisfactory to Landlord evidencing such effort), and (ii) all other sit down restaurants in the Premises shall also be accessible to the general public. In addition to the Required Restaurant, there shall be one or more commercial establishments operated by Occupants of not less than four thousand (4,000) square feet of GLA, in total, located in the Above Grade Enclosed Space at, or proximate to, the western end of Pier Shed Level 1, which establishments offer Food Services or other services and/or products which are moderately priced, are accessible to the general public without reservation and afford the general public the opportunity to sit at tables and observe unobstructed views of the water (the required area located in the Above Grade Enclosed Space at, or proximate to, the western end of Pier Shed Level 1 for the establishments described in this sentence, the "Required Commercial Area"). Other than Tenant's obligations to maintain the Required Restaurant (subject to the relocation right referred to above) and the Required Commercial Area, which obligations shall apply at all times during the Term of this Lease (except for such periods as may be reasonably necessary to sublease, refit and refurbish applicable GLA from time to time), and notwithstanding anything to the contrary contained in this Lease, if at any time during the Term, Tenant shall not be able to satisfy the Food Service GLA requirement (after deducting therefrom the GLA of the then existing Required Restaurant) for Food Services in the Above Grade Enclosed Space (the Food Service GLA requirement, after deducting therefrom the GLA of the then existing Required Restaurant, the "Net Food Service GLA Requirement") due to market conditions beyond the reasonable control of Tenant, after Tenant has used commercially reasonable efforts to satisfy the Net Food Service GLA Requirement (meaning that Tenant and/or any manager or broker engaged by or on behalf of Tenant has, for a commercially reasonable period, advertised the availability of, and/or listed through then-customary means in the retail/food service leasing business, the applicable available portions of the Premises for subletting or occupancy agreements, at commercially reasonable rates, for Food Services, and Tenant has been unable to secure Occupants for such portions who are willing to enter into commercially reasonable subleases or occupancy agreements for Food Services after Tenant has used good faith, commercially reasonable efforts to secure such Occupants and/or negotiate such subleases or occupancy agreements) (the "Adverse Food Service Market Conditions"), Tenant shall be released and relieved of the portion of the Net Food Service GLA Requirement that Tenant is then unable to satisfy due to Adverse Food Service Market Conditions but only for such period during the Term that the Adverse Food Service Market Conditions shall continue to exist (or until such later date, after the Adverse Food Service Market Conditions no longer exist, upon which applicable portions of the Premises become available for re-leasing for Food Services upon the expiration or earlier termination of then-existing subleases or occupancy agreements with non-Food Services Occupants). Notwithstanding anything to the contrary contained in this Lease, the Food Service GLA requirement set forth in the first sentence of this Section 7.03(b) shall apply at all times during the Term of this Lease other than when Adverse Food Service Market Conditions exist, and/or during any period after any Adverse Food Service Market Conditions existed and there is no applicable portion of the Premises available for re-leasing for Food Services due to validly-existing subleases or occupancy agreements for non-Food Services uses. Upon receipt of written request from Landlord from time to time, Tenant shall provide to Landlord reasonable evidence of the existence of any Adverse Food Service Market Conditions and Tenant's entitlement, under the terms of this Section 7.03(b), to relief from the Food Service GLA requirement.

(c) In addition to the requirements set forth in Article 12, the GLA used for the Public Marketplace as set forth in clause (iv) of Section 7.03(a) shall be managed by Tenant (or, if the Public Marketplace is to be managed by any party other than Tenant, such party must have not less than five (5) years' experience managing and/or operating multi-tenant retail facilities in the New York metropolitan area and, at the time of any engagement of such party by or on behalf of Tenant to manage the Public Marketplace (or within the six (6) month period preceding such engagement), such party shall have or shall have had, as the case may be, not less than two hundred thousand (200,000) square feet of multi-tenant retail space under management or operation by such party (such other operator hereinafter referred to as the "Marketplace Manager"). Prior to the engagement of any Marketplace Manager, Tenant shall deliver to Landlord written documentation, reasonably satisfactory to Landlord, evidencing the satisfaction of the aforesaid qualifications and requirements for the Marketplace Manager.

(d) Notwithstanding anything to the contrary contained in this Lease, but subject to the specific provisions of this Section 7.03, Landlord and Tenant acknowledge and agree that Tenant shall determine, in Tenant's reasonable commercial judgment, the identity and mix of Occupants of the Commercial Space, taking into account, among other things, (i) trends in consumer preference and changes in retail market demand, (ii) appropriate leasing opportunities and (iii) the requirements and conditions contained in this Lease.

(e) Tenant agrees that, in determining the identity and mix of Occupants of the Commercial Space and CEE Use space: (i) all such Occupants shall be qualified and financially capable in Tenant's reasonable judgment to comply with the Operating Standard, (ii) establishments offering primarily discounted merchandise or goods and services of inferior quality shall be prohibited, (iii) with respect to the Commercial Space, retail establishments occupying more than twenty thousand (20,000) square feet of GLA with "big box" retailing characteristics (meaning with an interior design consisting of minimal finishes and/or "industrial or warehouse-like" elements and offering merchandise in larger or bulk quantities, and at a lower price point through bulk purchasing, than would be typical of more traditional retail establishments offering similar merchandise) shall be prohibited (such prohibited retail establishments described in clauses (ii) and (iii) being hereinafter referred to as "Prohibited Big Box Retailers"), (iv) establishments with the characteristics of nightclubs, cabarets or other entertainment venues that generate noise which is plainly audible from areas outside the Above Grade Enclosed Space or Pier Shed Caissons 1 and 2 ("Prohibited Nightclubs/Cabarets") shall be prohibited, (v) Occupants shall not include tenancies or uses that (1) consist primarily of trade shows, event space and/or ballroom businesses and similar uses, as opposed to the occasional occurrence of any of the foregoing uses which are solely incidental to a primary use conducted by an Occupant and/or (2) are incompatible with the park uses as set forth in the Act and (vi) all subleases or occupancy agreements shall be permissible pursuant to the Public Approvals and applicable Requirements, including without limitation the requirements set forth in Section 7.07.

Section 7.04 Public Access and Public Benefit Space Uses.

(a) The portion of the Premises comprised of the Public Open Space, together with public restrooms as depicted on the Approved Plans and Specifications for the Required Tenant Improvements, shall be open and accessible to the public without charge or fee (i) seven days a week, during normal hours of the Park consistent with Park Rules, if such portion of the Public

Open Space is not within the Pier 57 Building or upon the Pier Shed Roof Open Space, and (ii) during normal business hours of the non-office use Commercial Space if that portion of the Public Open Space is located within the Pier 57 Building or upon the Pier Shed Roof Open Space. Tenant shall not permit amplified sound to be generated by any Occupant of subleased premises on the Pier Shed Roof to impair unreasonably the use and enjoyment of the Pier Shed Roof Open Space by the public.

(b) The public portions of the Public Marketplace, and of the Public Viewing Areas, shall each be open and generally accessible to the public without charge or fee during normal business hours of the non-office use Commercial Space.

(c) Occupants shall not be permitted to operate within areas designated as Public Open Space, except for the use of the Pier Shed Roof Open Space for film screening during the 14-day Period and the six (6) additional days included within the Available Dates as provided in Section 7.02(d) and the Cooperation Agreement, and otherwise pursuant to Section 7.04(d). Notwithstanding the foregoing, employees and invitees of Occupants, acting in their capacity as individuals, shall be entitled to use the Public Open Space in the same manner as the public.

(d) Tenant (on behalf of any Occupant) may request Landlord's written permission to use all or a portion of the Pier Shed Roof Open Space for a public event provided that such event: (i) is free and open to the public, (ii) is primarily educational in nature, (iii) has a program that is appropriate for school age children but such program shall not necessarily be oriented toward school children (but the Occupant conducting such event shall seek to include content that is oriented toward school age children to the extent practicable), (iii) does not include the sale of products or services (but may feature or demonstrate products or services for sale elsewhere), (iv) does not utilize amplified sound or music which would create an unreasonable disturbance to, or interruption for, the other users of the Pier Shed Roof Open Space, (v) will not otherwise create a Noise Effect on the Pier 54/55 Property, (vi) does not extend for more than a single day, (vii) does not unreasonably conflict, as determined by Landlord, with any other organized Park activity (provided, however, that the identity of any commercial entity sponsoring or undertaking another organized Park activity shall not be the basis for any such determination by Landlord that an unreasonable conflict exists), and (viii) is not otherwise expressly prohibited pursuant to the terms and conditions of this Lease and is subject to the other terms and conditions of this Lease. Each such Tenant request (on behalf of any Occupant) must be received by Landlord not less than thirty (30) days prior to the date of the requested event and shall contain such information about the requested event, in reasonable detail, as shall be sufficient to enable Landlord to make a determination in accordance with this Section 7.04(d) (and no request shall be deemed to have been made by Tenant unless and until Landlord has advised that Landlord has received all such information). If Tenant submits such request and Landlord advises that Landlord has sufficient information regarding the requested event, Landlord shall, in Landlord's reasonable judgment, notify Tenant in writing whether Landlord approves, denies or conditions Landlord's permission, taking into account the criteria listed in clauses (i)-(viii) of this Section 7.04(d) and any other factor deemed relevant by Landlord, in its reasonable discretion, related to the public interest for which Landlord has a responsibility pursuant to the Act, including but not limited to the size, timing and frequency of such events. If Landlord fails to respond to Tenant's request (on behalf of any Occupant) within ten (10) business days after Landlord's receipt of such request, then Tenant shall give Landlord a second

request (“Second Public Event Request”) for such determination and, provided the Second Public Event Request states in bold, capital letters “**IF LANDLORD FAILS TO RESPOND TO THIS REQUEST FOR DETERMINATION OF WHETHER THE PIER SHED ROOF OPEN SPACE MAY BE USED ON THE DATE AND FOR THE PUBLIC EVENT DESCRIBED BELOW WITHIN FIVE (5) BUSINESS DAYS FOLLOWING LANDLORD’S RECEIPT OF THIS REQUEST, THEN LANDLORD’S PERMISSION SHALL BE DEEMED GRANTED FOR SUCH EVENT IN ACCORDANCE WITH SECTION 7.04(d) OF THE LEASE**”, and Landlord fails to respond to the Second Public Event Request within five (5) Business Days after Landlord’s receipt of the Second Public Event Request, then in such event Landlord’s permission shall be deemed granted for such event. Should Landlord deny Tenant’s request (on behalf of any Occupant) for such event, then Landlord shall notify Tenant in writing, within ten (10) business days after Landlord’s receipt of notice of Tenant’s request (on behalf of any Occupant) to conduct such event, setting forth the reason for such denial. Tenant may not thereafter proceed with such event unless Tenant is able to satisfactorily address, in the reasonable judgment of Landlord, such Landlord-identified reasons for denial. The maximum number of Landlord permissions (whether conditioned or not conditioned) for such requests by Tenant (on behalf of any Occupant) in any calendar year pursuant to this Section 7.04(d) shall be six (6). All public events conducted pursuant to this Section 7.04(d) shall be conducted by Occupants and not by parties that are not Occupants at the Premises. Tenant acknowledges and agrees that the express purpose of this Section 7.04(d) is to benefit the public.

(e) Notwithstanding anything contained herein to the contrary, Landlord reserves the right to use all or a portion of the Pier Shed Roof Open Space, whether by itself, by itself with one or more sponsoring entities, or through a third party, to conduct up to four (4) “Hudson River Park” public events in any calendar year (each, a “Landlord Event”) provided that: (i) Landlord provides written notice to Tenant of its intent to conduct such Landlord Event not less than thirty (30) days in advance of the date of such Landlord Event, (ii) the date of such Landlord Event does not occur (x) during the 14-day Period, (y) on one of the six (6) additional days included within the Available Dates, or (z) on a date for which Landlord has previously granted permission to Tenant for a public event pursuant to Section 7.04(d), (iii) Landlord provides a certification to Tenant that such Landlord Event satisfies the criteria set forth in clauses (i)-(vii) of Section 7.04(d), and (iv) Landlord performs clean-up following such Landlord Event such that Tenant’s cost of maintenance is not materially greater than what it would be for public use of the Pier Shed Roof Open Space on a non-event day. Tenant may deny such Landlord use for a Landlord Event should Tenant determine, in Tenant’s reasonable judgment, that that the involvement of a particular sponsoring entity or third party in such Landlord Event presents a conflict that would cause Tenant to breach an agreement with any current Occupant. Should Tenant determine that such conflict exists, then Tenant shall so notify Landlord in writing within five (5) business days after receipt of notice from Landlord of Landlord’s intention to conduct such Landlord Event, setting forth the reason for such conflict. Landlord agrees that unless Landlord is able to address such identified conflict to the satisfaction of Tenant, in the reasonable judgment of Tenant, Landlord may not proceed with such Landlord Event. Tenant agrees to provide commercially-reasonable cooperation to Landlord for such Landlord Event, including but not limited to use of the loading dock area and elevators for set-up and breakdown activities, provided that any and all materially incremental, out-of-pocket and documented costs or expenses actually incurred by Tenant as a result of such cooperation shall

be at Landlord's sole cost and expense. Tenant acknowledges and agrees that the express purpose of this Section 7.04(e) is to benefit the public.

Section 7.05 Parking Use. A portion of the Premises located in the Head House Caisson may be subleased, licensed or operated by Tenant (or, at Tenant's option, operated by a third party manager or operator engaged by Tenant) for ancillary vehicle circulation and/or parking of motor vehicles for Occupants and/or visitors, customers and employees of Occupants (any such portion of the Premises located in the Head House Caisson for such ancillary circulation and/or parking being hereinafter referred to as the "Ancillary Parking Area") and the same shall be deemed an approved use. At all times during the Term, Tenant shall post and maintain a sign at the entryway to the Ancillary Parking Area stating that transient parking is prohibited in the Ancillary Parking Area.

Section 7.06 Maritime Use.

(a) Tenant shall have the right to use in-water portions of the Premises (other than the In-Water Areas which are covered by Section 7.06(b)) for boating and/or maritime uses, including without limitation mooring historic or educational vessels ("Vessels") and uses related to such Vessels and for waterborne transportation, provided that Tenant shall satisfy the following conditions precedent: (i) Tenant shall have provided written notice to Landlord, prior to commencing such boating and/or maritime uses, or creating any obligations or making any commitments to any other party in connection therewith, which notice shall specify the type of boating and/or maritime use proposed for any in-water portion of the Premises, the parties to be involved in such use and any proposed construction relating to, or facilities to be utilized in connection with, such use; (ii) Tenant shall have provided to Landlord such additional information as may be reasonably requested from time to time by Landlord in connection with (1) such use, (2) Landlord's determinations referred to in this Section 7.06(a) and (3) any other requirements set forth in this Lease relating to such use; (iii) Landlord shall have determined that the proposed, specific boating and/or maritime use is permitted by the Act and that all matters relating to such proposed use are consistent with the Act, and Landlord shall have evidenced such determination in a written instrument to Tenant ("Landlord's Maritime Determination"); (iv) Landlord shall have determined, as evidenced in Landlord's Maritime Determination, that such use is compatible with the Park; (v) Landlord shall have determined, as evidenced in Landlord's Maritime Determination, that such use is not otherwise prohibited by the express terms of this Lease; (vi) Landlord shall have determined, as evidenced in Landlord's Maritime Determination, that such use will not interfere in any material respect with Tenant's obligation to construct the Mandatory Perimeter Public Access Walkway Platforms and/or the public's ability to use and enjoy the Public Open Space comprising the unenclosed, perimeter esplanade around the exterior of the Pier (and Tenant shall be obligated, at all times when such use exists, to insure that such use does not interfere in any material respect with the public's ability to use and enjoy the Public Open Space); (vii) Landlord shall have determined, as evidenced in Landlord's Maritime Determination, that such use shall not require Landlord to forfeit or concede any rights or benefits held by or granted to Landlord and/or the Pier 57 Property relating to in-water matters, or diminish in any manner any such rights or benefits, or cause Landlord to incur any cost or expense related to such use that is not reimbursed by Tenant; (viii) Tenant shall have obtained (and shall maintain in full force and effect at all relevant times), at Tenant's sole cost and expense, any permits necessary for such use, having obtained Landlord's prior written

approval of any applications for such permits prior to the filing of such applications with the appropriate Governmental Authority or agency; and (ix) Tenant shall comply, at all relevant times, with any other Requirements relating to such use.

(b) If Tenant exercises the option to lease the In-Water Areas (or a portion thereof) pursuant to Section 2.05, then Tenant shall use the In-Water Areas (or such portion thereof) only for the development, construction, and operation of a marina, moorings for historic Vessels and/or non-motorized pleasure boats, and for such other boating, water-borne and maritime related activities as shall be reasonably acceptable to Landlord, including without limitation the construction of additional docks in connection with such uses solely to the extent in compliance with applicable Requirements and subject to the DEC/ACE Permits issued for the Premises and, to the extent not superseded by the DEC/ACE Permits for the Premises, the DEC Permits issued for the Park.

Section 7.07 Pedestrian and Vehicular Traffic Limitation. Tenant shall comply (and shall cause all Occupants to comply) with the Traffic Management Plan attached hereto as Exhibit H and made a part hereof (the “Traffic Management Plan”), as the same may be modified by any Governmental Authority pursuant to the Requirements and/or the Public Approvals or by Landlord acting in its governmental capacity. Tenant shall also comply with the provisions of Section 14.14 relating to the Traffic Monitoring Plan (as hereinafter defined). If Tenant or any Occupant wish to operate a shuttle bus service to and from the Premises, then Tenant or such Occupant, as applicable, shall prior to implementation of such service, meet and consult in good faith with representatives of both Manhattan Community Board 4 and certain local elected officials on how such service can minimize vehicular traffic to and from the Premises, and, if requested, shall devise and implement a traffic mitigation and pedestrian safety plan. In addition, in connection with any operation of such shuttle bus service, neither Tenant nor such Occupant, as applicable, shall seek or utilize funding, whether in whole or in part, from Hudson River Park Trust (or any successor thereto as operator of the Park) for such purpose.

Section 7.08 Requirements for Conduct of Business. This Lease does not grant any permission, license or authority for the performance or conduct of any business, operation or use which may require any permit or approval from any public or private party. Tenant shall obtain and maintain (and shall cause any Occupants to obtain and maintain, as the case may be) in full force and effect, during the Term at Tenant’s (or the applicable Occupant’s) sole cost and expense, any governmental license or permit imposed or mandated by any Governmental Authority in connection with any trade or business conducted in and the use of the Premises, and shall comply (and shall require all Occupants to comply) with any Requirements for the proper and lawful operation of the Premises for the purposes authorized by this Lease. In addition, Tenant shall at all times adhere (and Tenant shall cause all Occupants to adhere) to the Park Rules and the Operating Standard.

Section 7.09 Unlawful Use and Prohibited Use. Tenant shall not use or occupy the Premises, or permit or suffer the Premises or any part thereof to be used or occupied, (a) for any unlawful, illegal business, use or purpose or hazardous or environmentally unsound use or activity in accordance with rules and regulations promulgated by Landlord from time to time that are applicable to the entire Park (such rules and regulations being posted on the website of the Trust www.hudsonriverpark.org (or the website of any successor organization to the Trust), and herein

collectively referred to as the “Park Rules”), (b) for any use that is immoral or disreputable (including, without limitation, for use as an “adult entertainment establishment”, “adult” bookstore, a massage parlor, or as an “adult” entertainment bar or club), (c) in such a manner as to constitute a nuisance of any kind (public or private), including without limitation to (1) visitors of the Park, (2) patrons of other retail and commercial establishments and other facilities in the Park, (3) the tenants, licensees or permittees of such establishments and facilities and/or (4) the users of the Bikeway, (d) in violation of any of the certificate(s) of occupancy, the Public Approvals or the Requirements, (e) in such manner as to make void or voidable any insurance then in place, (f) by Prohibited Big Box Retailers, (g) as Prohibited Nightclubs/Cabarets, (h) for docking, servicing and/or boarding of maritime vessels having a capacity greater than forty-five (45) passengers for use as dinner boats and/or entertainment or recreational cruises, or (i) in such manner as might reasonably make possible a claim or claims of adverse use, adverse possession, prescription, dedication or similar claims of, in, to or with respect to the Premises or any party thereof. Notwithstanding anything to the contrary contained herein, Tenant shall be obligated to comply (and shall cause all Occupants to comply) with the Park Rules as applicable to Tenant (or such Occupants) and the Operating Standard.

Section 7.10 Hours of Operation. Tenant shall operate and make available (or cause to be operated or made available) the Premises for the Permitted Uses (other than any portion of the Premises leased for office use) seven (7) days a week (with exception for holidays and events constituting Force Majeure), subject to the hours of operation contained in the Park Rules and any applicable Requirements. Except as set forth in Section 7.04, Tenant shall have the right to establish reasonable, commercially-appropriate hours of operation for the type of Commercial Uses and CEE Use in the Premises, subject to the hours of operation contained in the Park Rules and any applicable Requirements.

Section 7.11 Unlawful Business. Immediately, upon the discovery of any unlawful, illegal, hazardous, or prohibited business, use or purpose, Tenant shall take all necessary steps, legal and equitable, to compel the discontinuance thereof, including if necessary, the removal from the Premises of any Occupant using any portion of the Premises for any such business, use or purpose.

Section 7.12 No Representation by Landlord. Landlord has not made nor makes any representation as to the legality or conformance with the Requirements of the use of the Premises for the Permitted Uses; it being understood, however, that Landlord has no knowledge or information that any Permitted Use is contrary to Requirements. If any Permitted Use is determined to be illegal by a court of competent jurisdiction, subject to the terms hereof, Tenant agrees that (i) Landlord or any of its respective directors, officers, employees or agents shall not be liable for any damages incurred by Tenant or any third party as a result of, or in connection with such determination, or illegal use or proposed use, and (ii) Tenant shall defend, indemnify and hold harmless Landlord and its respective directors, officers, employees and agents against any cost, liability or expense incurred by any of them in connection with such determination, or illegal use or proposed use in accordance with Article 22.

Section 7.13 Use During Construction of Required Tenant Improvements. During the period in which Tenant is constructing the Required Tenant Improvements, Tenant may use the areas designated for the northern esplanade, southern esplanade, sidewalk to the east of the Head

House, and traffic circulation area for the Pier 57 Property for construction-related activities and/or temporarily reconfiguring bicycle, pedestrian and vehicular traffic entering and exiting the Premises, provided that, prior to such use or reconfiguration, (a) Tenant prepares and submits to Landlord, for Landlord's prior written approval, a detailed written plan for pedestrian and traffic management (including without limitation planned traffic flow, implementation of safety measures, employment of flagmen and other traffic management agents, and modifications to geometric alignments, striping and signage) during such use in order to maintain continuous north-south use and access by Park and Bikeway users and the general public, (b) Tenant obtains any other approvals required from any Governmental Authorities having jurisdiction over such use or reconfiguration and (c) Tenant complies with all Landlord's requirements and other Requirements related thereto.

Section 7.14 Use Following Major Construction Completed Subsequent to the Required Tenant Improvements. Tenant may, subsequent to the completion on the Required Tenant Improvements, and in accordance with Article 16, all other applicable provisions of this Lease and any applicable Requirements, undertake one or more Structural Alterations which results in an enlargement of GLA beyond that included in the Approved Plans and Specifications for the Required Tenant Improvements. The total GLA following completion of such Structural Alterations shall be four hundred twenty thousand sixty-four (420,064) square feet. Any remaining development rights after the completion of such Structural Alterations shall remain the sole property of Landlord. Following completion of such Structural Alterations, the Enclosed Minimum CEE GLA shall be increased in accordance with Section 7.02(c), Public Open Space shall not, in the sole but reasonable judgment of Landlord, be diminished in size, location or utility to the general public, one or more of the Public Viewing Areas shall be retained (though they may be relocated), only Permitted Uses shall be allowed, and the provisions of this Article 7 shall continue to govern the use and occupancy of the Premises.

Section 7.15 Cooperation Agreement. Tenant acknowledges and agrees that, in connection with Landlord's leasing of the property currently known as "Pier 54" and which may later be known as "Pier 55" (the "Pier 54/55 Property") to the tenant of the Pier 54 Property (the "Pier 54/55 Tenant"), Landlord is or will be bound by certain provisions in the lease for the Pier 54 Property (the "Pier 54/55 Lease") that, except as expressly agreed by the Pier 55/56 Tenant with the reasonable approval of Landlord, restrict certain activities in and uses of the rooftop, open air and exterior portions of the Premises (i.e., other than those located within the Above Grade Enclosed Space and Pier Shed Caissons 1, 2 and 3) (such portions, the "Noise Restricted Portions") that generate or are reasonably expected to generate "plainly audible sound" within the meaning of New York City Local Law No. 113 for the Year 2005 (as amended) (such noise generation as applicable to a specific location where audible, a "Noise Effect") that can be heard at the Pier 54 /55 Property. Accordingly, Landlord, Tenant and Pier 54/55 Tenant have entered a Cooperation Agreement, dated as of December 15, 2015 (the "Cooperation Agreement", attached to this Lease as Exhibit P and made a part hereof, setting forth certain rights and obligations of the parties thereto relating to preventing a Noise Effect at the Pier 54/55 Property resulting from certain activities in and uses of the Noise Restricted Portions. Tenant acknowledges and agrees that (i) the Cooperation Agreement shall be deemed a Permitted Exception for all purposes under this Lease, (ii) the Cooperation Agreement grants to the P54/55 Tenant the right to access the Pier 57 Property to enforce Tenant's obligations under the Cooperation Agreement, (iii) Tenant shall allow the P54/55 Tenant to exercise such right of access to the Pier 57 Property and (iii)

Tenant shall not object to any exercise of P54/55 Tenant of such right of access to the Pier 57 Property.

ARTICLE 8

RIGHT OF ENTRY

Section 8.01 Landlord's Entry. Landlord, the State, and the City and their respective designees shall have the right during regular business hours upon reasonable prior written notice (which notice may be given by email), except in case of an emergency in which case entry may be made at any time and no notice shall be required, to enter upon the Premises with workers, materials and equipment to (a) construct, reconstruct, lay, relay, maintain, operate and inspect Landlord's and/or the State's or the City's facilities in or adjacent to the Premises, (b) maintain, replace and repair existing municipal facilities located within the Premises, if any; (c) maintain fire communications facilities, sewers, water mains and street sub-surface below the Premises; and (d) to access other facilities adjacent to the Premises. Except in the case of an emergency, Tenant shall have the right to accompany Landlord during such access. The easement reserved hereby is in addition to any other easement, right-of-way or other right that constitutes a Permitted Exception as described in Exhibit D hereto.

Section 8.02 Non-Interference. Landlord and its designees shall use reasonable efforts to minimize interference with Tenant's (and any Occupant's) business operations when entering upon or using the Premises as contemplated by this Article 8 and shall promptly repair or cause to be repaired any damage to the Premises caused by Landlord, its officers, employees, agents, servants, representatives and invitees while on the Premises for the purposes contemplated by this Article 8.

Section 8.03 Access to Show Premises to Prospective Tenants. Landlord, upon reasonable notice to Tenant and provided Landlord shall not unreasonably interfere with Tenant's (or any Occupant's) use of or access to the Premises, shall have the right to enter the Premises during regular business hours within two (2) years prior to the expiration or earlier termination of this Lease for the purpose of showing to prospective tenants all or any part of the Premises.

Section 8.04 Cooperation Relating to Construction Activities. Landlord and Tenant agree to reasonably cooperate and coordinate with each other any construction being performed by or on behalf of Tenant on the exterior of the Premises with any construction being performed in areas located in close proximity to the Premises by or on behalf of Landlord, Landlord's tenants and licenses and/or any Governmental Authority.

ARTICLE 9

INSURANCE

Section 9.01 Insurance Requirements.

(a) At all times during the Term, or as otherwise required by this Lease, Tenant, at its sole cost and expense, shall obtain and maintain in full force and effect, or caused to be carried and maintained in full force and effect, insurance coverage of the following types or insuring the

described risks with limits not less than those described below and as required by terms of this Lease, or as required by applicable Requirements, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies) for all areas of the Premises:

(i) Commercial General Liability insurance, written on the most current edition of ISO Form CG 00 01 or its equivalent, and with respect to this form, the Landlord must have final approval for acceptance of any changes or restrictions to form which will lessen coverage, such acceptance shall be commercially reasonable and not withheld based on industry standard or its equivalent, protecting against all liability with respect to the Premises and the operations related thereto, whether conducted on or off the Premises, for bodily injury, death, personal injury and property damage, in an amount not less than Fifty Million Dollars (\$50,000,000) per occurrence, and designating Tenant as the named insured thereunder and Landlord, the People of the State of New York, the New York State Executive Department, the New York State Office of Parks, Recreation and Historic Preservation, the New York City Region of State Parks, Recreation and Historic Preservation Commission, the Department of Environmental Conservation, the City of New York, New York City Department of Parks and Recreation, and each of their commissioners, officers, agents, employees, successors and assigns, and as additional insured (any party required to be named as an additional insured hereunder, an “Additional Insured”). Additional Insured endorsement shall be on the most current edition of ISO form CG 20 10 11 85 or its equivalent, or may be obtained through a combination of the most current edition of CG 20 10 07 04 and CG 20 37 07 04 or their equivalents. Additional Insured coverage must (A) apply to direct and vicarious liability to both on-going and completed operations and (B) include a broad form comprehensive general liability endorsement, or substitute form providing equivalent coverage and shall cover liability arising from premises operations, independent contractors, products-completed operations, property damage, personal and advertising injury, cross liability coverage, contractual liability (including tort liability of another assumed in a contract), pollution liability (including broad form bodily injury and property damage, under Coverage A and B exclusions), and extended bodily injury coverage, fire legal liability (property), and such limit of Fifty Million Dollars (\$50,000,000) shall be achieved by any combination of Commercial General Liability and Umbrella insurance. Tenant shall require that any contractors and subcontractors doing work on the Premises provide Commercial General Liability insurance in an amount not less than Five Million Dollars (\$5,000,000) per occurrence, and naming Landlord, the People of the State of New York, the New York State Executive Department, the New York State Office of Parks, Recreation and Historic Preservation, the New York City Region of State Parks, Recreation and Historic Preservation Commission, the Department of Environmental Conservation, the City, New York City Department of Parks and Recreation, and each of their commissioners, officers, agents, employees, successors and assigns, and as Additional Insured on a primary and non-contributory basis. The Commercial General Liability Insurance required hereby shall:

(A) contain no exclusion for contractual liability insurance covering written contractual liability, and specifically covering Tenant’s indemnification obligations under Article 22 as relates to bodily injury, personal injury and or property damage;

- (B) contain independent contractors coverage;
 - (C) contain a thirty (30) day notice of cancellation (except ten (10) days for non-payment of premium) or non-renewal clause, specifically requiring notice of cancellation or non-renewal for non-payment of premium, and for any material reduction in coverage;
 - (D) contain coverage for suits arising from the use of reasonable force to protect persons and property;
 - (E) contain no exclusion for Water Damage or Sprinkler Leakage Legal Liability or any other hazard customarily covered by such insurance;
 - (F) contain a pier and wharf endorsement or no pier and wharf exclusions;
 - (G) contain a liquor liability endorsement, if liquor is being served;
 - (H) contain a garage keepers liability endorsement;
 - (I) contain no deductibles in excess of One Hundred Thousand Dollars (\$100,000) per claim unless otherwise specifically approved in each instance by Landlord;
 - (J) under no circumstances shall the policy exclude coverage for any Public Open Space or any portions of the Premises used for Maritime Uses or for Public Access and Public Benefit Uses;
 - (K) apply aggregate limits, if any, separately to the Premises distinct from any other locations covered under Tenant's policies;
 - (L) contain a caterer's liability endorsement, as applicable;
 - (M) contain an owners and contractors protective liability endorsement written on ISO Form CG 29 35 (or its equivalent) to cover state or governmental agencies or political subdivision as an additional insured, such owners protective liability endorsement may be carried by any combination of casualty insurance; and
 - (N) shall obtain no exclusion for explosion, collapse and underground coverage.
- (ii) Comprehensive Business Automobile Liability Insurance with a limit of not less than Three Million Dollars (\$3,000,000) each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles. Such limit shall be achieved as referenced under Section 9.01(a).
 - (iii) Commercial Property Insurance on all Improvements protecting Tenant and Landlord against loss of or damage to the Premises by fire and all other risks of

physical loss or damage now or hereafter embraced by extended coverage and an “All Risk” endorsement in the broadest form available on commercially reasonable terms, shall be in the amount of the full Replacement Value of the Premises and Improvements (without depreciation or obsolescence clause). Such insurance shall designate Landlord as a loss payee and Tenant as named insured, and shall include the following coverages and clauses:

(A) if not otherwise included within the “All Risk” coverage specified herein, coverage against damage by earthquake and/or by wind storm with a limit reasonably acceptable to Landlord and commercially available in the insurance market;

(B) contingent liability from operation of building Requirements with a limit not less than Twenty Five Million Dollars (\$25,000,000);

(C) demolition cost for undamaged portion coverage with a limit not less than Twenty Five Million Dollars (\$25,000,000);

(D) provision for a deductible of not more than One Hundred Thousand Dollars (\$100,000.00) per loss; except for flood and earthquake, which may have a deductible of up to five percent (5%) of the total insured value of the Premises per loss;

(E) increased cost of construction coverage specifying that the proceeds of such insurance shall be available to pay all costs of demolition, including the costs of debris removal, grading and fencing and all increased costs of construction in the event that any insured hazard results in a loss; as required per Section 9.03, such insurance may be carried by Tenant or by a third party on Tenant’s behalf;

(F) an agreed or stipulated amount endorsement negating any co-insurance requirements; the Landlord shall not provide mutual indemnification or coinsurance;

(G) Flood Insurance or endorsement through Property Coverage, covering at a minimum water damage due to flood, rising water, storm surge and inundation due to flood conditions; coverage to the maximum extent available under the National Flood Insurance Act of 1968, as amended; and a Commercial Flood policy providing a limit of not less than as agreed by Landlord for full damage expense, covering the improvements and betterments to building and other related expenses incurred due to flood, rising water, storm surge and inundation; Tenant shall provide Flood Insurance limits of not less than Twenty-five Million Dollars (\$25,000,000).

