



New York City Economic Development Corporation

April 18, 2017

Mr. Jon Paul Lupo
Director, Mayor's Office of City Legislative Affairs
City Hall
New York, NY 10007

Re: City Council approval needed for Maritime Lease for Piers 88 & 90 of the Manhattan Cruise Terminal ("MCT")

Mr. Lupo:

I am writing this letter to request that the Office of City Legislative Affairs submit to the City Council for approval a proposed maritime lease (the "Lease") between the City of New York (the "City"), acting by and through its Department of Small Business Services, as landlord (the "Landlord"), and Ports America, Inc., as tenant ("Ports America" or "Tenant"), and the New York City Economic Development Corporation, as administrator ("NYCEDC" or "Administrator"), for Piers 88 and 90 of MCT (the "Premises") pursuant to New York City Charter Section 1301(2)(f).

The proposed Lease to be entered into between the City and the Tenant will be substantially in the form attached hereto as **Exhibit A**.

On October 21, 2015, the Department of Small Business Services issued a determination, a copy of which is attached as **Exhibit B**, that the proposed Lease is a Type II action pursuant to 6 NYCRR Part 617.5(c)(26) and that no further review under CEQR was required.

Background

The Premises is a four-berth, City-owned cruise terminal located on the Hudson River between West 48th and West 55th Streets in Manhattan. The piers were originally constructed in the 1930s to accommodate large transatlantic passenger ships and were later modernized in the 1970s by the City and the Port Authority of New York & New Jersey (the "PA") in an effort to create a consolidated terminal for use by all cruise lines. The City leased MCT to the PA between 1973 and 1994, after which NYCEDC assumed management of MCT and undertook a concerted effort to address declining cruise passenger volumes.

Since assuming control of MCT, NYCEDC has grown cruise passenger volumes from a low of 271,000 passengers in 1990 to over 900,000 passengers in 2016. NYCEDC's efforts included coupling an aggressive business development strategy with a significant modernization of the terminal in 2006 and an additional series of improvements in 2013, which allowed the Premises to accommodate the world's largest cruise ships.

The Premises is currently home to Norwegian Cruise Line Holdings, Carnival Cruise Lines and numerous seasonal vessels with itineraries departing from New York City for Bermuda, the Bahamas, the Caribbean and Canada/New England. The combined passenger volumes at both MCT and the Brooklyn Cruise Terminal make New York City the fifth-largest cruise port in North America.

Terminal operations of the Premises are currently provided by Ports America, Inc. under an amended operating agreement with NYCEDC that expires on June 30, 2017. The proposed Lease will allow for continued cruise ships operations, ensuring that the over 1 million passengers expected to flow through the terminal in 2017 alone will do so without interruption. Continued use of the Premises for cruise operations will also spur additional tourist spending in New York City while helping to create and retain local jobs.

Material Lease Terms

The proposed material Lease terms are as follows:

Landlord: The City of New York, by its Department of Small Business Services

Administrator: The New York City Economic Development Corporation

Tenant: Ports America, Inc.

Premises: Piers 88 and 90 in the Borough of Manhattan, City and State of New York

Tenant will also have exclusive and unrestricted access to Pier 92 to conduct maritime terminal operations as needed

Term: The initial term of the Lease shall commence upon execution and expire as of December 30, 2029

Renewal Terms: Two (2) 5-year renewal periods at Tenant's option

Annual Base Rent: \$2,000,000 as adjusted on an annual basis by the Consumer Price Index ("CPI")

Permitted Uses: Tenant shall use and occupy the Premises for the primary purposes of operating MCT as a marine terminal (the

“Primary Use”) and any other uses ancillary to the operation of the Premises for the Primary Use including parking and event operations, military and yacht dockings, and concessions

Participation Rent: Tenant shall collect all fees for the following ancillary operations and shall remit to Landlord as Participation Rent the associated percentages set forth below:

Event Operations: 25% of net revenue
Military Docking: 25% of gross revenue
Yacht Docking: 25% of gross revenue
Concessions: 50% of net revenue

Tenant Retention

Amount: Tenant shall collect Facility Usage Fees on behalf of Landlord and, per Lease Year, shall retain the greater of (1) \$6.82 per passenger (as adjusted by CPI) or (2) the Minimum Retention Amount as calculated by passenger activity at both the Premises and the Brooklyn Cruise Terminal (“BCT”)

Minimum Retention

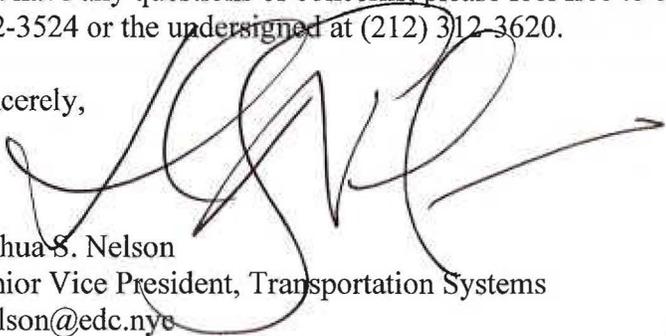
Amount: A minimum aggregate annual amount under the Lease and the BCT Operating Agreement of \$7,500,000 (as adjusted by CPI for each Lease Year)

Approvals:

The proposed Lease is a lease of wharf property and, therefore, pursuant to the City Charter, is subject to City Council approval for disposition. The City Council has 45 days to approve the Lease from time of receipt of this notice. If the City Council fails to act on the Lease within the 45 day time period, the Lease will be automatically approved upon the expiration of the 45th day

Please inform me of the date of submission of the proposed Lease to the City Council. If you have any questions or concerns, please feel free to contact Lydon Sleeper at (212) 312-3524 or the undersigned at (212) 312-3620.

Sincerely,



Joshua S. Nelson
Senior Vice President, Transportation Systems
jnelson@edc.nyc

EXHIBIT A

LEASE AGREEMENT

between

THE CITY OF NEW YORK, acting by and through its
DEPARTMENT OF
SMALL BUSINESS SERVICES,

LANDLORD,

and

PORTS AMERICA, INC.

TENANT

Premises

Piers 88 and 90 in the Borough of Manhattan,
City and State of New York

Dated as of April __, 2017

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AGREEMENT OF LEASE (“Lease”) dated as of _____, 2017, by and between THE CITY OF NEW YORK, a municipal corporation of the State of New York, acting by and through its COMMISSIONER OF SMALL BUSINESS SERVICES, having an address at 110 William Street; New York, New York 10038, as landlord (“Landlord”), and PORTS AMERICA, INC., a Delaware corporation, having an office and place of business at 525 Washington Boulevard #1600, Jersey City, New Jersey 07310, as tenant (“Tenant”).

W I T N E S S E T H

WHEREAS, the City of New York (the “City”) is the owner of certain real property and the improvements situated thereon commonly known as Manhattan Cruise Terminal (the “Manhattan Cruise Terminal” or “MCT”), consisting generally of Piers 88 and 90 on the Hudson River between West 48th and West 55th Street identified as Block ____, Lots ____ on the Tax Map for the Borough of Manhattan, City and State of New York, and adjacent upland and lands underwater, in the Borough of Manhattan, as more particularly depicted in Exhibit A (the “Premises”);

WHEREAS, Landlord desires to provide a high-quality and cost-effective way of servicing cruise lines and passengers and to produce new employment opportunities and generate new revenues for the City; and

WHEREAS, the New York City Economic Development Corporation, a not-for-profit corporation organized under the New York State Not-for-Profit Corporation Law (together with its successors, “NYCEDC” or “Lease Administrator”), has been appointed by Landlord pursuant to Section 2.01 of the so-called “Maritime Contract” between the City and NYCEDC to administer this Lease and act for and on behalf of Landlord with respect to Landlord's proprietary interest, and certain of its rights and obligations as Landlord, under this Lease;

WHEREAS, Landlord and Tenant desire to enter into this Lease with respect to the Premises and cause the Premises to be used in accordance with the terms hereof; and

WHEREAS, The Port Authority of New York and New Jersey (the “Port Authority”) is the owner of a certain Brooklyn Port Authority Marine Terminal consisting generally of Pier 12 and adjacent upland and lands underwater in the borough of Brooklyn (the “Brooklyn Cruise Terminal”); and

WHEREAS, Pursuant to a lease between Port Authority and NYCEDC made as of December 23, 2004 (Lease No. BP 304), as Amended and Restated as of January 1, 2009 (Lease No. BP 311) (the “PA Lease”), the Port Authority has leased the Brooklyn Cruise Terminal, along with the Pier 11 shed to NYCEDC; and

WHEREAS, simultaneously with the execution of this Lease, Tenant has entered into an operating agreement to operate and manage the Brooklyn Cruise Terminal (the “BCT Operating Agreement”).

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

ARTICLE 1

CERTAIN 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):

“Administrative Code” means the Administrative Code of The City.

“Affiliate” means as applied to a Person or Persons, any other Person or Persons directly or indirectly controlling, controlled by, or under common control with, that Person or Persons.

“Alterations” has the meaning provided in Section 16.01 hereof.

“Ancillary Operations Gross Revenues” shall include any and all gross revenues, amounts, monies, rentals, fees, income and receipts and other forms of consideration of whatever kind or nature paid or payable to Tenant or any affiliate of Tenant or otherwise derived by the Tenant (without any deductions therefrom) or for the account of Tenant or any affiliate of Tenant from or in connection with any ancillary operations permitted hereunder, including but not limited to all such amounts paid or payable to the Tenant by any sublessee, licensee or other third party with respect to such ancillary uses; provided, however, that any taxes imposed by law which are separately stated to and paid by the customer and directly payable to the taxing authority by the Tenant or others, shall be excluded therefrom.

“Annual Base Rent” has the meaning provided in Section 4.01(a) hereof.

“Architect” means an architect, architectural firm, professional engineer, or combined practice or association registered in the State of New York, selected by Tenant and approved by Lease Administrator, in its sole and absolute discretion.

“Binding Engineer’s Statement” has the meaning provided in Section 29.09 hereof.

“Bundle Rate Fees” means the fees collected based on the rate cruise line pay per passenger movement each way for a home port and once for each in-transit port-of-call.

“Business Day” means any day other than a Saturday, Sunday, legal holiday, a day on which Lease Administrator or the City is closed for business, or a day on which banking institutions in New York City are authorized by law or executive order to close.

“Casualty” has the meaning provided in Section 12.02(a) hereof.

“Charter” means the New York City Charter.

“Commence Construction of Tenant’s Work” or “Commencement of Construction of Tenant’s Work” means all of the following shall have been done: (A) all required site testing work and/or remediation shall have been substantially completed; (B) a Construction Contract relating to Tenant’s Work shall have been executed, and (C) a non-cancelable, binding contract for any

material in an amount in excess of \$250,000 to be incorporated into Tenant's Work for the Project shall have been entered into and a copy of such contract shall have been delivered to Lease Administrator.

“Commencement Date” means [_____,2017].

“Comptroller” means the Comptroller of the City, or his or her designee.

“Concessions” means revenue generating operations (not including Parking) at the Manhattan Cruise Terminal by businesses that are permitted to operate at the Manhattan Cruise Terminal, including, but not limited to, advertisements within the Manhattan Cruise Terminal, food and drink services and concession or usage charges to taxis, limousines and buses servicing the Manhattan Cruise Terminal and any other businesses and/or concessions that may be permitted to operate at the Manhattan Cruise Terminal, provided that (i) such businesses and/or concessions do not interfere and are not prohibited or inconsistent with marine terminal operations or the facility security plan, and/or (ii) the presence of such businesses and/or concessions is not inconsistent with existing labor arrangements. Notwithstanding the foregoing, Concessions does not include revenue generated from the granting of naming rights unless such naming rights are approved by Lease Administrator and Landlord.

“Condemnation Restoration” has the meaning provided in Section 13.01(c) hereof.

“Construction Application” has the meaning provided in Section 17.01(a).

“Construction Commencement Date” means, with respect to the Tenant's Work, the earlier of the date on which Tenant commences Construction Work and the date set forth in the Construction Schedule for commencement of the Tenant's Work and, with respect to other Construction Work, a date reasonably acceptable to Lease Administrator and Tenant after the completion of the Construction Application review and approval process set forth in Section 17 hereof.