(iv) If applicable and such coverage is not already included in Tenant’s master insurance program providing Tenant’s insurance policies and coverages required by this Lease, Protection and Indemnity Insurance with a limit of not less than Twenty Million Dollars (\$20,000,000); per occurrence; such Insurance shall provide coverage at a minimum for loss of life, personal injury and illness of crew, passengers and third-party individuals, damage to cargo on board, damage to piers, docks, buoys and other fixed or floating objects and damage to other vessels and their cargo. Such limit shall be achieved

as referenced above and through any combination of protection and indemnity and umbrella insurance;

(v) If applicable and such coverage is not already included in Tenant's master insurance program providing Tenant's insurance policies and coverages required by this Lease, Marina Operator Legal Liability insurance with a limit of not less than Twenty Million Dollars (\$20,000,000) per occurrence; such insurance shall provide coverage at a minimum for loss or damage to vessels, property held in the care, custody and/or control of Tenant, including but not limited to vessels for a rental fee at docks, slips, moorings or buoys. Such coverage shall not exclude hauling out, vessel launch, fueling, in connection with services provided or additional miscellaneous servicing of a transient nature at the Pier 57 mooring field or marina docks, slips or at pier. Coverage shall apply to fueling, storage of vessels or repair operations contemplated by Tenant;

(vi) Equipment Breakdown Insurance covering all of the boilers, fired or unfired pressure vessels, heating ventilating and air-conditioning units or any other mechanical equipment which services the Premises and which may malfunction or cause damage to property or injury to persons, in an amount of not less than full replacement value. Tenant shall be responsible for ensuring that any such boilers or mechanical equipment are regularly inspected;

(vii) Plate Glass Insurance on forms and in amounts acceptable to Landlord, in an amount not less than full replacement value of damages;

(viii) If applicable, Hull and Machinery Insurance in the amount of the replacement cost of each vessel docked at the Premises (the evidence for Hull and Machinery Insurance will designate each vessel, the amount of insurance applicable to each and the Navigational Limits of coverage);

(ix) During the performance of any repair, restoration or renovation, Tenant shall maintain Builder's Risk completed value form covering the perils insured under the ISO special causes of loss form, including collapse, building materials, water damage, and transit and theft of with deductible reasonably approved by the Landlord, in non-reporting form, covering the total value of work performed and equipment, supplies and materials at the location of the job as well as at any off-site storage location used with respect to the Premises. Such coverage may be carried through an All Risks policy form if endorsed with Builders Risk or Property coverage in the course of construction. The policy shall cover the cost of debris removal including demolition as may be legally necessary by the operation of any law, ordinance or regulation;

(x) If applicable, Tenant shall carry Statutory Workers' Compensation, U.S. Longshore and Harbor Worker's Compensation Act Insurance, New York State Disability Benefits Insurance, in amounts as required by applicable statutory requirements. Jones Act Insurance with a limit not less than Three Million Dollars (\$3,000,000) per occurrence, and any other insurance required by applicable requirements covering all persons employed by Tenant, Tenant's contractors, subcontractors, or any entity performing work on or for the Premises. Employer Liability

in an amount not less than One Million Dollars (\$1,000,000) per occurrence is required. Proof of compliance by Tenant with New York State Workers Compensation Law section 57 and Disability Benefits requirements under New York State Workers Compensation Law section 220(8) must be provided; coverage must be presented on the New York State Workers Compensation Board issued and approved forms, or equivalent forms as amended;

(xi) Business Interruption Insurance in an amount acceptable to Landlord shall be required for the term of the Lease; in addition to coverage required insuring the Rental, for each of the following: the Construction Period Rent, the Base Rent, the Participation Rent, PILOT, and the In-Water Areas Rent or on an actual loss sustained basis. Business Interruption coverage shall be not less than full base rent and profit sharing term for a period as noted above. Such requirement maybe achieved through the use of Business Interruption and extended period of indemnity;

(xii) As applicable to the operation of the Premises, if any work involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any hazardous material, waste or substance, the Tenant shall maintain in full force and effect throughout the term hereof, Pollution Legal Liability insurance with limits of not less than Five Million Dollars (\$5,000,000) per occurrence; providing coverage for bodily injury and property damage, including loss of use of damaged property, or of property that has not been physically injured. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit, or proceedings against Landlord arising from Tenants operation;

(A) If coverage is written on a claims-made policy, Tenant warrants that any applicable retroactive date precedes the effective date of this Lease; and that continuous coverage will be maintained, or an extended discovery period exercised, for a period of not less than two (2) years from the time any work completed by Tenant is completed;

(B) As applicable to disposal of materials from Premises, Tenant must furnish Landlord with evidence of pollution legal liability insurance in the amount of not less than Five Million Dollars (\$5,000,000) maintained by the disposal site operator, for losses arising from the disposal site accepting waste under this Lease;

(xiii) As applicable, if Tenant is subcontracting professional services Tenant shall require the subcontractor to maintain, Errors and Omissions liability insurance with coverage of not less than Five Million Dollars (\$5,000,000) per claim, and as an aggregate annual limit. The policy limits must be adequate to cover both the cost of defense and damages arising out of any resulting damages, judgments and court costs. Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by this Lease and may not exclude opinions, nonperformance, negligent oversell, fraud, breach of contract, allegations of copyright infringement and

intellectual property infringement, advertising injury, vicarious liability and personal injury;

(xiv) Any insurance referred to in Exhibit R - the Maintenance and Repair Standards.

(b) If coverage is written on a claims-made policy, Tenant warrants that any applicable retroactive date precedes the effective date of this Lease and the subcontractor will maintain continuous coverage for an extended period exercised for not less than three (3) years.

(c) All insurance required by this Lease shall:

(i) Be obtained at the sole cost and expense of Tenant unless otherwise expressly provided in this Lease;

(ii) Be maintained with insurance carriers licensed or authorized to do business within in New York State or other State within the United States of America reasonably acceptable to Landlord;

(iii) Be primary and non-contributing to any insurance or self-insurance maintained by Landlord;

(iv) Be endorsed to provide written notice be given to Landlord, at least (30) days prior to the cancellation, non-renewal, or material alteration of such policies, at Landlord's address pursuant to Article 30; and

(v) Name Landlord, the People of the State of New York, the New York State Executive Department, the New York State Office of Parks, Recreation and Historic Preservation, the New York City Region of State Parks, Recreation and Historic Preservation Commission, the Department of Environmental Conservation, the City, the City of New York Department of Parks and Recreation, and each of their respective commissioners, officers, agents, employees, successors and assigns as Additional Insured thereunder.

(d) Tenant shall be solely responsible for the payment of all deductibles and self-insured retentions to which such policies are subject. Deductibles and self-insured retentions must be approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed.

(e) Tenant shall cause all insurance to be in full force and effect as on the Commencement Date and to remain in full force and effect throughout the Term and as further required by this Lease. Tenant shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverage during the period of time such coverage are required to be in effect. Not less than thirty (30) days prior to the expiration date or renewal date of any policy, Tenant shall supply Landlord with updated replacement certificates of insurance, and any applicable endorsements.

(f) Tenant shall include a requirement in all subleases or occupancy agreements with Occupants (and shall enforce such requirement) that Occupants be required, at all times during the terms of such subleases or occupancy agreements, to (i) maintain Commercial General Liability insurance naming, as additional insureds thereunder, each Additional Insured, with limits appropriate to the premises similar to the premises covered by such subleases or occupancy agreements, and to the business operations of a size, nature and character similar to the business conducted by such Occupants at the premises covered by such subleases or occupancy agreements and (ii) provide, from time to time, certificates to Landlord evidencing the maintenance of such insurance and the naming of each Additional Insured such that there is no gap in the protection to each Additional Insured afforded by such certificates. If any such certificates are delivered to Tenant, Tenant shall deliver same to Landlord within ten (10) days after Tenant's receipt of such certificates.

(g) Tenant shall require all Occupants and contractors and subcontractors of Tenant and/or Occupants performing construction to carry insurance with limits of no less than Three Million Dollars (\$3,000,000) per occurrence and Four Million Dollars (\$4,000,000) in the aggregate containing similar provisions as provided herein and as commercially reasonable for retail tenants to carry or unless Landlord authorizes in writing a different limit and/or provision(s).

(h) Each insurance carrier must be licensed to do business in New York State and be rated at least "A-" in the most recently published Best's Key Rating Guide. If, during term of the policy, a carrier's rating falls below "A-", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to Landlord and rated at least "A-" in the most recently published Best's Insurance Report.

Section 9.02 Treatment of Proceeds.

(a) All insurance proceeds payable with respect to a property loss on account of the Premises or any casualty (excluding insurance proceeds from "contents" insurance policies carried by Tenant for personal property separate and apart from the policies required under this Lease and excluding all proceeds of Occupants' policies), together with all interest earned thereon, if any (i) if less than or equal to the Threshold Amount, shall be paid to Tenant as a trust fund, to be deposited in a non-segregated bank account maintained by Tenant and used, applied and paid solely for the cost of the Restoration in accordance with Article 10, and (ii) if in excess of the Threshold Amount, shall be paid to Depository to be held for the purpose of paying for the cost of the Restoration, and such proceeds shall be used, applied and paid solely for the cost of such Restoration in accordance with Article 10, and any such funds remaining after the completion of a Casualty Restoration in accordance with the terms of this Lease shall be distributed as provided in Section 10.04(c). Depository shall apply any casualty insurance proceeds so received in accordance with the provisions of this Lease. Depository shall have no liability with regard to any proceeds received by it and retained in good faith and in accordance with the provisions of this Lease. If Tenant believes that Depository has not applied the insurance proceeds in accordance with this Lease, Tenant's sole remedy shall be to bring an action to have the proceeds applied in accordance with this Lease. Insurance proceeds payable with respect to a property loss on account of Trade Fixtures and personal property shall be payable to Tenant.

(b) 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 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) Tenant shall procure policies for all insurance required by this Lease for periods of not less than one (1) year and shall keep and maintain such insurance at all times during the Term. Tenant shall provide Landlord evidence of renewals thereof from time to time and as soon as is practicable.

(d) All policies of insurance required under this Lease shall include a waiver of the right of subrogation with respect to all the named insureds and Additional Insureds under any insurance policy pursuant to this Lease. Landlord shall also include a waiver of subrogation with respect to Tenant in its insurance policies, if any.

(e) Each policy of insurance required to be carried pursuant to the provisions of this Article 9 shall contain (i) a provision that no act or omission of Tenant, including, without limitation, any use or occupancy of the Premises for any purpose or purposes more hazardous than those permitted by the policy, shall invalidate the policy or affect or limit the obligation of the insurance company to pay the amount of any loss sustained by Landlord, (ii) an agreement by the insurer that such policy shall not be cancelled, materially modified in a manner that would compromise the coverage theretofore provided under the policy, or denied renewal without at least thirty (30) days' prior written notice to Landlord including cancellation or non-renewal for non-payment of premium; provided however, that with respect to cancellation or non-renewal for non-payment of premium, Tenant shall be required to deliver ten (10) days' prior written notice to Landlord, and (iii) a provision that notice of accident or claim to the insurer by Tenant shall be deemed notice by all Persons having rights in said policy, provided that a copy of any such notice by Tenant to the insurer shall have been delivered to Landlord.

(f) Notices from the insurer or Tenant to Landlord shall be delivered in accordance with Article 31 to the addresses set forth therein, with an additional copy to:

Hudson River Park Trust
Pier 40, Second Floor
353 West Street
New York, New York 10014
Attn: Finance Department

(g) Upon Tenant's receipt of any claim(s) or legal action(s) naming Tenant in connection with the operation of the Premises, Tenant shall be obligated to give Landlord written notice of such claim(s) or legal action(s) within twenty-four (24) to forty-eight (48) hours after Tenant's receipt of such claim(s) or legal action(s). In the event Tenant receives any request for on-Premises claim(s) investigation(s), or on-site claim(s) handling activity during the Term, Tenant shall promptly notify Landlord in writing of such request and shall coordinate, in a timely and diligent manner, the response to any such request with Landlord's staff or designated representative(s).

(h) All insurance policies required by this Article 9 shall be primary protection. Landlord shall not be called upon to contribute to any loss, except to the extent that losses are caused by the negligence or intentionally tortious acts of Landlord.

(i) All insurance policies required by this Article 9 shall provide that all adjustments for claims with the insurers shall be made by Tenant and Tenant's agents in coordination with Landlord, both of which shall act reasonably and Tenant shall direct loss proceeds to be paid to Landlord or Tenant as provided in Section 9.02 based upon the actual amount of the loss, as such amount shall have been determined by adjustment with the insurer. Upon demand of the other, Landlord and Tenant shall confirm in writing to each property insurer that all insurance proceeds shall be delivered to Landlord or Tenant, as their trustee.

(j) The liability coverage(s) may not contain the following exclusions/limitations:

- (i) Athletic or Sports Participation;
- (ii) Products/Completed Operations;
- (iii) Personal Injury or Advertising Injury;
- (iv) Contractual liability;
- (v) Total Pollution;
- (vi) Explosion, Collapse and Underground Property Damage;
- (vii) Watercraft limitations affecting the use of watercraft; and
- (viii) New York Labor Law.

Section 9.03 Insurance Requirements for Construction Work, Repair or Renovation or as required under Article 16. Ten (10) days prior to the commencement of the work to be performed by any contractor on behalf of Tenant hereunder (hereinafter referred to as the "Contractor"); shall provide Tenant and Landlord with certificates of insurance evidencing compliance with all requirements contained within any Construction Contract. Such certificates shall be of form and substance acceptable to Landlord. Acceptance and/or approval by Landlord will not and shall not be construed to relieve Tenant or Contractor of any obligations, responsibilities or liabilities under such Construction Contract.

(a) Such insurance shall name Landlord, the People of the State of New York, the New York State Executive Department, the New York State Office of Parks, Recreation and Historic Preservation, the New York City Region of State Parks, Recreation and Historic Preservation Commission, the Department of Environmental Conservation, the City of New York, New York City Department of Parks and Recreation, and each of their commissioners, officers, agents, employees, successors and assigns, and as additional insured (any party required to be named as an additional insured hereunder, an "Additional Insured"). Additional Insured endorsement shall be on the most current edition of ISO form CG 20 10 11 85 or its equivalent, or may be obtained through a combination of the most current editions of CG 20 10 07 04 and

CG 20 37 07 04 or their equivalents. Additional Insured coverage must apply to direct and vicarious liability to both on-going and completed operations.

(b) The Contractor shall be solely responsible for the payment of all deductibles and self-insured retentions to which such policies are subject. Landlord must approve deductibles and self-insured retentions. Such approval shall not be unreasonably withheld, conditioned or delayed.

(c) The Contractor shall require that any subcontractors and sub subcontractors hired carry insurance with the same limits and provisions provided herein.

(d) Each insurance carrier must be licensed to do business in New York State and rated at least "A-" and Financial Class Size (FSC) "VII or above" in the most recently published A.M. Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A-" FSC "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to Landlord and rated at least "A-" FSC "VII" in the most recently published A.M. Best's Insurance Report.

(e) The Contractor shall cause all insurance to be in full force and effect as of the commencement date of the Construction Contract and to remain in full force and effect throughout the term thereof and as further required thereunder. The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverage during the period of time such coverage are required to be in effect.

(f) Not less than thirty (30) days prior to the expiration date or renewal date, the Contractor shall supply Landlord with updated replacement certificates of liability insurance, and all amendatory endorsements.

(g) All insurance required of the Contractor or any subcontractor shall be primary and non-contributing to any insurance maintained by Tenant or Landlord, where applicable.

(h) The Contractor, throughout the term of the Construction Contract, or as otherwise required thereunder, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by the terms of the Construction Contract, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

(i) Commercial General Liability Insurance with a limit of not less than Twenty-five Million Dollars (\$25,000,000) per occurrence. Such liability shall be written on the most current edition of ISO occurrence form CG 00 01 or its equivalent and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal and advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse and underground coverage. If such insurance contains an aggregate limit, it shall apply separately on a per job, per location basis.

(ii) An Owner's and Contractor's Protective Liability Policy, or equivalent form of coverage; issued to, and in the name of Landlord with limits of not less than Ten Million Dollars (\$10,000,000) per occurrence and Twenty-five Million Dollars (\$25,000,000) in the aggregate. Such liability shall be written to include CG 29 35-Additional Insured-State or Governmental Agency or Subdivision or Political Subdivision-Permits or Authorizations.

(iii) Workers Compensation, Employers Liability, Disability Benefits as required by New York State. If employees will be working on, near or over navigable waters, US Long Shore and Harbor Workers Compensation Act endorsement must be included. If applicable, Jones Act Insurance with a limit of not less than Three Million Dollars (\$3,000,000); proof of Workers Compensation coverage must be presented on the NYS WCB C-105.2 or equivalent form, proof of Disability Benefits coverage must be provided on a DB-120.1 form.

(A) The New York State Workers Compensation Board guideline regarding these requirements is available at: <http://www.wcb.ny.gov/content/main/forms/AllForms.jsp>.

(B) If Exempt from Worker Compensation please refer to the following link and provide proof on the appropriate form issued by the NY State Workers Compensation Board: http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/requestExemptionOverview.jsp.

(C) Proof of Employer Liability is required, in an amount not less than One Million Dollars (\$1,000,000).

(iv) If applicable, Protection and Indemnity Insurance with a limit of not less than Ten Million Dollars (\$10,000,000) per occurrence; such insurance shall provide coverage at a minimum for loss of life, personal injury and illness of crew, passengers and third-party individuals, damage to cargo on board, damage to piers, docks, buoys and other fixed or floating objects and damage to other vessels and their cargo.

(v) Comprehensive Business Automobile Liability Insurance with a limit of not less than Five Million Dollars (\$5,000,000) each accident; such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles; shall cover bodily injury, property damage, medical payments and uninsured motorists or operators.

(vi) Commercial Property Insurance covering at a minimum, the perils insured under the ISO Special Causes of Loss Form (CP 10 30), or a substitute form providing equivalent coverage, for loss or damage to any owned, borrowed, leased or rented capital equipment, tools, including tools of their agents and employees, staging towers and forms, and property of Landlord held in their care, custody and/or control; which shall include but not be limited to Business Personal Property, Data Processing Equipment and Data Processing Media. Such coverage, not including Flood Insurance limits, shall be in an amount not less than the Full Insurable Value of the property held in the Contractor's

care, custody and/or control; Tenant shall provide Flood Insurance limits not less than Twenty-five Million Dollars (\$25,000,000). The Commercial Property Insurance Policy shall name Landlord as Loss Payee.

(vii) During the performance of any construction work, restoration, repair or alteration, Builder's Risk completed value form, including comparable Installation or Equipment floaters as applicable, covering the perils insured under the ISO special causes of loss form, including collapse, water damage, and transit and theft of building materials, with deductible reasonably approved by the Landlord, in non-reporting form, covering the total value of work performed, equipment, supplies and materials at the location of the job, not including Flood Insurance limits; as well as at any off-site storage location used with respect to the Project; Tenant shall provide Flood Insurance limits not less than Twenty-five Million Dollars (\$25,000,000). The policy shall cover the cost of removing debris, including demolition as may be legally necessary by the operation of any law, ordinance or regulation.

(viii) If the work involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any hazardous material or substance, the Contractor shall maintain in full force and effect throughout the term hereof, Pollution Legal Liability insurance with limits of not less than Five Million Dollars (\$5,000,000) per occurrence, providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit, or proceedings against Landlord arising from Contractor's work.

(A) If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the effective date of the Construction Contract; and that continuous coverage will be maintained, or an extended discovery period exercised, for a period of not less than two (2) years from the time work under the Construction Contract is completed.

(B) If the Contract includes disposal of materials from the job site, the Contractor must furnish to Landlord, evidence of Pollution Legal Liability insurance in the amount of \$5,000,000 maintained by the disposal site operator for losses arising from the disposal site accepting waste under the Construction Contract. If Contractor or subcontractor will be transporting of hazardous material, Pollution Liability coverage including broadened coverage for covered autos (endorsement CA 99 48) as well as proof of MCS 90 is required.

(ix) If providing professional services, the Contractor shall maintain, or if subcontracting professional services, shall certify that subcontractor maintain, Errors and Omissions Liability insurance with a limit of not less than Five Million Dollars (\$5,000,000) per loss.

(A) Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by the Construction Contract and may not exclude bodily injury, property damage, pollution or asbestos related claims, testing, monitoring, measuring, or laboratory analyses.

(B) If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the effective date of the Construction Contract; and that continuous coverage will be maintained, or an extended discovery period exercised, for a period of not less than two (2) years from the time work under the Construction Contract is completed.

(i) Waiver of Subrogation. Contractor shall cause to be included in each of its policies a waiver of the insurer's right of subrogation against Landlord or any of the other additional insured as identified above, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if Contractor waives or has waived before the casualty, the right of recovery against Landlord or other such additional insured identified above or (ii) any other form of permission for the release of Landlord or other such additional insured identified above.

(j) Indemnification. Notwithstanding anything to the contrary contained herein, Contractor shall be responsible for all injuries to persons, including death, or damage to property sustained while performing or resulting from the work under this Lease, if and to the extent the same results from any act, omission, negligence, fault or default of Contractor or subcontractors, or their employees, agents, servants, independent contractors or subcontractors retained by Contractor pursuant to any contract or agreement entered into in relation to this Lease. Contractor agrees to defend, indemnify and hold Landlord, the People of the State of New York, the New York State Executive Department, the New York State Office of Parks, Recreation and Historic Preservation, the New York City Region of State Parks, Recreation and Historic Preservation Commission, the Department of Environmental Conservation, the City of New York, New York City Department of Parks and Recreation, and each of their commissioners, officers, agents, employees, successors and assigns (collectively, the "Indemnitees") harmless from any and all claims, judgments and liabilities, including but not limited to claims, judgments and liabilities for injuries to persons (including death) and damage to property if and to the extent the same results from any act, omission, negligence, fault or default of Contractor or its Subcontractors, or their agents, employees, servants, independent contractors and subcontractors and from any claims against, or liability incurred by the Indemnitees by reason of claims against Contractor or its Subcontractors, or their employees, agents, servants, independent contractors and subcontractors for any matter whatsoever in connection with the services performed under this Lease, including, but not limited to, claims for compensation, injury or death, and agree to reimburse the Indemnitees for reasonable attorney's fees incurred in connection with the above. Contractor shall be solely responsible for the safety and protection of all its subcontractors, or the employees, agents, servants, independent contractors, or subcontractors of Contractor or its subcontractors, and shall assume all liability for injuries, including death, that may occur to said persons due to the negligence, fault or default of Contractor, its subcontractors, or their respective agents, employees, servants, independent contractors or subcontractors.

This Section 9.03 shall survive the expiration or earlier termination of this Lease.

(k) **Performance and Payment Bond.** The Contractor or the Tenant shall furnish bonds or equivalent bonding instrument, covering faithful performance of the Construction Contract and payment of obligations arising there under. Bonds shall be obtained from a surety satisfactory to the Landlord, licensed to do business in New York and listed in the latest issue of the U.S. Treasury Circular 570 and the cost thereof shall be included in the contract sum. The amount of each bond shall be equal to one hundred percent (100%) percent of the contract sum.

(i) The Contractor or the Tenant shall deliver the required bonds to the Landlord on or prior to the date of the Construction Contract, or if the work is to be commenced prior thereto in response to a letter of intent, the Contractor shall, prior to the commencement of the work, submit evidence satisfactory to the Landlord that such bonds will be furnished.

(ii) The Contractor or the Tenant shall require the attorney-in-fact, who executes the required bonds on behalf of surety, to affix a certified and current copy of the power of attorney to each of the bonds.

Section 9.04 Evidence of Insurance. Prior to the Commencement Date, Tenant shall deliver or cause to be delivered to Landlord certificates of insurance for the insurance required to be carried under this Article 9. At Landlord's request Tenant shall deliver a copy of each entire original policy required hereby, but in no event shall Tenant be required to provide a copy of a policy earlier than the 90th day following the date on which such coverage shall have been bound.

Section 9.05 Compliance with Policy Requirements. Tenant shall not violate or knowingly permit its licensees or invitees to violate any of the conditions, provisions or requirements of any insurance policy required by this Article. Tenant shall perform, satisfy and comply with or cause to be performed, satisfied and complied with all material conditions, provisions and requirements of all such insurance policies on Tenant's part to be performed, and, as appropriate, shall give and cause its contractors to give, the insurer and Landlord notice of all claims, accidents and losses promptly, but in any event no later than five (5) Business Days after Tenant, or any of its contractors, as the case may be, acquires actual knowledge of the same.

Section 9.06 Separate Insurance. Tenant shall not carry separate liability or property insurance concurrent in form or contributing in the event of loss with that required by this Lease to be furnished by Tenant, unless Landlord and all Persons named as Additional Insured are included therein as Additional Insured with respect to required insurance pursuant to the terms of this Lease. Tenant shall immediately notify Landlord that it carries any such separate insurance and shall cause the same to be delivered to Landlord.

Section 9.07 Increases in Coverage and Additional Insurance. Landlord shall have the right, but with a minimum thirty (30) days' notice to Tenant prior to annual policy renewals, to reasonably modify, increase or supplement the insurance coverage(s), limits, sublimits, minimums and standards required by this Article 9 to conform such requirements to the insurance coverage, limits, sublimits, minimums and standards that at the time are commonly carried by owners of premises comparable to the Premises, or are commonly carried by businesses of the size and nature of the business conducted at the Premises. Landlord may require Tenant to increase or cause to be increased the amount of coverage provided under the

policies of insurance required hereunder, or change the types of insurance required hereunder, provided that in any such event, Landlord reasonably demonstrates the need for such increase of coverage.

Section 9.08 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 that such insurance is in any respect adequate.

Section 9.09 Blanket and/or Master Policies. The insurance required by the provisions of this Article 9 may, at Tenant's option, be effected by blanket and/or umbrella policies issued to Tenant covering the Premises and other properties owned or leased by Tenant, 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 named insured and Additional Insured hereunder, without possibility of reduction or coinsurance by reason of, or because of damage to, any other properties named therein. If the insurance required by this Lease shall be effected by any such blanket or umbrella policies, Tenant shall furnish to Landlord certified copies of such policies 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.

Section 9.10 Annual Aggregates. If there is imposed under any 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 Five Million Dollars (\$5,000,000) or two (2) times the per occurrence limit required for such insurance, whichever is greater. Such aggregate shall be achieved by any combination of Commercial General Liability and Umbrella insurance.

Section 9.11 Other Insurance Not Required Under this Lease. Tenant may effect for its own account any insurance not required under the provisions of this Lease, provided same shall not directly or indirectly result in a diminution of the insurance coverage specified in Section 9.01.

Section 9.12 Modification By Insurer. Without limiting any of Tenant's obligations or Landlord's rights under this Article 9, in the event that an insurer modifies, in any material respect, any insurance policy that Tenant is required to maintain in accordance with this Lease, Tenant shall give notice to Landlord of such modification within thirty (30) days after Tenant's receipt of notice thereof.

Section 9.13 Interpretation. All insurance terms used in this Article 9 shall have the meanings ascribed by the Insurance Services Offices.

ARTICLE 10

DAMAGE, DESTRUCTION AND RESTORATION

Section 10.01 Notice to Landlord. If the Premises or any part thereof are destroyed or damaged by fire or casualty of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Tenant shall notify Landlord within the following time period after Tenant has actual knowledge of such destruction or damage: (a) within one (1) Business Day if the reasonably estimated cost of repairing or restoring such destruction is in excess of the Threshold Amount, and (b) within five (5) Business Days if the reasonably estimated cost of repairing or restoring such destruction is equal to or less than the Threshold Amount.

Section 10.02 Casualty Restoration.

(a) If all or any portion of the Premises shall be damaged or destroyed by fire or other casualty ordinary or extraordinary, foreseen or unforeseen (a “Casualty”), then Tenant shall, in accordance with the provisions of this Article 10 and Article 15 (if such restoration is a non-Structural Alteration) or Article 16 (only if such restoration were a Structural Alteration), (A) if such Casualty shall occur following RTI Substantial Completion, restore the Premises to the extent of, and to the extent reasonably practicable, as nearly as possible to the character of the Improvements as they existed immediately prior to the Casualty and (B) if such Casualty shall occur prior to RTI Substantial Completion, restore the Premises as reasonably practicable in accordance with the requirements for the Required Tenant Improvements (either such restoration, a “Casualty Restoration”). Tenant shall so restore the Premises 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 any cost of the Casualty Restoration. Notwithstanding the foregoing, (x) in no event shall Casualty Restoration include any Occupant’s work, which Tenant shall have no obligation to restore, and (y) if a Casualty occurs at any time during the last three (3) years of the Initial Term or any Extension Term and Tenant otherwise satisfies the conditions under Section 10.02(d), then Tenant shall have no obligation to perform Casualty Restoration and in lieu thereof shall comply with the terms thereunder.

(b) Before commencing any Casualty Restoration that is reasonably likely to exceed the Threshold Amount and within ninety (90) days after the damage or destruction, Tenant shall furnish Landlord with an estimate, prepared by an Architect (after consultation by the Architect with Landlord, to the extent practicable), of the cost of the Casualty Restoration. Landlord, at its election and at its own cost, may engage a licensed professional engineer or registered architect to prepare its own estimate of the cost of the Casualty Restoration. 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 the Casualty Restoration, the dispute shall be resolved by a licensed professional structural engineer or licensed professional contractor, chosen by agreement of Landlord and Tenant (such agreement not to be unreasonably withheld, conditioned or delayed by either) and paid for in equal parts by Tenant and Landlord. Said engineer shall resolve the dispute by choosing either Landlord’s or Tenant’s estimate, which choice shall be binding on the parties. If the estimated cost of the Casualty Restoration exceeds the Threshold Amount, then Tenant shall deposit any

insurance proceeds received in connection therewith with the Depository to be used as Restoration Funds. If the estimated cost of the Casualty Restoration is less than the Threshold Amount, then Tenant shall apply any insurance in trust pursuant to the terms of this Article.

(c) Subject to Force Majeure, Tenant shall commence the Casualty Restoration within sixty (60) days after settlement of the insurance claim relating to the damage or destruction (which settlement shall be diligently prosecuted). If there is no insurance claim relating to the casualty, subject to Force Majeure, Tenant shall commence the Casualty Restoration within sixty (60) days after the date of (i) Landlord's approval (or deemed approval) of Tenant's cost estimate as provided in Section 10.02(b) or (ii) resolution by the licensed professional structural engineer or licensed contractor as provided in Section 10.02(b) as to the estimate for repair of the damage or destruction, as applicable. For purposes of this Section 10.02(c), a delay by Tenant's insurer in adjusting or disbursing the insurance proceeds shall constitute Force Majeure in the commencement of the Casualty Restoration if the Casualty was insured and the insurer has not formally denied or rejected coverage, provided that during the period of such Force Majeure Tenant takes all reasonable steps to insure that portions of the Premises accessible to the public shall be safe and free from conditions hazardous to life and property, including, if Landlord in its reasonable judgment determines necessary, the erection of a fence around as much of the Premises as Landlord may reasonably direct, and Tenant fully and diligently pursues Tenant's rights against the insurer.

(d) Notwithstanding the foregoing, if at any time during the last three (3) years of the Term there is a Casualty, and the insurance policies required to be maintained pursuant to Article 9 are in full force and effect, then Tenant, if it reasonably determines that it is not practicable to restore the Premises, may advise Landlord, not later than sixty (60) days after the date of said Casualty, that it elects to terminate this Lease. Such termination shall be made by, and subject to, giving Landlord, at any time within said sixty (60) day period, written notice of Tenant's election to so terminate, which termination shall be effective on the thirtieth (30th) day after giving of such notice. All available insurance and other proceeds payable due to such damage or destruction shall be paid to Landlord, subject to the rights of any Recognized Mortgagee or Recognized Mezzanine Pledgee. Upon the giving of such notice in accordance with Article 31, this Lease shall terminate on the date specified in such notice which shall be the thirtieth (30th) day after the giving of such notice with the same force and effect as if such date were the Expiration Date, Tenant shall comply with the surrender requirements of Article 29 but only to the extent reasonably feasible, and Tenant and Landlord shall thereafter have no further obligations hereunder other than those obligations expressly stated herein to survive such termination. Any amounts due and owing to Landlord up to and including the date of termination shall survive the termination of this Lease and shall be payable in accordance with this Lease.

Section 10.03 Restoration Funds.

(a) Before paying the Restoration Funds to Tenant as provided in Section 10.03(c), Depository shall reimburse itself, Landlord and Tenant therefrom (in no particular order) to the extent of the documented necessary and proper reasonable out-of-pocket expenses (including, without limitation, court costs and reasonable attorneys' fees and disbursements) paid or incurred by Depository, Landlord or Tenant in the collection of such Restoration Funds; provided, that

Landlord shall only be entitled to reimbursement to the extent that Landlord's cooperation is necessary in order for Tenant to collect Restoration Funds from the insurance company. If at a point in the distribution process, however, it shall become demonstrable that the balance of the Restoration Funds is insufficient to pay Depository, Landlord or Tenant the full amount due to each as set forth above, then the remaining Restoration Funds shall be distributed to Depository, Landlord or Tenant in proportion to their respective reasonable out-of-pocket expenses, but in no event shall any party get more than its documented reasonable out-of-pocket expenses.

(b) In connection with any Casualty Restoration the cost of which exceeds the Threshold Amount, the Depository shall pay to Tenant the Restoration Funds from time to time in installments as the Casualty Restoration proceeds, in the manner and at the times required by the Recognized Mortgagee most senior in Lien (if there is any conflict between the provisions of this Lease and the provisions of the Recognized Mortgage most senior in Lien regarding the procedures by which Restoration Funds are disbursed for a Casualty Restoration (or Condemnation Restoration), the provisions of the Recognized Mortgage shall control). If there is no Recognized Mortgagee or the Recognized Mortgagee has no provision relating to the disbursement of the Restoration Funds, then, subject to the provisions of Sections 10.03(a), 10.04, and 10.05, the Restoration Funds shall be paid to Tenant, in monthly installments, as the Casualty Restoration progresses, upon application to be submitted by Tenant to Depository and Landlord showing Restoration Costs, including Architect's and engineer's fees (and other construction-related soft costs), construction labor costs and the cost of materials, fixtures and equipment that either (i) have been incorporated in the Improvements since the last previous application and have either been paid for by Tenant or the payments of which are then due and owing, or (ii) have not been incorporated in the Improvements, but have been purchased since the last previous application and either have been paid for by Tenant or the payments for which 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 either on, or outside of, the Premises (such costs collectively referred to as "Restoration Costs"). 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, with Tenant and Landlord insured as their interests may appear.

(c) Any Restoration Funds remaining after the completion of a Casualty Restoration in accordance with the provisions of Sections 16.10 shall be paid to Tenant, subject to the rights of Recognized Mortgagees and Recognized Mezzanine Pledges.

Section 10.04 Conditions Precedent to Disbursement of Restoration Funds. The conditions precedent to disbursement of Restoration Funds by the Depository shall be governed by the terms of the Recognized Mortgage; provided that if there is no Recognized Mortgagee or the Recognized Mortgagee has no provision relating to the disbursement of the Restoration Funds, the following are conditions precedent to each payment of Restoration Funds to be made to Tenant pursuant to Section 10.03(b):

(a) A certificate issued by the Architect or the inspecting licensed professional engineer selected by Tenant (or as to the matters set forth in subsections (i), (ii) and (iii) of this

Section 10.04(a), a certificate issued by a principal of Tenant) 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 payable, to contractors, subcontractors, material providers, 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 Casualty 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 received by Tenant;

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

(iv) Construction Work, services and materials represented by the submitted invoices are substantially in accordance with any plans and specifications approved by Landlord for the Casualty Restoration, which approval shall not be unreasonably withheld, conditioned or delayed;

(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 10.06) shall in the reasonable judgment of the Architect be sufficient, upon completion of the Construction Work in connection with the Casualty Restoration, to pay for the Construction Work in full, and estimating, in reasonable detail, the total and remaining costs to complete such Construction Work; and

(vi) in the case of the final request for payment by Tenant, the Construction Work in connection with a Casualty Restoration shall have been Substantially Completed, except for punch list items.

(b) There shall be furnished to Landlord and Depository a report or a certificate of a title insurance company, or other evidence reasonably satisfactory to Landlord, showing that there are no (i) vendor's, mechanic's, laborer's or material provider's statutory or other similar Liens filed against the Premises or any part thereof caused by Tenant or an Occupant or arising out of Tenant's or an Occupant's work (except Liens which are permitted pursuant to the terms of the Lease) 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, in either case, (A) Liens that will be discharged upon payment of the amount then requested to be withdrawn, (B) Liens which the Casualty Restoration is intended to remove, (C) the Permitted Exceptions, (D) other Liens expressly permitted pursuant to the terms of this Lease or (E) Liens the discharge of which is guaranteed to the satisfaction of Landlord by a bond, letter of credit or similar security instrument reasonably satisfactory to Landlord.

Section 10.05 Restoration Fund Deficiency. If the estimated cost (determined as provided in Section 10.02(b)) of any Construction Work in connection with any Casualty Restoration (a) exceeds the Threshold Amount and (b) exceeds any unpaid insurance proceeds claimed under a proof of loss filed (and being pursued by Tenant with reasonable diligence) in connection with the damage or destruction in question then, before the commencement of such Construction Work, or, at any time after commencement of such Construction Work if it is reasonably determined pursuant to Section 10.02(b) that the cost to complete such Construction Work exceeds the unapplied portion of the Restoration Funds, then as a condition to the disbursement of further Restoration Funds, Tenant shall, within forty-five (45) days of Landlord's request, furnish to Landlord evidence reasonably satisfactory to Landlord of the financial ability of Tenant to pay the amount of such excess, which evidence may, at Tenant's election, consist of a letter of credit, loan commitment, surety bond, completion guaranty (from a credit-worthy entity reasonably acceptable to Landlord) or any combination of the foregoing or such other security as may be reasonably satisfactory to Landlord, in the amount of such excess. If Tenant shall be required to deposit the amount of any such excess with a Recognized Mortgagee or Recognized Mezzanine Pledgee, such deposit with a Recognized Mortgagee or Recognized Mezzanine Pledgee shall be deemed to satisfy the requirements of this Section 10.05.