“Construction Contract(s)” has the meaning provided in Section 17.05(c).

“Construction Schedule” means the schedule for Tenant's Work and Landlord's Improvement Obligations set forth on Exhibit N.

“Construction Work” means any construction or construction work performed by or on behalf of Tenant during the Term, including, without limitation, any Tenant's Work, Alteration, Restoration, or other capital improvements, or other construction work performed by Tenant in connection with the use, maintenance or operation of the Premises.

“Date of Taking” has the meaning provided in Section 13.01(b) hereof.

“Default” means any condition or event, or failure of any 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.

“Dockage and Wharfage Fees” means the dockage and wharfage charges in connection with vessels and passengers at the Manhattan Cruise Terminal, as more particularly set forth in Exhibit I.

“Engineer’s Statement” has the meaning provided in Section 29.09 hereof.

“Equipment” means all personal property (other than Tenant’s Trade Fixtures) now or hereafter incorporated in or attached to and used or usable in the operation of the Premises by virtue of Tenant’s Work, 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 (other than Tenant’s Trade Fixtures).

“Event of Default” has the meaning provided in Section 29.01 hereof.

“Event Operations” means, with respect to any Events, setup and hosting, post Event, and coordinating and integrating all other operations within an Event and its associated venues.

“Events” include, but are not limited to, parties, weddings, conferences, trade shows, and meetings at Manhattan Cruise Terminal.

“Expedited Binding Engineer’s Statement” has the meaning provided Section 29.10.

“Expedited Final Engineer’s Statement” has the meaning provided Section 29.10.

“Expedited Landlord Approved Engineer’s Statement” has the meaning provided Section 29.10.

“Facility Usage Fees” has the meaning provided in Section 4.03 hereof.

“Final Completion” has the meaning provided in Section 17.02 hereof.

“Final Engineer’s Statement” has the meaning provided in Section 29.09 hereof.

“Fresh Water” means the provision of water to the ships berthed at the Manhattan Cruise Terminal by the connection to and use of the metered water lines at the Manhattan Cruise Terminal.

“Governmental Authority” or “Authorities” means the United States of America, the State of New York, New York City in its governmental capacity and any agency, department, legislative body, commission, board, bureau, instrumentality or political subdivision of any of the foregoing, now existing or hereafter created, having jurisdiction over the Premises, or any portion thereof, or any street, road, avenue, sidewalk or water comprising a part of, or immediately adjacent to, the Premises, or the operations conducted thereon or any vault in or under the Premises.

“Hazardous Substances” has the meaning provided in Section 42.01 hereof.

“Imposition” or “Impositions” has the meaning provided in Section 5.02 hereof.

“Improvements” means any and all structures or other 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, replacements and substitutions thereof, including, but not limited to, the Tenant’s Work, landscaping and fencing, and all Equipment incorporated in or attached to the Premises at any time during the Term.

“Indemnitees” has the meaning provided in Section 23.02 hereof.

“Index” means the Dodge Building Cost Index or such other published index of construction costs which shall be selected from time to time by Lease Administrator or Landlord, but not more often than once every three years, provided that such Index shall be a widely recognized measure of construction costs in the insurance industry and appropriate to the type and location of the improvements to the Premises.

“Landlord Approved Engineer’s Statement” has the meaning provided in Section 29.09 hereof.

“Landlord Delays” means delays caused by the acts or omissions of Lease Administrator or Landlord, in its proprietary capacity, including, failure to grant consents or approvals and/or disapprovals within the respective time periods specified in the Lease, undue delay in requests for additional information or materials and delays by Landlord in performing the Pier 90 West End subsidence mitigation project as described in Exhibit J.

“Landlord’s Facility Usage Fee Share” means the Facility Usage Fees collected by Tenant less the Tenant Retention Amount and any other amounts permitted to be deducted therefrom by Tenant in accordance with this Lease, including the amounts set forth in Section 15.06.

“Late Charge Rate” means the rate of interest charged at the time in question by the City for delinquent Taxes.

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

“Lease Year” means each twelve (12) month period based on a calendar year falling within the Term measured initially from the Commencement Date provided that, if the Commencement Date occurs on a date other than the first day of a calendar month, the first Lease Year shall include the partial calendar month in which the Commencement Date occurs plus the immediately succeeding twelve (12) calendar months.

“Lien” means any lien (statutory or otherwise), including, but not limited to, mechanic’s, laborer’s, materialman’s and public improvement liens, security interest, mortgage, deed of trust, priority, pledge, charge, financing lease or other encumbrance against the Premises.

“Military Docking” means the berthing of military vessels, including, but not limited to, berthing related to Fleet Week in the New York Harbor.

“Minimum Retention Amount” shall have the meaning provided in Section 4.02 hereof.

“Net Revenue” means the earned revenue of Tenant for each item referenced in Participation Rent in accordance with US GAAP applied in accordance with Tenant’s then-existing corporate policies, less related pricing discounts and allowances, costs and expenses, revenue-based fees and taxes and similar items; provided, however, that Net Revenue shall not include revenue resulting from: (i) inter-company transactions between Tenant and the Ports America Group Companies; (ii) non-recurring, one-time or non-operating items calculated in accordance with the specified accounting principles.

“NYCEDC” has the meaning provided in the Preamble.

“Outside Completion Date” means eighteen (18) months after the Scheduled Completion Date, provided however, that if the New York State Department of Environmental Conservation (“DEC”) permitting process with respect to the Tenant’s Work extends beyond the time period appropriated for DEC in the Construction Schedule, solely as a result of DEC’s inaction, then the Outside Completion Date shall be extended for each day beyond the time apportioned therefor.

“Parking” means parking on the Premises operated by or on behalf of the Tenant for Event Operations, cruise operations, Yacht Docking, Military Docking, in connection with any other Permitted Use, and any other parking events approved by Lease Administrator in writing.

“Participation Rent” has the meaning provided in Section 4.04 hereof.

“Permitted Uses” has the meaning provided in Section 9.01 hereof.

“Person” means an individual or an organization, including a limited liability company, 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.

“Port Authority” has the meaning provided in the Preamble.

“Premises” has the meaning provided in the Preamble.

“Project” means the development, use and operation of the Premises for the Permitted Uses, as contemplated in this Lease.

“Quarter” means a period of three consecutive months in a calendar year starting on one of January 1, April 1, July 1 or October 1.

“Questionnaire” has the meaning provided in Section 26.03 hereof.

“Rental” means all of the amounts payable by Tenant pursuant to this Lease, including, without limitation, Annual Base Rent, Landlord’s Facility Usage Fee Share, Participation Rent, and Impositions, the amounts, if any, payable pursuant to Article 23 hereof and any other sums, costs, expenses or deposits which Tenant is obligated to pay and/or deposit pursuant to the terms, covenants and conditions of this Lease.

“Replacement Cost” means the cost to repair or replace, on the same premises, the lost or damaged property with other property of comparable material and quality and used for the same purpose.

“Required Improvement” has the meaning provided in Section 19.02 hereof.

“Required Improvement Cost” has the meaning provided in Section 19.02 hereof.

“Required Remediation” means remediation that is a Landlord Environmental Condition and that is required pursuant to applicable Environmental Requirements.

“Requirements” means: (i) any and all laws, rules, regulations, orders, ordinances, statutes, codes, executive orders, resolutions and requirements of the Governmental Authorities applicable (now or at any time during the Term) to the Premises, or in front of or adjacent to the Premises to the extent the owner of the Premises would have legal responsibility therefor (including, without limitation, the Building Code of New York City, The New York City Noise Control Code, 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; and (iii) any Certificate of Completion issued for the Improvements as then in force.

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

“Restoration Costs” has the meaning provided in Section 12.03(b) hereof.

“Restoration Funds” means any moneys that may be received by Landlord pursuant to the provisions of Sections 11.02(a), 13.01, hereof, as a result of property loss or condemnation, together with the interest, if any, earned thereon, and (b) the proceeds of any security deposited with Landlord pursuant to Sections 12.03 and 12.05 hereof, together with the interest, if any, earned thereon.

“Scheduled Completion Date” means, with respect to the Tenant’s Work, the date set forth on the Construction Schedule, and with respect to other Construction Work, a date reasonably acceptable to Lease Administrator.

“Sealing Professional” has the meaning provided in Section 17.01(a) hereof.

“Self-help Request” has the meaning provided in Section 29.09 hereof.

“State” means the State of New York.

“Stevedoring Services” has the meaning provided in Exhibit D hereof.

“Substantial Completion” or “Substantially Completed” has the meaning provided in Section 17.02 hereof.

“Taking” has the meaning provided in Section 13.01 (a) hereof.

“Taxes” means real property taxes assessed and levied against the Premises including all Improvements or any part thereof (or, if the Premises or Improvements 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, and Title 11, Chapter 2 of the Administrative Code of the City, as the same may now or hereafter be amended, or any successor statute.

“Tenant” has the meaning provided in the Preamble hereof or its permitted successors and assigns under this Lease.

“Tenant Operations” has the meaning provided in Section 15.01 hereof.

“Tenant Retention Amount” has the meaning provided in Section 4.03 hereof.

“Tenant’s Work” means the Improvements to the Premises, as described on Exhibit C hereto in an amount of not less than Twenty Five Million Two Hundred Thousand Dollars (\$25,200,000); such capital investment to the Premises together with the capital investment and investment in operating equipment at the BCT required under the BCT Operating Agreement shall be in an amount not less than Forty Million Two Hundred Thousand Dollars (\$40,200,000) in the aggregate.

“Term” has the meaning provided in Section 2.01 hereof.

“Terminal Sponsorship” means any and all naming rights, approved by NYCEDC and the City, for terminal advertising, signage, brand partnerships, product, service and activity sponsors and related vendor establishments at the Premises jointly agreed to by the Parties.

“Title Matters” has the meaning provided in Section 2.01 hereof.

“Trade Fixtures” means the personal and other property (including, but not limited to, furniture, inventory, machinery, equipment, vehicles, vessels, and special purpose structures and operating facilities of, utilized by or constructed by Tenant in or for purposes of its trade or business on or at the Premises, including any such property incorporated in Tenant’s Work.

“Unavoidable Delays” has the meaning provided in Section 45.20 hereof.

“Yacht Docking” means the berthing of all yachts, sailboats, ferries, cargo vessels, barges and other vessels other than commercial cruise vessels in the cruise trade and military vessels.

Section 1.02 References.

(a) Unless otherwise specified, references herein to Sections, Articles, Exhibits and other provisions are to the same in this Lease, i.e., “Section 1.02” means Section 1.02 of this Lease.

(b) Any reference to enacted statutory material ending in the word “Law” shall be to such law of the State of New York.

ARTICLE 2

DEMISE OF PREMISES

Section 2.01 Demise of Premises.

(a) Landlord does hereby lease to Tenant, and Tenant does hereby hire and take from Landlord, the Premises subject to (i) all easements, restrictions, reservations, covenants and agreements of record, if any, to which the Premises may be subject; (ii) rights of the public in and to any public street; (iii) rights, if any, of any enterprise, public or private, which is engaged in furnishing heating, lighting, power, telegraph, telephone, steam, or other utilities or transportation services and of the municipality and State in which the Premises is located; (iv) permits, licenses, regulations and restrictions, if any, of the United States, the municipality or State in which the Premises is located, or other Governmental Authority whether or not of record set forth in Exhibit B hereto (the “Title Matters”). Tenant shall make use of the Premises solely for the purposes set forth in Article 9.01 hereto. Landlord shall have the unrestricted right to further encumber its fee interest in the Premises provided that no such further encumbrance shall adversely affect Tenant’s leasehold interest in and to the Premises.