Section 10.06 Effect of Casualty on This Lease. If Tenant does not elect to terminate this Lease pursuant to Section 10.02(d), this Lease shall not terminate, be forfeited nor be affected in any manner, nor shall there be a reduction or abatement of Rental (except to the extent that Landlord shall receive proceeds from the Business Interruption Insurance required to be maintained pursuant to Section 9.01(a)(xi) on the dates Rental is due under this Lease and in the amounts of the Rental due under this Lease) by reason of damage to, or total, substantial or partial destruction of, the Premises or by reason of the untenability of the Premises or any part thereof, nor for any reason or cause whatsoever, and Tenant's obligations hereunder, including the payment of Rental, shall continue as though the Premises had not been damaged or destroyed and shall continue without any abatement, suspension, diminution or reduction whatsoever.

Section 10.07 Assignment. To the extent that the Restoration Funds are payable to Landlord pursuant to the terms of this Article 10 due to the termination of this Lease, and same are not required to be applied to the Restoration of the Premises or payment to a Recognized Mortgagee or Recognized Mezzanine Pledgee, Tenant shall be deemed to have assigned to Landlord all of Tenant's right, title and interest, if any, in and to any Restoration Funds and the proceeds thereof.

Section 10.08 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 Premises, except as may otherwise be expressly provided in Section 10.02(d). It is the intention of Landlord and Tenant that the provisions of this Article 10 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.

Section 10.09 Landlord as Depository. In the event there is no Depository at the time of the application of any of the provisions of this Article 10 relating to the rights and obligations of Depository, then such rights and obligations shall be exercised by, and charged to, Landlord, and the provisions contained in this Article 10 related thereto shall be deemed modified accordingly.

ARTICLE 11

CONDEMNATION

Section 11.01 Certain Definitions. For the purposes hereof the following terms shall have the following meanings:

(a) “Taking” means a taking of the Premises or any part thereof occurring during the Term for any public or quasi-public purpose by any lawful power or authority, acting in its sovereign capacity, 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” means such portion of the Premises as would leave remaining, after a Taking, a balance of the Premises that, due either to the area so taken or the location of the part so taken in relation to the part not so taken, would not readily accommodate a new or reconstructed facility of a type and size generally similar to the Improvements as existing on Date of Taking and capable of producing a fair and reasonable net annual income or capable of supporting substantially similar activities as the Premises in the condition thereof immediately prior to the Date of Taking, 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 and/or observance by Tenant of all covenants, agreements, terms and conditions contained herein or by applicable Requirements required to be performed or observed by Tenant or which would result in Tenant no longer having access to the Premises.

(c) “Date of Taking” means the date on which, following a Taking, 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” means 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 11.04 so that such portions shall contain complete structures, in good condition and repair, consisting of self-contained architectural units, and (i) if such Taking shall occur following RTI Substantial Completion, to the extent practicable, to a size and condition of, and having a quality substantially similar to, the size, condition and quality of the Premises existing immediately prior to the Date of Taking and (ii) if such Taking shall occur prior to RTI Substantial Completion, restore the Premises in accordance with the requirements of the Required Tenant Improvements to the extent practicable. Notwithstanding the foregoing, if (1) such Taking occurs at any time during the last three (3) years of the Term or (2) an award in an amount necessary to effect the

restoration are not available, then Tenant shall have no obligation to perform a Condemnation Restoration, and in lieu thereof may comply with the terms of Section 11.02(c).

Section 11.02 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 and paid to the Date of Taking, and all such Rental shall be paid to Landlord within thirty (30) days after the Date of Taking, and Tenant and Landlord shall thereafter have no further obligations hereunder other those obligations expressly stated herein to survive such termination; and

(ii) the award payable in respect of such Taking shall be paid follows: (1) first, to Landlord the aggregate sum of (aa) the value of all Public Open Space in the Premises (based on the replacement value thereof), (bb) the net present value of Base Rent, Participation Rent, PILOT and Deferred PILOT (which value shall be based on the actual amounts to the extent then known or reasonably estimates thereof if such actual amounts are not then known) (collectively, the "Trust Payables") due through the balance of the Term (which shall include all Renewal Terms whether or not such Renewal Terms have then been exercised by Tenant), with each such payment of Trust Payables discounted to the date of the Taking using a discount rate which is the prevailing interest rate then payable on the most recent issuance of the City's general obligation bonds, and (cc) the reversionary interest of Landlord at the end of the Term (which shall include all Renewal Terms whether or not such Renewal Terms have then been exercised by Tenant); and then, subject to the rights of any Recognized Mortgagees and Recognized Mezzanine Pledges, (2) next, to Tenant with Tenant's interest measured by the net present value of the estimate of Tenant's cash flow from all Gross Revenue to Tenant at the Premises from Tenant's operation of the Premises for the remainder of the Term (which shall include all Renewal Terms whether or not such Renewal Terms have then been exercised by Tenant) after deducting from such Gross Revenue the payment of all operating expenses, Trust Payables, debt service and other expenses reasonably estimated to be payable by Tenant from Gross Revenue during the Term (which shall include all Renewal Terms whether or not such Renewal Terms have then been exercised by Tenant), and (3) finally, subject to Tenant's right to claim for its personal property, intangibles and contract rights as set forth in the immediately succeeding sentence of this Section 11.02(a)(ii), the balance to Landlord. Tenant shall also Tenant shall have the right to claim separately its personal property, intangibles and contract rights, including its interest in its Trade Fixtures and moving and relocation costs for itself and any Occupants. Any award on account of Tenant's Trade Fixtures or other personal property shall be paid to Tenant. In addition, Landlord and Tenant acknowledge and agree that their respective claims filed in connection with such Taking (AA) shall not abridge the other's rights to any award in connection with such Taking and (BB) are subject to the rights of the State under the State Lease.

(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 provided that Tenant has not exercised its right to terminate this Lease pursuant to Section 11.02(c):

(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) a pro rata amount of Base Rent determined by Landlord on the basis of the extent and nature of such Partial Taking shall abate for the remainder of the Term and (B) PILOT shall be reduced in proportion to the extent that Taxes would otherwise be reduced by reason of such Taking;

(ii) Tenant shall, after settlement of the award, at its sole cost and expense proceed with diligence (subject to Force Majeure) to effect a Condemnation Restoration of the remaining portion of the Premises not so taken, whether or not the award or awards received by Tenant for such taking are sufficient to pay in full the Construction Work in connection with such Condemnation Restoration; and

(iii) the portion of the condemnation award to be applied to the Condemnation Restoration shall be paid to the Depository if the cost of the Condemnation Restoration is in excess of the Threshold Amount or to Tenant, in trust, if the cost of the Condemnation Award is equal to or less than the Threshold Amount. The remainder of any award shall be paid in accordance with the provisions of this Article 11.

(c) Notwithstanding the foregoing, if at any time during the last three (3) years of the Term there is a Partial Taking, then Tenant, if it reasonably determines that it is not practicable to restore the Premises, may advise Landlord, not later than ninety (90) days after the date of said Partial Taking, that it elects to terminate this Lease. Such termination shall be made by, and subject to, giving Landlord, at any time within said ninety (90) day period, written notice of Tenant’s election to so terminate, which termination shall be effective on the thirtieth (30th) day after giving of such notice. Upon the giving of such notice in accordance with Article 31, this Lease shall terminate on the date specified in such notice which shall be the thirtieth (30th) day after the giving of such notice with the same force and effect as if such date were the Expiration Date, Tenant shall comply with the surrender requirements of Article 29 but only to the extent reasonably feasible, and Tenant and Landlord shall thereafter have no further obligations hereunder other than those obligations expressly stated herein to survive such termination. Any amounts due and owing to Landlord up to and including the date of termination shall survive the termination of this Lease and shall be payable in accordance with this Lease.

Section 11.03 Temporary Taking 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 but 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 (A) Tenant shall be entitled to receive for itself, subject to the rights of any Recognized

Mortgagees or Recognized Mezzanine Pledgees, any award or payments for such use to the extent provided in Section 11.03(a)(iii), (B) the foregoing shall not preclude Tenant seeking reduction and/or abatement of PILOT and Impositions from applicable Governmental Authorities as a result of such Temporary Taking;

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

(iii) the award or payment payable with respect to such Taking shall be paid to and held by Tenant, subject to the rights of any Recognized Mortgagee or Recognized Mezzanine Pledgees; provided however, that if Tenant shall be required to effect a Condemnation Restoration pursuant to Section 11.03(a)(ii) and the cost of such Condemnation Restoration is in excess of the Threshold Amount, then a portion of such award or payment equal to the estimated cost (calculated as provided in Section 10.02(b)) of such Condemnation Restoration shall instead be paid to and held by Depository for the purpose of paying the cost of said Condemnation Restoration, and shall be disbursed by Depository to Tenant in accordance with the terms and conditions contained in Section 11.06(a) with any balance remaining thereafter to be paid to Tenant.

Section 11.04 Temporary Taking 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 t for a period extending beyond the Term, the consequences specified in clauses (i), (ii) and (iii) of Section 11.03(a) 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 11.03(a)(iii), 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 11.05 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, or a temporary Taking that does not meet the criteria in the definition of Temporary Taking, 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 the Depository if the cost of the Construction Work performed by Tenant resulting from such governmental action is in excess of the Threshold Amount, or to Tenant, in trust, if the cost of the such Construction Work is equal to or less than the Threshold Amount and any balance of the award remaining after completion of the Construction Work shall be disbursed to Landlord and Tenant in amounts based upon the value of their respective interests in the Premises at that time.

Section 11.06 Condemnation Restoration Procedure. A Condemnation Restoration, submission of the estimated cost thereof by Tenant and approval thereof by Landlord, shall be done, determined, made and governed in accordance with the provisions of Article 15 and Sections 10.02(b), 10.03, 10.04 and 10.05. If the portion of the award paid to Landlord or Tenant is insufficient for the purpose of paying for the cost of the Condemnation Restoration, then, subject to all other applicable provisions of this Lease, Tenant shall nevertheless be required to perform the Condemnation Restoration as required hereby and pay any additional sums required for the Condemnation Restoration.

Section 11.07 Notice of Condemnation; Collection of Awards. Landlord hereby promptly agrees to notify Tenant upon receipt of a notice of Taking or similar action with respect to all or any part of the Premises. Each of the parties shall execute documents that are reasonably required to facilitate collection of any awards made in connection with any condemnation referred to in this Article 11 and shall cooperate with each other to permit collection of the award.

Section 11.08 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 or otherwise in accordance with this Lease shall become the property of and shall be paid over to Landlord, subject to the rights of Recognized Mortgagees or Recognized Mezzanine Pledges hereunder, if this Lease shall terminate for any reason prior to completion of said Condemnation Restoration in accordance with the provisions of this Article 11.

Section 11.09 Allocation of Award. Upon a Taking, the parties shall make every effort to agree to an allocation of the award or payment as set forth in Section 11.02.

Section 11.10 Tenant's Appearance at Condemnation Proceedings. Tenant and any Recognized Mortgagee and Recognized Mezzanine Pledges 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 11.11 Waiver of Rights under Statute. The existence of any present or future law or statute notwithstanding, except as otherwise provided herein and to the extent permitted by applicable Requirements, 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. It is the intention of Landlord and Tenant that the provisions of this Article 11 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.

Section 11.12 Negotiated Sale. In the event of a negotiated sale agreed to by Landlord of all or a portion of the Premises in lieu of condemnation, the proceeds shall be distributed as provided in cases of condemnation.

Section 11.13 Tenant's Approval of Settlements. Landlord shall not settle or compromise any taking or other governmental action creating a right to compensation in Tenant as provided in this Article 11 or enter into a sale of all or a portion of the Premises in lieu of condemnation

without the consent of Tenant, which consent shall not be unreasonably withheld, conditioned or delayed, if the settlement, compromise or sale will materially adversely affect or prejudice Tenant's right to compensation for the taking or the amount of such compensation or Tenant's rights under this Lease.

Section 11.14 Landlord as Depository. In the event there is no Depository at the time of the application of any of the provisions of this Article 11 relating to the rights and obligations of Depository, then such rights and obligations shall be exercised by, and charged to, Landlord, and the provisions contained in this Article 11 related thereto shall be deemed modified accordingly.

ARTICLE 12

ASSIGNMENTS, SUBLEASES AND TRANSFERS

Section 12.01 Landlord. Landlord may, upon reasonable prior written notice to Tenant, transfer or assign its interests in the Premises or its interest under this Lease, in whole or in part to any Person or to the City, State or other Governmental Authority, at any time, in Landlord's sole and absolute discretion provided that such transfer or assignment shall be subject to the conditions of this Lease. In the event that Landlord or any successor to Landlord's 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 means the assignee or transferee and the assignor or transferor shall be, and hereby is, entirely freed and relieved of all agreements, covenants and obligations of Landlord hereunder to be performed on or after the date of such transfer or assignment, provided that the transferee or assignee under such transfer or assignment has assumed, in a written instrument (a copy of which shall be provided to Tenant), and agreed to carry out, any and all agreements, covenants and obligations of Landlord hereunder occurring from and after the date of such assignment or transfer.

Section 12.02 Tenant.

(a) Except as otherwise provided pursuant to this Article 12 or Article 13, without the prior consent of Landlord in each instance (which consent shall not be unreasonably withheld, conditioned or delayed), Tenant shall not (i) assign Tenant's interest in this Lease, in whole or in part (by operation of law or otherwise), (ii) sublease, or enter into any occupancy agreement for, all or any part of the Premises, (iii) permit an Occupant under a sublease or other occupancy agreement that is consummated in accordance with the terms of this Article 12 to further sublease the Premises or any part thereof or to assign the Occupant's interest under any such sublease or occupancy agreement in whole or in part, (iv) amend or modify any sublease or occupancy agreement that is consummated in accordance with the terms of this Article 12, (v) mortgage or otherwise encumber Tenant's interest in this Lease, in whole or in part, (vi) permit the Premises or any part thereof to be occupied by any Person other than Tenant, or (vii) transfer any direct or indirect interest in the Tenant SPE. An assignment of Tenant's interest in this Lease shall include an assignment of Tenant's rights under, or a delegation of Tenant's duties under, this Lease by express assignment, by operation of law or by any other means.

(b) Tenant covenants that the Person from time to time that constitutes the tenant under this Lease (the "Tenant SPE") shall at all times during the Term be a single-purpose entity

whose only commercial activity is the development, construction, maintenance, leasing and operation of the Project and the performance of all of its obligations as the tenant under this Lease.

(c) Notwithstanding anything to the contrary contained in this Article 12, (i) a sublease of all or part of Tenant's interest in this Lease to HTC Master Tenant (the "HTC Master Sublease") shall be permitted without Landlord's consent, and (ii) an assignment of all or a part of Tenant's interest in this Lease or a Master Sublease by Tenant, or an assignment of all or a part of HTC Master Tenant's interest in its sublease or a Master Sublease by HTC Master Tenant, to a Person that is not a Prohibited Party and that is under one hundred percent (100%) common ownership and control with either the Tenant SPE or HTC Master Tenant shall be permitted without Landlord's consent provided that Tenant gives prior written notice thereof to Landlord and information reasonably satisfactory to Landlord confirming such common ownership and control.

(d) Notwithstanding anything to the contrary contained in this Lease and in consideration of Landlord's execution and delivery of the Consent Agreement, Tenant shall cause the HTC Master Sublease to include the following provisions:

(i) Base Rent, Participation Rent and PILOT due under this Lease and Tenant's expenses relating to maintenance and operation of the Public Open Spaces shall constitute "must pay" components of rent due under the HTC Master Sublease, and the "Annual Rent" (as such term is defined in the HTC Master Sublease), shall be sufficient for Tenant to pay all amounts required to be paid by Tenant under this Lease, including without limitation amounts related to Ground Lease Operating Deficits (as defined in the Consent Agreement) in the order of priority set forth in the Ground Lease Operating Deficits Priority Payments (as defined in the Consent Agreement). Such rental payments under the HTC Master Sublease shall be a first priority payment by HTC Master Tenant to Tenant as "HTC Master Landlord" thereunder before payment of fees or cash distributions. The HTC Master Sublease shall further prioritize the payment obligations of the Tenant as "HTC Master Landlord" thereunder such that Annual Rent (as such term is defined in the HTC Master Sublease) receipts shall be applied before paying any other expenses, as follows: first, to pay to Landlord Base Rent, Participation Rent and PILOT due under this Lease and, second, to pay expenses relating to maintenance and operation of the Public Open Spaces;

(ii) HTC Master Tenant Managing Member shall grant to Tenant a security interest in any fees, cash distributions or other payments from HTC Master Tenant to HTC Master Tenant Managing Member to secure Tenant's payment obligations under this Lease;

(iii) If required by Tenant's third party lenders, HTC Master Tenant shall collaterally assign to Tenant the HTC Master Sublease and the individual subleases or occupancy agreements covering leasable units in the Premises to secure HTC Master Tenant's obligations under HTC Master Sublease;

(iv) Tenant shall grant to Landlord, subject to any first priority rights of Tenant's third party lenders, a security interest in all rights granted to Tenant under clauses (ii) and (iii) of this Section 12.02(d) to secure all payment obligations under this Lease from Tenant to Landlord; and

(v) the HTC Master Sublease shall include provisions entitling Landlord or a Landlord-designated Successor (as defined in the Consent Agreement) to cure any defaults by Tenant as "HTC Master Landlord" thereunder beyond any applicable notice or cure periods under the HTC Master Sublease provided to Tenant as "HTC Master Landlord" thereunder.

Landlord and Tenant acknowledge and agree that (1) as of the Effective Date, any ancillary documentation relating to perfection of the security interest referred to in clause (iv) of this Section 12.02(d), including without limitation the final form of and the filing of any UCC financing statements, and/or relating to the protection of Landlord's rights in such security interest, has not been agreed upon by Landlord and Tenant, (2) after the Effective Date, Landlord and Tenant shall use reasonable, good faith efforts to identify any ancillary documentation relating to such perfection that shall be legally necessary and/or any ancillary documentation relating to such protection that may be customary for transactions similar to the one in question and (3) upon any agreement being reached between Landlord and Tenant relating to any such documentation and actions, to effectuate such agreement in the ordinary course and in accordance with applicable Requirements; provided, however, that in no event shall Tenant be obligated to agree upon any such ancillary documentation and/or take any such actions that (x) would create a material adverse effect on Tenant, including without limitation causing Tenant to be in default of any obligation under any agreement to which Tenant is a party, and/or (y) be inconsistent with any documents relating to the Construction Loan and/or the HTC Documents.

Notwithstanding anything to the contrary contained in this Lease and in consideration of Landlord's execution and delivery of the Consent Agreement, Tenant agrees as follows:

(A) upon the occurrence of an uncured Event of Default during the Forbearance Period (as defined in the Consent Agreement) (subject to the rights of Recognized Mortgagees and Recognized Mezzanine Pledges as set forth in Article 13) and instead of Landlord's termination of this Lease in accordance with Section 28.02(b), then, at the election of Landlord exercised by written notice from Landlord to Tenant and following notice to Tenant in the manner set forth in Section 28.02(b), Tenant shall assign Tenant's interest under this Lease to a Landlord-designated Successor;

(B) if this Lease remains in effect but Landlord otherwise has the right to terminate this Lease as set forth in Section 28.02(b) during the Forbearance Period (subject to the rights of Recognized Mortgagees and Recognized Mezzanine Pledges as set forth in Article 13), Tenant shall relinquish day-to-day management, operation and leasing control of the Premises, upon any exercise by Landlord of the right to appoint a Qualified Property Manager (as defined in the Consent Agreement) to perform day-to-day management, operation and leasing responsibilities for the Premises, which relinquishment shall continue until such time as Landlord elects to return day-to-day

management, operating and leasing control of the Premises to Tenant and to terminate the services of a Qualified Property Manager appointed by Landlord;

(C) if, as permitted under the Consent Agreement, Landlord seeks injunctive relief and/or specific performance after the occurrence and during the pendency of an Event of Default during the Forbearance Period (subject to the rights of Recognized Mortgagees and Recognized Mezzanine Pledges as set forth in Article 13), Tenant shall not assert any defense to Landlord's efforts to obtain, or otherwise seek to preclude Landlord from obtaining, such injunctive relief and/or specific performance on the basis that remedies at law are available to Landlord or on any other similar legal basis (however the provisions of this clause (F) shall not preclude Tenant from asserting a defense relating to the merits of Landlord's position vis-a-vis such Event of Default and/or the circumstances that gave rise to such Event of Default);

(D) Neither Landlord's rights and obligations under the Consent Agreement nor the provisions of this Section 12.02(d) shall release or relieve Tenant from any obligations or liability, whether past, present, or future, under this Lease or alter the primary liability of Tenant to pay all amounts due under this Lease and to perform and observe all of Tenant's agreements, covenants, conditions, provisions and obligations under the Lease; and

(E) During the Forbearance Period and subject to the provisions of the Consent Agreement, Tenant shall cause (i) the Guaranty (as defined in the Consent Agreement) to remain in full force and effect, (ii) Guarantor (as defined in the Consent Agreement) not to release, surrender or modify the Guaranty in any manner which would reduce or modify Guarantor's obligations in respect of Ground Lease Operating Deficits (as defined in the Consent Agreement), except that the Guaranty may be modified or replaced in the manner permitted under the Guaranty and the Master Tenant Operating Agreement (as defined in the Consent Agreement) and (iii) during any period when there are Ground Lease Operating Deficits (as defined in the Consent Agreement), any Tenant Affiliates receiving amounts paid under the Guaranty, or amounts in lieu of a payment under the Guaranty, including without limitation any cash deposits available to HTC Master Tenant and HITC Investors related to the Guaranty, apply same in the order of priority set forth in Section 4.6 of the Consent Agreement.

(F) In consideration of Landlord's approval of the final form of the Guaranty to be executed by Guarantor and delivered to HTIC Investors simultaneously with the execution of this Lease (which Guaranty was intended, along with the Consent Agreement and other provisions in the HITC Documents, to provide additional protection for the payment of monetary obligations under this Lease, but in its final form does not provide protections to the extent originally contemplated by Landlord), Tenant agrees that the Completion Guaranty relating to the Required Tenant Improvements, to be delivered to Landlord pursuant to this Lease simultaneously with the execution of this Lease, shall contain guaranteed obligations, reasonably acceptable to Landlord and the guarantors under such Completion Guaranty, relating to Ground Lease Operating Deficits consisting of Base Rent, PILOT, Participation Rent and Tenant's expenses relating to maintenance and operation of the Public Open Spaces required to be paid under this

Lease, which guaranteed obligations shall apply to a specific period in time to be defined in such Completion Guaranty, and which are in addition to the guaranteed obligations relating to the completion of the Required Tenant Improvements. The final form of such Completion Guaranty shall be subject to the approval of Landlord, Tenant and the guarantors under such Completion Guaranty.

Tenant acknowledges and agrees that nothing contained in this Section 12.02(d) shall be construed as creating any obligation on the part of Landlord to HTC Master Tenant or HITE Investors. The provisions of the immediately preceding sentence shall not negate or affect any obligations of Landlord (and, if applicable, any Qualified Transferee) under the Consent Agreement.

(e) Notwithstanding anything to the contrary contained in this Lease, any transfer or assignment (including without limitation a direct or indirect transfer or assignment of an interest in the JV SPE) in violation of the terms and conditions of this Article 12 shall be void *ab initio* and of no force or effect.

Section 12.03 Ownership of Tenant SPE Prior to the Lockout Date; Initial Joint Venture Agreement.

(a) Initial Ownership Requirements. Subject to the right to enter into mortgages or mezzanine loans in accordance with Article 13, Tenant covenants that, prior to the Lockout Date, the Tenant SPE shall at all times satisfy the following “Initial Ownership Requirements:” (i) the JV SPE shall be the Control Person of, and the direct or indirect owner of at least sixty-five percent (65%) of the equity interests in, the Tenant SPE; (ii) Institutional Investor and/or a Qualified Institutional Investor shall be the direct or indirect owner of at least forty-five percent (45%) of the equity interests in Tenant SPE (not including interests held by the HITE Investors); (iii) RXR Parent shall be the Control Person of, and the direct or indirect owner of not less than seven and one half percent (7.5%) of the equity interests in, the JV SPE; and (iv) all direct and indirect owners of equity interests in the Tenant SPE shall satisfy the requirements of this Lease for such ownership, including without limitation any applicable Vendex requirements. Notwithstanding the immediately preceding sentence, the Tenant SPE shall not be deemed to be in violation of the Initial Ownership Requirements as a result of the removal of RXR Parent as the Control Person of Tenant SPE or any dilution of RXR Parent’s ownership interest in Tenant SPE by Institutional Investor or any Qualified Institutional Investor that is the direct or indirect owner of not less than forty-five percent (45%) of all direct or indirect equity interests in the JV SPE (not including the equity interests of any HITE Investors) in accordance with customary removal/dilution rights for cause and after notice to Landlord, provided that, if Institutional Investor, or another entity that is a Qualified Institutional Investor, is not a Professional Mixed-Use Developer, such Institutional Investor or Qualified Institutional Investor, as the case may be, shall engage, within ninety (90) days after such removal of RXR Parent, a Professional Mixed-Use Developer, whether by admitting such person as a member or retaining such Person pursuant to a separate development agreement, to oversee the completion of the Required Tenant Improvements and/or the leasing, management and operation of the Pier 57 Property through the Lockout Date.

(b) Initial Joint Venture Agreement. The Initial Joint Venture Agreement shall provide that (i) the owners of the equity interests in the JV SPE are obligated to fund the JV SPE's share of the equity portion of Project Development Costs from and after the Commencement Date, (ii) the JV SPE shall have no assets or activities other than its direct or indirect interest in the Tenant SPE (and the HTC Master Tenant) and assets or activities incidental thereto and (iii) the Initial Joint Venture Agreement may not be amended to delete or change any of the provisions referred to in subparagraphs (i) through (iii) of this sentence. The Tenant Operating Agreement shall contain provisions corresponding to those required by the immediately preceding sentence to be included in the Initial Joint Venture Agreement. Neither the Initial Joint Venture Agreement nor the Tenant Operating Agreement, nor any amendment to or modification of the Initial Joint Venture Agreement or Tenant Operating Agreement, shall contain any provisions that are inconsistent with the requirements of this Lease. Prior to the execution of this Lease, Tenant shall make the Initial Joint Venture Agreement and Tenant Operating Agreement available for Landlord's review, shall provide Landlord with a chart showing the identities of the direct and indirect owners of Tenant, and shall provide such information concerning the experience and net worth of RXR Parent as Landlord shall reasonably request. Tenant shall and hereby does represent, contemporaneously with the execution of this Lease, that such agreements and chart are true and correct, as of the date of such execution, with any changes therein that are disclosed to Landlord in writing as of such date. During the Term, Tenant shall promptly furnish an updated version of such ownership chart to Landlord from time to time upon request, and shall also notify Landlord from time to time of any material amendment to the Initial Joint Venture Agreement and/or the Tenant Operating Agreement, and shall make true, correct and complete executed counterparts of the amended versions of such agreements available for Landlord's review on one or more occasions in the reasonable discretion of Landlord and at a location reasonably acceptable to Landlord and Tenant.

(c) "Qualified Institutional Investor" shall mean any of the following types of Persons or any Person that is, or is directly or indirectly owned and controlled by, any of the following types of Persons, whether domestic or foreign: (i) a commercial bank, trust company (whether acting individually or in a fiduciary capacity for another entity that constitutes a Qualified Institutional Investor), savings and loan association, savings bank, financing company or similar institution; (ii) an insurance company; (iii) an investment bank; (iv) an employee's welfare, benefit, profit-sharing, pension or retirement trust, fund or system (whether federal, state, municipal, private, foreign or otherwise); (v) a credit union, trust, or endowment fund; (vi) a hedge fund, opportunity fund or similar type of fund that is reputable and operated by management that has not less than ten (10) years prior experience directing similar funds; (vii) a Person not referred to in the foregoing provisions of this definition that is subject to supervision and regulation by the insurance or banking department of any of the United States, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or by any successor hereafter exercising similar functions; or (viii) any combination or group of one or more of the foregoing Persons, in each case on the condition that (1) such Person or group or combination of Persons has net assets (in name or under management) in excess of Five Hundred Million Dollars (\$500,000,000), as Adjusted for Inflation, in the aggregate, and (2) no such single Person, if Qualified Institutional Investor comprises a combination or group of such

Persons, has net assets (in name or under management) of less than Fifty Million Dollars (\$50,000,000), as Adjusted for Inflation.

(d) “Professional Mixed-Use Developer” shall mean a reputable and creditworthy Person with not less than ten (10) years prior real estate experience in the New York metropolitan area relating to the development, construction, leasing, operation and management of a retail and office facilities similar to the Project, which experience shall include acting as principal developer of combined mixed use retail and office facilities having not less than an aggregate of one million (1,000,000) square feet of GLA, and the financial and managerial resources necessary to perform its obligations under this Lease. Prior to the engagement of any Professional Mixed-Use Developer, Tenant shall deliver (or cause to be delivered) to Landlord written documentation, reasonably satisfactory to Landlord, evidencing the contractual relationship between Tenant and Professional Mixed-Use Developer and the satisfaction of the aforesaid qualifications and requirements for the Professional Mixed-Use Developer.

Section 12.04 Assignment and Master Sublease Prior to the Lockout Date; Customary Transfer Requirements.

(a) Except as provided in Section 12.02(c) or Article 13, prior to the date (the “Lockout Date”) that is the earlier to occur of (i) the second (2nd) anniversary of the date upon which the following two conditions are both first satisfied: (1) at least eighty percent (80%) of GLA in the office portions of the Premises shall be occupied pursuant to subleases and/or occupancy agreements executed in accordance with this Lease and (2) fifty percent (50%) of the GLA in the retail portions of the Premises shall be occupied pursuant to subleases and/or occupancy agreements executed in accordance with this Lease, and (ii) the fifth (5th) anniversary of the date, following the RTI Substantial Completion Date, upon which the first occupancy shall have occurred for the office and/or retail portions of the Premises pursuant to subleases and/or occupancy agreements executed in accordance with this Lease, Tenant shall not be permitted to (A) assign in whole or in part its interest in this Lease (except that Tenant may, upon prior notice to Landlord providing the identity and reasonable particulars about the transferee, assign its interest in this Lease to an Affiliate of Tenant SPE that satisfies the Initial Ownership Requirements and the Customary Transfer Requirements), or (B) enter into a Master Sublease (other than the HTC Master Sublease), in either case without the consent of Landlord, which consent may be withheld in Landlord’s sole and absolute discretion (provided that Tenant’s right to enter into subleases and occupancy agreements, other than a Master Sublease, are governed by Sections 12.07 and 12.08).

(b) “Customary Transfer Requirements” shall mean that: (1) any applicable Vendex requirements are satisfied by the transferee and Tenant does not become a Prohibited Person; (2) no Event of Default shall have occurred that remains uncured; (3) based on written certification to Landlord given by an authorized officer or member on behalf of Tenant, such transfer does not violate applicable federal or state securities laws or applicable financing documents; (4) if such transfer occurs prior to the RTI Substantial Completion Date, no material default exists under the Construction Loan beyond applicable notice and cure periods and the Construction Loan remains in full force and effect; (5) if such transfer is an assignment of this Lease, the transferee expressly assumes in writing all obligations of tenant under this Lease; and (6) Tenant gives notice to Landlord not fewer than thirty (30) days prior to such transfer providing the identity

and reasonable particulars about the transferee (including, if applicable, reasonably sufficient information to confirm that a Person is a Professional Mixed-Use Developer or Professional Mixed-Use Manager, as the case may be), and Tenant shall furnish to Landlord, prior to the finalization of any such transfer, assignment or Master Sublease, copies of the instrument effecting such transfer, assignment or Master Sublease and any other information or materials reasonably requested by Landlord in connection with the satisfaction of the requirements set forth in clauses (1) – (5) of this sentence and with the material aspects of the transaction.

Section 12.05 Transfers of Equity Interests in Tenant Prior to the Lockout Date. At any time prior to the Lockout Date, transfers of direct and indirect interests in the Tenant SPE shall be permitted without Landlord's consent, provided that the Initial Ownership Requirements continue to be satisfied before and after each such transfer, and that the Customary Transfer Requirements are satisfied.

Section 12.06 Transfers of Equity Interests in Tenant, Assignments and Master Sublease Consent From and After the Lockout Date.

(a) From and after the Lockout Date, transfers of direct and indirect interests in the Tenant SPE, an assignment of Tenant's interest in this Lease, or a Master Sublease shall be permitted as follows: (a) if such transfer, assignment or Master Sublease does not result in a change in the Control Person of the Tenant SPE, without Landlord's consent, and (b) if such transfer, assignment or Master Sublease does result in a change in the Control Person of the Tenant SPE, only if the new Control Person (A) will have following such transaction at least a two and one half percent (2.5%) direct or indirect equity interest in the Tenant SPE and (B) is, or retains a third party that is, a Professional Mixed-Use Manager. Notwithstanding the immediately preceding sentence, each such transfer, assignment or Master Sublease must also satisfy the Customary Transfer Requirements. If such transaction is a Designated Sale, Tenant shall, within thirty (30) days after the date of such Designated Sale, provide Landlord with a statement, executed by a responsible officer of Tenant that includes all information necessary for Landlord to calculate Transaction Rent pursuant to Article 3.

(b) From and after the Lockout Date, if the Customary Transfer Requirements and the other express requirements of this Section 12.06 are not met with respect to any proposed transfer of direct or indirect interests in the Tenant SPE, a proposed assignment of all or substantially all of Tenant's interest in this Lease, or a proposed Master Sublease, none of the proposed transfers of direct or indirect interest in the Tenant SPE, the proposed assignment of all or substantially all of Tenant's interest in this Lease, or the proposed Master Sublease shall occur without the prior written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion.

(c) "Professional Mixed-Use Manager" shall mean a reputable and creditworthy Person with not less than ten (10) years prior real estate experience in the New York metropolitan area relating to the leasing, operation and management of a mixed-use facility similar to the Project. Prior to the engagement of any Professional Mixed-Use Manager, Tenant shall deliver (or cause to be delivered) to Landlord written documentation, reasonably satisfactory to Landlord, evidencing the satisfaction of the aforesaid qualifications and requirements for the Professional Mixed-Use Manager.

(d) “Control Person” shall mean a Person that has the direct or indirect power and authority to direct the strategic and day-to-day management and affairs of the Tenant SPE, including the right to make (or consent to) all capital and major decisions to be made by the Tenant SPE, provided that the mere power to consent to major decisions to be made by the Tenant SPE, by itself, shall not constitute any party a “Control Person”. By way of example, but without limiting the foregoing definition, for so long as the Institutional Investor or Qualified Institutional Investor, as the case may be, is not the manager, general partner, managing member or equivalent of the JV SPE, Institutional Investor or Qualified Institutional Investor, as the case may be, shall not be a “Control Person” hereunder, notwithstanding that Institutional Investor or Qualified Institutional Investor, as the case may be, may have the right to consent to actions of the Tenant SPE at the direction of JV SPE pursuant to the major decision provisions of the Initial Joint Venture Agreement.

Section 12.07 Subleases/Occupancy Agreements Not Requiring Landlord’s Consent. Subject to Section 12.14 related to NFP subleases, Tenant, HTC Master Tenant and Master Tenant shall have the right to enter into and amend a sublease or occupancy agreement of less than fifty percent (50%) of the non-office use GLA of the Premises and/or (ii) enter into a sublease or occupancy agreement of all or any portion of the office use GLA, without Landlord’s consent, in each instance, if each of the following requirements shall have been satisfied: (a) this Lease is in full force and effect and no material Event of Default then exists; (b) the term of any sublease or occupancy agreement does not extend beyond the day prior to the Expiration Date; (c) the proposed sublease or occupancy agreement use conforms with the Permitted Use; (d) the Occupant agrees in the sublease or occupancy agreement that the sublease or occupancy agreement is subordinate to this Lease and that the Occupant will attorn to Landlord at Landlord’s request, subject to the terms of any subordination, non-disturbance and attornment agreement and/or other written agreement between Landlord and the Occupant; (e) the Occupant agrees in the sublease or occupancy agreement that it will not pay rent or other sums more than one (1) month in advance; (f) the Occupant agrees to comply with the Occupant Design Guidelines; (g) the sublease or occupancy agreement may not be assigned without the prior written consent of Tenant (or HTC Master Tenant or Master Tenant) except to the extent in connection with any affiliate transactions, as part of a corporate type transaction (e.g., in connection with a merger, consolidation, or a sale of a business), and/or otherwise to the extent a landlord’s consent would not be required as part of customary leasing practice in the City, and (h) Tenant provides Landlord with a copy of the original executed sublease or occupancy agreement within thirty (30) days after execution thereof. Any sublease or occupancy agreement that does not satisfy the requirements of this Section 12.07 shall require Landlord’s prior written approval.

Section 12.08 Subleases/Occupancy Agreements Requiring Landlord’s Consent.

(a) Subject to the provisions of Section 12.14 related to NFP subleases, a sublease or occupancy agreement of fifty percent (50%) or more of the non-office use GLA of the Premises (other than the HTC Master Sublease or a Master Sublease) shall require Landlord’s review and approval, which approval shall not be unreasonably withheld, conditioned or delayed, provided that Tenant shall have furnished Landlord with the name and address of the proposed Occupant and its principals and proof reasonably satisfactory to Landlord evidencing that the proposed Occupant and/or sublease or occupancy agreement meets the requirements set forth in Sections

12.07(a)-(h) and, in addition, such Occupant: (1) shall then have the financial ability to meet the Occupant's obligations under the applicable lease or occupancy agreement; (2) has good credit; (3) does not violate any of the City's requirements under Vendex, (4) if a partnership, corporation or other entity, is validly formed, is qualified to transact business in the State of New York and has duly authorized the signatories to sign all documents on its behalf so as to bind the Occupant; (5) based on written certification to Landlord given by an authorized officer or member on behalf of Tenant, the applicable sublease or occupancy agreement will not violate any applicable federal or State securities laws or any applicable financing documents; and (6) if the transfer occurs prior to the RTI Substantial Completion Date, no material default exists under the Construction Loan beyond applicable notice and cure periods and the Construction Loan remains in full force and effect.

(b) Landlord shall be deemed to have acted reasonably in withholding its consent to any sublease over which Landlord has approval rights pursuant to this Section 12.08 if: (1) all of the applicable conditions of this Section 12.08 have not been reasonably satisfied; (2) the proposed Occupant or any Person which, directly or indirectly, controls, is controlled by, or is under common control with, the proposed Occupant or any person who controls the proposed Occupant, is a Prohibited Party; (3) the form of the proposed sublease or occupancy agreement shall not comply with the applicable provisions of this Article 12 or any other applicable requirements of this Lease; (4) such subletting or occupancy shall be for a term ending later than one day prior to the Expiration Date; or (5) except as provided in any SNDA Agreement provided by Landlord, such sublease or occupancy agreement shall fail to provide that it is subject and subordinate to this Lease and to the matters to which this Lease is or shall be subordinate, and that in the event of termination, re-entry or dispossession by Landlord under this Lease may, at its option, take over all of the right, title and interest of Tenant, as sublessor, under such sublease or occupancy agreement, and such Occupant shall, at Landlord's option, attorn to Landlord pursuant to the then executory provisions of such sublease or occupancy agreement, except that Landlord shall not be liable for any previous act or omission of Tenant, as sublessor, under such sublease or occupancy agreement, be subject to any offset, which theretofore accrued to such Occupant against Tenant, or be bound by any previous modification of such sublease or occupancy agreement or by any previous prepayment of more than one month's rent.

(c) On or prior to the granting by Landlord of its consent to any sublease or occupancy agreement that requires Landlord's consent: (1) Tenant shall deliver to Landlord an executed duplicate original of the sublease or occupancy agreement (which shall prohibit any subleasing or assignment by the Occupant without the prior consent of Landlord); (2) at the reasonable request of Landlord, Tenant and the Occupant shall enter into a consent or three party agreement with respect to such sublease or occupancy agreement in form and substance reasonably satisfactory to Landlord; and (3) Tenant shall reimburse Landlord for all reasonable attorney's fees and disbursements incurred by Landlord in connection with such sublease or occupancy agreement.

Section 12.09 Additional Provisions. Tenant shall diligently collect all rents and other payments required under subleases or occupancy agreements and shall use commercially reasonable efforts to monitor compliance, and to cause all Occupants to comply, with all material obligations under their respective subleases or occupancy agreements. Tenant shall, on an annual basis, or within

thirty (30) days after demand by Landlord, provide a schedule of subleases and occupancy agreement, giving the names of all Occupants, a description of the space that has been sublet or allowed to be occupied, expiration dates, rentals and such other information as Landlord may reasonably request. Tenant shall promptly deliver to Landlord any termination notices delivered to Tenant by Anchor Occupant pursuant to Anchor Occupant's sublease or occupancy agreement if such termination notices are not given by Anchor Occupant directly to Landlord under the SNDA Agreement with Anchor Occupant. Unless otherwise provided in an SNDA Agreement between Landlord and an Occupant, Tenant shall promptly deliver to Landlord any default notices received or given by Tenant pursuant to any sublease or occupancy agreement with any Occupant.

Section 12.10 Non-Disturbance Protection. Landlord shall enter into a subordination, non-disturbance and attornment agreement (i) with Anchor Occupant in a form substantially similar to Exhibit I-1 annexed here and made a part hereof and (ii) with all other Occupants with whom any Mortgagee also enters into a subordination, non-disturbance and attornment agreement in a form substantially similar to Exhibit I-2 annexed here and made a part hereof (a subordination, non-disturbance and attornment agreement pursuant to clause (i) or (ii) of this Section 12.10, an "SNDA Agreement").

Section 12.11 Effect of Subletting or Assignment. If this Lease be assigned, whether or not in violation of the provisions of this Lease, Landlord may, subject to the rights of any Recognized Mortgagee, collect rent from the assignee. If the Premises or any part thereof are licensed, sublet or used or occupied by anybody other than Tenant, whether or not in violation of this Lease, Landlord may, subject to the rights of any Recognized Mortgagee, collect rent from the Occupant. In either event, Landlord may apply the net amount collected to the Rental herein reserved, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of any of the provisions of this Lease, or the acceptance of Occupant as Tenant, or as a release of Tenant from the performance by Tenant of Tenant's obligations under this Lease. Except as provided in this Lease, the consent by Landlord to any assignment, mortgaging, subletting, licensing or use or occupancy by others shall not in any way be considered to relieve Tenant from obtaining the express written consent of Landlord to any other or further assignment, mortgaging or subletting or use or occupancy by Persons except as expressly permitted by this Lease.

Section 12.12 Tenant Liability. Tenant covenants that, notwithstanding any assignment, subletting, occupancy or transfer, whether or not in violation of the provisions of this Lease, and notwithstanding the acceptance of Rental by Landlord from an assignee, Occupant, transferee, or any other party, Tenant shall (except for an assignment of this Lease pursuant to Section 12.06) remain fully liable for the payment of the Rental due hereunder and for all other obligations of this Lease on the part of Tenant to be performed or observed. Any violation of any provision of this Lease by any assignee, Occupant, transferee or other party shall be deemed a violation by Tenant hereunder.

Section 12.13 No Violation. If a transfer (including without limitation a transfer of a direct or indirect interest in Tenant) is made in violation of the provisions of this Article 12, then such transfer shall be deemed a default by Tenant under this Lease entitling Landlord to exercise any rights and remedies under this Lease in connection with such default, and no transferee under a

transfer made in violation of this Article 12 shall be entitled to any of the rights, benefits or remedies under this Lease which would otherwise flow through to a transferee pursuant to a transfer made in compliance with this Article 12.

Section 12.14 NFP Subleases/Occupancy Agreements. Tenant, HTC Master Tenant and Master Tenant shall have the right at least forty-five (45) days prior to entering into a sublease or occupancy agreement with a not-for-profit entity (“NFP”) to seek Landlord’s review and approval of said NFP as designated for not-for-profit Occupants approved by Landlord (an “Approved NFP Occupant”). Landlord shall review and approve or deny such request in writing within thirty (30) days for proposed NFP Occupants that have been established for a significant period of time prior to the submission of such request, and forty-five (45) days for proposed NFP Occupants that have not been established for a significant period of time prior to the submission of such request, upon consideration of factors including without limitation: (i) whether the use under the sublease or occupancy agreement conflicts with or detracts from other uses in the Park in reasonable proximity to the Premises, and whether the use enhances the experience of visitors to the Premises and the other Park facilities in reasonable proximity to the Premises, (ii) the quality of management and reputation of the proposed NFP Occupant, (iii) whether the services provided by the proposed NFP Occupant already exist at the Premises or in close proximity thereto, (iv) whether the proposed NFP Occupant provides a significant contribution to the community, (v) whether the proposed sublease or occupancy agreement rent reflects the abatement of PILOT, and (vi) whether the use to be made of the applicable portion of the Premises covered by the sublease or occupancy agreement with the proposed NFP Occupant is for bona fide purposes related to such entity’s core programs and mission and not for purposes unrelated thereto. Any proposed NFP sublease or occupancy agreement shall provide that Tenant will not pass through PILOT. Any proposed NFP sublease or occupancy agreement shall be subject to all applicable provisions of this Lease including Article 7. Notwithstanding the foregoing, Tenant, HTC Master Tenant or Master Tenant may enter into a sublease or occupancy agreement with a proposed NFP Occupant even if the request for such Occupant to be deemed an Approved NFP Occupant under this Lease is denied by Landlord if the sublease or occupancy agreement and proposed use conform in all respects to the applicable requirements under this Lease; provided, however that the space occupied by such Occupant shall not be eligible for an abatement of PILOT as Approved NFP Occupants are eligible pursuant to this Lease.

Section 12.15 Leasehold Interest Condominium. Tenant shall not (i) subject all or any portion of Tenant’s leasehold interest in and to the Premises created by this Lease and/or any other interest that Tenant may own or hold relating to the Premises to a condominium form of ownership in accordance with the provisions of Article 9-B of the Real Property Law, or any successor thereto, and/or (ii) record against the Land or subject Tenant’s leasehold interest in and to the Premises to any condominium declaration, by-laws and any other documentation relating to such condominium form of ownership, without in each instance obtaining the prior written approval of Landlord, which approval may be granted, withheld or conditioned in the sole and absolute discretion of Landlord.

ARTICLE 13

MORTGAGES; MEZZANINE LOANS

Section 13.01 General.

(a) 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) No Mortgage shall be permitted other than a Recognized Mortgage. No Mezzanine Pledge shall be permitted other than a Recognized Mezzanine Pledge, and no other mezzanine loan shall be permitted if such mezzanine loan is secured by a pledge of any interest in the ownership structure of Tenant from time to time and, upon the foreclosure, transfer-in-lieu thereof or otherwise under such mezzanine loan, any applicable requirements of this Lease relating to the ownership structure of Tenant and/or the assignment and transfer provisions under this Lease are not satisfied.

(c) If, prior to the Lockout Date, (i) any Recognized Mortgagee shall take title to Tenant SPE's interest in the Lease, whether by foreclosure, deed-in-lieu thereof or otherwise, (ii) any Recognized Mezzanine Pledgee shall hold the membership interests in Tenant SPE, whether by foreclosure or transfer-in-lieu thereof or otherwise, or (iii) any Permitted Substitute (as hereinafter defined) shall succeed to Tenant SPE's interest in the Lease, then in any such case, if such Recognized Mortgagee, Recognized Mezzanine Pledgee or Permitted Substitute, as the case may be, is not a Professional Mixed-Use Developer, then such Recognized Mortgagee, Recognized Mezzanine Pledgee or Permitted Substitute, as the case may be, shall engage, within 90 days after taking title or such membership interest, and continue to engage for as long it retains such title or membership interest, a Professional Mixed-Use Developer new to the Project to oversee the completion of the Required Tenant Improvements and/or the leasing, management and operation of the Pier 57 Property through the Lockout Date and shall comply with the notice and other requirements of Section 12.03(d).

(d) Definitions.

(i) "Institutional Lender" means any of the following types of Persons or any Person that is directly or indirectly owned and controlled by any of the following types of Persons, whether domestic or foreign, as long as (1) at the time of the making of the applicable loan or financing, any such Person is not a Prohibited Party, and (2) any such Person is, or shall agree in writing to be, subject to the jurisdiction under the laws, and courts, of the United States of America and of the State and City of New York and shall appoint an individual or other Person to accept service of process on behalf of any such Institutional Lender in the City of New York: (A) a commercial bank, trust company (whether acting individually or in a fiduciary capacity for another entity that constitutes an Institutional Lender), savings and loan association, savings bank or similar institution; (B) an insurance company; (C) an investment bank; (D) an employees' benefit, profit-sharing, pension or retirement trust, fund or system (whether federal, state, municipal, private, foreign or otherwise); (E) a credit union, or endowment fund; (F) a hedge fund, opportunity fund or similar type of fund that is reputable, operated by experienced

management that has not less than ten (10) years prior experience directing similar funds; (G) a Person not referred to in the foregoing provisions of this Section 13.01(b)(ii) that is subject to supervision and regulation by the insurance or banking department of any of the United States, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or by any successor hereafter exercising similar functions; (H) any Person that is entirely owned and controlled by any combination of one or more of the foregoing Persons; or (I) a Syndicate including any of the foregoing Persons, provided that such Person, in the case of each applicable Person identified in Sections 13.01(b)(ii)(A)-(H), has net assets (owned or under management) in excess of Five Hundred Million Dollars (\$500,000,000), as such amount is Adjusted for Inflation at the time of the making of the applicable loan or financing; provided, however, that in the case of a Syndicate, (x) a Syndicate shall be deemed to be an Institutional Lender for all purposes under this Article 13 as long as such Syndicate is comprised of at least one (1) Institutional Lender that shall act as the administrative agent for the Syndicate members and shall participate in the funding of the particular loan in question in an amount approximate to that customarily funded by administrative agents in other syndicated loans with similar principal amounts and similar risk factors to the particular loan in question (such Institutional Lender, the "Lead Institutional Lender") and (y) the members of such Syndicate, other than the Lead Institutional Lender, may include, in addition to any of the types of Persons identified in Section 13.01(b)(ii)(A)-(H), any of the following types of Persons or any Person that is directly or indirectly owned and controlled by any of the following types of Persons, whether domestic or foreign, as long as (aa) any such Person is not a Prohibited Party and (bb) any such Person is, or shall agree in writing to be, subject to the jurisdiction under the laws, and courts, of the United States of America and of the State and City of New York and shall appoint an individual or other Person to accept service of process on behalf of any such Institutional Lender in the City of New York: (I) a financing company, (II) an employees' welfare fund or system, (III) a religious, educational or eleemosynary institution or foundation, (IV) a governmental agency or governmental plan, (V) trust fund or (VI) any Person that is entirely owned and controlled by any combination of one or more of the foregoing Persons.

(ii) "Inter-Creditor Agreement" means any agreement between a Recognized Mortgagee and a Recognized Mezzanine Pledgee containing, among other things, (1) provisions relating to the exercise by a Recognized Mortgagee and/or a Recognized Mezzanine Pledgee of any cure rights in the event of a default by Tenant under this Lease, including without limitation the coordination or priority of such cure rights as between a Recognized Mortgagee and a Recognized Mezzanine Pledgee, and/or (2) provisions relating to the exercise by a Recognized Mortgagee and/or a Recognized Mezzanine Pledgee of any cure rights under either or both of the Recognized Mortgagee and/or the Recognized Mezzanine Loan, as the case may be, in the event of a default by Tenant under the Recognized Mortgage and the instruments related thereto and/or a default by the member(s) of the Tenant SPE under the Recognized Mezzanine Loan and the instruments related thereto; which Inter-creditor Agreement (x) shall not contain any provisions that are inconsistent with the requirements of this Article 13 and any other applicable provisions of this Lease, and (y) shall not be amended or modified in any manner that is inconsistent with the provisions of this Article 13 and/or any other

applicable provisions of this Lease, without in each instance the prior written consent of Landlord, which consent may be granted, conditioned or withheld in the sole and absolute discretion of Landlord.

(iii) “Mezzanine Pledge” means a pledge agreement or other security instrument entered into by the member(s) of Tenant SPE that constitutes a security interest on the membership interests in Tenant SPE.

(iv) “Mortgage” means any mortgage or deed of trust that constitutes a lien on Tenant’s interest in this Lease and the leasehold estate created hereby and “Mortgagee” means the holder of any Mortgage.

(v) “Recognized Mezzanine Loan” means financing permitted pursuant to this Lease and secured by the membership interest(s) in Tenant (and not by a lien on Tenant’s interest in this Lease) pursuant to a Recognized Mezzanine Pledge, provided that, prior to Substantial Completion, the proceeds from the Recognized Mezzanine Loan are used to fund Project Development Costs.

(vi) “Recognized Mezzanine Loan Agreement” means the loan agreement between the member(s) of the Tenant SPE and the Recognized Mezzanine Pledgee in connection with the Recognized Mezzanine Loan, provided that (1) such Recognized Mezzanine Loan Agreement (and any amendments or modifications thereto) shall comply with the provisions of this Article 13 and any other applicable provisions of this Lease and shall not contain any provisions that are inconsistent with the requirements of this Article 13 and any other applicable provisions of this Lease; (2) a written certificate (the “Mezzanine Loan Agreement Certification”) to Landlord by a duly authorized officer or member of Tenant has been delivered to Landlord certifying that such Recognized Mezzanine Loan Agreement (and any amendments or modifications thereto) comply with the provisions of this Article 13 and any other applicable provisions of this Lease and do not contain any provisions that are inconsistent with the requirements of this Article 13 and any other applicable provisions of this Lease; and (3) with respect to which Recognized Mezzanine Loan Agreement, the Recognized Mezzanine Pledgee shall have agreed in writing to provide to Landlord, within ten (10) Business Days after the giving by the Recognized Mezzanine Pledgee of any written notice to the member(s) of the Tenant SPE relating to any default or event of default by such members as pledgor(s) under such Recognized Mezzanine Loan Agreement or any instrument related thereto (a “Recognized Mezzanine Loan Default Notice”), a copy of any Recognized Mezzanine Loan Default Notice for informational purposes only.

(vii) “Recognized Mezzanine Pledge” means a Mezzanine Pledge (and any amendments or modifications thereto) for the benefit of a Recognized Mezzanine Pledgee and entered into in connection with a Recognized Mezzanine Loan, provided that (1) such Recognized Mezzanine Pledge shall comply with the provisions of this Article 13 and any other applicable provisions of this Lease and shall not contain any provisions that are inconsistent with the requirements of this Article 13 and any other applicable provisions of this Lease, and (2) a written certificate (the “Mezzanine Pledge Certification”) to Landlord by a duly authorized officer or member of Tenant has been

delivered to Landlord (x) certifying that such Recognized Mezzanine Pledge (and any amendments or modifications thereto) comply with the provisions of this Article 13 and any other applicable provisions of this Lease and do not contain any provisions that are inconsistent with the requirements of this Article 13 and any other applicable provisions of this Lease, and (y) giving the name and post office address of the Recognized Mezzanine Pledgee.

(viii) “Recognized Mezzanine Pledgee” means any Institutional Lender that provides a Recognized Mezzanine Loan to the member(s) of Tenant SPE secured by a Recognized Mezzanine Pledge.

(ix) “Recognized Mortgage” means a Mortgage (1) that, prior to Substantial Completion, is held by an Institutional Lender and the proceeds from which are used to fund Project Development Costs; (2) which, together with any other loan documents entered into in connection with such Mortgage (together with any amendments or modifications to such Mortgage or other loan documents), shall comply with the provisions of this Article 13 and any other applicable provisions of this Lease and shall not contain any provisions that are inconsistent with the requirements of this Article 13 and any other applicable provisions of this Lease; (3) a photostatic copy of which has been delivered to Landlord, together with a written certification (the “Mortgage Certification”) by Tenant confirming that the photostatic copy is a true copy of the Mortgage and giving the name and post office address of the holder thereof; (4) which shall be presented for recordation promptly after such delivery and certification, in the Office of the City Register, New York County; and (5) with respect to which Recognized Mortgage, the Recognized Mortgagee shall have agreed in writing to provide to Landlord, within ten (10) business days after the giving by the Recognized Mortgagee of any written notice to the Tenant relating to any default or event of default by the Tenant under the Recognized Mortgage and/or any instrument related thereto (a “Recognized Mortgage Default Notice”), a copy of any Recognized Mortgage Default Notice for informational purposes only.

(x) “Recognized Mortgagee” means the holder of a Recognized Mortgage (or, in the case of a Syndicate that qualifies as an Institutional Lender pursuant to this Article 13, the Lead Institutional Lender for itself and as agent for the Syndicate).

Section 13.02 Recognized Mortgagee’s and Recognized Mezzanine Pledgee’s Rights.

With the exception of the rights granted to a Recognized Mortgagee and/or a Recognized Mezzanine Pledgee as provided herein, the execution and delivery of a Mortgage or a Recognized Mortgage, or the provision of a Recognized Mezzanine Loan through the execution and delivery of a Recognized Mezzanine Pledge and Recognized Mezzanine Loan Agreement, shall not give nor shall be deemed to give a mortgagee, a Recognized Mortgagee or a Recognized Mezzanine Pledgee any greater rights against Landlord than those granted to Tenant hereunder.

Section 13.03 Notice and Right to Cure Tenant’s Defaults.

(a) Landlord shall give to each Recognized Mortgagee and Recognized Mezzanine Pledgee, at the address of the Recognized Mortgagee stated in the Mortgage Certification or the Recognized Mezzanine Pledgee stated in the Mezzanine Notice, or in any subsequent notice given by the Recognized Mortgagee or Recognized Mezzanine Pledgee to Landlord, and otherwise in the manner pursuant to Article 31 of this Lease, a copy of each notice given by Landlord under this Lease (including, without limitation, each notice of Default and Event of Default) at the same time as it gives such notice to Tenant, and no such notice shall be deemed effective unless and until a copy thereof shall have been so given to each Recognized Mortgagee and Recognized Mezzanine Pledgee as aforesaid.

(b) Subject to the provisions of Section 13.03(e), each Recognized Mortgagee and Recognized Mezzanine Pledgee shall have a period of:

(i) in the case of a Default in the payment of Rental, fifteen (15) days more than are given to Tenant under the provisions of this Lease to remedy such Default in the payment of Rental;

(ii) in the case of a Default in the completion of the Required Tenant Improvements, a Casualty Restoration or a Condemnation Restoration, as applicable, nine (9) months more than are given to Tenant under the provisions of this Lease to complete the Required Tenant Improvements, a Casualty Restoration or a Condemnation Restoration, as applicable; provided that such Recognized Mortgagee or Recognized Mezzanine Pledgee delivers to Landlord, within fifteen (15) days after the expiration of the time given to Tenant pursuant to the provisions of this Lease to remedy the event or condition described in this clause (ii) and which would otherwise constitute an Event of Default hereunder, Recognized Mortgagee's or Recognized Mezzanine Pledgee's written intention to take the action described in this clause (ii); and

(iii) in the case of any Default not otherwise described in the foregoing clauses (i) or (ii) above (a "Clause (iii) Default"), sixty (60) days more than are given to Tenant under the provisions of this Lease to remedy a Clause (iii) Default, cause a Clause (iii) Default to be remedied, or cause action to remedy a Clause (iii) Default as provided in Section 27.01(c) of this Lease to be commenced; provided that such Recognized Mortgagee or Recognized Mezzanine Pledgee delivers to Landlord, within fifteen (15) days after the expiration of the time given to Tenant pursuant to the provisions of this Lease to remedy the event or condition described in this clause (iii) and which would otherwise constitute an Event of Default hereunder, Recognized Mortgagee's or Recognized Mezzanine Pledgee's written intention to take the action described in this clause (iii).

(c) Landlord shall not object to any temporary entry onto the Premises by or on behalf of a Recognized Mortgagee or Recognized Mezzanine Pledgee to the extent necessary to effect such Recognized Mortgagee's or Recognized Mezzanine Pledgee's cure rights, provided that (i) Landlord shall first have been provided reasonable prior written notice (as provided in Article 31) by Recognized Mortgagee or Recognized Mezzanine Pledgee, as the case may be, of any intention to so enter the Premises and (ii) such entry is in compliance with applicable law. At any time after the delivery of the aforementioned written notice of intention to so enter the

Premises, the Recognized Mortgagee or Recognized Mezzanine Pledgee may notify Landlord, in writing (as provided in Article 31), that it has relinquished possession of the Premises or that it will not institute foreclosure proceedings or, if such proceedings shall have been commenced, that it has discontinued such proceedings, and, in either event the liability of the Recognized Mortgagee for the period prior to delivery of such notice, shall be limited to its interest in the Premises, if any, and the proceeds of any insurance policies covering or relating to the Premises and any awards payable in connection with the condemnation of the Premises or any part thereof, to the extent actually received by such Recognized Mortgagee or Recognized Mezzanine Pledgee and not applied to restoration, and the Recognized Mortgagee or Recognized Mezzanine Pledgee shall have no further liability under such agreement from and after the date on which it delivers such notice to Landlord. Thereupon, Landlord shall have the unrestricted right (without further notice or opportunity to cure on the part of any Person) to terminate this Lease and to take any other action it deems appropriate by reason of any Event of Default prior to the Landlord's delivery to Tenant of notice of the termination of this Lease, and, upon any such termination, the provisions of Section 13.04 shall apply.

(d) Subject to the provisions of Section 13.03(b), Landlord shall accept performance by a Recognized Mortgagee or Recognized Mezzanine Pledgee of any covenant, condition or agreement on Tenant's part to be performed hereunder with the same force and effect as though performed by Tenant. Any performance by a Recognized Mortgagee or Recognized Mezzanine Pledgee of any covenant, condition or agreement on Tenant's part to be performed hereunder shall be in accordance with the applicable provisions of any Inter-Creditor Agreement and Landlord shall only be required to recognize the performance of the party that is entitled to perform pursuant to the terms of the Inter-Creditor Agreement.

(e) Notwithstanding anything to the contrary contained in this Lease, no Event of Default (other than an Event of Default arising from the nonpayment of Rental) shall be deemed to have occurred if, within the period set forth in Section 13.03(b), a Recognized Mortgagee or Recognized Mezzanine Pledgee shall have:

(i) In the case of a Default that is curable without possession of the Premises by the Recognized Mortgagee or Recognized Mezzanine Pledgee, commenced in good faith to cure the Default within the periods provided in Section 13.03(b) and is prosecuting such cure to completion with reasonable diligence and continuity; or

(ii) Without limiting the requirements of Section 13.01(c), in the case of a Default where possession of the Premises is required in order to cure the Default, or is a Default that is otherwise not susceptible of being cured by a Recognized Mortgagee or Recognized Mezzanine Pledgee, if a Recognized Mortgagee or Recognized Mezzanine Pledgee (or its designee, nominee, assignee or transferee, each of whom, for all purposes of this Article 13, must be a Person that is not a Prohibited Party and that would otherwise be a permitted transferee under this Lease (other than the provisions of Section 12.03(a) which shall not apply to such designee, nominee or transferee during the Lockout Period) (any such designee, nominee, assignee or transferee, a "Permitted Substitute"; which Permitted Substitute must in all instances be, or must agree in writing to be, subject to jurisdiction under the laws, and courts of the United States of America and of the State and City of New York and, if applicable, shall appoint an individual or

other Person to accept service of process on behalf of such Permitted Substitute in the City of New York)) shall proceed reasonably and expeditiously to institute foreclosure proceedings, and shall continuously prosecute the foreclosure proceedings with reasonable diligence and continuity to obtain possession of the Premises and, upon obtaining possession of the Premises, shall promptly commence to cure the Default (other than a Default which is not susceptible of being cured by a Recognized Mortgagee or Recognized Mezzanine Pledgee) and prosecute such cure to completion with reasonable diligence and continuity.

(f) As long as any Recognized Mortgage or Mezzanine Loan is in existence, unless all holders of Recognized Mortgages and Recognized Mezzanine Pledgees shall otherwise consent in writing, the fee title to the Premises and the leasehold estate of Tenant created by this Lease shall not merge, but shall remain separate and distinct, notwithstanding the acquisition of both fee title to the Premises and the leasehold estate by Landlord, or by Tenant, or by any Recognized Mortgagee or by any other party.

(g) Notwithstanding anything in this Section 13.03 to the contrary, a Recognized Mortgagee or Recognized Mezzanine Pledgee shall not be required to cure any non-monetary Defaults of Tenant that are not capable of being cured by such Recognized Mortgagee or Recognized Mezzanine Pledgee, and if any Recognized Mortgagee, Recognized Mezzanine Pledgee or Permitted Substitute shall acquire the Premises pursuant to a foreclosure or transfer in lieu of foreclosure, then any such non-monetary Default by Tenant that is not capable of being cured shall no longer be deemed a Default.

(h) With respect to any non-monetary Default, as long as a Recognized Mortgagee or Recognized Mezzanine Pledgee shall be diligently and continuously exercising its cure rights under this Section 13.03 with respect thereto within the applicable cure periods set forth in this Section 13.03 and as long as, if possession of the Premises is required to cure the same, a Recognized Mortgagee or Recognized Mezzanine Pledgee shall be taking the actions required by Section 13.03(d), Landlord shall not (i) re-enter the Premises, (ii) serve a termination notice, or (iii) bring a proceeding on account of such Default to (1) dispossess Tenant and/or other occupants of the Premises, (2) re-enter the Premises or (3) terminate this Lease or the leasehold estate created hereby (such rights described in clauses (i), (ii) and (iii) being herein "Landlord's Termination Rights"). In addition, with respect to any monetary Event of Default, Landlord shall not exercise any of Landlord's Termination Rights as long as a Recognized Mortgagee or Recognized Mezzanine Pledgee shall be diligently exercising its cure rights under this Section 13.03 within the time period set forth in this Section 13.03. Upon any abandonment of a Recognized Mortgagee or Recognized Mezzanine Pledgee so exercising such rights and undertaking such activities, Landlord may serve a termination notice and exercise any of Landlord's Termination Rights hereunder upon ten (10) days' prior written notice to the Recognized Mortgagee or Recognized Mezzanine Pledgee of its intention to so terminate and the Recognized Mortgagee's or Recognized Mezzanine Pledgee's failure to demonstrate its reasonable diligence to exercise such rights and undertake such activities in accordance with this Section 13.03. Nothing in the protections afforded to Recognized Mortgagees or Recognized Mezzanine Pledgee in this Lease shall, however, be construed to either (A) extend this Lease term beyond the stated expiration date provided for in this Lease that would have applied if no Default had occurred or (B) require such Recognized Mortgagee or Recognized Mezzanine

Pledgee to cure any non-monetary Default by Tenant that is not capable of being cured by Recognized Mortgagee or Recognized Mezzanine Pledgee, including, without limitation, as a condition to preserving this Lease or obtaining a new lease as provided in Section 13.04.

(i) The exercise of any rights or remedies of a Recognized Mortgagee under a Recognized Mortgage or Recognized Mezzanine Pledgee under a Recognized Mezzanine Loan Agreement or Recognized Mezzanine Pledge, including the consummation of any foreclosure or transfer in lieu of foreclosure and assignment of its rights to a Permitted Substitute, shall not constitute a Default or Event of Default under this Lease.

(j) Except as provided in Section 13.04, no Recognized Mortgagee, Recognized Mezzanine Pledgee or Permitted Substitute shall become liable under the provisions of this Lease unless and until such time as it becomes, and then only for as long as it remains, the owner of this leasehold estate created hereby and no performance by or on behalf of such Recognized Mortgagee or Recognized Mezzanine Pledgee of Tenant's obligations thereunder shall cause such Recognized Mortgagee or Recognized Mezzanine Pledgee to be deemed to be a "mortgagee in possession" unless and until such Recognized Mortgagee or Recognized Mezzanine Pledgee shall take control or possession of the Premises.

Section 13.04 Execution of New Lease.

(a) If this Lease is terminated by reason of an Event of Default in accordance with Section 13.03(b) or (h) or if this Lease is rejected by Tenant under a bankruptcy proceeding, Landlord shall give prompt notice thereof to each Recognized Mortgagee.

(b) If, within thirty (30) days of the receipt (as shown on proof of service or return receipt) of the notice referred to in Section 13.04(a), a Recognized Mortgagee shall request a new lease, then subject to the provisions of Section 13.04(c) and Section 13.05, within thirty (30) days after Landlord shall have received such request, Landlord shall execute and deliver a new lease of the Premises for the remainder of the Term to the Recognized Mortgagee, or any Permitted Substitute. The new lease shall contain all of the covenants, conditions, limitations and agreements contained in this Lease; provided, however, that Landlord shall not be deemed to have represented or covenanted that such new lease shall be superior to claims of Tenant, its other creditors or a judicially appointed receiver or trustee for Tenant.

(c) The provisions of Section 13.04(b) notwithstanding, Landlord shall not be obligated to enter into a new lease with a Recognized Mortgagee (or its Permitted Substitute) unless the Recognized Mortgagee (or its Permitted Substitute) (i) shall pay to Landlord, concurrently with the execution and delivery of the new lease, all Rental due under this Lease up to and including the date of the commencement of the term of the new lease (excluding penalties and interest thereon) and all expenses, including, without limitation, reasonable attorneys' fees and disbursements and court costs, incurred in connection with the Default or Event of Default, the termination of this Lease and the preparation of such new lease, if and to the extent such expenses would be collectible under this Lease from Tenant, (ii) except in the case of an Event of Default described in Sections 28.01(d) through (i), shall promptly after receipt from Landlord of a statement of the Default required to be cured, cure all Defaults then existing under this Lease and susceptible of being cured by the Recognized Mortgagee (as though the Lease had not been

terminated), and (iii) shall deliver to Landlord a statement, in writing, acknowledging that Landlord, by entering into such new lease with such Recognized Mortgagee or such Permitted Substitute, shall not have or be deemed to have waived any Defaults or Events of Default then existing under this Lease (other than the Defaults or Events of Default mentioned in Sections 28.01(d) through (i), which Landlord shall be deemed to have waived) notwithstanding that any such Defaults or Event of Default existed prior to the execution of such new lease and that the breached obligations which gave rise to the Defaults or Event of Default are also obligations under such new lease.

(d) The execution of a new lease shall not constitute a waiver of any Default existing immediately before termination of this Lease and, except for a Default which is not susceptible of being cured by the Recognized Mortgagee and except those Defaults described in Sections 28.01(d) through (i), the tenant under the new lease shall cure, within the applicable periods, all Defaults specified in the Landlord's statement of Defaults referred to in Section 13.04(c) existing under this Lease immediately before its termination that are susceptible of being cured within the applicable periods by the Recognized Mortgagee.

(e) Concurrently with the execution and delivery of a new lease pursuant to the provisions of Section 13.04(b), Landlord shall assign to the tenant named therein all of its right, title in and interest to moneys (including insurance proceeds and condemnation awards), if any, then held by, or payable to, Landlord or Depository that Tenant would have been entitled to receive but for the termination of this Lease. Any sums then held by, or payable to, Depository, shall be deemed to be held by, or payable to, Depository as Depository under the new lease.

(f) Upon the execution and delivery of a new lease pursuant to the provisions of Section 13.04(b), all subleases that have been assigned to Landlord shall be assigned and transferred by Landlord, without recourse, together with any security or other deposits received by Landlord and not applied under such subleases to the tenant named in the new lease. Between the date of termination of this Lease and the date of the execution and delivery of the new lease, if a Recognized Mortgagee has requested a new lease as provided in Section 13.04(b), Landlord shall not modify or amend, or cancel, or accept any cancellation, termination or surrender of, any sublease (unless such termination is effected as a matter of law upon the termination of this Lease or terminated by the terms of the sublease), or enter into any new sublease without the consent of the Recognized Mortgagee or Permitted Substitute.

(g) As between Landlord and the tenant under the new lease, any such new lease and the leasehold estate thereby created, subject to the same conditions contained in this Lease, shall continue to maintain the same priority as this Lease with regard to any Mortgage or fee mortgage or any other lien, charge or encumbrance whether or not the same shall then be in existence.