Section 2.02 Premises AS IS. Tenant hereby represents, warrants, acknowledges and agrees that Tenant (i) has inspected the condition of the Premises, (ii) accepts the Premises “AS IS” (including, without limitation, with respect to the presence of Hazardous Substances), (iii) will not at any time make any claim that the Premises are not in suitable repair or condition for the uses and purposes contemplated and permitted by this Lease (except by reason of the presence of undisclosed or unknown Hazardous Substances hereinafter provided). Tenant acknowledges that, except as may be provided herein (i) no representations, statements, or warranties, express or implied, have been made by or on behalf of Lease Administrator and Landlord with respect to the Premises, the transactions contemplated by this Lease, the status of title to the Premises, the physical condition thereof, the Requirements applicable thereto, the use that may be made of the Premises, or the absence of “Hazardous Substances” on or under the Premises, and (ii) Tenant has relied on no such representations, statements or warranties in its determination to enter into this Lease. In the event that it is determined at any time during the Term that there are Hazardous Substances present in the Premises (or any portion thereof) that predate the Commencement Date and (a) were not known to the parties prior to the Commencement Date, or (b) were known to the parties prior to the Commencement Date but whose impact is exacerbated by factors or circumstances following the Commencement Date so as to render the Premises materially unsuitable for Tenant Operations (in Tenant’s reasonable judgment), and (c) were not exacerbated by Tenant, Tenant shall have the right to terminate this Lease by giving thirty (30) days prior notice to Landlord and upon the expiration of such thirty (30) day period this Lease shall terminate and expire as if such date was the Expiration Date of this Lease and Landlord and Tenant shall have no further obligation to each other hereunder except as expressly set forth herein.

Section 2.03 No Right to Air Space. Nothing contained in this Lease shall grant to Tenant any rights whatsoever in the air space above the roof of any building(s) or portion of any building(s) included in the Premises (except to the extent required in either case for the performance of any of the obligations of Tenant hereunder).

Section 2.04 Failure to Give Possession. Landlord shall not be liable to Tenant or any third party for failure to give possession of the Premises to Tenant on the Commencement Date. If possession of the Premises is delivered after the Commencement Date, due in no part to any act or omission of Tenant, charges will commence and the term “Commencement Date” shall be deemed to refer to the date that Landlord has delivered possession of the Premises, which is understood by the parties to mean the date upon which the Landlord provides access to the keys to the Premises, as evidenced by written notice thereof.

Section 2.05 Piers 92 and 94. Landlord and Tenant shall coordinate with the tenant of Piers 92 and 94, Piers 92/94 LLC, an affiliate of Merchandise Mart Properties, Inc. (“MMPI”) in the same manner as occurred prior to the Commencement Date, to accommodate, from time to time, certain cruise vessels and parking operations at Pier 92 during the Term. The Parties agree that if, from time to time, Pier 92 is used or needed for the overflow berthing of cruise or naval vessels, then Tenant shall have exclusive and unrestricted access to Pier 92 to conduct marine terminal operations in connection therewith (including stevedoring and security operations) at the same rates and terms as charged for use of the Premises.

If MMPI vacates and surrenders Pier 92 during the Term, and Landlord, in its sole discretion determines that Pier 92 will continue to be used for maritime purposes, Landlord shall offer Tenant a Right of First Offer (“ROFO”) for a lease of Pier 92 (the “Optional Berth”), pursuant to the terms set forth in this paragraph. In such event, Landlord shall give written notice to Tenant (“ROFO Notice”). The ROFO Notice shall specify the rent and other terms and conditions of lease of the Optional Berth. Tenant shall, within thirty (30) days after the date of the ROFO Notice, provide Landlord written notice either accepting the lease offer (the “Acceptance Notice”) or rejecting the lease offer (the “Decline Notice”). If Tenant provides a Decline Notice or fails to give the Acceptance Notice or Decline Notice within the thirty (30) day time period, Tenant shall be deemed to have rejected the ROFO and Landlord may lease the Optional Berth to a third party on such terms and conditions as Landlord determines is in the City’s best interests; provided that for so long as Pier 92 is being used for maritime purposes, Tenant shall have the exclusive right to provide stevedoring and security services at Pier 92 for purposes related to the Primary Use. In the event that Tenant gives Landlord an Acceptance Notice, then, on such business day as the Parties shall mutually agree, but in no less than the later of (i) 120 days after the giving of the Acceptance Notice, and (ii) sixty (60) days after the receipt of all required approvals, Tenant and Landlord shall execute an amendment to the Lease adding the Optional Berth for the rental stated in the ROFO Notice and upon such other terms and conditions stated in the ROFO Notice.

ARTICLE 3

TERM

Section 3.01 Initial Term. (a) The term of this Lease shall commence for a term of years (the “Initial Term”) commencing on the Commencement Date and expiring on the sooner to occur of (i) December 30, 2029 (the “Initial Term Expiration Date”), or (ii) such earlier date upon which this Lease is terminated as hereinafter provided. Notwithstanding the foregoing sentence, it is acknowledged by the Parties that the Lease and the BCT Operating Agreement shall commence on the same day.

Section 3.02 Renewal Term. (a) Provided that Tenant is not in default under the Lease or the BCT Operating Agreement, Tenant may provide notice to Landlord to extend the Initial Term (the "Renewal Request Notice"), not less than twelve (12) months prior to the Initial Term Expiration Date, for an additional period of five years, expiring on December 29, 2034 (the "First Renewal Term"), and may provide a Renewal Request Notice to Landlord to extend the Lease for an additional period of five (5) years, on not less than twelve (12) months prior notice, expiring on December 30, 2039 (the "Second Renewal Term," and together with the first Renewal Term, the "Renewal Terms"), such Renewal Terms to be on the same terms and conditions as provided herein for the Initial Term, other than for Annual Base Rent, which will be determined in accordance with Section 4.01(c) below. Any First Renewal Term or Second Renewal Term hereunder is contingent on no default existing under the Lease or the BCT Operating Agreement at the time of the commencement of the First Renewal Term or Second Renewal Term, as the case may be. For the avoidance of doubt, Tenant has the right to extend the Lease for one or both of the Renewal Terms regardless of whether the PA Lease has been renewed or the BCT Operating Agreement has been renewed by Tenant as Operator thereunder. The Initial Term, First Renewal Term and the Second Renewal Term, if any, shall collectively be referred to as the "Term." If neither of the Renewal terms is exercised hereunder, then the Initial Term shall be synonymous with the "Term" for all purposes under the Lease.

(a) The amounts payable for Annual Base Rent, Participation Rent and Facility Fees, in the First Renewal Term and the Second Renewal Term shall be as described in Section 4.01(c). Unless otherwise agreed to by the Landlord and the Tenant, all other terms and conditions of the Lease as are applicable during the Initial Term shall be applicable during the First Renewal Term and the Second Renewal Term. The First Renewal Term will commence immediately upon expiration of the Initial Term and expire at midnight of the day immediately preceding the fifth anniversary of the commencement of the First Renewal Term (the "Second Expiration Date"), and the Second Renewal Term will commence immediately upon expiration of the First Renewal Term and expire at midnight of the day immediately preceding the fifth anniversary of the commencement of the Second Renewal Term (the "Final Expiration Date") (the Initial Term Expiration Date, Second Expiration Date and the Final Expiration Date, are collectively referred to as the "Expiration Date" or Expiration Dates"). If this Lease is terminated in accordance with the provisions hereof prior to the Expiration Date, then the end of the Term shall be the date this Lease is so terminated, and such date shall be the "Expiration Date" of the Lease to the same effect as if such date had been the Expiration Date as set forth herein.

(b) If Tenant desires to request an extension of the Initial Term or the First Renewal Term as provided above, Tenant shall give Landlord the Renewal Request Notice as provided in Section 3.02(a). In the event that, for either the First Renewal Term or the Second Renewal Term (i) Tenant fails to give Landlord a Renewal Request Notice within the period specified in Section 3.02(a), the Tenant shall have waived or forfeited its right to extend this Lease for the First Renewal Term or Second Renewal Term, whatever the case may be, and this Lease shall expire on the then current Expiration Date. No Renewal Request Notice shall be effective if at the time the Renewal Request Notice is given, any default has occurred and is continuing beyond any applicable grace period under the Lease and/or the BCT Operating Agreement. No later than ninety (90) days following receipt of the Renewal Request Notice, Landlord shall provide written

notice to Tenant confirming the extension of the Lease in accordance herewith. The Term of the Lease will be extended in accordance with requirements of this Section 3.02(c).

ARTICLE 4

RENTAL; FACILITY USAGE FEES; NET LEASE

Section 4.01 Annual Rental.

(a) Annual Rental. Commencing as of the Commencement Date, Tenant shall pay to Landlord annual base rental (“Annual Base Rent”) payable as described in Section 4.04, as follows:

Initial Term -- Lease Year	Annual Base Rent Amounts
July 1, 2017 - December 31, 2017	\$1,000,000
January 1, 2018 - December 31, 2018	\$2,000,000

(b) Annual Base Rent Adjusted for Inflation. Commencing on January 1, 2019, Annual Base Rent shall be subject to an adjustment for inflation and on the first day of each Lease Year thereafter, by the percentage increase in the CPI over the immediately preceding Lease Year.

(c) Annual Base Rent Adjustment Upon Renewal. The Annual Base Rent for the First Renewal Term and Second Renewal Term shall be the lesser of (1) a 5% increase above Annual Base Rent applicable to the immediately preceding Lease Year and (2) the fair market rental value of the Premises (the “Fair Market Rent”) which shall be determined as follows: a new appraisal of the Premises for purposes of determining Fair Market Rent shall be conducted in accordance with terms as agreed upon by Landlord and Tenant. The appraisal to be conducted in connection with Tenant’s exercise of the First Renewal Term and Second Renewal Term shall set forth the Fair Market Rent for the First Renewal Term and Second Renewal Term. In determining Fair Market Rent upon an appraisal, the Premises shall be considered as encumbered by, but with the benefits of the rights afforded by the Lease. On each January anniversary of each Lease Year within the First Renewal Term and Second Renewal Term, the Annual Base Rent for the next twelve month period shall be adjusted by the greater of 3% and the percentage increase in the CPI for the immediately preceding twelve month period.

As used herein, “CPI” shall mean and refer to that table in the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics, now known as the “Consumer Price Index” for all Urban Consumers (Index 1982-1984 = 100). If such Index referred to above shall be discontinued, then any successor Consumer Price Index of the United States Bureau of Labor Statistics, or successor agency thereto, shall be used, and if there is no

successor Consumer Price Index, the parties hereto shall authorize Landlord's attorney to designate a substitute Index or formula..

(d) Prorations of Annual Base Rent. Annual Base Rent due for any period of less or more than a full Lease Year and any installment of the Annual Base Rent due for any period of less or more than a full month (including the month in which the Commencement Date and/or Expiration Date may occur) shall be appropriately apportioned based upon a 365-day year.

Section 4.02 Participation Rent.

(a) In addition to any Annual Base Rent, Tenant shall also pay annually to Landlord a participation rent based on revenue collected by Tenant' for the following ancillary operations at the MCT. Tenant shall remit a percentage of either (x) the Ancillary Operations Gross Revenues; or (y) Net Revenues as agreed below to Landlord as "Participation Rent" in the percentages as set forth below. Tenant shall establish the fees for all such ancillary operations at the Manhattan Cruise Terminal.

- (i) Event Operations, Landlord will be entitled to 25% of Net Revenue;
- (ii) Military Docking, Landlord will be entitled to 25% Ancillary Operations Gross Revenues;
- (iii) Yacht Docking, Landlord will be entitled to 25% of Ancillary Operations Gross Revenues;
- (iv) Fresh Water, Landlord will be entitled to 0% of revenues;
- (v) Parking, Landlord will be entitled to 0% of revenues; Parking fees may be increased from time to time at Tenant's discretion upon a written request for approval from Landlord, which approval shall not be unreasonably withheld or delayed;
- (vi) Concessions, Landlord will be entitled to 50% of Net Revenue; and
- (vii) Terminal Sponsorship, Landlord and Tenant shall jointly agree on any Terminal Sponsorship. If either party presents a Terminal Sponsorship opportunity, the approval of the other party shall not be unreasonably withheld or delayed.

Section 4.03 Dockage and Wharfage Fees and Bundle Rate Fees. Tenant shall bill and collect on behalf of Landlord dockage and wharfage fees (collectively, the "Dockage and Wharfage Fees") or bundle rate fees (the "Bundle Rate Fees"), as determined by Landlord and initially as set forth on Exhibit I, from each commercial cruise vessel that docks at Manhattan Cruise Terminal, for the dockage of such vessel and for the passengers on such vessel, at such initial rates as more particularly set forth in Exhibit I, and at such future rates as shall be determined by Landlord on an annual basis (such Dockage and Wharfage Fees and Bundle Rate Fees, collectively the "Facility Usage Fees"). Beginning in Lease Year 2018, NYCEDC expects to transition from the current Dockage and Wharfage Fees to the proposed Bundle Rate Fees.