Section 13.05 Recognition by Landlord of Recognized Mortgagee Most Senior in Lien. If more than one Recognized Mortgagee has exercised any of the rights afforded by Section 13.03 or Section 13.04, only that Recognized Mortgagee, to the exclusion of all other Recognized Mortgagees, whose Recognized Mortgage is most senior in lien shall be recognized by Landlord as having exercised such right, for so long as such Recognized Mortgagee shall be diligently exercising its rights under this Lease with respect thereto, and thereafter only the Recognized Mortgagee whose Recognized Mortgage is next most senior in lien shall be recognized by

Landlord, unless such Recognized Mortgagee has designated a Recognized Mortgagee whose Mortgage is junior in lien to exercise such right. If the parties shall not agree on which Recognized Mortgage is prior in lien, such dispute shall be determined by a reputable national title insurance company in New York, New York chosen by Landlord, and such determination shall bind the parties.

Section 13.06 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 Building, or the proceeds of an award paid in connection with a taking referred to in this Lease, be applied to restore any portion of the Building, no Mortgagee shall have the right to apply the proceeds of insurance or awards toward the payment of the sum secured by its Mortgage until the Restoration requirements of this Lease have been satisfied.

Section 13.07 Appearance at Condemnation Proceedings. A Recognized Mortgagee and Recognized Mezzanine Pledgee 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 13.08 Additional Mortgageability Provisions. Notwithstanding anything to the contrary contained herein, Landlord and Tenant agree that the following shall apply to all Recognized Mortgagees:

(i) From and after the date upon which Landlord receives the Mortgagee Certification with respect to a Recognized Mortgagee, Landlord shall not, without the prior written consent of such Recognized Mortgagee, (a) amend or modify this Lease in any material respect or (b) cancel or terminate this Lease or accept a surrender of Tenant's leasehold interest herein other than as provided herein;

(ii) So long as a Recognized Mortgagee's right to cure a Default or Event of Default pursuant to Section 13.03 has not expired, Landlord shall do nothing to terminate this Lease or accelerate any Rental, or otherwise interfere with Tenant's possession and quiet enjoyment of the leasehold estate demised to Tenant pursuant to this Lease. Subject to the rights of Tenant hereunder, a Recognized Mortgagee may enter the Premises to seek to cure a Default or Event of Default and such entry shall not alone be deemed to give such Recognized Mortgagee possession of the Premises;

If Landlord initiates any appraisal, arbitration, litigation or other dispute resolution proceeding hereunder, Landlord shall simultaneously notify each Recognized Mortgagee of which Landlord shall have received Mortgagee Certification notice, and any such Recognized Mortgagee shall have the right to participate in any such proceeding on Tenant's behalf, subsequent to the occurrence and during the continuance of a default or event of default under the applicable Recognized Mortgage, pursuant to its rights under the applicable Recognized Mortgage; and

(iii) A Recognized Mortgagee may exercise its rights pursuant to this Article 13 through an Affiliate that is a Permitted Substitute, acting in its own name or in such Recognized Mortgagee's name.

Section 13.09 Landlord's Right to Mortgage its Interest. Landlord shall have the right to mortgage its superior leasehold or other interest in the Premises, as long as such mortgage is subject to this Lease and any new lease executed pursuant to the provisions of Section 13.04 and provided that such mortgage does not adversely affect Tenant's leasehold or leasehold mortgage interest in and to the Premises or affect any of Tenant's rights or increase any of Tenant's obligations under this Lease, except to a de minimis extent. Anything in this Lease to the contrary notwithstanding, Landlord covenants and agrees that neither Tenant's interest in this Lease, nor Tenant's interest in any sublease nor any Recognized Mortgagee's interest in this Lease or a new lease obtained pursuant to Section 13.04, shall be subordinate to any mortgage ("Landlord's Mortgage") on Landlord's superior leasehold or other interest in the Premises. Landlord agrees to include in Landlord's Mortgage a subordination clause reasonably satisfactory to Tenant and to the Recognized Mortgagee most senior in lien in order to accomplish such subordination. Landlord's Mortgage shall also include a waiver and release by the mortgagee under Landlord's Mortgage of any claims to any insurance proceeds or condemnation awards properly applicable to a Condemnation Restoration or a Casualty Restoration. If the mortgagee under Landlord's Mortgage refuses to include such provisions, Landlord shall not enter into the Landlord's Mortgage and to do so shall constitute a material default by Landlord under the terms of this Lease. For the purposes of this Section 13.09, it is understood and agreed that the lien of any Landlord's Mortgage shall be subordinate not only to the lien of this Lease, and to Tenant's interest in this Lease and Tenant's leasehold estate, and to the lien of any Recognized Mortgagee, but also to the lien of any new lease granted pursuant to Section 13.04 and a Recognized Mortgagee of such new lease, notwithstanding that, as a technical legal matter, the leasehold estate created pursuant to this Lease may have terminated prior to the execution, delivery and recordation of a memorandum of such new lease. The mortgagee under any Landlord's Mortgage shall, upon foreclosure under such mortgage, be entitled to succeed only to the interest of Landlord. Landlord represents that there is currently no mortgage encumbering Landlord's interest in the Premises.

ARTICLE 14

REPAIRS, MAINTENANCE, ETC.

Section 14.01 Maintenance and Repair of the Premises, General. Tenant shall, at its sole cost and expense, maintain, repair and take good care of the Premises and all Improvements, including, without limitation, (i) the Pier 57 Building, the Caissons, the Mandatory Perimeter Public Access Walkway Platforms, pilings, pile caps, pier structural supports, all other pier and marine elements, both structural and nonstructural such as pier decks, underdecks, underdeck utilities, bollards and cleats, fender systems, dolphins, pier fascia, and railings, (ii) all surfaces, roofs, gantries, parking areas, areas open to the public, foundations and appurtenances thereto, any alleys, sidewalks, esplanade areas, walkways, vehicular circulation areas, vaults, gutters and curbs, and (iii) any water, electric, sewer and gas connections, pipes and mains within or appurtenant to the Premises. The areas identified as waterfront public access areas in the Approved ULURP Applications shall be maintained by Tenant pursuant to and in accordance with the requirements of Exhibit R. Tenant shall keep and maintain the Premises 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 foregoing in good and safe order and condition, however the necessity or

desirability therefor may occur. 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 (unless the cause of such repair or maintenance arises out of a default by Landlord under the terms of this Lease or the gross negligence or intentional misconduct of Landlord, its agents, employees or contractors) and shall be made in compliance with this Lease and applicable Requirements consistent with good engineering practices and industry standards, all materials therefor shall be at least equal in quality and class to the original materials, and the original design loads and other performance specifications shall be maintained. As used in this Article, the terms “repair” and “repairs” shall include all necessary replacements, removals, alterations, and additions. Tenant acknowledges that neither Landlord nor its agents or employees has made any representation regarding the physical condition of the Premises, its state or repair or disrepair. Tenant agrees, as a material inducement to Landlord’s execution of this Lease, to perform the repair and maintenance obligations set forth herein.

Section 14.02 Selection of the Engineer and the Historic Building Procedure Consultant.

(a) Within ninety (90) days prior to the performance of the first Comprehensive Inspection required pursuant to Section 14.03, Tenant shall engage Robert Silman & Associates, McLaren Engineering or any another New York State licensed marine professional engineer, and, if different than the marine professional engineer, a New York State licensed structural professional engineer that has been approved by Landlord, such approval not to be unreasonably withheld or delayed (the marine and structural engineer, whether singular or plural, the “Engineer”). The Engineer may be replaced by Tenant with the approval of Landlord, such approval not to be unreasonably withheld, conditioned or delayed. The Engineer shall be engaged by Tenant to undertake and prepare: (a) Comprehensive Inspections, (b) repair recommendations, (c) plans and specifications for any such identified recommended repairs as may be necessary and/or practicable, and (d) post repair inspections and certifications that such repairs were performed and completed in accordance with the repair recommendations and the plans and specifications, all as set forth below.

(b) Tenant acknowledges that the Pier 57 Building is on the National Register of Historic Places, that one of the objectives of the Project is the preservation of the historic status and elements of the Pier 57 Building, and that an “Historic Preservation Certification Application Part 2 – Description of Rehabilitation” (identified as NPS Project Number 29039) has been filed with and approved by the National Park Service Tax Incentive Program. Tenant further acknowledges and agrees that the rehabilitation work to be performed as the Required Tenant Improvements and, without limitation, Major Construction Work, Structural Alterations, Non-Structural Alterations, and repair and maintenance, whether undertaken by Tenant or any Occupant, in accordance with the Occupant Design Guidelines or not, costing more than the Threshold or less, or requiring Landlord approval or not, shall each be carried out in such a manner as to meet the Secretary of the Interior’s Standards for Rehabilitation (the “NPS Standards”).

(c) In furtherance of the historic preservation objective of the Project set forth in Section 14.02(b), Tenant shall, throughout the Term and at Tenant’s sole cost and expense, retain an independent consultant approved by Landlord, such approval not to be unreasonably withheld,

conditioned or delayed, which consultant is a qualified historic preservation architect (the “Historic Building Procedure Consultant”) to: (1) review Preliminary Plans and Specifications prior to submittal to Landlord, and any other preliminary plans and specifications prepared by or on behalf of Tenant or any other Occupant prior to sending such plans and specifications out for bidding for construction; (2) recommend to Tenant means and methods of construction that the Historic Building Procedure Consultant determines are consistent with the NPS Standards; (3) review any modifications to the Occupant Design Guidelines with respect to observing the NPS Standards; (4) monitor construction on a regular basis; and (5) issue periodic reports to Tenant and Landlord as set forth herein. As of the date hereof, Cas Stachelberg, of the firm Higgins Quasebarth & Partners is the approved Historic Building Procedure Consultant.

Section 14.03 Preparation of the Comprehensive Inspection Report by Engineer and Periodic Reports by Historic Building Procedure Consultant; Cure By Tenant of Work Not Compliant with the NPS Standards.

(a) Within five (5) years after the Commencement Date and every five (5) years thereafter during the remaining term of this Lease (or more frequently as the Engineer may determine as set forth below), Tenant shall cause the Engineer to prepare and submit a comprehensive marine and structural inspection report of the marine structures included in the Premises, including but not limited to the Caissons, platforms, pilings, pile caps, pier structural supports, all other pier and marine elements, both structural and nonstructural such as pier decks, underdecks, underdeck utilities, bollards and cleats, fender systems, dolphins, pier fascia, and railings (such report, the “Comprehensive Inspection”). The purpose of the Comprehensive Inspection shall be to inform and guide the nature, extent and prioritization of all repair work. The Comprehensive Inspection report shall, at minimum, contain: (a) a description of the complete visual/tactile inspection of each underwater and above water element, including a detailed examination of key structural areas, conducted by the Engineer, (b) a description of the Engineer’s observation of conditions resulting from such inspection, (c) recommended actions, including the need for repairs and, if necessary, any additional engineering inspections or repair design investigations and the timing for the completion of any repairs, and (d) the recommended time interval for the next Comprehensive Inspection if less than five (5) years from the prior Comprehensive Inspection. In preparing the Comprehensive Inspection report the Engineer shall apply the criteria to which Tenant is required to adhere pursuant to Section 14.01 of this Lease, procedures and standards consistent with professionally recognized marine and structural engineering criteria and standards, and compliance with the Requirements, including but not limited to the New York City Building Code. The scope, activities and report format of each Comprehensive Inspection with respect to the Premises shall be generally those set forth for Routine Inspections in the Inspection Guidelines Manual prepared by Han-Padron Associates for New York City Economic Development Corporation dated October 1999, and any subsequent amendment, revision or replacement of such guidance manual.

(b) Together with Tenant’s submission to Landlord of (i) Preliminary Plans and Specifications and (ii) modifications to the Occupant Design Guidelines, Tenant shall cause to be prepared and submitted to Landlord and Tenant a written report from the Historic Building Procedure Consultant stating that each such submission has been reviewed and found to be compliant with the NPS Standards. Should such Preliminary Plans and Specifications or modifications to the Occupant Design Guidelines be found to be non-compliant, Tenant shall

withdraw such submission and cause a compliant submission to be provided to Landlord within sixty (60) days after the date of the Historic Building Procedure Consultant's report of non-compliance.

(c) Not less frequently than (i) quarterly during the Construction Period during which Tenant is undertaking the Required Tenant Improvements, (ii) within thirty (30) days after the completion of any Structural or Non-Structural Alteration and (iii) within ninety (90) days after the end of each Base Rent Year, Tenant shall cause to be prepared and submitted to Landlord and Tenant a written report from the Historic Building Procedure Consultant stating that he/she has inspected the Premises and or more times during the prior Base Rent Letter, and that to the best of his/her knowledge, the construction work performed at the Premises during such Base Rent Year, if any, was found to be compliant with the NPS Standards.

(d) If, and to the extent that, the Historic Building Procedure Consultant reports that inspected work performed at the Premises during a prior period is not compliant with the NPS Standards, Tenant shall, within sixty (60) days after the date of the Historic Building Procedure Consultant's report, (i) commence and diligently prosecute to completion a restoration or correction to the NPS Standards if Tenant's work caused such violation, or (ii) if an Occupant's work caused such violation, cause to be commenced and diligently prosecuted to completion a restoration or correction to the NPS Standards by such Occupant. Following the completion of such restoration or correction, whether by Tenant or any Occupant, Tenant shall cause to be submitted to Landlord and Tenant a follow-up written report by the Historic Building Procedure Consultant stating whether the reported violation has been corrected and that the construction work is compliant with the NPS Standards.

Section 14.04 Landlord's Review of the Engineer's Comprehensive Inspection Report. Tenant shall provide to Landlord a copy of each Comprehensive Inspection report promptly after Tenant's receipt thereof from the Engineer for Landlord's review and comment. Landlord shall issue such comments, if any, to Tenant within thirty (30) days of receipt of the Comprehensive Inspection report. Tenant shall forward Landlord's comments, if any, to the Engineer within five (5) days of receipt, and cause Engineer to consider such comments, and (i) should the Engineer concur, incorporate such comments as to which Engineer agrees into the Comprehensive Inspection report, or (ii) should the Engineer disagree, respond in writing to Landlord regarding each comment to which Engineer does not agree with reasons for not incorporating such comments. Notwithstanding Landlord's submission of comments or anything contained therein, Landlord assumes no responsibility for the Comprehensive Inspection report and the conclusions, assessments, and recommended course of action therein and Tenant shall remain obligated for compliance with the repair and maintenance obligations under this Lease and the Requirements, and hereby forever releases Landlord of any liability, and indemnifies and holds harmless Landlord from any and all third party claims, in connection thereto except to the extent caused by a default by Landlord under the terms of this Lease or the gross negligence or willful misconduct of Landlord, its agents, employees or contractors.

Section 14.05 Engineer's Recommended Repairs.

(a) Concurrent with the submission of each Comprehensive Inspection Report, Tenant shall cause the Engineer to submit to Tenant a plan from time to time specifying

recommended repairs, if any. Prior to submitting such plan, Engineer shall conduct such additional engineering inspections or repair design inspections that Tenant, upon advice of the Engineer, determines, in its reasonable discretion, to be necessary in order to properly specify recommended repairs. Tenant shall provide Landlord with a copy of each such repair recommendation plan within thirty (30) days after Tenant's receipt thereof together with a statement, certified by Tenant, accepting, modifying or disagreeing with each of the Engineer's repair recommendation for Landlord's review and comment.

(b) The recommended repair plan shall set forth a proposed scope of work for repairs determined to be necessary by the Engineer so as to first address identified areas of more significant or extensive deterioration, or where multiple piles and/or pile caps and/or other below pier deck or above pier deck structural elements are affected. The repair recommendation may be phased over multiple years provided that the recommended work is prioritized in accordance with criteria which place emphasis on, and ensure, the safety and preservation of the pier and other marine structures. If Landlord determines in its reasonable discretion that all or a portion of the Engineer's repair recommendation plan that Tenant has modified or disagreed with pursuant to Tenant's certified statement pursuant to Section 14.05(a) is necessary, then Landlord shall set forth the reasons therefore and Tenant shall be provided the opportunity to modify the scope of work for repairs so as to address the reason for such disapproval and resubmit same for review and approval by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed.

(c) If Landlord determines in its reasonable discretion that all or a portion of the Engineer's repair recommendation plan is unacceptable to Landlord, then Landlord shall set forth the reasons therefor and Tenant shall be provided the opportunity to modify the scope of work for repairs so as to address the reason for such disapproval and resubmit same for review and approval by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. The obligations of the parties and limitation on liability with respect to Landlord's comments, if any, shall be the same as those set forth in Section 14.04.

Section 14.06 Repair Work.

(a) Tenant, promptly and with diligence, shall commence and continuously and diligently, subject to the Requirements and all related permit and approval conditions, and the provisions of this Lease, undertake to perform the work set forth in the Engineer's repair recommendation plan, as such plan may be modified pursuant to Section 14.05(b) and (c), or work of similar extent and scope which is not part of the Engineer's recommended repair plan but is determined by Tenant to be necessary (together, the "Repair Work"). Tenant shall provide to Landlord, as applicable:

(i) For Repair Work with a cost in excess of Twenty Thousand Dollars (\$20,000), copies of all approvals and permits relating to the Repair Work;

(ii) Copies of the scope(s) of work issued to third party contractors, or used by Tenant's own work force, describing the Repair Work, together with all amendments, significant change orders or modifications to such scope(s) of work;

(iii) Advance notice of not less than fifteen (15) days of the commencement date of the Repair Work;

(iv) Subject to Section 14.06(b), notification of the date of completion of the Repair Work;

(v) For Repair Work with a cost in excess of Twenty Thousand Dollars (\$20,000), plans and specifications, if any, for Repair Work;

(vi) Certification by the Engineer and the Historic Building Procedure Consultant that (aa) the Repair Work was performed in a good and workmanlike manner in compliance with the repair recommendations and in accordance with the plans and specifications if any, and is in good condition, fully operational, without defects and (bb) the Repair Work is compliant with the NPS Standards;

(vii) Certification by Tenant that, to the best of its knowledge, the Repair Work was performed in accordance with the Requirements;

(viii) Copies of any and all guarantees and warranties on labor, materials and equipment, if any, in accordance with the plans and specifications, if any, and as are generally available within the relevant industry for similar work;

(ix) Such other documentation that Landlord may reasonably request confirming that the Repair Work was undertaken and paid for accordingly; and

(x) Compliance with the applicable provisions of Articles 15 and 16 with respect to Alterations.

(b) Should a condition arise that requires Tenant to undertake Repair Work on an emergency basis for which the advance notification requirement set forth in Section 14.06(a)(iii) above is not possible to satisfy, then Tenant shall provide notice to Landlord as soon as practicable after Tenant has knowledge of such emergency condition stating (x) the nature of the emergency condition and the reason as to why advance notice was not possible, and (y) a scope of work for such emergency Repair Work. Upon completion of such emergency Repair Work Tenant shall provide notice to Landlord of the scope of completed work together with a certification by the Engineer with respect to such work prepared in accordance with Section 14.06(a)(vi).

Section 14.07 Removal of Equipment. Tenant shall not, without the prior consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed, remove or dispose of any Equipment (except for Trade Fixtures), unless such Equipment (i) is promptly replaced by Equipment of at least equal utility and quality (which replacement shall be at Tenant's sole cost and expense), or (ii) is removed for repairs, cleaning or other servicing (which shall be at Tenant's sole cost), provided Tenant reinstalls such Equipment on the Premises with reasonable diligence. Notwithstanding the foregoing, Tenant shall not be required to replace any such Equipment that has become obsolete, or that performed a function that has become obsolete, unnecessary or undesirable in connection with the operations at the Premises. However, Tenant

shall obtain the consent of Landlord prior to removal of any obsolete Equipment from the Premises which consent shall not be unreasonably withheld, conditioned or delayed.

Section 14.08 Tenant to Maintain Premises Free of Dirt, Snow, Etc. Tenant shall keep clean and free from dirt, snow, ice, rubbish, and obstructions the sidewalks and grounds, driveways, circulation or service roads and any parking facilities, common areas, vaults, chutes, sidewalk hoists, railings, gutters, alleys, curbs, if any, or any other space located on the Premises, and any spaces located immediately adjacent to the Premises for which Tenant would be responsible pursuant to applicable Requirements if it were the fee owner of the Premises (it being understood that prior to Substantial Completion of the Required Tenant Improvements, Tenant shall only be required to perform such cleaning and maintenance as necessary to maintain the Premises in a safe, legal and sightly condition). Tenant expressly agrees that Landlord shall have no such cleaning and snow removal responsibility.

Section 14.09 No Obligation of Landlord to Supply or Repair Utilities. Except as otherwise specified herein, Landlord shall not be required to supply any facilities, services or utilities whatsoever to the Premises and shall not have any duty or obligation to make any alteration, change, improvement, replacement, Restoration or repair any such services or utilities, and, subject to the terms hereof, Tenant assumes the full and sole responsibility for the condition, operation, alteration, change, improvement, replacement, Restoration, repair, maintenance and management of the said services and utilities; provided, however, that, to the extent necessary and at Tenant's sole cost and expense, Landlord shall reasonably cooperate with Tenant with respect to the above described services, utilities and repairs to be obtained or performed by Tenant.

Section 14.10 Window Cleaning. Tenant shall neither clean nor require, permit, suffer or allow any window in the Improvements to be cleaned from the outside in violation of Section 202 of the New York State Labor Law or of the rules of the New York State Industrial Board or any other Governmental Authority.

Section 14.11 Central Station Monitoring. Tenant shall provide for industry-standard monitoring of the life safety systems in the Premises, and shall contract with the New York City Fire Department approved central station monitoring company.

Section 14.12 Maintenance Contracts. Tenant shall provide to Landlord a copy of all infrastructure and life safety maintenance contracts and the appropriate insurance certificates for each such contract, which contracts are included on a list to be agreed between Landlord and Tenant from time to time.

Section 14.13 Security. Tenant shall provide for security on the Premises comparable to and consistent with security provided for other properties having characteristics and features similar to the Premises and uses and activities similar to those in the Premises and that takes into account the location of the Premises and other factors relevant to maintaining adequate security on the Premises.

Section 14.14 Traffic Monitoring. Tenant shall provide for all traffic monitoring and traffic control, including implementation of the traffic improvement measures, as more fully set forth in

Section 7.07, and shall provide for supervision services, in connection with Tenant's use and operations at the Premises. Promptly after Tenant or any Occupants commence operations in the Premises, Tenant shall prepare and institute a plan (the "Traffic Monitoring Plan") to monitor traffic on Route 9A from 14th Street to 17th Street, as well as along the frontage road, other traffic circulation areas and the greenway adjacent to the Premises, which Traffic Monitoring Plan (along with the memorandum described below) shall be updated periodically, in accordance with a schedule reasonably approved by Landlord and Tenant, based upon any change in traffic conditions in the aforesaid areas and/or use and operations at the Premises that affect such traffic conditions. In connection with the Traffic Monitoring Plan, Tenant and Landlord shall coordinate with the New York City Department of Transportation (or any successor thereto) ("DOT") to determine appropriate monitoring times and to establish the number and sizes of events when such traffic is to be monitored pursuant to the Traffic Monitoring Plan. Promptly after the completion of the Traffic Monitoring Plan, Tenant shall also prepare a technical memorandum detailing the findings of the Traffic Monitoring Plan and submit this memorandum to Landlord and DOT. In the event that DOT determines, at any time, that any changes or enforcement measures are necessary to manage traffic conditions by reason of the findings in the Traffic Monitoring Plan and the associated memorandum, Tenant shall be responsible for any costs of implementing such changes and/or enforcement measures.

Section 14.15 Access of Landlord to Premises to Perform Obligations. Landlord, upon reasonable prior written notice to Tenant during regular business hours on business days, except in the event of an emergency, and provided Landlord shall not unreasonably interfere with Tenant's use of or access to the Premises and shall not unreasonably interfere with the rights of Occupants under the subleases or occupancy agreements, shall have access to, over and through the Premises for the purpose of performing inspections of the Premises, and to exercise its remedy of self-help in accordance with this Lease (Landlord's costs for which shall be reimbursed by Tenant to Landlord in accordance with Section 28.08) to the extent Tenant fails to reasonably perform its Repair Work and maintenance obligations under this Article 14 beyond applicable notice and cure periods. During such periods of access, Tenant may accompany Landlord. In entering the Premises, Landlord and its designees shall not unreasonably interfere with operations on the Premises. Landlord shall repair or cause to be repaired any damage to the Premises to the extent caused by Landlord during its entry upon the Premises under this paragraph or any other provision of this Lease permitting Landlord to enter the Premises.

Section 14.16 Flood Mitigation. At all times during the Term, Tenant shall be obligated to design, procure and maintain a flood mitigation system (including without limitation testing the efficacy of such system on a periodic basis and conducting necessary drills with the required personnel to assemble such system in a flood emergency) that will be sufficient to protect against water penetration into the Premises from flooding, and Tenant shall, at Tenant's sole cost and expense, procure any equipment (and any replacements therefor or enhancements thereof) as shall be reasonably necessary in connection with such system, shall store such equipment (and any replacements therefor or enhancements thereof) at the Premises and shall train all required personnel in connection with the installation and maintenance of such equipment and system. Upon the request of Landlord, Tenant shall promptly furnish any information relating to the flood mitigation system and Tenant's satisfaction of the obligations set forth in this Section 14.16. Upon the execution of this Lease, the flood mitigation system is intended to consist of a "tiger dam."

ARTICLE 15

ALTERATIONS

Section 15.01 Alterations Requiring Landlord's Consent.

(a) Subject to the terms of this Section 15.01, Section 15.02(c), and except for the obligations of Tenant related to the Major Construction Work which are set forth in Articles 16 and 17, Tenant shall not make, and Tenant shall not allow any Occupant to make, any changes, alterations, improvements, installations or additions (each, an "Alteration") in or to the Premises, after Substantial Completion of the Required Tenant Improvements, which materially affect (i) any structural elements, including, but not limited to, the floor slabs, ceiling slabs, load-bearing walls, load bearing columns, or any other supporting members or load bearing elements of the Pier 57 Building, and have a cost in excess of the Threshold Amount (provided that Tenant shall provide Landlord with written notice of any such Alterations hereunder which do not require Landlord's consent), (ii) exterior appearance of any Public Open Space or any pedestrian or vehicular circulation areas, (iii) the historic elements of the Pier 57 Building, that are within the jurisdiction of Governmental Authorities, or (vi) in-water areas within the Premises and the In-Water Areas (a "Structural Alteration") without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed to the extent the proposed Structural Alteration complies with the City of New York Department of Buildings (the "DOB") or any other Governmental Authority Requirements (it being understood by Tenant that any denial, delay or condition imposed by the DOB or any other required Governmental Authority with respect to the issuance of a permit shall not be deemed to be a denial, delay or condition imposed by Landlord hereunder). Tenant agrees that if Tenant performs a Structural Alteration without Landlord's prior written consent, then Tenant shall promptly remove any such Structural Alteration upon notice from Landlord. If Tenant fails to so promptly remove any such Structural Alterations installed without Landlord's prior consent, then, in addition to any other remedies Landlord may have under this Lease, Landlord shall also have the right to remove such Alteration upon ten (10) Business Days of prior notice to, and at the sole cost and expense of, Tenant, which costs shall include the storage costs of any materials. Tenant shall pay Landlord for Landlord's costs to remove any such Structural Alterations and any related storage costs for materials no later than thirty (30) days after Landlord's rendition of a statement therefor, which statement shall have annexed thereto documentation that reasonably substantiates the costs set forth therein. For purposes hereof, the term "Structural Alterations" does not include ordinary maintenance and non-structural repair, Decorative Changes, Non-Structural Alterations and installation of Equipment (other than any Equipment, the installation of which would be structural in nature or exceed the applicable live load of the specific floor on which such Equipment is to be located).

(b) Tenant acknowledges that (i) Landlord's consent for, and Tenant's performance of, the Required Tenant Improvements, and (ii) Landlord's consent with respect to the plans and specifications, and Tenant's performance of, Structural Alterations, shall each be governed in accordance with applicable provisions contained in Articles 16 and 17.

Section 15.02 Conditions Applicable to Alterations Not Requiring Landlord's Consent.

(a) Decorative Changes. Tenant, at Tenant's sole cost and expense, shall be permitted to perform Alterations comprised of ordinary repairs, maintenance, minor landscaping and purely decorative changes to the Premises (collectively, "Decorative Changes") without the prior consent of Landlord and without prior notice to Landlord. For purposes of this Lease, Decorative Changes shall include, without limitation, painting of the exterior of the Premises in substantially the same color as previously existing and the installation or removal of Trade Fixtures, items of furniture, furnishings, decorations, temporary wall partitions, wall and floor coverings, window treatments, and other nonstructural finish work. The term "Construction Work" as used in this Lease shall not be deemed to include the performance of any Decorative Changes.

(b) Nonstructural Alterations. Tenant, at Tenant's sole cost and expense, shall be permitted to perform Alterations that are not Structural Alterations ("Non-Structural Alterations"), without the prior written consent of Landlord, but upon prior notice to Landlord provided that (i) no Default or Event of Default shall have occurred and be continuing at the time Tenant performs any Non-Structural Alterations, (ii) Tenant and its contractors shall have furnished Landlord with evidence of the insurance required by Article 9, and (ii) Tenant complies with the following provisions contained in Article 16 relating to Major Construction Work, which provisions shall also be deemed to apply to Non-Structural Alterations: Section 16.04(a), Section 16.05, Section 16.09, and Sections 16.11 through 16.17. No later than thirty (30) days after the completion of any Non-Structural Alterations, Tenant shall provide Landlord with "as built" plans and specifications for such Non-Structural Alterations (excluding Decorative Changes).

(c) Capital Replacements. Tenant, at Tenant's sole cost and expense, shall be permitted to make in-kind capital replacements of Alterations having a value less than the Threshold Amount as such amount shall be Adjusted for Inflation, provided that such Alteration (i) is promptly replaced by an improvement of at least equal utility and quality and (ii) is reinstalled on the Premises with reasonable diligence and in accordance with the terms of this Lease. Notwithstanding the foregoing, Tenant shall provide Landlord with thirty (30) days' prior written notice of any such capital replacement of any Alteration other than Decorative Changes or Non-Structural Alterations.

Section 15.03 No Allowances. Except as may otherwise be expressly set forth in this Lease, Tenant shall not be entitled to any abatement, allowance, reduction or suspension of the Rental or any other charge, cost or expense payable by Tenant under this Lease, nor shall Tenant be released of or from any other obligations imposed upon Tenant under this Lease because of the construction of any Alteration.

Section 15.04 Removal of Alterations. On or prior to the Expiration Date, Tenant shall remove any Structural Alteration (excluding any Required Tenant Improvements and any repairs or replacements thereof) that Landlord required Tenant to remove at the end of the Term as a condition to Landlord's written consent for such Structural Alteration. Tenant's obligation to remove any such Structural Alteration shall entail demolishing the applicable Structural Alteration and removing all debris and portions of such Structural Alteration from the Premises and restoring the applicable portion of the Premises where such Structural Alteration was removed to a clean, safe, and neat condition in as close to the condition of the applicable portion

of the Premises prior to the installation of such Structural Alteration as is reasonably practicable. Notwithstanding the foregoing, Tenant shall not be required to remove any Decorative Changes, Non-Structural Alterations, Required Tenant Improvements or any Improvements which existed as of the Commencement Date.

Section 15.05 Removal of Trade Fixtures and Equipment. Nothing in this Article 15 shall be construed to give Landlord title to or to prevent Tenant's removal of Tenant's Property, including Trade Fixtures, personal property and Equipment, but upon removal of any such property from the Premises, Tenant shall immediately and at its expense, repair and restore the Premises to the condition existing prior to the installation of any Tenant's Property and repair any damage to the Premises or the Improvements due to such removal. All property permitted or required to be removed by Tenant at the end of the Term pursuant to this Lease remaining in the Premises after the Expiration Date shall be deemed abandoned and at the election of Landlord, may either be retained as Landlord's property or removed from the Premises by Landlord, at Tenant's expense without liability to Landlord.

Section 15.06 Sprinklers. Anything elsewhere in this Lease to the contrary notwithstanding, if any Requirement requires the installation of a sprinkler system, other than the sprinkler system currently installed in the Premises, or that require any changes, modifications, alterations, or additional sprinkler heads or other equipment be made or supplied in an existing sprinkler system by reason of Tenant's business, or the location of partitions, Trade Fixtures, or other contents of the Premises, or for any other reason, Tenant shall, at Tenant's expense, promptly make such sprinkler system installations, changes, modifications, alterations, and supply additional sprinkler heads or other equipment as required in accordance with the applicable provisions of Articles 15 and 16.

Section 15.07 Occupant Design Guidelines. Tenant shall cause all Occupants to comply with the applicable terms and provisions contained in Articles 15 and 16 in connection with any Occupant's performance of Alterations, it being agreed that all Alterations by or on behalf of Occupants shall be required to conform to, and comply with, the Occupant design and signage guidelines in effect from time to time during the Term (the "Occupant Design Guidelines"). Annexed to this Lease as Exhibit K and made a part hereof is the Occupant Design Guidelines in effect as of the date of this Lease.

(a) Tenant may propose a modification to the Occupant Design Guidelines, on a case-by-case basis or generally on a prospective basis, in connection with any event or circumstance that, in Tenant's reasonable judgment, renders or will render the then-applicable Occupant Design Guidelines, in whole or in part, to be insufficient, inapplicable or otherwise in need of modification given all of the circumstances related to such modifications, provided that any proposed modifications to the Occupant Design Guidelines are submitted by written notice to Landlord and Landlord gives its written approval, not to be unreasonably withheld, conditioned or delayed, within thirty (30) days after Landlord's receipt of the proposed modification.

(b) Should Tenant submit to Landlord for approval either (i) one or more changes to the Permitted Use Floor Plans which, when taken together, encompass all or a majority of the GLA on a single floor of the Premises or (ii) one or more Alterations which, when taken together, affect all or a majority of the GLA on a single floor of the Premises, then Tenant shall,

at the request of Landlord, either (x) provide a written statement to Landlord affirming the applicability of the Occupant Design Guidelines then in effect, together with an explanation of Tenant's justification for such affirmation, or (y) prepare modifications to the Occupant Design Guidelines pursuant to Section 15.07(a). Provided that Tenant's explanation in the statement referred to clause (x) above is deemed reasonably acceptable to Landlord, then Tenant shall have no obligation to modify the Occupant Design Guidelines with respect to the changes to the Permitted Use Floor Plans or Alterations referred to in this Section 15.07(b). Should Landlord determine, in Landlord's reasonable judgment and after good faith consultation with Tenant that a modification to the Occupant Design Guidelines is necessary by reason of such changes to the Permitted Use Floor Plans or Alterations referred to in this Section 15.07(b), then Tenant shall prepare modifications to the Occupant Design Guidelines pursuant to Section 15.07(a).

(c) The Occupant Design Guidelines shall be applied to all Alterations and signage placement by or on behalf of Occupants and shall be strictly enforced by Tenant. Landlord's approval of design plans for Alterations by or on behalf of Occupants shall not be required so long as such plans substantially conform to the Occupant Design Guidelines and do not constitute Structural Alterations; provided, however, that upon the request of Landlord, Tenant shall provide copies of such design plans to Landlord for any Occupant that will occupy more than ten percent (10%) of GLA, together with an analysis prepared by Tenant demonstrating compliance with the Occupant Design Guidelines. Tenant shall furnish or cause to be furnished to Landlord by Occupants approved plans and specifications relating to the construction of improvements in the subleased or other occupied spaces in the Premises, which plans and specifications shall be furnished to Landlord prior to or simultaneously with bid packages (containing such plans and specifications) being furnished to potential bidders and shall be furnished to Landlord for informational purposes only in order for Landlord to confirm compliance with the Occupant Design Guidelines.

ARTICLE 16

MAJOR CONSTRUCTION WORK

Section 16.01 Major Construction Work. For purposes of this Article 16, the term "Major Construction Work" shall be deemed to refer, collectively, to Structural Alterations and the Required Tenant Improvements. Tenant shall undertake, and shall cause all Occupants to undertake, all Major Construction Work in accordance with the applicable requirements of this Article 16, it being agreed that with respect only to the Required Tenant Improvements, Tenant shall also comply with the requirements of Article 17 (it being agreed that if there are any conflicts between the terms of this Article 16 and Article 17 with respect to any Required Tenant Improvements, then the terms of Article 17 shall control).