Each Lease Year of the Term, Tenant shall remit to Landlord an amount equal to the Landlord's Facility Usage Fee Share. The "Tenant Retention Amount" shall be the amount per Lease Year retained by Tenant from the Facility Usage Fees (other than amounts retained pursuant to Section 15.06) and shall be calculated as the greater of (1) \$6.82, as adjusted for each Lease Year beginning on January 1, 2019 by the percentage increase in the CPI over the immediately preceding twelve month period, per passenger (the "Per Passenger Tenant Retention Amount") and (2) the Minimum Retention Amount (as defined below). Thereafter, and for the balance of the Term, Landlord shall annually establish the fee schedule for Facility Usage Fees at the MCT (which fee schedule shall be the same at the BCT) which Tenant is obligated to collect on behalf of Landlord from each commercial cruise vessel that docks at MCT, as noted above, and Tenant shall remit Landlord's Usage Fee Share to Landlord thirty (30) days after the end of each quarter and retain the Tenant Retention Amount for such quarter.

Landlord hereby agrees that Tenant shall in all cases be entitled to a minimum aggregate annual amount under this Lease and the BCT Operating Agreement of \$7,500,000, as adjusted for each Lease Year beginning on January 1, 2019 by the percentage increase in the CPI over the immediately preceding twelve month period (the "Minimum Retention Amount"). As such, notwithstanding anything to the contrary contained herein, at the end of each Lease Year, if the sum of the Per Passenger Tenant Retention Amount and the "Operator Retention Amount" under the BCT Operating Agreement based on the number of passengers at the Premises and the BCT during such Lease Year is less than the Minimum Retention Amount for such Lease Year (a "Retention Shortfall"), Tenant shall be entitled to collect such Retention Shortfall and shall be permitted to deduct amounts in respect of the Retention Shortfall from the remittances of Landlord's Facility Usage Fee Share during the subsequent Lease Year such that the total amount retained by Tenant with respect to such prior Lease Year shall be no less than the Minimum Retention Amount for such Lease Year. If within 90 days of the beginning of such subsequent Lease Year the additional amounts retained by Tenant are less than the Retention Shortfall, Lease Administrator shall remit the difference to Tenant so that Tenant shall have received the full Minimum Retention Amount with respect to the prior Lease Year by on or before 120 days of the beginning of such subsequent Lease Year, if applicable.

In no event shall Tenant have the right to increase the Facility Usage Fees other than as expressly instructed by Landlord, provided, however, the Parties agree that Tenant may retain an additional portion of Facility Usage Fees and accordingly reduce Landlord's Facility Usage Fee Share to cover the cost of any expenditure for any necessary improvement that is not a Tenant Maintenance Obligation or a Tenant Improvement Obligation (each as defined in Section 15.03) agreed by Landlord and Tenant and performed by Tenant in accordance with Section 15.06.

Tenant shall remit the Landlord's Facility Usage Fee Share to Landlord in the manner described in Section 4.05. Landlord, in its sole discretion, may direct Tenant to increase Facility Usage Fees from time to time, notice of any such increase in rates shall be given by Lease Administrator. In no event shall Tenant have the right to increase the Facility Usage Fees other than as expressly instructed by Landlord pursuant to this Lease.

Section 4.04 Customer Agreements. Landlord shall consult with and seek Tenant's advice in connection with the termination, and material modifications or amendments of any existing cruise line usage agreements at the Terminal ("Customer Agreements"), and Landlord

will reasonably consider Tenant's advice with respect to the terms and conditions of any new Customer Agreements. Landlord shall disclose all relevant non-proprietary sections of the Customer Agreements to Tenant. Exhibit O is a list of all current Customer Agreements.

Section 4.05 Payments of Rental.

(a) Annual Base Rent. Beginning on the Commencement Date, Annual Base Rent shall be payable in advance in equal monthly installments, on the first day of each month. The amount of the monthly installments of Annual Base Rent shall be equal to one twelfth (1/12) of the Annual Base Rent then in effect. Any monthly installment of Annual Base Rent that is due for any period of less than a full month shall be apportioned on the basis of the number of calendar days in such month.

(b) Participation Rent. In addition to the Annual Base Rent, Tenant shall pay annually to Landlord an amount equal to Participation Rent as set forth above. The Participation Rent shall be due and payable within ninety (90) days following the end of each Lease Year of the Term; and shall be submitted together with the Annual Tenant statements submitted pursuant to Section 4.07 below.

(c) Facility Usage Fees Payments. Tenant shall remit the Landlord's Facility Usage Fees Share to Landlord on a quarterly basis. The Landlord's Facility Usage Fees Share shall be remitted to Landlord within thirty (30) days following the end of each Quarter, and shall be submitted together with the Quarterly Reports submitted pursuant to Section 4.07 below. For avoidance of doubt, Tenant is collecting all Facility Usage Fees on behalf of Landlord and no Facility Usage Fees paid to Landlord are "earned" by Tenant or to be deemed income of Tenant (but Landlord's share of Facility Usage Fees shall be remitted to Landlord as part of the "Rental").

(d) Rental. Unless otherwise described herein, all Rental payable under this Lease shall be paid in full by Tenant upon demand, but in any event not later than the first day of the month following the giving of any notice related thereto or ten (10) Business Days following the giving of such notice, whichever is later.

(e) Manner and Place of Payment. All payments of the Annual Base Rent, Participation Rent, Landlord's Facility Usage Fee Share and other Rental hereunder shall be paid to Landlord (or in the case of Impositions, to such other person as required by the rules and regulations governing payment thereof) when the same shall become due and payable, without notice or demand (except as otherwise provided in the Lease), by check (or by certified check where such payment is called for) drawn on an account maintained with a bank that is a member of the New York Clearing House Association (or any successor entity with similar functions) or by wire transfer in immediately available funds, payable to the order of Landlord, or to the order of such other entity as Landlord may designate in writing when the same shall become due and payable as provided herein, without notice or demand (except as otherwise provided herein). If paid by check, payment shall be addressed to Lease Administrator at its address set forth in Section 32.02(b) hereof, or to the order of such other entity, or at such other address as Lease Administrator or Landlord may designate in writing, and if paid by wire transfer, payment shall be paid pursuant to wire transfer instructions to be provided by Landlord or Lease Administrator.

All payments hereunder by Tenant shall be denominated in United States Dollars, which shall be the currency of account for all purposes. Impositions shall be payable in the form and to the location provided by rules and regulations governing the payment thereof.

(f) Fee Waivers. Notwithstanding anything to the contrary herein, Landlord, in its sole discretion, may waive the Facility Usage Fees that Tenant would otherwise bill and collect from any third party and provide to Landlord under this Agreement; notice of any such waiver shall be given by Lease Administrator or Landlord; provided that in no way shall any such fee waiver reduce the Minimum Retention Amount and provided further that, unless otherwise agreed by Tenant in writing, Tenant may retain the full Per Passenger Tenant Retention Amount from the Facility Usage Fees, notwithstanding any waiver of any portion of the Facility Usage Fees by Landlord. Notwithstanding the foregoing, Tenant shall reasonably cooperate with Landlord in connection with any fee waivers provided by Landlord for promotions or other arrangements with the cruise lines.

(g) Other Revenue. It is acknowledged and agreed that, as between Tenant and Landlord, Landlord shall be entitled to 50% of Net Revenue and Tenant shall be entitled to 50% of Net Revenue of any and all revenues, not otherwise specifically provided for in the Lease, derived from operations or activities at, or in any other way connected to, the Manhattan Cruise Terminal.

Section 4.06 Late Payment.

(a) If any installment of the Annual Base Rent or Participation Rent or the remittance of Landlord's Facility Usage Fee Share shall become overdue for ten (10) days beyond the date on which it is due and payable as provided in this Lease, a late charge of one percent (1%) per month (computed on a 30-day month) on the sum so overdue shall become immediately due and payable to Landlord as liquidated damages for the administrative costs and expenses incurred by Lease Administrator or Landlord by reason of Tenant's failure to make prompt payment and said late charges shall be payable by Tenant without notice or demand.

(b) If (a) any payment of the Rental or any other payment or imposition due hereunder, is not received by Landlord within ten (10) Business Days after the due date therefor, or (b) Landlord makes a payment required to be made by Tenant under this Lease, then Tenant shall pay Landlord, in addition to such overdue the Rental or other payment, or payment made by Landlord, immediately, upon demand, a late charge on the amount of such overdue Rental or other payment, or payment made by Landlord, calculated on the basis of the Late Charge Rate from the due date of such Rental or payment, or the date Landlord made payment on behalf of Tenant, as the case may be, 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 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.

(c) 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 Section 4.05 in any other instance thereafter

occurring. The provisions of this Section 4.05 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 Section 4.05 shall survive the expiration or earlier termination of this Lease.

Section 4.07 Acceptance of Partial Performance; No Waiver. The acceptance by Landlord, Lease Administrator 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, Lease Administrator or Tenant to enforce any provision of this Lease shall not be considered a waiver of the applicable Party's rights either under this Lease, at law or in equity.

Section 4.08 Net Lease. Except as otherwise provided herein and subject to the obligations of Landlord in Article 5 regarding the payment of Taxes, it is the intention of Landlord and Tenant that Rental shall be absolutely net to Landlord without any abatement, diminution, reduction, deduction, counterclaim, credit, setoff, or offset whatsoever so that each Lease Year of the Term shall yield, net to Landlord, all Rental, and (b) except as expressly provided in this Lease with respect to the actions and/or omissions of Landlord and/or the Lease Administrator (including subject to Sections 4.03 and 15.06), 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. Notwithstanding the foregoing, Tenant shall have the right to set-off Rental for any reasonable sums expended by Tenant in connection with any self-help options exercised by Tenant pursuant to this Lease as a result of failure by Landlord to perform their respective obligations hereunder.

Section 4.09 Tenant's Statements.

(a) Annual Statements. Within sixty (60) days after the end of each Lease Year, Tenant shall furnish Lease Administrator with an accounting of all monies billed and collected, and any such monies billed and outstanding, in connection with this Agreement, including, without limitation, in relation to all applicable Facility Usage Fees, Participation Rent, and any other monies due, in reasonable detail, and certified as complete and correct in all material respects by the chief financial officer of Tenant or the designee of such chief financial officer, or examined and confirmed by an independent auditor.

(b) Quarterly Report. In order to monitor operating activity of the Project with respect to whether the Facility Usage Fees and/or Participation Rent may be due and owing at the end of any Lease Year during the Term pursuant to Section 4.05(a), on a quarterly basis for each Lease Year during the Term, and in no event later than thirty (30) days after the end of each Quarter, Tenant must provide (x) a copy of any agreement(s) executed between Tenant contractors or other entities for the purpose of conducting the ancillary operations at the Manhattan Cruise Terminal, and (y) any such other information and documentation as the Lease Administrator may reasonably request.

ARTICLE 5

IMPOSITIONS AND TAXES

Section 5.01 Obligation to Pay Impositions. Tenant shall pay, in the manner provided in Section 5.03(c) hereof, all Impositions (but not including Taxes) that at any time are (or if the Premises or any part thereof, or Landlord, were not exempt therefrom would be) assessed, levied, confirmed, imposed upon, or would become due and payable out of, or with respect to, or charged with respect to, the ownership, leasing, operation, use, occupancy and possession of, during the Term: (a) the Premises or any part thereof; (b) the sidewalks or streets in front of or adjoining the Premises or any part thereof; (c) any vault, passageway or space in, over or under such sidewalk or street; (d) any other appurtenances of the Premises or any part thereof; (e) any personal property 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) the transaction contemplated by this Lease.

Section 5.02 Certain Definitions. For the purposes hereof “Imposition” or “Impositions” means:

- (a) real property general and special assessments (including, without limitation, any special assessments for business improvements or imposed by any special assessment district), but excluding Taxes.
- (b) personal property taxes,
- (c) occupancy and rent taxes,
- (d) water, water meter and sewer rents, rates and charges,
- (e) excises,
- (f) levies,
- (g) license and permit fees,
- (h) service charges with respect to police and fire protection, street and highway construction, maintenance and lighting, and water supply,
- (i) 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 with respect to the Premises other than Taxes, and
- (j) any fines, penalties and other similar governmental charges applicable to the foregoing, together with any interest or costs with respect to the foregoing, excluding therefrom any such fines, penalties or charges which may be imposed solely as a result of Landlord’s acts or omissions in their proprietary capacity only.

Section 5.03 Payments of Impositions.

(a) Subject to the provisions of Sections 4.03 and 38.02 hereof, Tenant shall pay each Imposition or installment thereof not later than the last date the same may be paid without incurring any interest or penalty. However, if by law, at the taxpayer'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 and shall be responsible for the payment of such installments with interest, if any, as may be required by law.

(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 ten (10) days before the due date thereof. 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 as if Tenant owned the Premises.

Section 5.04 Evidence of Payment. Tenant shall, upon Landlord's or Lease Administrator's request, furnish to Landlord or Lease Administrator, as the case may be, 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 Lease Administrator or Landlord, evidencing the payment thereof.

Section 5.05 Evidence of Non-Payment. Any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition asserting non-payment of such Imposition shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill, at the time or date stated therein.

Section 5.06 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 of the Term shall be apportioned pro rata between Landlord and Tenant as of the Commencement Date or the Expiration Date, as the case may be (unless the Expiration Date has occurred as a result of an Event Of Default, in which case Tenant shall not be entitled to an apportionment).

Section 5.07 Taxes. Landlord shall pay, or otherwise arrange for the cancellation or other satisfaction and discharge of record of, any and all Taxes assessed and levied against the Premises on or before the due date thereof. If Landlord shall have failed to pay or discharge the Taxes as required hereunder and Tenant shall not have timely commenced a proceeding to contest the same as provided in Article 38 hereof (it being understood that Tenant is under no obligation to do so), or if Tenant shall have timely commenced such proceeding to contest the

Taxes but failure to pay the Taxes during the pendency of such proceeding will result in the imminent loss or forfeiture of the Premises and the termination of Tenant's interest under this Lease or Tenant would by reason thereof be subject to any civil or criminal penalty or liability, then Tenant may pay such unpaid Taxes together with any interest or penalties thereon and deduct such payment from the next payment of Rental due hereunder

Section 5.08 Survival. The provisions of Sections 5.01 through 5.07 (inclusive) of this Article 5 shall survive the expiration or earlier termination of this Lease.

ARTICLE 6

INTENTIONALLY OMITTED

ARTICLE 7

SECURITY DEPOSIT

Section 7.01 Security Deposit. As collateral security for Tenant's obligation to pay the rental and any other amount payable by Tenant under the Lease, including but not limited to Annual Base Rent, Participation Rent, and Landlord's Facility Usage Fee Share, when such amount becomes due and payable, and for the faithful performance when due of all other terms, covenants and conditions of the Lease (including, without limitation, terms and covenants that survive, and conditions that arise or occur after, the expiration or earlier termination of this Lease, or Tenant vacating the Premises), and for any liability that Tenant may incur to Landlord in connection with this Lease, Tenant shall provide a security deposit in favor of Landlord equal to One Million Dollars (\$1,000,000) ("Security Deposit") by check drawn against an account maintained with a bank that is a member of the New York Clearinghouse.

Section 7.02 Disposition of Security Deposit. The Security Deposit shall be placed by Landlord in an interest bearing account. Interest that accrues thereon shall belong to and be distributed annually to Tenant. The obligation to pay any taxes related to or affecting any interest earned on such Security Deposit shall be the sole responsibility of Tenant and Tenant hereby agrees to pay same and to forever indemnify and save harmless Landlord and Lease Administrator in respect thereof. Tenant shall, within fifteen (15) days after demand, furnish Landlord or its agent with a tax identification number for use in respect of such deposit.

Section 7.03 Application of Security Deposit. Without limiting its rights and remedies hereunder, at law or in equity, Landlord may use, retain or apply all or any portion of the Security Deposit to satisfy any cost or expense arising from the occurrence of a Default or Event of Default hereunder, or any other cost or expense incurred by Landlord in connection with the failure of Tenant to pay Rental or any other amount payable by Tenant hereunder, when such Rental or other amount becomes due and payable, or the failure of Tenant to perform when due any other term, covenant or condition of this Lease, or to satisfy any liability incurred by Tenant to Landlord under this Lease, provided that the application of any portion of the Security Deposit to the cure of any such Default or Event of Default shall not be deemed to have cured such Default or Event of Default unless the entire outstanding amount due or damages suffered by Landlord, as the case may be, shall have been paid in full, and the Security Deposit replenished.

Section 7.04 Additional Deposits. If Landlord uses or applies the Security Deposit or any part thereof for any of the foregoing purposes, Tenant shall deposit with Landlord an amount sufficient to restore the Security Deposit to its amount within ten (10) Business Days after notice from Landlord to Tenant regarding such use or application.

Section 7.05 Return of Security Deposit. If Tenant shall comply with all of the terms of this Lease, the Security Deposit shall be returned to Tenant within thirty (30) days after the Expiration Date of this Lease, together with interest, if any, accrued thereon.

Section 7.06 Letter of Credit In Lieu of Security Deposit. Tenant shall have the right, either (i) in lieu of the funds required to be deposited with Landlord pursuant to Section 7.01 or (ii) at any time thereafter in substitution for such funds, to deposit and maintain with Landlord as the Security Deposit referred to in said Section, an irrevocable commercial letter of credit in an amount equal to the then-required Security Deposit in form and substance satisfactory to Landlord, and issued by a member bank of the New York Clearing House Association, acceptable to Landlord, payable upon the presentation by Landlord to such bank in New York City of a sight-draft, without presentation of any other documents, statements or authorizations, which letter of credit shall provide (i) for the continuance of such credit for the period of at least one (1) year from the Expiration Date hereof, and (ii) that in the event that during the Term Tenant has not replaced such letter of credit with a comparable letter of credit not less than thirty (30) days prior to the scheduled expiry thereof, Landlord shall have the right to draw on such bank at sight for the balance remaining in such letter of credit and hold and apply the proceeds thereof in accordance with the provisions of Section 7.03. Each letter of credit to be deposited and maintained with Landlord (or the proceeds thereof) shall be held by Landlord as security for the faithful performance and observance by Tenant of the terms, provisions and conditions of this Lease, and in the event that (x) any default occurs under this Lease beyond the expiration of any applicable grace period, or (y) Landlord transfers its right, title and interest under this Lease to a third party and the bank issuing such letter of credit does not consent to the transfer of such letter of credit to such third party, or (z) notice is given by the bank issuing such letter of credit that it does not intend to renew the same, and Tenant has not replaced such letter of credit with a comparable letter of credit issued by another bank, acceptable to Landlord, not less than thirty (30) days prior to the scheduled expiry thereof, as above provided, then, in any such event, Landlord may draw on such letter of credit, and the proceeds of such letter of credit shall then be held and applied as security (and be replenished, if necessary) as provided in Sections 7.03 and 7.04. Tenant shall pay Landlord's reasonable costs in connection with the replacement, substitute or amendment of the letter of credit described herein, unless such replacement substitute or amendment is required by reason of the transfer of Landlord's interest in any such letter of credit to a third party in connection with a transfer of Landlord's interest in this Lease.

ARTICLE 8

NO DREDGING

Section 8.01 No Dredging. Tenant and/or Subtenant shall not dredge in the slips, or water adjacent to, or included in, the Premises without Landlord's or Lease Administrator's prior written approval which shall not be unreasonably withheld or delayed.

Section 8.02 Sunken Craft. Tenant shall promptly raise and remove or cause to be raised and removed any and all objects of any kind, including vessels or other floating structures and equipment (whether or not intended to be floating), owned or operated by Tenant, or by a corporation, company or other organization or Person affiliated with Tenant or for which Tenant acts as agent, stevedore or terminal operator (or of others going to or from the Premises on business with Tenant) which shall have sunk, settled or become partially or wholly submerged at the Premises, in each case that have sunk, settled or become partially or wholly submerged due to the negligence of Tenant in the operations of the Premises. Additionally, Tenant shall endeavor to cooperate with any other parties and to expedite the removal of any other vessels or other floating structures and equipment that have sunk, settled or become partially or wholly submerged at the Premises. Tenant shall include language in the Manhattan Cruise Terminal Tariff Regulations posted on its website requiring all vessels docking at the Premises to carry customary and appropriate protection and indemnity insurance (including wreck removal coverage).

ARTICLE 9

USE OF PREMISES

Section 9.01 Permitted Uses. Tenant shall use and occupy the Premises for the primary purposes of operating the Manhattan Cruise Terminal as a marine terminal (the “Primary Use”). Provided the following are ancillary to the operation of the Premises for the Primary Use (it being understood that the Primary Use shall be the predominant use of the Premises), Tenant shall be permitted to use the Premises, without Landlord's consent, for other uses which are consistent with the Primary Use, including without limitation, the following: (a) the handling, accommodation and servicing of passenger and military ships, and the handling, accommodation and servicing of Passengers, mail, visitors and associated cargo, and other activity incidental to such operations; (b) retail sales of goods and services at the Premises in connection with such operations; (c) the operation of a parking facility to provide space for the parking of motor vehicles for persons, (d) filming activities that have received a permit from the Mayor’s Office of Media and Entertainment or its successor, (e) a facility for trade shows, conventions and Events set forth on Exhibit H, (e) for such other purposes and uses incidental thereto and consistent therewith, so as to provide for (i) the smooth, efficient and integrated operation of the Manhattan Cruise Terminal, (ii) the coordination of operations at the Manhattan Cruise Terminal with the proposed trade show operations on Piers 92 and 94; and (f) all ancillary operations under Participation Rent and Section 15.01 (collectively, the “Ancillary Uses”, and together with the Primary Use, the “Permitted Uses”).

Except for the Tenant Maintenance Obligations and Tenant Improvement Obligations, Tenant shall not use the Premises nor permit the Premises to be used for any other purpose other than the Permitted Uses without the prior written approval of Landlord, not to be unreasonably withheld, conditioned or delayed; provided, however, that the Landlord may withhold any approval for a requested use if the requested use is inconsistent with Landlord and/or the City’s policies.

Tenant shall have the right to request Landlord's or Lease Administrator’s consent from time to time to use the Premises for a use which is not a Permitted Use (each such use, a “Special

Use”). Tenant shall send a written request to Lease Administrator or Landlord for its approval not less than thirty (30) days prior to the proposed date for such Special Use setting forth in reasonable detail the nature and duration of the proposed use (a “Special Use Request”) (such approval by Landlord or Lease Administrator not to be unreasonably withheld, conditioned or delayed), provided however that Landlord and/or Lease Administrator may withhold any approval for a Special Use in the event that the requested use is inconsistent with NYCEDC’s and/or the City’s policies. Landlord shall reply to the Special Use Request within ten (10) Business Days of its receipt of such request.

Section 9.02 Stevedoring Fees. Tenant shall have the exclusive right to, and shall, manage all facility operations, supervision, administration, and direct all stevedoring services required in connection with the servicing of passenger cruise vessels, yachts, military vessels or any other vessels arriving and berthing at the Premises as set forth in Exhibit D hereto (the “Stevedoring Services”). Tenant shall be entitled to retain the fees it charges for the Stevedoring Services (the “Stevedoring Fees”). Neither Landlord nor Lease Administrator shall receive or retain any portion of this revenue.

(a) To determine the Stevedoring Fees, Tenant shall engage in good faith negotiations with cruise lines operating at Manhattan Cruise Terminals to reduce overall operating costs. Tenant shall use good faith efforts to negotiate with appropriate reductions in manning requirements with labor.

(b) Stevedoring Fees should be disclosed in a vessel call Proforma (defined below) which is utilized by the cruise lines to determine operational budgets.