Section 16.02 Definitions. As used in this Lease, the following terms shall have the meanings set forth below:

(a) "Approved Plans and Specifications" means the Plans and Specifications prepared by an Architect in connection with any Major Construction Work which have been approved by Landlord in accordance with the provisions of Section 16.03.

(b) “Final Completion” means, with respect to all Major Construction Work, that the applicable Major Construction Work has been completed including all “punch list” items and that Tenant has complied with the requirements set forth in Section 16.10(b).

(c) “Substantial Completion” or “Substantially Complete(d)” means, with respect to all Major Construction Work, that the Major Construction Work has been substantially completed in accordance with the Approved Plans and Specifications, with all utilities necessary for the operation of the Premises for the Permitted Use connected and all systems of the Premises necessary for occupancy of the Premises operational and working and such systems have been accepted by Tenant (as evidenced by controlled inspection reports to be submitted by Tenant to Landlord, if such type of work is customarily subjected to testing under controlled conditions), it being agreed that the Major Construction Work shall be Substantially Completed notwithstanding that minor repairs, corrections, and adjustments of a “punch list” nature remain to be completed which are capable of being completed promptly after Substantial Completion, which punch list items shall be documented by the Architect and approved by the Architect, and that Tenant has otherwise complied with the requirements set forth in Section 16.10(a).

Section 16.03 Plans and Specifications.

(a) Tenant shall submit to Landlord, for Landlord’s prior review and approval solely to the extent of ensuring compliance with this Lease and the Requirements, which approval shall not be unreasonably withheld, conditioned or delayed, preliminary plans and specifications for any proposed Major Construction Work (“Preliminary Plans and Specifications”) (other than for the Required Tenant Improvements for which Approved Plans and Specifications are attached to this Lease and have heretofore approved by Landlord).

(b) Landlord shall notify Tenant in writing of Landlord’s approval or disapproval (and the reasons for such disapproval) of the Preliminary Plans and Specifications within twenty-five (25) days after receipt thereof. If Landlord shall fail to so approve or disapprove the Preliminary Plans and Specifications (or any part thereof) within such twenty-five (25) day period, Tenant may give to Landlord a notice of such failure stating that if Landlord fails within five (5) days after the giving of such notice to approve or disapprove (along with the reasons for any disapproval) such Preliminary Plans and Specifications, Landlord shall be deemed to have approved such Preliminary Plans and Specifications, and if Landlord shall fail to approve or disapprove such Preliminary Plans and Specifications within such five (5) day Period, Landlord shall be deemed to have approved such Preliminary Plans and Specifications. However, if during such twenty-five (25) day period, Tenant is so directed by Landlord in specificity to modify any portions of the Preliminary Plans and Specifications so as to bring them in compliance with this Lease or Requirements, Tenant shall revise or cause the Architect to revise the Preliminary Plans and Specifications in accordance with the reasonable directions of Landlord. Landlord shall set forth its directions in writing and in reasonable detail and identify those portions of the plans so disapproved on the basis of being noncompliant with this Lease or Requirements. Landlord shall advise Tenant within ten (10) days following receipt of the revised Preliminary Plans and Specifications, or portions thereof, or any further revised Preliminary Plans and Specifications, of Landlord’s approval or disapproval of the revised Preliminary Plans and Specifications, setting forth Landlord’s reasons for any such further disapproval in writing and in reasonable detail, in each case solely with respect to compliance

with this Lease and the Requirements. If Landlord fails to approve or disapprove (along with the reasons for any disapproval) the revised Preliminary Plans and Specifications within such ten (10) day period following Landlord's receipt of the revised Preliminary Plans and Specifications, Tenant may give to Landlord a notice of such failure stating that if Landlord fails within two (2) Business Days after the giving of such notice to approve or disapprove (along with the reasons for any disapproval) such revised Preliminary Plans and Specifications, Landlord shall be deemed to have approved such revised Preliminary Plans and Specifications, and if Landlord shall fail to approve or disapprove (along with the reasons for any disapproval) such revised Preliminary Plans and Specifications within such two (2) Business Day Period, Landlord shall be deemed to have approved the revised plans. Upon approval by Landlord, the Preliminary Plans and Specifications shall constitute Approved Plans and Specifications.

(c) If Tenant desires to materially modify the Approved Plans and Specifications, then Tenant shall submit the proposed modifications to Landlord for its prior review and approval for compliance with this Lease and the Requirements (it being agreed that modifications to the Approved Plans and Specifications for the Required Tenant Improvements shall be effected pursuant to the applicable provisions contained in Article 16.03(b) taking into consideration plans and specifications previously submitted and reviewed).

(d) Except as set forth in this Lease, Tenant understands and agrees that Landlord shall not incur any liability to any Person for any act or omission in connection with its review and approval of the Preliminary Plans and Specifications, or failure to review or approve the foregoing. Landlord's approval of the Approved Plans and Specifications or any other document or Landlord's inspection of any Major Construction Work, shall not be, or shall not be construed or interpreted, or otherwise relied upon, by any Person as: (1) a representation, warranty or determination by Landlord that the Approved Plans and Specifications comply with applicable Requirements, or are structurally or architecturally sound or safe, or technically correct, (2) an opinion by Landlord that the Major Construction Work constructed pursuant to the Approved Plans and Specifications is adequate or sufficient for any purpose or use, (3) a waiver of any of Landlord's rights under this Lease that have not yet been exercised or granted, or (4) a release of Tenant from any of its obligations under this Lease.

Section 16.04 Conditions Precedent to Tenant's Commencement of Major Construction Work. Prior to the commencement of any Major Construction Work, Tenant shall:

(a) obtain all permits, consents, certificates and applicable Public Approvals required for the performance of the Major Construction Work, it being agreed that at the request of Tenant, Landlord (acting in its proprietary capacity and at no cost to Landlord) shall cooperate with Tenant in obtaining the permits, consents, certificates and Public Approvals required pursuant to applicable Requirements, and any necessary utility easements. Landlord shall not unreasonably withhold, condition or delay its consent to any application required to obtain such permits, consents, certificates, approvals and easements made by Tenant. Landlord shall execute all applications, in form and content reasonably acceptable to Landlord, necessary to accomplish the foregoing. Tenant shall reimburse Landlord within thirty (30) days after demand therefor, the amount of any reasonable, out-of-pocket costs or expenses incurred by Landlord (acting in its proprietary capacity) in cooperating with Tenant to obtain the permits, consents, certificates and Public Approvals required by this clause (a) and any necessary utility easements, and such

amounts shall constitute Rental hereunder. Tenant hereby acknowledges that Landlord shall be required to sign as “Owner” on all permit applications filed with the DOB or other Governmental Authorities in connection with any Major Construction Work;

(b) obtain Landlord’s approval, which approval shall not be unreasonably withheld, conditioned or delayed, with respect to any required environmental remediation plan;

(c) submit to Landlord, prior to causing the preparation of bids for any Construction Contracts to be executed prior to such commencement (i) with contractors, subcontractors and materialmen performing work at, and/or supplying materials for, the applicable Major Construction Work, and (ii) having a value of the work/materials covered by such contracts exceeding the Threshold Amount as such amount shall be Adjusted for Inflation, lists of all prospective bidders for such contracts, whereupon (A) Landlord shall have five (5) business days after any such submission to review each list submitted and shall have the right to disapprove any Contractor on such list that is a “non-responsible party” as shown on certain lists available to Landlord from time to time from the City and the State, which disapproval shall be evidenced by written notice from Landlord to Tenant given within such five (5) business day period (and if Landlord fails to give such notice of disapproval within such five (5) business day period, Landlord shall be deemed to have waived any right to disapprove the applicable Contractor as a “non-responsible party”) subject to such party’s right to contest such determination in good faith pursuant to appropriate proceedings, and (B) Tenant shall not accept a bid from or engage with respect to the Project, any person so disapproved by Landlord;

(d) provide certificates to Landlord evidencing the types and levels of contractor insurance required under this Lease pursuant to Article 9 naming the required Persons as named insureds and Additional Insureds thereunder;

(e) furnish to Landlord all construction contracts to be entered into directly by Tenant (“Construction Contracts”), which Construction Contracts shall contain the provisions set forth in Section 16.05;

(f) deliver to Landlord the Bond required pursuant to Section 16.06 (and/or, if applicable, the Backup Guaranty and Other Assurances, as the case may be); and

(g) furnish to Landlord such other documentation as Landlord deems reasonably necessary evidencing Tenant’s compliance with the requirements of this Article 16 and, solely with respect to the Required Tenant Improvements, Article 17.

Section 16.05 Construction Contracts.

(a) All Construction Contracts shall include standard and customary indemnifications in favor of Landlord for any claim or liability asserted against Landlord arising out of and/or relating to the applicable Major Construction Work (unless such claim or liability is based upon a default by Landlord under the terms of this Lease or the gross negligence or intentional misconduct of Landlord, its agents, employees or contractors and the following provisions:

(i) standard and customary indemnifications in favor of Landlord for any claim or liability asserted against Landlord arising out of and/or relating to the applicable

Major Construction Work (unless such claim or liability is based upon a default by Landlord under the terms of this Lease or the gross negligence or intentional misconduct of Landlord, its agents, employees or contractors

(ii) “[Contractor”]/[“Subcontractor”]/[“Materialman”] hereby agrees that immediately upon the purchase from [“contractor”]/[“subcontractor”]/[“materialman”] of any building materials to be incorporated in the Improvements (as such terms are defined in the lease pursuant to which the contract purchase hereunder acquired a leasehold interest in the property (the “Lease”), such materials shall become the sole property of Landlord (as defined in the Lease), notwithstanding that such materials have not been incorporated in, or made a part of, such Improvements at the time of such purchase; provided, however, that Landlord shall not be liable in any manner for payment or otherwise to [“subcontractor”]/[“materialman”] in connection with the purchase of any such materials and neither Landlord nor Landlord shall have any obligation to pay any compensation to [“contractor”]/[“subcontractor”]/[“materialman”] by reason of such materials becoming the sole property of Landlord.”

(iii) “[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, neither Landlord nor Landlord shall 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.

(iv) “[Contractor”]/[“Subcontractor”]/[“Materialman”] hereby agrees to make available for inspection by [Landlord and Landlord, during reasonable business hours, upon prior written notice [“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.

(v) “All covenants, representations, guarantees and warranties of [“contractor”]/[“subcontractor”]/[“materialman”] hereunder shall if this contract is taken over by the [Landlord or 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 or Landlord.”

(vi) “Landlord is not a party to any Construction Agreement 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 agreement unless Landlord shall take over such agreement and then only as to claims arising after this agreement is so taken over.”

(b) Tenant shall deliver to Landlord an assignment of each Construction Contract (“Assignment of Construction Contract”) duly executed and acknowledged by Tenant (and consented to by the Contractor) effective by its terms at Landlord’s option upon any termination of this Lease, or upon Landlord’s re-entry upon the Premises during the continuance of an Event of Default before the complete performance of the Construction Contract required in connection

with the Major Construction Work in question. Any such Assignment of Construction Contract shall be subject to the rights of any Recognized Mortgagee therein. The Assignment of Construction Contract shall also include, subject to the rights of any Recognized Mortgagee, the benefit of all payments made on account of the Construction Contract, including payments made before the effective date of the Assignment of Construction Contract. The Assignment of Construction Contract may include a provision that in order for it to become effective the assignee must assume Tenant's remaining obligations under the assigned Construction Contract.

Section 16.06 Security for Major Construction Work.

(a) Completion of any Major Construction Work per project or on a total project basis exceeding the Threshold Amount shall be secured by (A) a completion bond issued by a corporate surety licensed to do business in the State reasonably satisfactory to Landlord guarantying construction of the Major Construction Work and naming Landlord as the beneficiary of such bond; (B) payment and performance bonds covering work comprising not less than one hundred percent (100%) of the estimated cost of such Major Construction Work, as certified by the Architect; (C) a guarantee of payment and completion from a Person whose credit and net worth are reasonably satisfactory to Landlord pursuant to a form of written guaranty (the "Completion Guaranty") reasonably acceptable to Landlord and Tenant; or (D) such other assurance of payment and completion in compliance with the provisions of this Lease as is reasonably satisfactory to Landlord (each of the instruments described in clauses (A) – (D) of this Section 16.06(a) individually, a "Bond"), and collectively such instruments, the "Bonds"). Notwithstanding anything to the contrary set forth in this Lease, if for any reason whatsoever no bond or bonds are available as aforesaid in connection with the completion of any Required Tenant Improvements, which bond or bonds would be used to secure the Premises from damage due to exposure to the elements and/or natural deterioration and/or exposure to Hazardous Materials in the event that such Required Tenant Improvements are abandoned or otherwise interrupted for a significant period of time, then either: (x) a creditworthy Person shall personally guaranty, pursuant to a form of written guaranty (the "Backup Guaranty") reasonably acceptable to Landlord and Tenant, the completion of construction to a level sufficient to secure and protect the Premises from such damage, or (y) Tenant shall deliver such other assurance of completion to such level, which assurance of completion shall be reasonably acceptable to Landlord (the "Other Assurance"); provided, however, that (1) the liability of the guarantor under the Backup Guaranty or the amount of the Other Assurance, as applicable, shall not exceed One Million Two Hundred Fifty Thousand Dollars (\$1,250,000) in the aggregate and (2) such Backup Guaranty or Other Assurance shall expire or shall be returned to Tenant, as applicable, on the date that the lender under the Construction Loan (the "Construction Lender") shall have advanced Fifteen Million Dollars (\$15,000,000) of proceeds from the Construction Loan in the aggregate.

(b) Subordination. Landlord shall agree that any enforcement by Landlord of a Bond (or, if applicable, the Backup Guaranty or Other Assurance) shall be subordinate to any enforcement by the Construction Lender of any Bond (or, if applicable, any guaranty delivered in connection with the Construction Loan (the "Construction Loan Guaranty") on the condition that the Construction Lender, at its option, uses commercially reasonable efforts to enforce such Bond (or, if applicable, the Construction Loan Guaranty). If, however, the Construction Lender does not take steps to enforce the Bond (or, if applicable, the Construction Loan Guaranty)

within a reasonable period of time following the occurrence of the event that is the basis for the applicable claim under such Bond (or, if applicable, the Construction Loan Guaranty), then Landlord shall have the right to enforce such Bond (or, if applicable, the Backup Guaranty or Other Assurance). Any completion of the applicable Major Construction Work in the manner and level required by any SNDA Agreement between Landlord and the Construction Lender is hereinafter referred to as the “Lender Completion Level”. Such subordination shall mean that, if the Construction Lender (or the Construction Lender’s designee) completes the Major Construction Work to the Lender Completion Level and/or the Tenant completes the Major Construction Work, Landlord shall not take any action to enforce the applicable Bond (or, if applicable, the Backup Guaranty or Other Assurance) and the applicable Bond (or, if applicable, the Backup Guaranty or Other Assurance) shall be of no further force or effect upon the completion of the Major Construction Work. If the Construction Lender (or the Construction Lender’s designee) does not complete the Major Construction Work to the Lender Completion Level or if Tenant does not complete the Major Construction Work as required by this Lease, Landlord shall be entitled to enforce the applicable Bond (or, if applicable, the Backup Guaranty or Other Assurance) to the extent necessary to achieve the level of completion required by the applicable Bond (or, if applicable, the Backup Guaranty or Other Assurance); and

(c) Landlord agrees that any enforcement of a Bond (or, if applicable, the Backup Guaranty or Other Assurance) by Landlord shall, subject to the following sentence, be tolled by any event constituting Force Majeure that delays or prevents the completion of the Major Construction Work to the extent required by such Bond (or, if applicable, the Backup Guaranty or Other Assurance) and within the timeframe required by this Article 16. During any period in which the enforcement of a Bond (or, if applicable, the Backup Guaranty or Other Assurance) is tolled, Landlord shall not enforce such Bond (or, if applicable, the Backup Guaranty or Other Assurance) provided that the completion of the Major Construction Work is at a level sufficient to secure and protect the Premises from damage due to exposure to the elements and/or natural deterioration and/or exposure to hazardous substances.

Section 16.07 Performance of Major Construction Work. All Major Construction Work shall be performed diligently (subject to Force Majeure), in a good and workmanlike manner and substantially in accordance with the Approved Plans and Specifications, all applicable Requirements and this Lease, and shall be fully completed in the ordinary course (subject to Force Majeure) in accordance with the Approved Plans and Specifications. All materials and equipment utilized or furnished in connection with any and all Major Construction Work shall be new (unless otherwise specified in the Approved Plans and Specifications) and in good condition, fully operational, without patent or latent defects, suitable for its intended purpose and shall comply with the requirements of the Approved Plans and Specifications.

Section 16.08 Supervision of Architect. All Major Construction Work shall be supervised by an Architect and all material changes to the Approved Plans and Specifications, shall be undertaken by an Architect.

Section 16.09 Rights of Inspection.

(a) Landlord and its representatives and agents shall have the right, at any time and from time to time upon reasonable notice (which the parties agree may be by email followed by,

to the extent such visit is within 24 hours of such notice, a phone call or phone message), to visit the Premises to observe the performance of Major Construction Work by Tenant and attend Tenant's job and/or safety meetings solely for the purpose of ensuring that the Major Construction Work is undertaken substantially in accordance with the Approved Plans and Specifications, all Requirements and this Lease; provided, that Landlord and its representatives and agents shall not unreasonably interfere with Tenant's performance of such Major Construction Work and shall not unreasonably interfere with the rights of Occupants under the subleases or occupancy agreements. Nothing herein shall impose any liability upon Landlord for any failure by Tenant to comply with any Requirements or observe any safety practices in connection with such construction, or constitute an acceptance of any work that does not comply in all material respects with the Approved Plans and Specifications, applicable Requirements or the provisions of this Lease. Landlord, in Landlord's sole and absolute discretion and at Landlord's expense except as otherwise provided herein, shall have the right to maintain field personnel at the Premises during the performance of Major Construction Work, provided that to the extent the necessity therefor is the result of Tenant's gross negligence or willful misconduct, such cost and expense of Landlord's field personnel at the Premises shall be paid by Tenant. Landlord shall indemnify and defend Tenant against any claims arising from the entry of the Premises that is the result of a default by Landlord under the terms of this Lease or the gross negligence or intentional misconduct of Landlord, its agents, employees or contractors.

(b) Tenant shall keep Landlord fully informed of Tenant's progress in undertaking any Major Construction Work, including, without limitation, the construction of the Major Construction Work. In furtherance of the foregoing, upon Landlord's request, Tenant shall provide Landlord with copies of all documentation that are actually provided to a construction lender (and other documentation reasonably requested by Landlord).

Section 16.10 Completion of Construction Work.

(a) Major Construction Work shall not be deemed to be Substantially Completed unless and until Tenant: (i) delivers to Landlord a certification of the Architect (certified to Landlord) that the applicable Major Construction Work in question has been Substantially Completed in accordance with the Approved Plans and Specifications therefor and that the Improvements constructed pursuant to such Major Construction Work comply with all Requirements, and (ii) delivers to Landlord a copy of the temporary Certificate of Completion or Certificate of Occupancy for the entire Premises (or the relevant portion thereof);

(b) Major Construction Work shall not be deemed to have reached Final Completion unless and until: (i) Tenant delivers to Landlord a complete set of record drawings showing "as built" conditions and specifications for the applicable Major Construction Work and a survey locating the applicable Major Construction Work on the Premises if different from the location of the Improvements shown on the New Survey, and (ii) all punch list items approved by the Architect, Tenant and Landlord have been completed. Landlord and its agents and representatives 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, it being agreed that Landlord and its agents and representatives 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 or its agents and

representatives in strict confidence, except as otherwise provided herein, subject, however, to any applicable Requirements that require Landlord or its agents or representatives to disclose or make any such information available to the public. In the event that Final Completion shall have occurred prior to Tenant's receipt of the permanent Certificate of Occupancy (or its equivalent) for the Premises, then Tenant shall be obligated to use diligent and commercially reasonable efforts to obtain such permanent Certificate of Occupancy (or its equivalent) in the ordinary course, and upon Tenant's receipt of such permanent Certificate of Occupancy (or its equivalent), Tenant shall promptly deliver to Landlord a copy of same.

(c) Landlord shall have the right to attend construction progress meetings and Tenant shall keep Landlord informed of the scheduling of such meetings from time to time.

(d) Force Majeure. All construction obligations of Tenant shall be subject to Force Majeure pursuant to Section 39.09.

Section 16.11 Intentionally Omitted.

Section 16.12 Compliance with Requirements. Tenant assumes sole responsibility for compliance with all applicable Requirements in the performance of any Major Construction Work. Accordingly, Tenant shall ensure that the Approved Plans and Specifications and any Construction Work undertaken at the Premises during the Term complies with all applicable Requirements (subject to Tenant's right to contest the validity or application of any Requirement in accordance with Section 36.03).

Section 16.13 Risks of Loss. Tenant hereby assumes all risks of demolition, removal, and construction in connection with any Major Construction Work.

Section 16.14 Costs and Expenses. Tenant understands and agrees that all Major Construction Work will be designed, constructed, maintained, secured and insured entirely at Tenant's cost and expense without reimbursement or contribution by Landlord, or any credit or offset of any kind for any costs or expenses incurred by Tenant (except as otherwise expressly provided in this Lease). Tenant further covenants and agrees to pay and discharge all Impositions, and all municipal fees, charges, assessments and impositions assessed, charged or imposed in connection with the construction of all Major Construction Work. In the case of a Restoration, Tenant's obligations with respect to this Section 16.14 shall be qualified by and subject to the provisions of Articles 10 and 11, respectively.

Section 16.15 Sales Tax Exemption. All Improvements installed by Tenant during the Term made in accordance with the terms of this Lease, in addition to the Improvements existing on the date hereof, shall constitute the sole property of Landlord, and upon their incorporation into the Premises, title thereto shall vest in Landlord. Title to any such Improvements shall remain with Landlord throughout the Term. Landlord, however, shall not be liable in any manner for payment or damage or risk of loss or otherwise to any contractor, and Landlord shall have no obligation to pay any compensation to Tenant for the Project, including any such Improvements unless such injury or damage is determined to be caused by a default by Landlord under the terms of this Lease or the gross negligence or intentional misconduct of Landlord, its agents, employees or contractors. Landlord shall provide customary and reasonable documentation to

Tenant to enable Tenant to file for sales tax exemptions pursuant to Section 4.11 and capital improvements certificates for Tenant's eligible Improvements. Tenant understands and agrees that (a) Landlord shall not be liable in any manner for payment to, or for damage or risk of loss or otherwise by any contractor, subcontractor, laborer or supplier of materials in connection with the purchase or installation of any such Improvements, and (b) Landlord shall have no obligation to pay any compensation to Tenant by reason of Landlord's acquisition of title to the materials. The term "materials" as used in this Section 16.15 shall include Equipment, but shall not include Trade Fixtures. Notwithstanding anything to the contrary contained in this Section 16.15, Tenant acknowledges and agrees that the risk of the availability of sales tax exemptions shall be borne solely by Tenant.

Section 16.16 Depreciation Deduction. Notwithstanding the other provisions of this Lease, it is hereby acknowledged that Tenant shall be entitled to any and all depreciation deductions, investment credits, deductions for taxes, and deductions for ordinary and necessary business expenses with respect to any part of any Improvements constructed or required to be constructed by Tenant.

Section 16.17 Publicity. Tenant shall furnish and install a so-called "Project" sign as to the impending construction of the Required Tenant Improvements, the wording, design and location of which are reasonably satisfactory to Landlord and Tenant. Tenant and Landlord shall consult with each other in advance and in good faith with respect to agreeing upon the contents and timing of any press releases with respect to the Project. Tenant shall obtain the prior approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed, for any and all press conferences, ceremonies, or other public events held by Tenant in connection with any Major Construction Work. Landlord shall have the right to participate in any such press conferences, ceremonies or other public events that relate to the Project. Tenant shall invite Landlord and its designee(s) to participate in groundbreaking and opening ceremonies.

Section 16.18 Reimbursement of Landlord's Costs. Tenant shall reimburse Landlord for any reasonable, out-of-pocket costs and expenses incurred by Landlord in connection with reviewing any Major Construction Work, including fees of architects and engineers engaged by Landlord to review Tenant's plans and specifications for any Major Construction Work, and verifying conformance therewith during, or following the completion of any such Major Construction Work, and expenses incurred on account of any failure of Tenant to comply with any requirements or of this Lease pertaining to the performance of any Major Construction Work; provided that Landlord shall provide Tenant with advance estimates of the foregoing fees and expenses to the extent available. In addition, Landlord shall notify Tenant to the extent of Landlord's knowledge, when such fees and expenses shall exceed an estimate, provided that Tenant's receipt of estimates or overages thereof, if any, shall not in any respect limit Tenant's reimbursement obligations hereunder. Tenant may, unless otherwise prohibited, contest in good faith, with any third party provider of services for which Landlord is reimbursed hereunder, the fees and expenses invoiced by such third party provider. Landlord shall not seek reimbursement from Tenant under this Article 16 for costs related only to the costs of Landlord's employees.

ARTICLE 17

REQUIRED TENANT IMPROVEMENTS

Section 17.01 Required Tenant Improvements. Tenant shall undertake and complete, at its sole cost and expense, the substantial rehabilitation and redevelopment of the Project and the existing Improvements located within the Premises all to the extent shown on the Approved Plans and Specifications for the Required Tenant Improvements listed on Exhibit L annexed hereto and made a part hereof, including, without limitation, demolition, clearance, site preparation, and construction (collectively, the “Required Tenant Improvements”).

Section 17.02 Gross Leasable Area Requirements. The term “GLA” as used in this Lease shall mean the aggregate space within the Pier 57 Building, including all levels contained therein, that is available for sublease/occupancy by Tenant to Occupants including space licensed or subleased for kiosks or mobile vending units and for ancillary public parking whether or not operated by Tenant (or an agent of Tenant) or a subcontractor or licensee of Tenant or for the retail sale of goods and services to the public (directly by Tenant or by an agent of Tenant) that is (1) measured (x) if within the Pier 57 Building, from the outside face of exterior or corridor walls and the center of party walls (without deduction for columns or other structural elements within any such space) (except with respect to the Caissons, in which case the measurement shall be from the interior walls of the structure of the Caisson), (y) if comprised of exterior terrace and balcony areas of the Pier 57 Building that are approved by third party regulatory agencies (including but not limited to SHPO) to the extent any such approval is required, from clearly identified physical building elements, and (z) if kiosks, mobile vending units, café seating or similar moveable commercial units, by the area occupied by the foregoing elements, (2) exclusive of common areas, circulation corridors, service and utility areas, public toilets and loading docks, to the extent such areas are not subleased to or occupied by, or intended to be subleased to or occupied by, Occupants, and (3) shown on the Approved Plans and Specifications for the Required Tenant Improvements. Subject to all applicable Requirements, the interior portion of the Pier 57 Building excluding the Caissons and Public Viewing Areas shall have a maximum GLA of 364,105 square feet square feet (the “Maximum GLA”).

Section 17.03 Additional Provisions Regarding Required Tenant Improvements.

(a) Commencement. Subject to Force Majeure, Tenant shall commence construction of the Required Tenant Improvements within sixty (60) days after the Commencement Date, and thereafter continuously and diligently pursue such construction to completion, and shall substantially complete (which shall mean that a temporary certificate of occupancy is issued) the following portions of the Required Tenant Improvements: (i) the portion of the Premises subleased to the Anchor Occupant pursuant to that certain Lease Agreement, dated as of the Commencement Date, between Tenant and Anchor Occupant, (ii) the areas designated as Retail Shell 153 and Retail Shell 156 on the Permitted Use Floor Plans in Pier Shed Level 1 and Head House Level 1 (i.e. the Public Marketplace); (iii) all Public Open Space within the Premises and (iv) any Required Tenant Improvements outside the Premises, including without limitation any relocation of the bikeway, platform construction and access road construction (the “RTI Substantial Completion”; the date of occurrence of Substantial Completion, the “RTI Substantial Completion Date”), within the time period set forth in the FEIS (if Tenant is unable to reach RTI

Substantial Completion within such time period, Tenant shall submit to Landlord a remedial plan pursuant to which Tenant shall achieve RIT Substantial Completion no later than thirty-six (36) months after the Commencement Date); provided, however, that Tenant shall not be required to complete the Mezzanine as a condition of RTI Substantial Completion. Notwithstanding the foregoing, provided that Tenant is continuously and diligently pursuing completion of the Required Tenant Improvements, upon Landlord's receipt of one or more written requests submitted by Tenant, Landlord shall extend the RTI Substantial Completion Date in writing to a date reasonably acceptable to Landlord and Tenant beyond the thirty-sixth (36th) month after the Commencement Date, but notwithstanding anything to the contrary contained in this Lease, in no event shall such extension extend beyond the date that is six (6) years after the Commencement Date. Notwithstanding anything to the contrary contained in this Lease, in Tenant's performance of any Major Construction Work, including without limitation the Required Tenant Improvements, Tenant shall be obligated to comply in all material respects with SEQRA and any other applicable Requirements. In the event of Force Majeure, and provided that Tenant is continuously and diligently pursuing the completion of the Required Tenant Improvements in accordance with this Lease, the RTI Substantial Completion Date shall be extended for a reasonable period of time taking into consideration the Force Majeure event (as reasonably determined by Landlord), but notwithstanding anything to the contrary contained in this Lease, in no event shall such extension extend beyond the date that is seven (7) years after the Commencement Date. Notwithstanding any occurrence of RTI Substantial Completion as aforesaid, Tenant shall remain obligated to fully complete the Required Tenant Improvements in the ordinary course (subject to Force Majeure) in accordance with the Approved Plans and Specifications for the Required Tenant Improvements.

(b) Costs. The construction and effectuation of any mitigation measures in accordance with the Requirements and the Public Approvals, either on the Premises or any other areas permitted by the terms of this Lease, shall be the sole responsibility of Tenant; provided, however, that Tenant's responsibility for mitigation measures in any areas other than the Premises shall be limited to those areas affected by Tenant's construction activities and/or to which Tenant is granted rights in connection with the Project (except that Tenant shall not be responsible for any mitigation measures with respect to any areas other than the Premises that are the responsibility of another entity (other than Landlord) pursuant a pre-existing contractual or other obligation).

(c) Construction Schedule; Plans and Specifications. In addition to the completion deadline pursuant to clause (a) above, Tenant shall cause construction of the Required Tenant Improvements to proceed substantially in accordance with a construction schedule ("Construction Schedule") to be provided to Landlord by Tenant (which Construction Schedule shall be subject to Landlord's reasonable approval) and the Approved Plans and Specifications for the Required Tenant Improvements, provided that Tenant may modify the Construction Schedule from time to time in accordance with good construction practices, provided further that Tenant shall have provided Landlord with not less than seventy-two (72) hours advance notice of same. Landlord and Tenant shall cooperate with respect to any modifications of the Construction Schedule. Any material modification to the Construction Schedule and/or the Approved Plans and Specifications for the Required Tenant Improvements shall not be construed to relieve Tenant of its construction obligations under this Lease. Landlord shall grant its approval to any modification to the Approved Plans and Specifications if such modification is

substantially consistent with and not significantly different from the Approved Plans and Specifications and in accordance with, or made necessary by, applicable Requirements or the Public Approvals for the Required Tenant Improvements in all material respects, it being agreed that any such modification shall be deemed significantly different if such modification provides for (i) material structural changes, (ii) a material reduction of the square footage of any Public Open Space, (iii) the substitution of inferior materials, (iv) material changes in the type of use of the portion of the Project involved (other than changes in the allocation of uses and/or the mix or the identity of Occupants for a Commercial Use permitted pursuant to Article 7), (v) material changes in the character or exterior appearance of the Pier 57 Building, (vi) changes that would result in a material delay in the construction or completion of the Project (unless such delay is reasonably necessary in order to meet the budgeted amounts of financing available to Tenant to construct or complete such Project element or comply with the Requirements), or (vii) changes that would have a material effect on the Park. If any proposed modification would effect a result described in the immediately preceding clauses (i) through (vi), then Landlord shall have the right to withhold its consent to any such proposed modification.

(d) Occupant Work. Tenant shall provide, in its subleases and occupancy agreements, for Occupants to perform such finish work and additional improvements as may be necessary to open their respective premises to the public, and Tenant shall use commercially reasonable efforts to enforce such Occupant's obligations. All Occupant work shall be performed substantially in accordance with the Occupant Design Guidelines pursuant to Articles 15 and 16.

ARTICLE 18

REQUIREMENTS OF GOVERNMENTAL AUTHORITIES

Section 18.01 Obligation to Comply with Requirements. Subject to Section 36.03, Tenant shall comply with all Requirements applicable to the maintenance, management, use and operation of the Premises and Tenant's performance of its obligations hereunder, including, without limitation, any Construction Work, 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 that may be made of the Premises, or any part thereof.

ARTICLE 19

DISCHARGE OF LIENS; BONDS

Section 19.01 No Liens Are Permitted. Tenant shall not create, cause to be created, nor suffer or permit to remain, any Lien, upon (a) this Lease, the leasehold estate created hereby, the income therefrom, the Premises, or any part of the Premises, (b) 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, except those resulting from Tenant's

recording of a memorandum of this Lease (which Landlord acknowledges Tenant may do) or relating to the Trade Fixtures.

Section 19.02 Discharge of Liens.

(a) Without limiting the generality of the foregoing, if any mechanic's, laborer's, vendor's, material provider's or similar statutory Lien is filed against the Premises, or any part thereof, or this Lease or leasehold estate, or the income therefrom, 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, Tenant shall, within, if such lien is in an amount less than Twenty Thousand Dollars (\$20,000), sixty (60) days, or if such lien is in an amount in excess of Twenty Thousand Dollars (\$20,000), forty-five (45) days, after receiving actual notice of the filing of such mechanic's, laborer's, vendor's, material provider'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.

(b) Notwithstanding the requirements of Section 19.02(a), Tenant shall not be required to discharge a Lien if Tenant shall have (i) furnished Landlord or a court of competent jurisdiction with a cash deposit, bond or other security reasonably satisfactory to Landlord in an amount sufficient to pay the Lien with interest and penalties, and (ii) brought an appropriate proceeding to discharge such Lien and prosecutes 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, or if the Premises or any part thereof is in imminent danger of being forfeited or if Landlord is in danger of being subjected to criminal liability or penalty, or civil liability in excess of the amount for which Tenant shall have furnished security as hereinabove provided, by reason of failure to vacate or discharge such Lien, Tenant shall immediately cause such Lien to be vacated or discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise, or Landlord may, upon five (5) days prior written notice, use the security furnished by Tenant to it in order to so discharge the Lien for which such security was given. To the extent there remains a balance in the security after the discharge of the Lien, Landlord will promptly return the balance of such security to Tenant.

Section 19.03 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 material provider for the performance of any labor, or the furnishing of any materials for any specific Improvement 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 against the Premises, this Lease, the leasehold estate created hereby or any part of any of the foregoing, or any income therefrom, or against assets of, or funds appropriated to, Landlord.

ARTICLE 20

CERTAIN REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 20.01 Tenant's Representations, Warranties and Covenants. Tenant hereby represents and warrants and, where applicable, covenants to Landlord as of the Commencement Date as follows:

(a) Incorporation, Good Standing and Due Qualification. Tenant is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, has the power and authority to own its assets and to transact the business in which it is now engaged or proposed to be engaged, and is duly qualified as a foreign corporation and in good standing under the laws of each other jurisdiction in which such qualification is required.

(b) Corporate Power and Authority; No Conflicts. The execution, delivery and performance by Tenant of this Lease have been duly authorized by all necessary corporate or limited liability company action and do not and will not: (a) require any consent or approval of its members that has not been received prior to the Commencement Date; (b) contravene its operating agreement; (c) to the best of Tenant's knowledge, 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, (d) result in a breach of, or constitute a default or require any consent under any indenture or loan or credit agreement or any other agreement, lease or instrument to which Tenant is a party or by which it or its properties may be bound or affected; (e) result in, or require, the creation or imposition of any Lien, upon or with respect to any of the properties now owned or hereafter acquired by Tenant; or (f) to the best of Tenant's knowledge, cause Tenant to be in default under any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award or any such indenture, agreement, lease or instrument.