(c) Tenant must disclose the Stevedoring Fees to Landlord. Landlord and NYCEDC agree that, to the extent permitted by law, including the New York State Freedom of Information Law, Article 6 of the Public Officers law (“FOIL”), it shall use best efforts to ensure that Landlord’s rate and other “trade secret” information is kept and maintained as confidential, and shall not be disclosed to any third party (the City and its agencies shall not be deemed to be “third parties” for purposes hereof). Landlord and NYCEDC agree that to the extent that either party receives a FOIL request for any rate or other allegedly proprietary information, it will consult with Tenant prior to making a determination, in either party’s sole discretion, as the case may be, as to the applicability of any exemptions under the provisions of FOIL. Tenant acknowledges that it shall not commence any action or proceeding against Landlord and/or NYCEDC and shall have no other rights or remedies available to it under this Agreement arising out of or in connection with either Landlord’s or NYCEDC’s determination to disclose such requested information.

(d) Once initial Stevedoring Fees are finalized, any changes to the Stevedoring Fees are subject to Landlord’s or Lease Administrator’s approval, which approval shall not be unreasonably withheld, conditioned or delayed, subject to the following conditions:

(i) Subject to any Tenant collective bargaining agreement, Tenant cannot increase Stevedoring Fees charged to existing cruise lines more than one time in a twelve month period and only upon Landlord’s approval.

(ii) In no event shall the increase in Stevedoring Fees for any year, excluding any increases resulting from collective bargaining negotiations, exceed the percentage increase in the CPI over the immediately preceding calendar year.

(iii) Tenant must advise the cruise lines of labor increases as a result of collective bargaining negotiations that result in an increase in Stevedoring Fees. Should any increases be imposed on the cruise lines, Tenant must immediately notify the cruise lines in writing accompanied by an updated Proforma.

(e) Tenant shall use commercially reasonable efforts to ensure that the Stevedoring Fees and services that are provided and charged to the cruise lines are commercially competitive with those for port operations of the size and scope of the Brooklyn Cruise Terminal and Manhattan Cruise Terminal in the Port of New York and New Jersey and, in any event, at least in accordance with generally accepted industry standards.

“Proforma” means the estimated fees for stevedoring services sent by the Tenant to the cruise line on an annual basis.

Section 9.03 Security Charges. Tenant shall have the exclusive right to provide security services at the Premises and may levy new/additional security charges to comply with federally mandated security procedures or general industry practice, but the implementation, cost and interpretation of those procedures shall be consistent with generally accepted industry standards of marine terminal operators servicing cruise lines in the United States.

Section 9.04 Intentionally Omitted.

Section 9.05 Vessel Calls. So long as Tenant is operating both the Premises and the BCT, Tenant shall make commercially reasonable efforts, including, but not limited to marketing and ensuring a consistent rate schedule, to increase the annual number of vessel calls at the BCT such that the annual number of vessel calls at the BCT comprise no less than fifteen (15) percent of the total number of annual vessel calls at the BCT and the Premises (the “Cruise Terminal Volume Target”). In efforts to increase utilization at both the Brooklyn Cruise Terminal and the Manhattan Cruise Terminal, Tenant agrees to work with New York Shipping Association to ensure appropriate manning levels to strive for labor efficiencies at both terminals. Additionally, subject to any collective bargaining agreement, Tenant agrees to establish a uniform ILA fixed staff cost and the retention of uniform Stevedoring Fees at both the Brooklyn Cruise Terminal and Manhattan Cruise Terminal.

Section 9.06 Tenant Vehicle Access to the Premises. Tenant shall have vehicle access to the Premises as required to conduct Tenant Operations via the northern exterior from the public streets to the north and east as shown on Exhibit A hereto.

Section 9.07 Requirements for Conduct of Business. The 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 in full force and effect during the Term at its sole cost and expense any governmental license or permit imposed or mandated by any Governmental Authority in

connection with Tenant's trade or business and the use of the Premises, and shall comply with any other Requirement for the proper and lawful operation of the Premises by Tenant for the purposes authorized by this Lease.

Section 9.08 Method of Tenant Operations. In the performance of its obligations hereunder and in the use of the Premises, Tenant shall conduct its Tenant Operations in an orderly and proper manner as follows:

(a) Tenant shall be solely responsible for all sanitation at the Premises. Tenant shall not allow garbage, debris or other waste materials (whether solid or liquid) to unreasonably collect or accumulate at the Premises and Tenant shall regularly remove from the Premises all garbage, debris and other waste materials (whether solid or liquid) arising out of its operations hereunder. Garbage shall be collected and removed from the Premises a minimum of three (3) times weekly. Any such material which may be temporarily stored shall be kept in suitable waste receptacles, the same to be made of metal and equipped with tight-fitting covers, and in any case to be designed and constructed to contain safely the waste material placed by Tenant therein. Said receptacles shall be provided and maintained by Tenant and shall be kept covered except when being filled or emptied. Tenant shall use due care when effecting removal of all such material, shall effect such removal at such times and by such means as are first approved by Lease Administrator, and shall in no event make use of any facilities or equipment of Lease Administrator or Landlord for the removal of such material except with the prior consent of the Lease Administrator. Tenant shall comply with all sanitation and recycling rules pursuant to the laws of the City.

(b) Tenant shall not do or permit to be done anything which may damage or render inaccessible the utility, mechanical, electrical and other systems installed or located anywhere at the Premises.

(c) Tenant shall not commit any nuisance or permit its employees or others on the Premises with its consent to commit or create or continue or tend to create any nuisance on the Premises.

(d) Tenant shall take all reasonable measures to eliminate vibrations tending to damage the Premises or any part thereof.

(e) Tenant shall not cause or permit to be caused or produced upon the Premises or to emanate therefrom, any unusual or noxious smokes, gases, vapors or odors; and if there shall be any such occurrence, Tenant shall take reasonable measures to minimize or eliminate any such smoke, gas, vapor or odor.

(f) Tenant shall not overload any floor, roof, land surface, bulkhead, pavement, landing, pier or wharf at the Premises and shall repair, replace or rebuild any such, including but not limited to supporting members, damaged by overloading.

(g) Tenant shall permit the use of the Premises (at any time and from time to time for the installation, maintenance and operation, at no cost to Tenant, of such navigation lights as may be required by the United States Coast Guard or other Governmental Authority having

jurisdiction, and Tenant shall furnish and pay for such electricity as may be required for use by navigation lights which may be so installed.

(h) Tenant shall not do or permit to be done any act or thing at the Premises which (i) will invalidate or conflict with any fire insurance policies covering the Premises, or any part thereof; or (ii) which, in the reasonable opinion of Landlord, constitutes an extra-hazardous condition, that materially increases the risks associated with the Tenant's normal business operations; or (iii) which will increase the rate of any fire insurance, extended coverage or rental insurance on the Premises or any part thereof or upon the contents of any building thereon held by Landlord. Tenant shall promptly observe, comply with and execute the provisions of any and all present and future rules and regulations, requirements, orders and directions of the National Fire Protection Association and of the Insurance Services Office of New York, or of any other board or organization exercising or which may exercise similar functions, which may pertain or apply to the operations of Tenant at the Premises, and Tenant shall, subject to and in accordance with the provisions of the Lease relating to construction by Tenant, make all improvements, alterations and repairs of the Premises that may be required at any time hereafter by any such present or future rule, regulation, requirement, order or direction. If by reason of any failure on the part of Tenant to comply with the provisions of this paragraph, any rate for fire insurance, extended coverage or rental insurance on the Premises or any part thereof shall at any time be higher than it otherwise would be, then Tenant shall pay to Landlord that part of all premiums paid by Landlord which shall have been charged because of such violation or failure by Tenant.

(i) From time to time and as often as reasonably required by Landlord, Tenant shall conduct pressure, water-flow and other appropriate tests of the fire-extinguishing system and fire-fighting equipment at the Premises, whether furnished by Landlord or by Tenant. Tenant shall keep all fire-fighting and fire-extinguishing equipment well supplied with a fresh stock of chemicals and with sand, water or other materials as the case may be, for the use of which such equipment is designed, and shall train its employees in the use of all such equipment, including in such training periodic drills.

(j) Tenant shall not throw, discharge or deposit or knowingly permit to be thrown, discharged or deposited any cargo, refuse, ashes or any material whatsoever, into or upon the waters of or about the Premises.

(k) Tenant shall not do or permit to be done any act or thing at the Premises which shall create an inordinate risk of subjecting Landlord to any liability or responsibility for injury to any person or persons or damage to any property in light of the Permitted Uses and approved Special Uses at the Premises.

Section 9.09 Unlawful Use. Tenant shall not use or occupy the Premises, or permit or suffer the Premises or any part thereof to be used or occupied, for any unlawful, illegal, or hazardous business, use or purpose or in any way in violation of any Requirement or this Lease, or in such manner as may make void or voidable any insurance then in force with respect to the Premises (it being understood that neither Tenant's normal business operations nor any other Permitted Use shall be deemed "hazardous" within the meaning of this Section 9.09). Immediately, upon the discovery of any such unlawful, illegal or hazardous 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 subtenant using any portion of the Premises for any such business, use or purpose. Tenant shall not keep, or permit to be kept, on the Premises any article, object, item, substance or thing that may cause, damage to the Premises or any part thereof (beyond normal wear and tear), or that may constitute a public or private nuisance, except as now or hereafter permitted by the Fire Department, Board of Fire Underwriters, Fire Insurance Rating Organization and other authority having jurisdiction over the Premises.

Section 9.10 No Representations or Warranty by Landlord and Lease Administrator.

(a) Neither Landlord nor Lease Administrator has made or makes any representation or warranty as to the condition of the Premises or its suitability for any particular use or as to any other matter affecting this Lease or the Premises.

(b) Landlord and Lease Administrator have not made nor make any representation as to the legality of the use of the Premises for Tenant's intended purposes. If any use or proposed use is determined to be illegal by a court of competent jurisdiction, subject to the terms hereof Tenant agrees that (i) neither Landlord, Lease Administrator nor any of their respective directors, officers, employees or agents shall 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.

ARTICLE 10

RIGHTS OF ENTRY

Section 10.01 Rights of Entry.

(a) Landlord, by its officers, employees, agents, representatives and contractors shall have the right, at all reasonable times and on prior written notice, subject to reasonable security measures prescribed by Tenant, to enter upon the Premises for the purpose of inspecting the same, for observing the performance by the Tenant of its obligations under this Lease or otherwise, provided such entry shall not unreasonably interfere with Tenant's access to and/or operations at the Premises (or any portion thereof).

(b) Without limiting the generality of the foregoing, Landlord, by its respective officers, employees, agents, representatives, and contractors, and on behalf of furnishers of utilities and other services, shall have the right, for its own benefit, for the benefit of the Tenant, or for the benefit of those Persons other than the Tenant at the Premises, to maintain existing and future utility, mechanical, electrical, fire communications, sewer, water mains, municipal facilities, and other systems and to enter upon the Premises and to access the bulkhead area and the pier and other facilities adjacent to the Premises at all reasonable times to make such repairs, replacements or alterations Landlord shall deem necessary or advisable and, from time to time, to construct or install over, in or under the Premises new systems or parts thereof; provided, however, that in the exercise of such rights of access, repair, alteration or new construction

Landlord shall not unreasonably interfere with the use and occupancy of the Premises by the Tenant.

(c) In the event that any property of the Tenant shall obstruct the access of Landlord and their respective employees, agents or contractors to any of the existing or future utility, sewer, mechanical, electrical and other systems and thus shall interfere with the inspection, maintenance or repair of any such system, the Tenant shall move such property, as directed by Landlord, in order that the access may be had to the system or part thereof for its inspection, maintenance or repair, and, if the Tenant shall fail so to move such property after written direction from Landlord to do so, Landlord may move it and the Tenant hereby agrees to pay the cost of such moving upon demand.

(d) Except as described in Section 15.06 and Article 40 of this Lease, nothing in this Section shall impose, or shall be construed to impose upon Landlord any obligations to construct or maintain or to make repairs, replacements, alterations or additions, or shall create any liability for any failure so to do. Tenant is and shall be in control and possession of the Premises and Landlord shall not in any event be liable for any injury or damage to any property or to any person happening on or about the Premises or for any injury or damage to the Premises or to any property of the Tenant or of any other person located therein or thereon (other than those occasioned by the acts of Landlord).

(e) At any time and from time to time during normal business hours within the three (3) months next preceding the expiration of the Term (and provided no Renewal Notice has been provided by Tenant in accordance herewith), Landlord, by its respective agents and employees, whether or not accompanied by prospective lessees, occupiers or users of the Premises, shall have the right, at all reasonable times and subject to reasonable security conditions as Tenant may prescribe, to enter thereon for the purpose of exhibiting and viewing all parts of the same, and during such three-month period Landlord may place and maintain on the Premises, the usual "To Let" signs, which signs the Tenant shall permit to remain without molestation.

(f) If, during the last month of the Term, the Tenant is no longer in occupancy and shall have removed all or substantially all its property from the Premises, Landlord may immediately enter and alter, renovate and redecorate the Premises.

The exercise of any or all of the foregoing rights by Landlord or others shall not be or be construed to be an eviction of the Tenant nor be made the grounds for any abatement of rental nor any claim or demand for damages, consequential or otherwise.

ARTICLE 11

INSURANCE

Section 11.01 Insurance Requirements. At all times during the Term, Tenant, at its sole cost and expense, shall carry and maintain in full force and effect, or cause to be carried and maintained in full force and effect, insurance coverage of the following types or insuring the described risks and in the minimum limits set forth below:

(a) Liability Insurance. Marine General Liability including Stevedore's and Marine Terminal Operator's Liability 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 at a limit of not less than \$50,000,000 per occurrence and, if maintained under a blanket policy or master policy in accordance with Section 11.09, with not less than a \$200,000,000 general aggregate, naming NYCEDC, and the City of New York as additional insured on a primary and non-contributory basis. If during any year, it appears that the amount of liability resulting from insured occurrences may exceed any annual aggregate applicable to the insurance required by this subsection, Tenant shall procure and maintain for the remainder of such year insurance against future-arising claims that satisfy the requirements of this subsection in all respects, including required amounts. In addition, the Tenant shall require that each of its (a) subcontractors, prior to the commencement of their work, and (b) subtenants, prior to the commencement of any tenancy, purchase and maintain, or be covered by, at no cost or expense to Lease Administrator and the City, liability insurance for bodily injury, death, personal injury and property damage that meets all of the same requirements as required of the Tenant as set for in this Lease, except that such policies shall have damage limits of not less than \$5,000,000 per occurrence. The Tenant hereby covenants and warrants that its subcontractors and any subtenants shall purchase and maintain the Policies required by this Lease in the amounts and for the periods required by this Section.

The General Liability Insurance required hereby shall:

- (i) include a broad form property damage liability endorsement;
- (ii) contain blanket contractual liability insurance covering written contractual liability, and specifically covering Tenant's indemnification obligations under Article 23 hereof;
- (iii) contain independent contractors coverage;
- (iv) contain a thirty (30) day notice of cancellation or non-renewal clause, specifically requiring notice of cancellation or non-renewal for non-payment of premium, and for any material reduction in coverage;
- (v) contain an unintentional failure to disclose hazards clause;
- (vi) contain coverage for suits arising from the use of reasonable force to protect persons and property;
- (vii) contain a cross liability endorsement;
- (viii) contain no exclusion for waterfront activities;
- (ix) contain no exclusion for Water Damage or Sprinkler Leakage Legal Liability or any other hazard customarily covered by such insurance;
- (x) contain no exclusions, except the standard exclusions provided for under ISO Form CG 00 01 or its equivalent and/or as specifically authorized herein, and contain no

deductibles unless specifically approved in each instance by Lease Administrator or Landlord; and

(xi) contain no exclusions or endorsements that in any way limit or eliminate coverage that would apply to New York State Labor Law claims.

(b) Property and Other Insurance. Insurance protecting Tenant, the City and Lease Administrator against loss of or damage to the Premises by fire and all other risks of physical loss or damage now or hereafter embraced by **ISO Form CP 10 30 (Cause of Loss - Special Form), or its equivalent**, written on a Replacement Cost basis, and in the following amounts: (w) coverage against damage caused by fire and extended perils except for flood and earthquake, with a limit not less than \$125,000,000; (x) coverage against damage caused by earthquake with a limit not less than \$50,000,000; (y) coverage against damage caused by wind with a limit not less than \$50,000,000; and (z) coverage against damage caused by flood with a limit not less than \$50,000,000.

(i) Such insurance shall include the following coverages and clauses:

- (1) Equipment Breakdown coverage;
- (2) contingent liability from operation of building laws;
- (3) demolition cost for undamaged portion coverage;
- (4) provision for a deductible of not more than \$25,000 per loss, or another amount as agreed upon by Lease Administrator or Landlord;
- (5) 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;
- (6) an agreed or stipulated amount endorsement negating any co-insurance requirements; and
- (7) no exclusion, except the standard exclusions provided for under **ISO Form CP 10 30 (Cause of Loss - Special Form), or its equivalent**, unless approved in writing by Lease Administrator or Landlord, which approval shall not be unreasonably delayed or withheld.

If Tenant elects to insure Tenant's Trade Fixtures and other personal property used in connection with the Premises, the Replacement Cost shall be increased in the amount of such personal property, and payments on Tenant's claims for loss of personal property shall be paid to Tenant after notice to Landlord and Lease Administrator (pursuant to the notice provisions of Article 32 hereof).

(c) Business Interruption Insurance. Business Interruption Insurance across both the MCT and BCT in the aggregate insuring the Tenant in an amount at least equal to the Minimum

Retention Amount payable for a period of not less than twelve months (12) months under the Lease (and shall be in the broadest form available covering loss of income);

(d) Statutory Workers' Compensation and Disability Benefits Insurance. Statutory Workers' Compensation, including United States Longshore and Harborworker Act coverage and New York Disability Benefits Insurance, in statutory amounts (as applicable), and as required by law, and any other insurance required by law covering all persons employed by Tenant, contractors, subcontractors, or any entity performing work on or for the Premises, including Employers' Liability coverage in an amount not less than \$1,000,000.

(e) Automobile Liability Insurance. Automobile Liability insurance covering owned, hired and non-owned vehicles with limits as reasonably designated by Lease Administrator or Landlord or from time to time but in any event with limits of not less than \$25,000,000 combined single limit per occurrence with respect to personal and bodily injury, death and property damage.

(f) Garagekeeper's Legal Liability written on a legal liability basis.

(g) Builder's Risk Insurance. Before the commencement of any construction activities, Builder's Risk Insurance (standard "All Risk") written on a completed value (non-reporting) and Replacement Cost basis, insuring Tenant, the City, Lease Administrator, the general contractor or construction manager, if any, and all subcontractors employed by Tenant or the general contractor or construction manager, if any, as their respective interests may appear. Such insurance policy (1) shall contain a written acknowledgment by the insurance company that its right of subrogation has been waived with respect to all of the named insureds and additional insureds in such policy and an endorsement stating that "permission is granted to complete and occupy", and (2) if any off-site storage location is used, shall cover, for full insurable value, all materials and equipment at any off-site storage location intended, or while in transit, for use with respect to the Premises.

Section 11.02 Treatment of Proceeds.

(a) Proceeds of Insurance in General. Insurance proceeds payable with respect to a property loss on account of the Premises shall be paid to Landlord to be held for the purpose of paying for the cost of the Restoration, and such proceeds shall be applied to the payment of the cost of such Restoration in accordance with Article 12 hereof. Landlord shall apply any casualty insurance proceeds so received in accordance with the provisions of this Lease. Landlord 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 Landlord 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 shall be payable to Tenant.

(b) Cooperation in Collection of Proceeds. Tenant, Lease Administrator 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.

Section 11.03 General Requirements Applicable to Policies.

(a) Insurance Companies. All of the insurance policies required by this Article 11 shall be procured from companies licensed or authorized to do business in the State of New York that have a rating in the latest edition of “Bests Key Rating Guide” of “A-:VII” or better or another comparable rating reasonably acceptable to Lease Administrator or Landlord; provided that in all cases Tenant may use Ports Insurance Company, a captive insurer that is an affiliate of Tenant to satisfy the requirements of this Article 11 for United States Longshore and Harborworker Act coverage, terrorism and first loss property and liability coverage. .

(b) Term. 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 Lease Administrator evidence of renewals thereof from time to time and as soon as is practicable.

(c) Waiver of Subrogation. 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. Notwithstanding the foregoing, Tenant will not be in default under this Section 11.03(c) with respect to Statutory Coverages required under Section 11.01(d), if Tenant uses best efforts to obtain such waiver.

(d) Required Insurance Policy Clauses. Each policy of insurance required to be carried pursuant to the provisions of this Article 11 shall contain (i) a provision that no act or omission of Tenant, including, without limitation, any use or occupation 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 Lease Administrator or Landlord, (ii) an agreement by the insurer that such policy shall not be cancelled, changed, modified, or denied renewal without at least thirty (30) days’ advance written notice to Lease Administrator and Landlord, including, cancellation or non-renewal for non-payment of premium, 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 Lease Administrator and Landlord. Each such policy shall also contain a contractual liability endorsement covering the indemnity obligations of the Tenant under Article 23.

(e) Notices from the insurer or Tenant to the Lease Administrator and Landlord shall be delivered in accordance with Article 32 hereof. All notices and correspondences from the insurer to the Lease Administrator and Landlord must be delivered to the following addresses or to such other addresses as the Lease Administrator and Landlord may notify the insurer of from time to time:

To Landlord:

Commissioner of Small Business Services
New York City Department of Small Business Services
110 William Street
New York, New York 10038

with a copy to:

New York City Law Department
100 Church Street
New York, New York 10007
Attention: Chief, Economic Development Division

To Landlord:

New York City Economic Development Corporation
Asset Management Department
110 William Street
New York, New York 10038
Attention: Senior Vice President for Asset Management

with copies to:

New York City Economic Development Corporation
Legal Department
110 William Street
New York, New York 10038
Attention: General Counsel

(f) Primary Protection. All insurance policies required by this Article 11 shall be primary protection. Lease Administrator and Landlord shall not be called upon to contribute to any loss.

(g) Adjustments for Claims. All real property insurance policies required by this Article 11 shall provide that all adjustments for claims with the insurers shall be made by Lease Administrator and Landlord. All other insurance policies required by this Article 11 shall provide that an adjustment for claims will be made with Lease Administrator, Landlord and Tenant, each of which shall act reasonably. All real property loss proceeds shall be paid to Landlord as provided in Section 11.02 hereof based upon the actual amount of the loss, as such amount shall have been determined by adjustment with the insurer.

Section 11.04 Evidence of Insurance. Prior to Tenant entering into possession of the Premises and at least thirty (30) days prior to the expiration of any of the policies to be maintained or caused to be maintained by Tenant, Tenant shall deliver or cause to be delivered to the Lease Administrator and Landlord certificates of insurance, in form reasonably satisfactory to Lease Administrator and Landlord, providing for thirty (30) days' prior written notice to the Lease Administrator and Landlord by the insurance company of cancellation or non-renewal of a policy or replacement or renewal of any policies expiring during the Term. The certificate(s) of

insurance must state that the certificate holder is an additional insured, on a primary and non-contributory basis, on the Tenant's and any subcontractor's policies. At the Lease Administrator's or Landlord's request Tenant shall deliver a copy of each entire original policy required hereby.

Section 11.05 Compliance With Policy Requirements. Tenant shall not violate or permit to be violated any of the conditions, provisions or requirements of any insurance policy required by this Article 11. Tenant shall perform, satisfy and comply with or cause to be performed, satisfied and complied with all conditions, provisions and requirements of all such insurance policies on Tenant's part to be performed, and, shall give and shall cause its contractors to give, the insurer, the Lease Administrator 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 11.06 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 the Lease Administrator and Landlord are included therein as additional insureds with respect to property insurance. Tenant shall immediately notify the Lease Administrator and Landlord that it carries any such separate insurance and shall cause the same to be delivered to the Lease Administrator and Landlord.

Section 11.07 Increases in Coverage and Additional Insurance. Landlord in its reasonable discretion shall have the right, at any time and from time to time, to modify, increase or supplement the insurance coverages, limits, sublimits, minimums and standards required by this Article 11 to conform such requirements to the insurance coverages, limits, sublimits, minimums and standards that at the time are commonly carried by owners of premises comparable to the Premises conducting business similar to Tenant's, or are commonly carried by businesses of the size and nature of the business conducted at the Premises. From time to time, 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. The amount of any such increased coverage shall not exceed the amount of similar coverage commonly carried by owners of comparable property or in connection with similar businesses.