(c) Legally Enforceable Agreements. This Lease is a legal, valid and binding obligation of Tenant enforceable against Tenant in accordance with its terms, except to the extent that such enforcement may be limited by bankruptcy, insolvency and other similar laws affecting creditors' rights generally.

(d) Litigation. There are no actions, suits or proceedings pending or, to the knowledge of Tenant, threatened against, or adversely affecting Tenant before any court, Governmental Authority or arbitrator, which may, in any one case or in the aggregate, materially adversely affect the financial condition, operations, properties or business of Tenant, or the ability of Tenant to perform its obligations under this Lease.

(e) Taxes. Tenant has filed all tax (federal, state and local) returns required to be filed (or has filed for an extension for the filing of any such tax returns, which extension has been granted) and has paid all taxes, assessments and governmental charges and levies thereon to be due, including interest and penalties. Tenant has no knowledge of any claims for taxes due and unpaid which might become a Lien upon any of its assets.

(f) Operation of Business; Compliance with Laws. Tenant possesses or will possess prior to the commencement of each item of construction work, all material licenses, permits, franchises, patents, copyrights, trademarks and trade names, or rights thereto, which are required to conduct its business substantially as presently proposed to be conducted, and Tenant is not in violation of any valid rights of others with respect to any of the foregoing. To the best of Tenant's knowledge, Tenant is in compliance in all material respects with all Requirements applicable to the use of the Premises.

(g) No Brokers. Tenant has not dealt with any broker, finder or like entity in connection with this Lease or the transactions contemplated hereby or the transactions contemplated hereby. Tenant shall hold Landlord harmless from and against any and all claims for commission, fee or other compensation by any Person who claims to have dealt with Tenant in connection with this Lease and for all costs incurred by Landlord in connection with such claims, including, without limitation, reasonable attorney's fees and disbursements. This representation shall survive the expiration or earlier termination of this Lease.

(h) Ownership/Transfers. The only members of the Tenant SPE are JV SPE and HTC Master Tenant as shown on the ownership chart annexed hereto as Exhibit N and made a part hereof and the Initial Tenant Operating Agreement, a true, correct and complete copy of the Initial Tenant Operating Agreement having been heretofore delivered to Landlord as set forth in the Preamble hereof and which Initial Tenant Operating Agreement has not been further amended, modified or supplemented. The Initial Tenant Operating Agreement is not inconsistent with the requirements of this Lease, including without limitation Section 12.03. The JV SPE directly and indirectly owns at least sixty-five percent (65%) of the equity interests in Tenant SPE. Each of YWA SPE and RXR Parent shall own not less than seven and one-half percent (7.5%) of the direct or indirect equity interests in the Tenant SPE (excluding interests held by any HITC Investors) and not less than forty-five percent (45%) of the direct or indirect interests in the Tenant SPE (excluding interests held by the HITC Investors) are owned by the Institutional Investor.

(i) No Insolvency. To the knowledge of Tenant, neither Tenant nor any of its members (nor any Person having a direct or indirect interest in Tenant's members) has filed for protection under the insolvency laws of any jurisdiction or had an involuntary bankruptcy filing made against it.

(j) No Pledge. None of the members of Tenant has pledged or otherwise encumbered its direct interests in Tenant (other than liens in favor of Tenant or the other members of Tenant to secure capital contribution obligations, as permitted by Tenant's operating agreement) and Tenant shall not permit any of its members to pledge or otherwise encumber their direct interests in Tenant, except (x) for liens in favor of Tenant or the other members of Tenant to secure capital contribution obligations, as permitted by Tenant's operating agreement, or (y) in connection with any financing obtained by such member for the development of the Project, including, without limitation, mezzanine financing and preferred equity.

(k) No Undue Influence. No officer, agent, employee or representative of Landlord has received any payment or other consideration in connection with this Lease, and no officer, agent, employee or representative of Landlord has any interest, direct or indirect in Tenant, this

Lease, or the proceeds thereof. Tenant acknowledges that Landlord is relying on the warranty and representation contained in this Section 20.11 and that Landlord would not enter into this Lease absent the same. It is specifically agreed that, in the event the facts hereby warranted and represented prove to be incorrect, Landlord shall have the right to declare a default under this Lease in which case Tenant may cure such default by removing such officer, member or employee of Tenant and cause such individual to divest himself or herself from any interest in this Lease or the Premises.

(l) Vendex; Prohibited Parties. Tenant is not a Prohibited Party. Tenant has complied with all of the applicable Vendex requirements, including to the extent required, any Vendex requirements applicable to members and/or principals of Tenant.

(m) No Other Assets or Activities. Prior to the Commencement Date, Tenant has not had any assets or activities other than related to the Project and/or the Premises.

Section 20.02 Landlord's Representations, Warranties and Covenants. Landlord hereby represents and warrants and, where applicable, covenants to Tenant as of the Commencement Date as follows:

(a) Incorporation and Authority. Landlord is duly organized and validly existing under the laws of the State of New York and has the full right, power, authority and legal capacity to execute and deliver this Lease, to execute and deliver the instruments referred to herein, and to enter into and fully perform the transactions contemplated hereby, or thereby;

(b) Actions and Consents. All actions and consents required by Landlord to authorize the transactions contemplated by this Lease have been duly performed and obtained;

(c) Execution. All Persons who execute this Lease and the instruments contemplated by this Lease on behalf of Landlord will be duly authorized and empowered on behalf of Landlord to do so and to enter into all transactions contemplated by this Lease, and by such instruments;

(d) No Conflict. The execution, delivery and consummation of the transactions contemplated hereby and performance of this Lease have not and will not conflict with any provisions of any Requirements to which Landlord is subject, or conflict with, result in any breach of, or constitute a default under, any superior lease, mortgage, deed of trust, lease, bank loan or credit agreement, corporate charter, bylaws or other instrument to which Landlord is a party or by which Landlord or its assets may be bound or affected;

(e) Legally Enforceable Agreements. This Lease is a legal, valid and binding obligation of Landlord, enforceable against Landlord in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally;

(f) State Lease. State Lease is in full force and effect, Landlord has not received any notice of default under the State Lease and the execution and delivery of this Lease and Landlord's performance of all obligations under this Lease (including, without limitation, leasing

the Premises until the expiration of the last Extension Term) is authorized under the State Lease; and

(g) No Brokers. Landlord has not dealt with any broker, finder or like entity in connection with this Lease or the transactions contemplated hereby or the transactions contemplated hereby. Landlord shall hold Tenant harmless from and against any and all claims for commission, fee or other compensation by any Person who claims to have dealt with Landlord in connection with this Lease and for all costs incurred by Tenant in connection with such claims, including, without limitation, reasonable attorney's fees and disbursements. This representation shall survive the expiration or earlier termination of this Lease.

ARTICLE 21

LIMITATION ON LIABILITY

Section 21.01 Landlord not Liable for Injury or Damage, Etc. Except as expressly provided in this Lease:

(a) From and after the Commencement Date, except as expressly set forth herein, none of Landlord, the City or the State shall 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, or that may arise from any other cause whatsoever, unless, and only to the extent that, such injury or damage is determined to be caused by a default by Landlord under the terms of this Lease or the gross negligence or intentional misconduct of Landlord, the City or the State or their respective agents, employees or contractors;

(b) From and after the Commencement Date, except as expressly set forth herein, none of Landlord, the City or the State shall be liable to Tenant for any failure of water supply, gas or electric current, nor for any injury or damage to any property of Tenant caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storm or disturbance after the Commencement Date, 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 that such failure, injury or damage is caused by Landlord, the City or the State or their respective agents', employees' or contractors' gross negligence, or intentional tortious acts;

(c) None of Landlord, the City or the State shall be liable for any latent or patent defect in the Premises.

Section 21.02 Landlord Exculpation. The liability of Landlord, the City or the State, for damages or otherwise, shall be limited to Landlord's interest in the Premises (including the rents and proceeds therefrom), 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: 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. None of the elected officials, directors, officers, partners, joint venturers, principals, shareholders, employees, agents or servants of Landlord, the City or the State 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.

Section 21.03 Governs Lease. The provisions of this Article 21 shall govern every other provision of this Lease. The absence of explicit reference to this Article 21 in any particular provision of this Lease shall not be construed to diminish the application of this Article 21 to such provision. This Article 21 shall survive the expiration or earlier termination of this Lease.

Section 21.04 Other Remedies. Nothing in this Article 21 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 Article 21. Nothing in this Article 21 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 21.05 Tenant's Liability. Notwithstanding anything in this Lease to the contrary, the liability of Tenant hereunder for damages or otherwise shall be limited to Tenant's assets, its interest in the Premises, any other security provided under this Lease and the proceeds of any insurance policies covering or relating to the Premises and any awards payable in connection with the condemnation of the Premises or any part thereof to the extent actually received by Tenant. Landlord shall not look to any other property or assets of any of the Affiliates, directors, officers, members, managers, employees, shareholders, agents or servants of Tenant or of any partners, joint venturers, members or tenants-in-common comprising Tenant, and no property or assets of any of the aforesaid Persons shall be subject to levy, execution or other enforcement procedure for the satisfaction of Landlord's remedies and Tenant's liabilities hereunder. The provisions of this Section 21.05 shall survive the expiration or earlier termination of this Lease.

ARTICLE 22

INDEMNIFICATION

Section 22.01 Obligation to Preserve Landlord against Liability. Tenant is solely responsible for the security of the Premises and Tenant's operations in the Premises, and other areas to which Tenant uses or occupies pursuant to the terms of this Lease, so as to avoid bodily injury and/or property damage. Tenant shall not perform any act, or do anything, or permit that any act be performed or thing done at the Premises, or any portion thereof, except as contemplated or required hereby that subjects Landlord to any liability for injury to any Person or damage to property for any reason whatsoever, including, without limitation, by reason of any violation of any Requirement, and Tenant shall exercise such control over the Premises so as to fully defend, preserve and protect Landlord against any such liability.

Section 22.02 Obligation to Indemnify. To the fullest extent permitted by applicable Requirements, Tenant shall defend, indemnify and save the Indemnitees harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, out-of-pocket costs, charges and expenses, including, without limitation, court costs and reasonable attorneys' fees and disbursements, that are actually incurred by any of the Indemnitees (excluding special, consequential or punitive damages) by reason of any of the following, except to the extent caused by a default by Landlord under the terms of this Lease or the gross negligence or intentional misconduct of Landlord, its agents, employees or contractors:

(a) Any Construction Work or act done in, on, or about the Premises or any part thereof by or on behalf of Tenant;

(b) 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, body of water, or space comprising a part thereof or adjacent thereto (provided same is the legal responsibility of Tenant), including, without limitation, any violations imposed by any Governmental Authorities in respect of any of the foregoing;

(c) Any act or failure to act on the part of Tenant or any of its respective members, partners, joint venturers, officers, shareholders, directors, agents, contractors, servants, employees, Occupants or invitees when such action is otherwise required or prohibited pursuant to the terms of this Lease;

(d) Any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in or on the Premises, or any part thereof, or in, any sidewalk, comprising a part thereof or, if caused by Tenant's use, possession, control or occupancy thereof any area immediately adjacent thereto, including the bulkhead walkway and vehicular circulation areas;

(e) 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) Any Lien, encumbrance or claim that has arisen against or on the Premises, or any Lien, encumbrance or claim created or permitted to be created by Tenant or any of its members, partners, joint venturers, officers, shareholders, directors, agents, contractors, servants, employees, Occupants or invitees against any assets of, or funds appropriated to, Landlord, or any liability asserted against Landlord with respect thereto;

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

(h) Tenant's non-payment when due of any recording fees or transfer tax, if any, attributable to the execution, delivery or recording of this Lease or a memorandum hereof;

(i) Any contest or proceeding brought by Tenant, or permitted to be brought by Tenant pursuant to Article 36 of this Lease;

(j) The presence, storage, transportation, disposal, release or threatened release of any Hazardous Materials over, under, in, on, from or affecting the Premises, or any persons, real property, personal property, or natural substances thereon or affected thereby, including, without limitation, any such liability, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses imposed upon, incurred by or asserted against any of the Indemnitees under any applicable Requirement, but excluding (i) the release of Hazardous Materials over, under, in, on, from or affecting the Premises caused by any of the Indemnitees or arising from outside of the Premises and which is not caused by Tenant or its contractors, and (ii) the New York State Department of Environmental Conservation Spill No. 91:06100 generally located exterior to the Pier 57 Building in the northeast portion of the Premises and which is currently being remediated and monitored by the New York City Transit Authority pursuant to an approved NYSDEC treatment and monitoring program (the “North Head House Oil Spill”).

Section 22.03 Contractual Liability. The obligations of Tenant under this Article 22 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 to be performed under insurance policies affecting the Premises. Notwithstanding anything to the contrary herein, in no event shall Tenant be liable for any consequential damages to Landlord, any other Indemnitee or any other Person (except as otherwise expressly provided in Section 7.15), and in no event shall Landlord or any other Indemnitee be liable for consequential damages to Tenant or any other Person.

Section 22.04 Defense of Claim, Etc. If any claim, action or proceeding is made or brought against any of the Indemnitees in connection with any event referred to in Section 22.02, then upon demand of 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 Tenant may retain and that Landlord shall reasonably approve. The foregoing notwithstanding, any such Indemnitee may engage its own attorneys in addition to any counsel appointed by Tenant’s insurance carrier or otherwise retained by Tenant 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, at such Indemnitee’s sole cost and expense.

Section 22.05 Notification and Payment. Promptly, upon having actual knowledge thereof, an Indemnitee shall notify Tenant of any cost, liability or expense incurred by, asserted against, or imposed on, such Indemnitee, as to which cost, liability or expense Tenant has agreed to indemnify such Indemnitee pursuant to this Lease. Tenant agrees to pay such Indemnitee all amounts due under this Section 22.05 within thirty (30) business days after Landlord’s request therefor, if Tenant is obligated to make such payment pursuant to the terms of this Lease.

Section 22.06 Survival Clause. The provisions of this Article 22 shall survive the expiration or earlier termination of this Lease.

ARTICLE 23

LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

Section 23.01 Landlord's Right to Perform. If at any time Tenant shall fail to pay for or maintain any of the insurance policies required to be provided by Tenant pursuant to Article 9, or to make any other payment or perform any other act on its part to be made or performed hereunder and such failure shall continue beyond any applicable notice and cure periods, including, without limitation, the obligation to cause the discharge of Liens pursuant to Article 19, then, upon not less than fifteen (15) days' prior written notice to Tenant (or, in case of any emergency or any other circumstances that may materially adversely affect Landlord, or Landlord's interest in the Premises, on such notice as may be reasonable under the circumstances), and without either releasing Tenant from any obligation of Tenant hereunder, or waiving Landlord's right to terminate this Lease upon an Event of Default in accordance with the provisions hereof, or any other right or remedy available to Landlord hereunder, at law or at equity, Landlord 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 9, or

(b) make any other payment or perform any other act on Tenant's part to be made or performed in accordance with this Lease (including, without limitation, for (i) any maintenance or repair obligation imposed on Tenant pursuant to Article 14, or (ii) any act that would require Landlord, its agents, employees, contractors, 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.

Section 23.02 Amounts Paid by Landlord are Rental. All reasonable out-of-pocket sums so paid by Landlord and all reasonable costs and expenses incurred by Landlord in connection with the performance of any such act shall bear interest thereon at the Default Rate from the respective dates of Landlord's making of each such payment, or incurring each such cost and expense. All such sums and interest thereon shall be paid by Tenant or caused to be paid by Tenant to Landlord, upon demand, but in no event not later than the first day of the month following the giving of any notice related thereto, unless such demand was made after the twentieth (20th) day of the month, in which case all such sums and interest shall be paid not later than the tenth (10th) day of the next succeeding month.

Section 23.03 Proof of Damages. Subject to Section 21.05, 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. 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.

Section 23.04 Right to Use Deposited Funds. Upon Landlord's election to commence or complete any Construction Work pursuant to Section 23.01 above, (a) Tenant shall, as provided in Article 9, pay promptly (but in no event later than seven (7) days after Landlord's election), or cause to be paid promptly (but in no event later than seven (7) days after Landlord's election), to Landlord, all insurance proceeds that have been received by Tenant in connection with a Casualty (or proceeds of a condemnation award received in connection with a condemnation affecting part or all of the Premises as provided in Article 11), reduced by (i) the costs reasonably incurred by Tenant in the collection of such proceeds and (ii) those reasonable amounts that Tenant has applied to the Construction Work, and if such sums are insufficient to complete the Construction Work, Tenant on Landlord's demand shall pay the deficiency to Landlord, unless this Lease had been terminated for a reason other than due to an Event of Default by Tenant, in which case Tenant would not be required to pay such deficiency.

Section 23.05 Discharge of Liens. If Tenant shall fail to cause any mechanic's, laborer's, vendor's, material provider's or similar statutory Lien or any public improvement Lien to be discharged in accordance with the provisions of Article 19, Landlord may, but shall not be obligated to, discharge such Lien of record either by paying the amount claimed to be due or by procuring the discharge of such Lien by deposit or by bonding proceedings. Landlord may also compel the prosecution of an action for the foreclosure of such Lien by the lienor and the payment of the amount of the judgment in favor of the lienor with interest, costs and allowances. Any liability, cost or expense (including, without limitation, court costs and reasonable attorney's fees and disbursements) incurred by Landlord in connection with the discharge of any such Lien shall constitute Rental and shall be payable by Tenant within ten (10) days after a demand therefor by Landlord.

Section 23.06 Waiver, Release and Assumption of Obligations. Landlord's payment or performance pursuant to the provisions of this Article shall not constitute, nor be deemed to constitute (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 and/or to take such other action as may be permissible under law or hereunder, or (b) Landlord's assumption of Tenant's obligations to pay or perform any of Tenant's past, present or future obligations hereunder.

ARTICLE 24

SUBORDINATION

This Lease and all the rights of Tenant hereunder shall be subordinate to the State Lease. Landlord shall cause the State to deliver to Tenant on or prior to the Commencement Date a subordination, non-disturbance and attornment agreement in form and substance reasonably acceptable to Tenant, any Mortgagee, and the State, which shall provide for the recognition of Tenant and Tenant's lender(s), which agreement shall be on terms and conditions substantially similar to the SNDA Agreement described in Article 13. Landlord covenants and agrees that it shall (a) not terminate, amend or modify the terms of the State Lease, except for any renewal thereof or any amendment or modification that shall not materially and adversely affect the Premises, the Lease and/or any party's ability to exercise its rights or comply with its obligations under the Lease. Except as specifically provided in Article 13 including, without limitation,

Section 13.09, 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, Liens or encumbrances now or hereafter placed on any Occupant'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 Permitted Exceptions.

ARTICLE 25

REPORTS, BOOKS AND RECORDS, INSPECTION AND AUDIT

Section 25.01 Financial Reports. At any time the Premises are used as an "income-producing property," as that term is used in City Administrative Code Section 11-208.1 (or successor thereto), Tenant shall furnish to the Department of Finance of the City (with a copy to Landlord furnished simultaneously therewith), income and expense statements of the type required by such code section (or successor thereto) as if Tenant owned fee title to the Premises, and such statements to be submitted within the time periods and to the address provided for in said Section 11-208.1 and such statements to be submitted notwithstanding that the State holds fee title to the Premises.

Section 25.02 Books and Records. Tenant shall (i) establish and maintain adequate systems of internal controls, which it shall, upon reasonable prior written request by Landlord describe in writing to Landlord, at any time, (ii) upon reasonable prior written notice to Tenant, make available for inspection by Landlord at reasonable times during regular business hours, and (iii) keep and maintain at the Premises complete and accurate adequate records, books of account and data relating to the calculation of Participation Rent, Contingent PILOT and Transaction Rent and the preparation of Annual Operating Statements for a period of not less than six (6) years following the end of each Base Rent Year; provided, however, if, at the expiration of such six (6) year period with respect to any Base Rent Year, a Reviewing Party 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 with respect to the Base Rent Year(s) in question until one (1) year after the final adjudication, settlement or other disposition of any such contest. If the Comptroller of the State, however, establishes a policy allowing the City to provide in future leases similar to this Lease for the right of a Reviewing Party to audit an Annual Operating Statement for a period that is less than six (6) years after the date of such Annual Operating Statement, then such shorter period shall be applicable to the audit rights contained in this Lease but in no event shall a Reviewing Party have less than one (1) year after the date of an Annual Operating Statement to give a notice to Tenant to audit Tenant's books and records on the terms and provisions contained herein. All such books and records maintained pursuant to this Lease shall be conveniently segregated from other business matters of the Tenant. Tenant shall deliver to Landlord, promptly on a quarterly basis, copies of the deliveries referred to in Section 13.04(c)(i) of the Master Tenant Operating Agreement.

Section 25.03 Audit. Landlord, the Comptroller of the City and the Comptroller of the State (collectively, the "Reviewing Parties" or, individually, a "Reviewing Party") and their accountants, agents and representatives shall have the right, at the Reviewing Party's sole cost

and expense (except as otherwise provide herein), from time to time during regular business hours, upon at least ten (10) days prior written notice to Tenant, to inspect and/or audit Tenant's books, records, statements, papers and files relating solely to information required to be set forth in the Annual Operating Statement. Tenant shall produce all such books, records, statements, papers and files promptly following Tenant's receipt of such notice for inspection at the Premises or at Tenant's principal place of business in the City. Subject to applicable law, all information obtained from Tenant's books, records, statements, papers and files, including, without limitation, the amount of Gross Revenue, shall be held in strict confidence, except that Landlord may disclose such information to its attorneys, consulting professionals and accountants to the extent necessary for the enforcement of Landlord's rights under this Lease, provided that each of such recipients shall be bound to the same non-disclosure provisions as are imposed upon Landlord and each other Reviewing Party. If an audit performed by a Reviewing Party or their agents or representatives discloses that Participation Rent, Contingent PILOT or Transaction Rent was underpaid, then Tenant shall pay to Landlord, within thirty (30) days after Tenant receives written notice from Landlord of such underpayment of rental, an amount equal to the sum of the aggregate amount of any such underpayment of rental and, if such audit shall reveal that a component of rental paid (whether Participation Rent, Contingent PILOT or Transaction Rent, as the case may be) shall have been understated by Tenant by more than five percent (5%), then (x) Tenant shall also pay the fees incurred by the Reviewing Party in connection with the performance of such audit, and (y) the payment to be made to Landlord as a result of such understatement shall bear interest at an annual rate equal to the lesser of the maximum rate allowed by law and five percent (5%) above the annual rate of interest announced from time to time by the New York branch of JP Morgan Chase Bank N.A. or its successor as its base or "prime" rate of interest (the "Default Rate") from the date such amount was due under this Lease until payment thereof is received by Landlord, which interest shall be calculated on a monthly compounded basis. If an audit performed by a Reviewing Party or their agents or representatives discloses that Participation Rent, Contingent PILOT or Transaction Rent was overpaid, then Landlord shall credit such excess amount against the next such component of rental becoming due under this Lease (or shall pay such excess amount to Tenant or credit against another component of rental if no such component of rental shall become outstanding at such time). Tenant shall maintain adequate books and records relating to the calculation of Participation Rent, Contingent PILOT and Transaction Rent and the preparation of the Annual Operating Statements for a period of not less than six (6) years following the end of each Base Rent Year, provided, however, if, at the expiration of such six (6) year period with respect to any Base Rent Year, a Reviewing Party 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 with respect to the Base Rent Year(s) in question until one (1) year after the final adjudication, settlement or other disposition of any such contest. If the Comptroller of the State, however, establishes a policy allowing the City to provide in future leases similar to this Lease for the right of a Reviewing Party to audit an Annual Operating Statement for a period that is less than six (6) years after the date of such Annual Operating Statement, then such shorter period shall be applicable to the audit rights contained in this Lease but in no event shall a Reviewing Party have less than one (1) year after the date of an Annual Operating Statement to give a notice to Tenant to audit Tenant's books and records on the terms and provisions contained herein.

Section 25.04 Survival Clause. The obligations of Tenant under this Article 25 shall survive the expiration of the Term.

ARTICLE 26

NON-DISCRIMINATION AND AFFIRMATIVE ACTION

Section 26.01 Non-Discrimination and Affirmative Action. Tenant shall be required to comply, and will cause all contractors and subcontractors engaged in the Project to agree to comply, with the provisions of Article 15A of the New York State Executive Law which mandates that contractors and subcontractors will not engage in any unlawful discrimination against any employee or applicant for employment because of race, creed, color, national origin, sex, disability, marital status or sexual orientation with respect to all employment decisions. Contractors and subcontractors engaged in the Project may also be subject to local provisions mandating a specified participation by trainees.

Section 26.02 Employment. During the eight (8) year period immediately following the Commencement Date and upon Landlord's request, Tenant shall be required to deliver to Landlord, every six (6) months during construction of the Required Tenant Improvements and annually thereafter, an employment and benefit report with respect to the creation of employment opportunities at the Project in a form to be provided by Landlord to Tenant. Tenant shall comply with all Requirements relating to employment recruitment, referral or training assistance applicable to Tenant. If Tenant should sublease all or any portion of the Premises, Tenant shall take all commercially reasonable measures, in consultation with Landlord, to enforce compliance by such Occupant's with their obligation to furnish employee information with respect to any such Occupant to Landlord in a manner equivalent to that provided above. In addition and without limitation to the preceding measures, Tenant agrees to make commercially reasonable efforts to provide, and cause Occupants to make commercially reasonable efforts to provide, notification of employment opportunities on the Project through listing any such positions with the Job Service Division of the New York State Department of Labor and/or the City of New York Department of Employment, or providing such notification to New York State and New York City residents in such manner as is consistent with existing collective bargaining contracts or agreements.

Section 26.03 New York State Business Enterprises. Tenant shall make commercially reasonable efforts to encourage the participation of New York State business enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on the Project, and will retain the documentation of these efforts.

Section 26.04 Equal Opportunity Act. Tenant shall comply with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended.

Section 26.05 Material Inducement. Tenant acknowledges that accurate and complete information concerning employment opportunities generated at the Premises is of material concern to Landlord and agrees that Tenant's covenants in this Article 26 are a material inducement for Landlord to enter into this Lease.

ARTICLE 27

INVESTIGATIONS; REFUSAL TO TESTIFY

Section 27.01 Cooperation. Tenant shall cooperate fully with any investigation, audit, or inquiry with respect to this Lease conducted by Landlord, a State or City Governmental Authority or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by any Governmental Authority that is a party in interest to the transaction, submitted bid, submitted proposal, contract, permit, lease or license that is the subject of the investigation, audit or inquiry.

Section 27.02 Hearings. If any person:

(a) 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 and still refuses to testify before a grand jury or other Governmental Authority or 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 Landlord, the State or any political subdivision or public authority thereof, or any local development organization, or any public benefit corporation organized under the laws of the State; or

(b) 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 any Governmental Authority that is a party in interest in, and is seeking testimony concerning the award of, or the performance under, any transaction, agreement, lease, permit, contract or license entered into with the City, the State, or any political subdivision thereof, or any local development corporation;

then Landlord or any representative of Landlord that Landlord deems appropriate (any such party being the "Landlord Representative") may convene a hearing, upon not less than ten (10) days of prior written notice to the parties involved, to determine if any penalties should attach for the failure of a person to testify.

Section 27.03 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 27.05 without Landlord incurring any penalty or damages for delay or otherwise; provided, that the right to suspend this Lease shall, in Landlord's sole and absolute discretion, 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 27.04 Penalties. The penalties that may attach after the final determination by the applicable Governmental Authority may include, but shall not exceed:

(a) The disqualification for a period not to exceed five (5) years from the date of any adverse determination for any person which such person was a member, shareholder, officer, director, employee or agent 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 Landlord; and/or

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

Section 27.05 Criteria for Determination.

(a) The Landlord Representative shall consider or address in reaching his or her other determination and in assessing an appropriate penalty the factors in subparagraphs (b) and (c) of this Section 27.05. He or she may also consider, if relevant and appropriate, the criteria established in subparagraphs (d) and (e) of this Section 27.05, in addition to any other information which may be relevant and appropriate.

(b) The party'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.

(c) 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.

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

(e) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in a party or entity subject to penalties under Section 27.04 above, provided that the party or entity has given actual notice to the Landlord Representative upon the

acquisition of the interest, or at the hearing called for in Section 27.02 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 such a penalty would have on such person or entity.

Section 27.06 Definitions.

(a) For the purposes of this Article 27, the following terms will have the meanings set forth below. Capitalized terms utilized, but not otherwise defined below, will have the meanings assigned to such terms elsewhere in this Lease.

(b) The term “license” or “permit” as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

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

(d) The term “entity” as used herein shall be defined as any firm, partnership, corporation, association or person that receives monies, benefits, licenses, leases or permits from or through Landlord, the City or the State or otherwise transacts business with such governmental agencies.

(e) The term “member” as used herein shall be defined as any person associated with any other person or entity as a partner, director, officer, principal or employee.

Section 27.07 Failure to Report Solicitations. In addition to, and notwithstanding any other provision of this Lease, the Landlord Representative may, at his or her discretion, (x) terminate this Lease upon prior written notice in the event Tenant fails to promptly report in writing to the Landlord Representative, any solicitation from Tenant of money, goods, requests for future employment or other benefit or thing of value, which request was made by or on behalf of any employee of Landlord, or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Lease by Tenant, or affecting the performance of Tenant’s obligation under this Lease or (y) declare a default under this Lease, in which case Tenant may cure such default by removing such officer, member or employee of Tenant and cause such individual to divest himself or herself from any interest in this Lease or the Premises.

ARTICLE 28

EVENTS OF DEFAULT, REMEDIES, ETC.

Section 28.01 Events of Default. 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 any item of Rental when required to be paid by Tenant hereunder and such failure shall continue for a period of ten (10) Business Days after notice thereof from Landlord to Tenant;

(b) if Tenant shall fail to maintain the Premises (subject to Force Majeure) as provided in this Lease and such failure shall continue for a period of twenty (20) Business Days after Landlord's notice thereof to Tenant (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 twenty (20) Business Day period, in which case no Event of Default shall exist as long as Tenant shall commenced curing the same in accordance with this Lease within such twenty (20) Business Day period and shall diligently and continuously prosecute the same to substantial completion to the reasonable satisfaction of Landlord within a reasonable period;

(c) if Tenant shall fail to observe or perform (subject to Force Majeure) one or more of the terms, conditions, covenants or agreements of this Lease on Tenant's part to be performed or observed not otherwise provided for in this Section 28.01 and such failure shall continue for a period of thirty (30) Business 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) Business Day period, in which case no Event of Default shall be deemed to exist as long as Tenant shall commenced curing the same within such thirty (30) Business Day period and shall diligently and continuously prosecute the same to substantial completion to the reasonable satisfaction of Landlord within a reasonable period;

(d) to the extent permitted by applicable Requirements, if Tenant shall admit, in writing, that it is generally unable to pay its debts as such debts become due and Tenant fails to provide evidence satisfactory to Landlord, in Landlord's sole and absolute discretion, within thirty (30) days after such admission, that Tenant has the financial ability to meet its obligations under this Lease;

(e) to the extent permitted by applicable Requirements, if Tenant shall make a general assignment for the benefit of creditors;

(f) to the extent permitted by applicable Requirements, if Tenant shall file a voluntary petition under the present or any future Federal Bankruptcy Act or any other present or future Federal, state or other bankruptcy or insolvency statute or law or if such petition 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 Act or any other present or future 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 partnership or corporate action in furtherance of any action described in Sections 28.01(d) or 28.01(e) or this Section 28.01(f);

(g) to the extent permitted by applicable Requirements, if within ninety (90) 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 stayed on appeal or otherwise, 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, 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;

(h) if any of the representations or warranties made by Tenant in Article 20 or elsewhere in this Lease shall be proved to be false or misleading in any material respect as of the date made or deemed made; provided, however, that if such misrepresentation was unintentionally made and the underlying condition is susceptible of being corrected, Tenant shall have a period of forty-five (45) days after Landlord's notice of such misrepresentation to correct the underlying condition and thereby cure such Default;

(i) if, unless necessitated by a Casualty or taking by eminent domain or Force Majeure, Tenant shall vacate or abandon the Premises for a period as would cause the property or liability insurance coverage required to be maintained pursuant to Article 9 to be subject to cancellation or unenforceability of coverage for breach of or default in the terms of such insurance coverage, and such failure shall continue for a period of ten (10) Business Days after Landlord's notice thereof to Tenant;

(j) 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 on account of work, labor and services performed by Tenant or on its behalf and such execution or attachment shall not be vacated, discharged or removed by court order, bonding or otherwise within a period of thirty (30) Business Days following the date Tenant first has actual knowledge of such levy;

(k) if prior to Final Completion of any Major Construction Work and payment of all costs and expenses thereof, the Bonds required by Section 16.04(f) shall expire, or be cancelled or otherwise shall cease to be in full force and effect, or the rights of Landlord as obligee under the Bonds shall be impaired in any way whatsoever and the Bonds are not replaced or reinstated within five (5) Business Days after such expiration or cancellation; or

(l) If Tenant assigns this Lease or sublets all or a material portion of the Premises other than individual subleases covering leasable units in the Premises in violation of any of the transfer provisions contained in Article 12 and the same shall not be remedied within thirty (30) days following notice from Landlord to Tenant.

Section 28.02 Remedies.

(a) Subject to Article 13, if an Event of Default occurs and is continuing, 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.

(b) Subject to Article 13, if an Event of Default occurs and is continuing and Landlord, at any time thereafter, gives Tenant notice specifying the Event of Default and stating that this Lease and the Term shall terminate on the date specified in such notice, which date shall not be less than twenty (20) Business Days after the giving of such notice, then unless Tenant cures such Event of Default prior to the termination date set forth in such notice, this Lease and the Term and all rights of Tenant under this Lease to use and occupancy of the Premises shall expire and terminate as if the date specified in the notice were the Fixed Expiration Date, and Tenant shall quit and peacefully surrender the Premises to Landlord forthwith. If such termination is stayed by order of any court having jurisdiction over any case described in Sections 28.01(f) or (g), or by federal or state statute, then following the expiration of any such stay, or if 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 applicable Requirements, 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 28.09, Landlord, to the extent permitted by applicable Requirements or by leave of the court having jurisdiction over such case, shall have the right, at its election, to terminate this Lease on ten (10) days' notice to Tenant, Tenant as debtor-in-possession or the trustee. Upon the expiration of the ten (10) day period this Lease shall cease and Tenant, Tenant as debtor-in-possession and/or the trustee immediately shall quit and surrender the Premises.

(c) If this Lease is terminated as provided in Section 28.02(b):

(i) Landlord may, without notice, reenter and repossess the Premises and may dispossess Tenant and, all other persons or property not otherwise subject to an enforceable non-disturbance agreement with Landlord, by summary proceedings or otherwise as provided by applicable Requirements.

(ii) Tenant shall pay to Landlord all Rental payable under this Lease to the date on which the Term expired and came to an end and shall remain liable for and shall pay to Landlord all items of Rental falling due thereafter on the respective dates when such items of Rental would have been payable but for the termination of this Lease.

(iii) Landlord may complete any 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 Tenant's name, and Landlord shall pay and dispose of any rent and other sums collected or received as a result of such reletting as follows:

(A) first, Landlord shall pay to itself the cost and expense of terminating what would otherwise have constituted the unexpired portion of the Term, re-entering, retaking, repossessing, repairing, altering and/or completing construction of any portion(s) of the Premises and the reasonable out-of-pocket cost and expense of removing

all persons and property therefrom, including in such costs brokerage commissions, legal expenses and court costs and reasonable attorneys' fees and disbursements;

(B) second, Landlord shall pay to itself the reasonable out-of-pocket cost and expense sustained in securing any new tenants and other occupants, including in such costs, brokerage commissions, legal expenses and reasonable attorneys' fees and disbursements and other reasonable out-of-pocket 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 reasonable out-of-pocket cost and expense of operating and maintaining same;

(C) third, Landlord shall pay to itself any balance remaining on account of the liability of Tenant to Landlord under this Lease; and

(D) fourth, Tenant shall retain any balance.

Notwithstanding the foregoing, Tenant shall remain liable to pay for the cost and expense of completing the Required Tenant Improvements required to be performed by Tenant hereunder that is completed by Landlord or its designee, which liability shall not be paid out of any rent or other sums collected or received as a result of a reletting by Landlord. Landlord shall not in any 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 28.03 Waiver of Rights of Tenant. Except with respect to the negligent acts or omissions of Landlord, the obligation of Landlord to mitigate any damages it may sustain and for which Landlord claims Tenant is responsible, or any right conferred on Tenant pursuant hereto, to the extent not prohibited by applicable Requirements, Tenant hereby waives and releases all rights, conferred by statute otherwise, the purpose or effect of which is to limit or modify any provision of this Article.

Section 28.04 Receipt of Moneys after Notice or 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 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 28.05 Certain Waivers. 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 of competent jurisdiction 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 28.06 Strict Performance. No failure by either party to insist upon the other party’s strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy available to it by reason of the occurrence of a Default or Event of Default, and no payment or 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 the right to strict performance 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 or Event of Default by Tenant or Landlord, shall be waived, altered or modified except, in either case, by a written instrument executed by the other party. No waiver of any Default or Event of 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 or Event of Default.

Section 28.07 Right to Enjoin Defaults or Threatened Defaults; Remedies Cumulative. In the event of Tenant’s Default or threatened Default, Landlord shall be entitled to enjoin the Default or threatened Default by appropriate legal proceedings and shall have the right to invoke any rights and remedies allowed at law or in equity, or by statute, or otherwise, 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 other documents executed between the parties prior hereto, simultaneously herewith or hereafter, or now or hereafter existing at law or in equity or by statute or otherwise, and the existence or 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 any other such documents or now or hereafter existing at law or in equity, or by statute, or otherwise shall not preclude the exercise by Landlord of any or all other rights or remedies provided for in this Lease or other such documents or now or hereafter existing at law or in equity or by statute or otherwise.

Section 28.08 Payment of All Costs and Expenses. Tenant shall pay Landlord all actual out-of-pocket costs and expenses, including, without limitation, court costs and reasonable attorneys’ fees and disbursements, incurred by Landlord in connection with any action or proceeding to which Landlord may be made a party because or in connection with the occurrence of any Default or Event of Default by Tenant under this Lease. Tenant shall also pay Landlord, all its actual out-of-pocket costs and expenses, including, without limitation, court costs and reasonable attorneys’ fees and disbursements, incurred by Landlord in enforcing any of the terms, covenants or conditions of this Lease, unless Tenant is the prevailing party in any such action or proceeding. All of the sums paid or obligations incurred by Landlord in connection with the occurrence of any Default or Event of Default or the enforcement of the terms, covenants or conditions of this Lease shall be paid by Tenant to Landlord within ten (10) days after demand,

or they shall bear interest at the Default Rate. This Section 28.08 shall survive the expiration or earlier termination of this Lease.

Section 28.09 Remedies Under Bankruptcy and Insolvency Codes.

(a) 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 Act 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 adequately protect 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 this Lease, shall mean the following:

(b) that Tenant shall comply with all of its obligations under this Lease;

(c) that Tenant shall pay Landlord, on the first (1st) 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;

(d) that Tenant shall continue to use the Premises in the manner required by this Lease;

(e) that Landlord shall be permitted to supervise the performance of Tenant's obligations under this Lease;

(f) that Tenant shall hire such security personnel as may be necessary to insure the adequate protection and security of the Premises;

(g) 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 Base Rent Year;

(h) 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;

(i) 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;

(j) 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 this Lease, including, without limitation, the assurances referred to in; and

(k) 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 that 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 28.10 Funds Held by Landlord. If this Lease shall terminate as a result of an Event of Default, any funds held by Landlord shall be retained by Landlord first to pay any balance on account of liability of Tenant to Landlord under this Lease, and, second to Tenant if there is any balance remaining after payment of such liability.

Section 28.11 Funds held by Tenant. From and after the date, if any, on which an Event of Default shall have occurred hereunder and so long as such Event of Default is continuing, Tenant shall not pay, disburse or distribute any rents, issues or profits of the Premises, or portion thereof, the proceeds received by Tenant 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 received by Tenant (except to the extent such insurance proceeds or condemnation awards are required in connection with any Restoration to be performed pursuant to Articles 10 or 11), 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 (collectively, "Receivables") except for (i) payments of the costs of operating Tenant's business or (ii) payments to Landlord in payment of amounts due or payable under this Lease. Notwithstanding the foregoing, in no event during the continuance of an Event of Default, may Tenant disburse any portion of the Receivables to an Affiliate, or its officer, director, shareholder, manager or member, whether in the form of cash, a dividend, or otherwise, until the Event of Default has been cured, except for reasonable and customary payments in the form of payroll for services rendered in the normal course of operating Tenant's business.

Section 28.12 Survival. The rights and remedies of Landlord and the other provisions of this Article 28 shall survive the expiration or earlier termination of this Lease.

ARTICLE 29

TERMINATION AND SURRENDER

Section 29.01 Surrender of Premises. Upon expiration of this Lease or upon a re-entry by Landlord upon the Premises pursuant to Article 28, Tenant, without any payment or allowance whatsoever by Landlord, shall surrender the Premises and the Improvements to Landlord in good order, condition and repair, reasonable use and wear and tear excepted, free and clear of all Liens and encumbrances (other than Permitted Exceptions to the extent applicable) and easements and other rights that Landlord has agreed may survive the expiration or earlier termination of this Lease. Without in any way affecting Tenant's obligations to surrender the Premises on the expiration of this Lease in accordance herewith, upon the request of either Landlord or Tenant, the parties shall on or prior to the expiration of this Lease perform a joint inspection of the Premises. Tenant shall rectify any then existing conditions identified during the inspection which shall be required to comply with Tenant's surrender obligations under this Lease. Tenant hereby waives any notice now or hereafter required by applicable Requirements with respect to vacating the Premises on the expiration or earlier termination of this Lease.

Section 29.02 Delivery of Contracts, etc. Upon expiration or upon a re-entry by Landlord upon the Premises pursuant to Article 28, Tenant shall deliver to Landlord to the extent in the possession of Tenant or any agent or employee of Tenant, (a) Tenant's executed counterparts of any service and maintenance contracts then affecting the Premises, (b) true and complete maintenance records for the Premises for the three (3) immediately preceding years, (c) all original licenses and permits then pertaining to the Premises, (d) certificates of occupancy then in effect for the Improvements, (e) all warranties and guarantees then in effect which Tenant has received in connection with any work or services performed or Equipment installed at the Premises, together with a duly executed assignment of the above to Landlord (which assignment of contracts, licenses and permits shall become effective with regard to any of the same upon Landlord's acceptance of same), (f) copies of all financial reports, books and records required by Article 28 and (g) any and all other reasonable documents of every kind and nature whatsoever relating to the operation of the Premises and the condition of the Improvements.

Section 29.03 Survival Clause. The provisions of this Article 29 shall survive the expiration or earlier termination of this Lease.

ARTICLE 30

CLAIMS, JURISDICTION, IMMUNITIES, PROCESS

Section 30.01 Waiver of Trial by Jury. Landlord and Tenant hereby waive, for the benefit of each other, trial by jury in any action, proceeding or counterclaim brought by any of the foregoing 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 that either party commences any proceeding for nonpayment of any rent or any other sums required to be paid by the other party under the terms of this Lease, the other party will not interpose any counterclaim of any nature whatever or description in any such proceedings other than statutory mandatory counterclaims,

or unless the failure to file such counterclaim will result in the other party's inability to bring a separate proceeding under applicable law.

Section 30.02 Jurisdiction. Any and all claims asserted by or against either party arising under this Lease or related thereto shall be heard and determined either in the courts of the United States located in New York City ("Federal Courts") or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To this effect both parties agree as follows:

(a) With respect to any possessory proceeding between Landlord and Tenant in New York State Court, both parties hereby expressly waive and relinquishes any rights they might otherwise have (i) to move to dismiss on grounds of forum non conveniens, (ii) to remove such action to Federal Court; and (iii) to move for a change of venue to a New York State Court outside New York County.

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

(c) Both parties agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Requirements. However, neither party waives its right to appeal or to obtain a stay.

(d) If either party commences any action against the other party in a court located other than in the City, County and State of New York, upon request of the other party, Landlord or Tenant, as applicable, shall either consent to a transfer of the action to a court of competent jurisdiction located in the City, County and State of New York, or if the court where the action is initially brought will not or cannot transfer the action, Landlord or Tenant, as applicable, shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in the City, County and State of New York.

Section 30.03 Process. Landlord and Tenant irrevocably consent to the service of any and all process in any action or proceeding instituted against them by the mailing of copies of such process to them to their respective addresses, and in the manner, set forth in Article 31. Landlord and Tenant irrevocably consent to the service of any and all process in any action or proceeding instituted against any of them by the mailing of copies of such process to Landlord and Tenant, as applicable, to their respective addresses, and in the manner, set forth in Article 31. Nothing in this Section shall affect the right of Landlord or Tenant to serve legal process in any other manner permitted by applicable Requirements.

ARTICLE 31

NOTICES

Section 31.01 Notices. All notices and communication to the parties hereunder will be delivered by hand or sent by registered or certified mail, return receipt requested, or by Airborne Express, FedEx, UPS, Express Mail or other overnight mail service that provides a receipt to the sender.

Receipt of a notice by the party to whom the notice is transmitted will be deemed to have occurred: (a) upon receipt, if hand delivered or if mailed; or (b) the next business day after transmittal by Airborne Express, FedEx, UPS, Express Mail or other overnight delivery service that provides a receipt to the sender. Notices given by counsel to Tenant shall be deemed given by Tenant, and notices given by counsel to Landlord shall be deemed given by Landlord.

(a) All notices and correspondence to Landlord must be delivered to the following addresses and addressees or to such other addresses or addressees of which Landlord may notify Tenant from time to time as follows:

If to the Landlord:

Hudson River Park Trust
Pier 40, 2nd Floor
353 West Street
New York, New York 10014
Attn: President

with a copy to:

Hudson River Park Trust
Pier 40, 2nd Floor
353 West Street
New York, NY 10014
Attn: General Counsel

and for notices under Section 9.02(h), with a copy to:

Hudson River Park Trust
Pier 40, 2nd Floor
353 West Street
New York, NY 10014
Attn: Finance Department

(b) All notices and correspondence to Tenant will be delivered to the following address(es) and addressee(s) or to such other address(es) or addressee(s) of which Tenant may notify Landlord from time to time:

If to Tenant: Pier 57 Tenant LLC
c/o RXR Realty LLC
625 RXR Plaza
Uniondale, NY 11556
Attn: Jason Barnett

with copies to:

Youngwoo & Assoc., LLC
435 Hudson Street, 4th Floor
New York, NY 10014
Attention: Margarett Lee

Fried, Frank, Harris, Shriver & Jacobson LLP
One New York Plaza
New York, NY 10004-1980
Attention: Tal J. Golomb, Esq.

Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, NY 10038
Attention: Ross F. Moskowitz, Esq.

Ropes & Gray LLP
Prudential Tower
800 Boylston Street
Boston, Massachusetts 02199
Attn: Marc D. Lazar, Esq.

ARTICLE 32

SUBLEASE

Section 32.01 This Lease Is a Sublease. Notwithstanding the reference to this document as a “lease” and the reference to the Landlord under this as “Landlord”, Landlord is the tenant of the Premises and other property pursuant to the State Lease. Landlord has submitted to Tenant a true and complete copy of the State Lease and shall promptly submit to Tenant any modifications or amendments thereof during the Term. Tenant shall not do or omit any act which would constitute a violation of, or default under, the State Lease. In the event that the State’s interest in the State Lease is transferred or assigned to a third party that is not a governmental agency or deemed to be a governmental agency, then Landlord shall (i) use commercially reasonable efforts, at Tenant’s expense, to obtain a subordination, non-disturbance and attornment agreement on Tenant’s behalf in a form reasonably acceptable to Landlord, Tenant and the State’s successor-in-interest as overlandlord under the State Lease, and (ii) request a subordination, non-disturbance and attornment agreement, on any behalf of any Occupant with whom Landlord, Tenant and such Occupant have entered into a Subordination, Non-Disturbance and Attornment Agreement, which subordination, non-disturbance and attornment agreement, if any, shall be in a form reasonably acceptable to Landlord, Tenant, such Occupant and the State’s successor-in-interest as overlandlord under the State Lease.

ARTICLE 33

CERTIFICATES BY LANDLORD AND TENANT

Section 33.01 Certificate of Tenant. Tenant shall, within twenty (20) days after request by Landlord, execute, acknowledge and deliver to Landlord, or any other Person reasonably 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 providing a copy thereof if requested), 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 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) attesting to any other matters relating to this Lease as reasonably requested by Landlord.

Section 33.02 Certificate of Landlord. Landlord shall, within twenty (20) days after request by Tenant (or a Recognized Mortgagee or a Permitted Substitute which has elected to enter into a New Lease pursuant to Section 13.04 or to assume or continue this Lease pursuant to Section 13.03), execute, acknowledge and deliver to Tenant, or any other Person specified by Tenant (or to a Recognized Mortgagee or a Permitted Substitute, as applicable), 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 providing a copy thereof if requested), 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 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) attesting to any other matters relating to this Lease as reasonably requested by Tenant.

Section 33.03 Authority of Party Executing Certificate. If the party delivering a certificate described in this Article 33 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 Occupant.

ARTICLE 34

QUIET ENJOYMENT

Landlord covenants that, as long as Tenant faithfully shall perform the agreements, terms, covenants and conditions hereof, Tenant shall and may (subject to the exceptions, reservations,

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. This covenant shall run with the land and shall bind Landlord, its successors and assigns, and shall inure to the benefit of Tenant, its successors and assigns. Notwithstanding anything to the contrary contained in this Article 34, Tenant acknowledges and agrees that, at all times during the Term, Landlord has a continuing obligation to construct, maintain, operate and/or lease or license areas of the Park adjacent to and otherwise in the vicinity of the Premises, and any activities by, or on behalf of, Landlord in furtherance of those obligations and which do not constitute a material and/or unreasonable interference to, or disruption of, Tenant's use of the Premises as permitted under this Lease shall not be deemed a violation of this covenant, unless this Lease contains an express provision to the contrary.

ARTICLE 35

RECORDING OF LEASE

At Tenant's request Landlord shall execute a memorandum of this Lease and Tenant may 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, if any, in connection therewith.

ARTICLE 36

ADMINISTRATIVE AND JUDICIAL PROCEEDINGS, CONTESTS, ETC.

Section 36.01 Tax Contest Proceedings. Tenant shall have the exclusive right, at its sole cost and expense, to seek reductions in the valuation of the Premises assessed for real property tax purposes and to prosecute any action or proceeding in connection therewith by appropriate proceedings diligently conducted in good faith in accordance with the Charter and Administrative Code of New York City. Nothing contained herein shall be deemed to imply that Tenant (or Landlord) has any obligation to pay Taxes.

Section 36.02 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 Article 4, payment of such Imposition may be postponed or deferred if, and only as long as:

(i) by reason of such postponement or deferment of such Imposition, in Landlord's sole reasonable discretion, neither the Premises nor any part thereof, could be in danger of being forfeited, and Landlord is not in danger of being subjected to criminal liability or penalty or civil liability or penalty in excess of Two Hundred Thousand Dollars (\$200,000) unless Tenant has furnished security as provided in Section 36.03;

(ii) Tenant shall have delivered, if required pursuant to clause (i) above, to Landlord collateral security satisfactory to Landlord, in Landlord's

reasonable discretion, to secure Tenant's obligation to pay any such postponed or deferred Imposition. Without limiting the generality of the foregoing, the value of any such collateral security shall be at least equal to the aggregate deferred or postponed amount of any and all Impositions contested by Tenant, together with all interest and penalties in connection therewith and all charges relating thereto that may, in Landlord's sole and absolute discretion, be assessed against, or become a charge on, the Premises or any part thereof in or during the pendency of such proceedings. If upon the termination of such proceedings, Tenant is required to pay the deferred or postponed amount of such contested Imposition, Tenant shall either (a) promptly pay the amount of such Imposition as determined in such proceedings, together with any interest, penalties, costs, fees (including, without limitation, reasonable attorneys' fees and disbursements) and other liabilities in connection therewith, and, upon such payment, Landlord shall return the collateral security to Tenant, or (b) at Tenant's request, Landlord shall apply the proceeds of the collateral security to the extent held by Landlord in cash to the payment, removal and discharge of any such deferred or postponed Imposition and the interest and penalties in connection therewith and any costs, fees (including, without limitation, court costs and reasonable attorney's fees and disbursements) or other liability accruing in any such proceedings and the balance, if any, remaining after application by Landlord as aforesaid, together with the interest, if any, earned thereon, shall be returned to Tenant. If Tenant fails to pay the amount of such Impositions, then Landlord shall be entitled to apply the proceeds of the collateral security delivered to it by Tenant to the payment of such Imposition. Tenant shall remain liable for any unpaid balance of such Imposition remaining after payment by Landlord as aforesaid, and Tenant shall pay said balance to Landlord or the Person entitled to receive it within ten (10) days after Landlord's demand; and

(iii) If at any time during the continuance of such proceedings Landlord, in its sole reasonable discretion, shall deem insufficient the amount or nature of any collateral security delivered by Tenant as security for Tenant's obligation to pay any such postponed or deferred Imposition, Tenant shall deliver to Landlord such additional collateral security, satisfactory to Landlord, in Landlord's sole reasonable discretion, as Landlord may request. If Tenant shall fail to deliver to Landlord such additional collateral security within ten (10) days after Landlord's demand therefor, Landlord may apply the proceeds of the collateral security held by Landlord to the payment, removal and discharge of any such deferred or postponed Imposition and the interest and penalties in connection therewith and any costs, fees (including, without limitation, court costs and reasonable attorney's fees and disbursements) or other liability accruing in any such proceedings and the balance, if any, remaining after application by Landlord as aforesaid, together with the interest, if any, earned thereon, shall be returned to Tenant or to the Person entitled to receive it. Tenant shall remain liable for any unpaid balance of such Imposition remaining after payment by Landlord as aforesaid, and Tenant shall pay said balance to Landlord or the Person entitled to receive it, within ten (10) days after Landlord's demand.

Section 36.03 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 on the condition that before instituting any such proceeding, Tenant shall deliver to Landlord collateral security, satisfactory to Landlord in Landlord's sole reasonable discretion, securing compliance with the contested Requirement and payment of all interest, penalties, fines, civil liabilities, fees and expenses in connection therewith. Any such proceeding instituted by Tenant shall be commenced as soon as it 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. Notwithstanding the delivery of any such collateral security, Tenant shall comply with any such Requirement in accordance with the provisions of Article 20, if by reason of noncompliance therewith, in Landlord's sole reasonable discretion, the Premises, or any part thereof, could be in danger of being forfeited or if Landlord is in danger of being subjected to criminal liability or penalty, or civil liability in excess of the amount for which Tenant shall have furnished collateral security as required hereby, or if failure to comply is hazardous to persons or property or would violate any insurance policy provisions.

Section 36.04 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. Notwithstanding the foregoing, provided that an Event of Default is not then continuing, Landlord shall not, without Tenant's prior written approval, make or finally agree to any settlement, compromise or other disposition of any such proceedings or discontinue or withdraw any such proceedings or accept a refund or other adjustment of or credit for any Taxes or Impositions as a result of any such proceedings. Any refunds resulting from any contest by Tenant shall belong to Tenant (less any fees or expenses due Landlord), even if the action was brought by Tenant in Landlord's name.

ARTICLE 37

SIGNS AND ADVERTISEMENTS

Section 37.01 Advertisements, Notices and Signs. Tenant shall not have the right to install and display on or about the exterior of the Premises advertisements, notices and/or signs, except those advertisements, notices and/or signs that are required by applicable Requirements, including but not limited to those mandated under local zoning waterfront public access area provisions, or as specifically permitted and authorized by this Lease, including without limitation (i) signage that complies with the dimensions and locations depicted in the schematic shown on, Exhibit O-1 attached hereto and made a part hereof, or (ii) the Project sign pursuant to and in accordance with Section 16.17. Any advertisements, notices and/or signs on or about the exterior of the Premises which Tenant wishes to install (other than in respect of the dimensions and locations depicted on Exhibit O-1), and the content of any advertisement, notices and/or signage on or about the exterior of the Premises, including the signage depicted on Exhibit O-1

(other than in respect of only the identification of an Occupant on any such signage without any other content on such signage) shall require the prior written approval of Landlord in each instance, which approval shall not be unreasonably withheld, conditioned or delayed; provided that Landlord shall be deemed to be acting reasonably should Landlord (1) require Tenant to utilize uniform signage standards (which may include identification of “Hudson River Park” in such signage) applicable to other areas of the Park and (2) evaluate such content in Landlord’s capacity as a public authority charged with the operation and management of the Park, as opposed to how a commercial operator might evaluate such content (and any advertisement, notices or signs utilized by another tenant or occupant of any other portion of Hudson River Park shall not be used as a precedent for Landlord’s consent to any advertisements, notices or signs referred to in this Section 37.01). All advertisements, notices and signs on the Premises shall comply with applicable laws, rules and regulations including, without limitation, the City Zoning Resolution and the requirements of the DOB. Tenant shall, at Tenant’s sole cost and expense, install, as part of the completion of the Required Tenant Improvements, and maintain signage identifying “Hudson River Park” in the dimensions and locations depicted in the schematic shown on Exhibit O-1, which signage shall be fabricated according to the specifications set forth on Exhibit O-2 attached hereto and made a part hereof; provided, however, that Tenant’s liability for the cost of fabricating and installing such signage shall not exceed Twenty-five Thousand Dollars (\$25,000). In addition Tenant shall, at Tenant’s sole cost and expense, install any freestanding signs that Landlord may desire to be located in the Easement Agreement, which signs shall be fabricated, without cost to Tenant, by or on behalf of Landlord and supplied to Tenant prior to Final Completion of the Required Tenant Improvements. If any freestanding signs that Landlord may desire to be located in the Easement Area are not delivered to Tenant prior to Final Completion of the Required Tenant Improvements, Tenant shall thereafter have no obligation to install such freestanding signs. Tenant shall cause all Occupants (other than Anchor Occupant whose sublease or occupancy agreement has been finalized on or prior to the Effective Date) occupying any of the Premises designated for retail uses to identify, in any advertising and promotional materials (including without limitation advertising and promotional materials in print format or in any form of electronic presentation whether on the internet, social media or any other similar format) utilized by such Occupants, the location of such Occupants’ businesses as being “in Hudson River Park” if any location is referred to in such advertising or promotional material.

Section 37.02 Sponsorships. Tenant acknowledges and agrees that, at any time during the Term and in connection with Landlord’s operations in, and oversight of, other portions of the Park, Landlord may enter into written agreements (“Promotional Contracts”) with corporate sponsors and other organizations for promotional events, offerings and/or displays (collectively, the “Promotional Activities”) in the Park for a specified period of time (the “Promotional Period”) provided that any such Promotional Contracts shall be subject to prior promotional contracts entered into between Tenant and other third party corporate sponsors but only to the extent (x) such third party corporate sponsor is, in Landlord’s reasonable opinion, comparable to, and a direct competitor of, Landlord’s proposed corporate sponsor, (y) Tenant shall have provided Landlord with written notice, and a fully executed copy, of such promotional contract, and (z) Tenant proves to Landlord’s satisfaction that the Promotional Contract would violate the terms of Tenant’s existing promotional contract. If Landlord gives Tenant written notice (the “Promotion Notice”) of the existence of any Promotional Contracts, together with a general description of the Promotional Activities and the duration of the Promotional Period, Tenant

agrees that, notwithstanding anything to the contrary contained in this Lease, Tenant shall not engage in (and shall not allow any Occupants in the Premises, to the extent within Tenant's reasonable control, to engage in) any activities similar to the Promotional Activities in any portion of the Premises during the Promotional Period that would conflict with or be inconsistent with the Promotional Activities under the sole and direct control of Landlord. Any Promotion Notice may also contain a request for Tenant to allow Promotional Activities to occur in the Premises during the Promotional Period and an offer by Landlord to share with Tenant, on a basis more particularly set forth in the Promotion Notice, revenue generated by the Promotional Activities in the Premises. Tenant shall, and shall make a request to Occupants (and endeavor to cause to such Occupants to), schedule and meet with any such promotion provider and/or sponsor to discuss Promotional Activities in which Tenant and Occupants may participate. Any decision by Tenant in connection with such request and offer shall be in the sole and absolute discretion of Tenant. If Landlord and Tenant reach an agreement relating to such request and offer, Landlord and Tenant shall enter into a separate written agreement related thereto, which agreement shall include how any revenue sharing between Landlord and Tenant relating to Promotional Activities in the Premises shall be treated under this Lease. Nothing contained in this Section 37.02 shall interfere with or negate any right that an Occupant has under its sublease or occupancy agreement in connection with its use of the premises covered by such sublease or occupancy agreement and/or its operations in such premises as long as such use and/or operations do not require the consent of Tenant. If Tenant and/or any Occupant are participating in Promotional Activities or any related sponsorship program(s), Tenant shall comply with the provisions of this Section 37.02 and shall withhold its consent to such Occupant if its use of the premises covered by its sublease or occupancy agreement and/or such Occupant's operations therein is in violation of the Promotional Activities or related sponsorship programs to which Tenant and/or such Occupant has elected to participate.

ARTICLE 38

HAZARDOUS MATERIALS

Section 38.01 Covenant. Tenant covenants that the Premises shall be kept free of Hazardous Materials, except in compliance with applicable environmental laws and except those related to the North Head House Oil Spill (which cleanup shall not be the responsibility of Tenant) or any Hazardous Materials introduced onto the Premises by an Indemnitee after the Commencement Date, that neither Tenant nor any occupant of the Premises shall use, transport, store, dispose of or in any manner deal with Hazardous Materials at the Premises, except in compliance with applicable environmental laws, and shall under no circumstances permit the release or discharge of any Hazardous Materials into the waters of the Hudson River. Tenant shall comply with, and ensure compliance by all occupants of the Premises, at all times during the Term, with all applicable environmental laws, ordinances, rules and regulations of federal, state and local governments (individually and collectively "Environmental Laws"). Tenant shall keep the Premises free and clear of any liens imposed pursuant to such laws. In the event that Tenant receives any notice or advice from any governmental agency or any source whatsoever with respect to Hazardous Materials, at, under, on, from, adjacent to or affecting the Premises, or affecting the waters of the Hudson River adjacent to the Premises, Tenant shall promptly notify Landlord. Tenant shall conduct and complete, at its sole cost and expense, all investigations, studies, sampling and testing, and take all remedial actions required by applicable Environmental

Laws necessary to clean up and remove all Hazardous Materials from the Premises, including any portions of the Hudson River into which Hazardous Materials were discharged or released by Tenant or any occupant or customer of the Premises, or in connection with any activities at the Premises, provided that Tenant shall have no liability or obligation to perform any remediation in connection with any Hazardous Materials introduced on the Premises by an Indemnitee after the Commencement Date.

ARTICLE 39

MISCELLANEOUS

Section 39.01 Headings, Captions and Table of Contents. The descriptive headings and captions used in this Lease are for the purposes of convenience only and do not constitute a part of this Lease. The Table of Contents hereof 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 39.02 Governing Law. This Lease and its performance shall be governed by and construed in accordance with the laws of the State of New York, excluding New York's rules regarding conflict of laws and any rule requiring construction against the party drafting this Lease.

Section 39.03 Amendments; Waiver. This Lease may not be amended except by an instrument in writing signed by both parties. The failure by either party to exercise in any respect any right provided for herein will not be deemed a waiver of any rights hereunder.

Section 39.04 Entire Agreement. This Lease, including 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 Landlord and Tenant concerning the Premises that were made or entered into prior to the date of this Lease, including without limitation the CDL and the MOU, and that are intended by Landlord and Tenant to have any further force or effect after the date of this Lease other than as expressly set forth herein or as may be expressly contained in any enforceable written agreements or instruments executed simultaneously herewith or hereafter by the parties hereto. The Section 39.04 shall not apply to written agreements executed by Landlord and Tenant contemporaneously with the execution of this Lease.

Section 39.05 Invalidity of Certain Provisions. The provisions of this Lease are intended to be severable. 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 applicable Requirements.

Section 39.06 No Partnership or Joint Venture. Nothing herein contained shall be construed in any manner to create any relationship between Landlord and Tenant other than the relationship

between landlord and tenant, and Landlord and Tenant will not be considered partners or co-venturers for any purpose.

Section 39.07 Consents and Approvals.

(a) 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, except where expressly stated otherwise, 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. The foregoing shall not limit the effect of any provision of this Lease by which consent is deemed granted, if objection is not made within a specified period.

(b) Whenever pursuant to the terms of this Lease any consent or approval by Landlord or Tenant is not to be unreasonably withheld, conditioned or delayed 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, conditioned or delayed 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.

(c) Wherever this Lease provides that Landlord's or Tenant's consent, review or approval is required, such consent, review or approval shall not be unreasonably withheld, conditioned or delayed, unless the express provisions of this Lease state otherwise. 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, unless the express provisions of this Lease state otherwise. Unless this Lease specifies that a notice under this Lease must be given within a specific timeframe and/or any required response to such notice must be given within a specific number of days after recipient's receipt of such notice, any notices to be given under the Lease shall be given within a reasonable timeframe and any required response to such notice shall be given within thirty (30) days after the recipient's receipt of such notice (unless the recipient requests, in a written notice given to the sender of the original notice prior to the expiration of the thirty (30) day response period, additional time in which to respond, which additional time shall not exceed fifteen (15) days, unless this Lease provides otherwise).

(d) 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.

Section 39.08 Including. "Including" as used in this Lease, shall be deemed to mean "including, without limitation."

Section 39.09 Force Majeure. "Force Majeure" shall mean any and all causes beyond Tenant's reasonable control, including, without limitation, delays resulting from actions of Landlord that are not in conformity with this Lease (provided such delays are not themselves the result of actions by Tenant), governmental restrictions, labor disputes (including strikes, slowdowns and

similar labor problems), accident, mechanical breakdown, shortages or inability to obtain labor, fuel, steam, water, electricity, equipment or materials (for which no substitute is readily available at a comparable price), acts of God (including inordinately severe weather conditions), removal of hazardous substances that are not the responsibility of Tenant pursuant to the terms of this Lease, enemy action, civil commotion, fire or other casualty, and in the case of the occurrence of any of the foregoing events and in order to get the benefits afforded Tenant under this Lease by reason of any such occurrence, Tenant shall have given Landlord written notice within thirty (30) days after Tenant has obtained actual but not constructive or implied knowledge that the same shall (i) materially and adversely affect the timely construction of the Project in accordance with this Lease or (ii) affect the time performance by Tenant of any other obligation under this Lease. In addition, if after the Commencement Date and prior to the completion of the Project, any Major Litigation is commenced and Tenant determines that it would be reasonably prudent to delay taking any action required by the Lease in connection with the completion of the Project, then any attendant or resultant delay in Tenant's performance in connection with the completion of the Project shall be deemed caused by Force Majeure. Landlord acknowledges and agrees that if a Recognized Mortgagee succeeds to the interests of Tenant under this Lease by foreclosure or transfer in lieu of foreclosure, then such Recognized Mortgagee shall not be adversely affected by reason of Tenant's failure to have given any notice of Force Majeure within such thirty (30) day period and, accordingly, shall get the benefit of Force Majeure, as applicable pursuant to the terms of this Lease, but such Recognized Mortgagee thereafter shall be required to give the aforesaid notice within such thirty (30) day period after such Recognized Mortgagee has obtained actual but not constructive or implied knowledge of any Force Majeure that shall materially and adversely affect the timely construction of the Project in accordance with this Lease, or affect the time performance by Tenant of any other obligation under this Lease, as the case may be, in order to get the benefits afforded Tenant under this Lease by reason of the occurrence of an event listed in the first sentence of this Section 39.09. The time periods set forth in this Lease for the performance by Tenant of Tenant's obligations hereunder shall be extended for the period such performance is adversely affected by such Force Majeure, except that if any Force Majeure shall occur and be continuing for a period in excess of two (2) years and Tenant is unable to perform Tenant's material obligations under this Lease as a direct result of such Force Majeure, either Tenant or Landlord shall have the ability to terminate this Lease at any point after such two (2) year period without liability.

Section 39.10 Remedies Not Exclusive. No right or remedy conferred upon any party in this Lease is intended to be exclusive of any other right or remedy of such party contained in this Lease. Every such right or remedy shall be cumulative and shall be in addition to each other right and remedy contained in this Lease or now or hereafter available to either party at law, in equity, by statute or otherwise.

Section 39.11 Required Provisions of Law Controlling. It is the intention and understanding of the parties hereto that each and every provision of law required to be inserted in this Lease should be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is deemed to be inserted and if, through mistake or otherwise, any such provision is not inserted herein or is not inserted in correct form, then this Lease shall forthwith, upon the application of either party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party.

Section 39.12 Successors and Assigns. The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of, Landlord and Tenant and their respective successors and assigns.

Section 39.13 Construction of Terms and Words. All terms and words used in this Lease regardless of the number and gender in which they are used shall be deemed and construed to include any other gender, masculine, feminine or neuter, as the context or sense may require, with the same effect as if such numbers and words had been fully and properly written in the required number and gender.

Section 39.14 Publicity. Unless specifically directed to the contrary by Landlord, Tenant will, and Tenant will use commercially reasonable efforts to make all Occupants under subleases or occupancy agreements covering leasable units in the Premises, identify its location as being within the Park in all literature, brochures, handouts, advertising, and dissemination of information of any kind respecting its operations permitted hereunder.

Section 39.15 Overpass Bridge. Tenant's conceptual plans include the possible construction of a pedestrian overpass bridge as identified as an alternative in the project's Final Environmental Impact Statement, which construction shall be at the sole cost and expense of Tenant. To the extent necessary, and at no cost or liability to Landlord, Landlord shall reasonably cooperate with Tenant in Tenant's efforts to secure approval for and construct such pedestrian overpass bridge. Furthermore, if Tenant or any Occupant seeks to have designed and constructed such pedestrian overpass bridge spanning Route 9A for the purpose of serving the Premises, then notwithstanding anything to the contrary contained in this Lease, none of Tenant, any affiliate of Tenant (or any successor in interest to Tenant under this Lease), any Occupant or Landlord shall seek or utilize funding, whether in whole or in part, from the State of New York, the City of New York or Hudson River Park Trust (or any successor thereto as operator of the Park) for such purpose.


Section 39.16 Counterparts. This Lease may be executed in one or more counterparts which, when taken together, shall constitute one and the same.

Section 39.17 Confidentiality. Landlord acknowledges that Tenant and other Persons in connection with this Lease have provided and will be hereafter providing confidential information, including trade secrets and proprietary information, the disclosure of which may be harmful to Tenant's competitive position. Accordingly, Landlord agrees that it shall maintain the confidentiality of such information which are clearly marked and identified as a "CONFIDENTIAL"; provided that if disclosure requests are received by Landlord pursuant to the Freedom of Information Law or any judicial or legislative subpoena, requesting any financial information concerning Tenant or its principals, or any trade secret or proprietary information provided to Landlord or by Tenant or any other Person in connection with this Lease, Landlord shall give Tenant prior notice and the opportunity to object to such Freedom of Information Law request or subpoena (it being understood and agreed that Landlord shall have the right to make disclosures believed in good faith to be required under the Freedom of Information Law or other applicable law notwithstanding any objection of Tenant). Tenant understands and acknowledges that Landlord is a public authority of the State of New York and is subject to review and oversight by legislative and other regulatory bodies, and that Landlord is required by law and

may be compelled or requested by such oversight bodies to make public disclosure of information regarding this Lease, and shall be fully entitled to do so without objection from Tenant, except in the limited circumstances described in this Section 39.17.

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

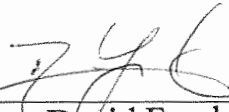
HUDSON RIVER PARK TRUST

By: 
Name: Madelyn Wils
Title: President

[Signatures continue on following page]

[Signature Page to Lease Agreement]

SUPER P57 LLC, a Delaware limited liability company

By: 
Name: **David Frank**
Title: Authorized Person