Section 11.08 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 Lease Administrator and Landlord that such insurance is in any respect adequate.

Section 11.09 Blanket and/or Master Policies. The insurance required by the provisions of this Article 11 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 insureds required to be named as "named insureds" or "additional insureds" hereunder. If the insurance required

by this Lease shall be effected by any such blanket or umbrella policies, Tenant shall furnish to the Lease Administrator and Landlord evidence of such insurance as set forth in Section 11.04.

Section 11.10 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 Ten Million Dollars (\$10,000,000).

Section 11.11 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 11.01 hereof. If any such insurance, as permitted above, shall affect Lease Administrator's and Landlord's insurance coverage, prior to purchase thereof, Tenant shall provide a copy of the policy to Lease Administrator and Landlord for their approval.

Section 11.12 Modification By Insurer. Without limiting any of Tenant's obligations or Landlord's and Lease Administrator's rights under this Article 11, 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 the Lease Administrator, and Landlord of such modification within thirty (30) days after Tenant's receipt of notice thereof.

Section 11.13 Interpretation. All insurance terms used in this Article 11 shall have the meanings ascribed by the Insurance Services Offices.

ARTICLE 12

DAMAGE, DESTRUCTION AND RESTORATION

Section 12.01 Notice to Landlord. If the Premises or any part thereof is destroyed or damaged by fire or casualty of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Tenant shall immediately notify Lease Administrator and Landlord upon obtaining actual knowledge thereof.

Section 12.02 Casualty Restoration.

(a) Tenant's Obligation to Restore. If the Premises shall be substantially damaged or destroyed, as reasonably determined by Landlord or Lease Administrator, by fire or other casualty, ordinary or extraordinary, foreseen or unforeseen (a "Casualty"), Tenant shall, in accordance with and subject to the provisions of this Article 12, restore the Premises to the extent reasonably practicable, the character of the Improvements as they existed prior to the Casualty (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 under the insurance policies, or (iii) the insurance proceeds are sufficient to pay in full any cost of the Construction Work required in connection with the Casualty Restoration.

(b) Insurance Proceeds. In the event of a Casualty damaging the Premises, any property insurance proceeds shall be paid to Landlord and, to the extent that a Casualty Restoration is undertaken pursuant to this Section 12.02, Landlord, shall disburse the funds to Tenant, as required for the completion of such Casualty Restoration. Such insurance proceeds may be paid to Tenant to be used solely for the rebuilding of the Tenant's damaged Improvements resulting from the Casualty, or, at Landlord's sole discretion, may be paid outright to Tenant (with no obligation on the part of the Landlord and/or Tenant to rebuild the Tenant's improvements at the Premises).

(c) Estimate of Construction Work Cost. Before commencing any Construction Work in connection with a Casualty Restoration and within ninety (90) days of the damage or destruction, Tenant shall furnish Landlord, with a copy to Lease Administrator, with an estimate, prepared by a registered architect or other qualified professional (after consultation by the architect or other qualified professional with Landlord and Lease Administrator to the extent practicable), of the cost of such Construction Work. Lease Administrator or 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 such Construction Work. If Lease Administrator or Landlord shall fail to disapprove Tenant's estimate within thirty (30) days, then Lease Administrator or Landlord shall be deemed to have approved Tenant's estimate. If Lease Administrator or Landlord shall dispute the estimated cost of such Construction Work, the dispute shall be resolved by a licensed professional engineer, chosen by agreement of Lease Administrator or Landlord and Tenant (such agreement not to be unreasonably withheld 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.

(d) Commencement of Construction Work. Tenant shall commence the Construction Work in connection with a Casualty Restoration within sixty (60) days of agreement or resolution by the licensed professional engineer as provided in Section 12.02(c) as to the estimate for repair of the damage or destruction. For purposes of this Section 12.02(d), a delay by Tenant's insurer in adjusting or disbursing the insurance proceeds shall constitute an Unavoidable Delay in the commencement of such Construction Work if (i) the Casualty was insured and the insurer has not formally denied or rejected coverage, and (ii) the amount of the insurance proceeds reasonably estimated to be payable exceeds the applicable deductible amount in the insurance policy covering the loss; provided that during the period of such Unavoidable Delay Tenant takes all reasonable steps to insure that any 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 direct, and Tenant fully and diligently pursues Tenant's rights against the insurer.

Section 12.03 Restoration Funds.

(a) Reimbursement of Expenses. Before paying the Restoration Funds to Tenant or Landlord as provided in Section 12.03(b), below, Landlord will first reimburse itself therefrom to the extent of reasonable out of pocket expenses (including, without limitation, court costs and

reasonable attorneys' fees and disbursements) paid or incurred by any of them in the collection of such Restoration Funds.

(b) Application for Disbursement. Subject to the provisions of Sections 12.02(b), 12.04 and 12.05 hereof, the Restoration Funds shall be paid by Landlord to Tenant in monthly installments as the Restoration progresses, upon application to be submitted by Tenant to 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 been paid for by Tenant (or the payments are then due and owing), or (ii) have not been incorporated in the Improvements, but have been purchased since the last previous application and paid for by Tenant (or the payments are then due and owing) and insured by Tenant for one hundred percent (100%) of the cost thereof and stored at a secure and safe location on the Premises or at such other location as shall be reasonably satisfactory to Landlord ("Restoration Costs"). Landlord 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 evidence satisfactory to Landlord 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) Disbursement of Remaining Restoration Funds. Any Restoration Funds remaining after the completion of a Casualty Restoration shall be paid to Tenant.

Section 12.04 Conditions Precedent to Disbursement of Restoration Funds. The following are conditions precedent to each payment of Restoration Funds to be made to Tenant pursuant to Section 12.03(b) hereof:

(a) Payment Certificate. A certificate reasonably satisfactory to Landlord issued by a registered architect shall be submitted to 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 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) to Architect's knowledge such materials, fixtures and equipment are substantially in accordance with any plans and specifications approved by Landlord for the Restoration;

(v) Intentionally omitted; 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 completed, except for punch list items.

(b) Intentionally omitted.

(c) Defaults. No Default or Event of Default shall have occurred and be continuing beyond the applicable grace period.

Section 12.05 Restoration Fund Deficiency. If the estimated cost (determined as provided in Section 12.02(c) hereof) of any Construction Work in connection with any Casualty Restoration exceeds the aggregate of (a) the net Restoration Funds (i.e., Restoration Funds available after the reimbursement provided for in Section 12.03(a) above) received by Landlord pursuant to Section 12.02(a) hereof, and (b) 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 (provided (i) the loss is covered by the applicable policy, (ii) no disclaimer of coverage by the insurer has been made, and (iii) all other applicable conditions of the policy have been met in connection with such loss), then, before the commencement of such Construction Work or at any time after commencement of such Construction Work, if it is reasonably determined by Landlord that the cost to complete such Construction Work exceeds the unapplied portion of the Restoration Funds, Tenant shall, within ten (10) days of Landlord's request, deliver evidence satisfactory to Landlord that Tenant has sufficient funds available to it to undertake the Construction Work to completion.

Section 12.06 Effect of Casualty on This Lease. Except as otherwise provided herein, this Lease shall not terminate, nor be forfeited, nor be affected in any manner, nor shall there be a reduction or abatement of Rental, by reason of damage to, or total, substantial or partial destruction of, the Premises, or by reason of the untenability of the Premises or any part thereof, 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. Notwithstanding the foregoing, in the event that the Premises are totally or substantially damaged or destroyed within the last two (2) years of the expiration of the term of the letting hereof, then Landlord and Tenant shall have the right to terminate the letting and this Lease upon thirty (30) days' notice given to the other party within ninety (90) days of the aforesaid casualty. As used in this Section 12.06, the term "substantially damaged or destroyed" shall mean that such damages are in excess of One Million Dollars (\$1,000,000.00) as such cost is determined in accordance with the procedures set forth in Section 12.02(c) hereof and/or it would take Tenant in excess of nine (9) months to restore the Premises. Termination under the provisions of this paragraph shall have the same effect as if the effective date of termination stated in the notice were the date of expiration of the term of the letting under this Lease.

Section 12.07 Effect of Lease Termination. If Landlord elects to terminate this Lease pursuant to any provision of this Lease, 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 Tenant shall pay any Restoration Funds then held by it in accordance with Landlord's directions.

Section 12.08 Effect of Events of Default. Notwithstanding anything to the contrary contained herein, if an Event of Default shall have occurred and be continuing, Tenant shall pay any Restoration Funds then held by it in accordance with Landlord's directions. This provision shall survive the termination of this Lease.

Section 12.09 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. It is the intention of Landlord and Tenant that the provisions of this Article 12 shall constitute an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York and shall govern and control in lieu thereof.

ARTICLE 13

EMINENT DOMAIN

Section 13.01 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 for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among Landlord, Tenant and those authorized to exercise such right, irrespective of whether the same affects the whole or substantially all of the Premises (as determined by Landlord in its sole discretion) 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) "Date of Taking" means the date on which title to the whole or substantially all of the Premises (as determined by Landlord in its sole discretion) 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.

(c) "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 13.04 hereof so that such portions shall contain complete structures, in good condition and repair, consisting of self-contained architectural units, and to the extent practicable, of a size and condition of, and having a character similar to, the character of the Premises existing immediately prior to the Date of Taking, or the date of such other governmental action, but in

any case taking into account and not exceeding the amount of the award paid to Landlord or Tenant due to such Taking.

Section 13.02 Permanent Taking.

(a) Taking of the whole etc. If during the Term there shall be a Taking of the whole or substantially all (as determined by Landlord in its sole discretion) 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 Rental payable by Tenant hereunder shall be apportioned to the Date of Taking, and all such Rental shall be paid to Landlord on the Date of Taking.

(ii) Tenant shall have no claim for the value of any unexpired Term of this Lease and assigns to Landlord, Tenant's entire interest in any such award. Tenant shall have the right to make an independent claim to the condemning authority for the value of the Tenant's moving expenses and personal property if such claims are permitted by law, provided Tenant is entitled, pursuant to the Lease, to remove such property at the end of the Term and provided further such claim does not directly or indirectly reduce the Landlord's award.

(b) "Partial Taking." If there shall be a Taking of less than substantially all of the Premises (other than a Temporary Taking), the following consequences shall result:

(i) this Lease and the Term shall continue without diminution of any of Tenant's obligations hereunder, except that this Lease shall terminate as to the portion of the Premises so taken, and from and after the Date of Taking, a pro rata amount of Annual 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;

(ii) Tenant shall at its sole cost and expense proceed with diligence (subject to Unavoidable Delays and Landlord Delays) to effect a Condemnation Restoration of the remaining portion of the Premises not so taken, but not in excess of the condemnation proceeds received by Tenant for restoration); and

(iii) Tenant assigns to Landlord its entire interest payable with respect to such Partial Taking and such award shall be paid to Landlord. Tenant shall have the right to make an independent claim to the condemning authority for the value of the Tenant's moving expenses and personal property if such claims are permitted by law, provided Tenant is entitled, pursuant to the Lease, to remove such property at the end of the Term and provided further such claim does not reduce Landlord's award.

Section 13.03 Temporary Taking.

(a) Not extending beyond Term. If during the Term there shall be a Taking for 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, subject to receipt of the Minimum Retention Amount, Tenant shall continue to pay in full the Rental payable by Tenant hereunder without reduction or abatement;

(ii) if such Taking results in changes or alterations to the Premises or any part thereof, Tenant shall effect a Condemnation Restoration with respect thereto (but not in excess of the condemnation proceeds received by Tenant for Restoration); and

(iii) the award or payment payable with respect to such Taking, shall be paid to Landlord; provided however, that if Tenant shall be required to effect a Condemnation Restoration pursuant to Section 13.03(a)(ii) hereof, then a portion of such award or payment equal to the estimated cost (calculated as provided in Section 12.02(c) hereof) of such Condemnation Restoration shall in Landlord's sole discretion either (i) be retained by Landlord for the purpose of paying the cost of said Condemnation Restoration, and upon satisfactory proof from Tenant that such funds are required, shall be disbursed by Landlord to Tenant or (ii) be paid to the Landlord for disbursement to Tenant in accordance with Section 13.05(a) hereof with any balance remaining thereafter to be applied in accordance with this Section 13.03(a)(iii).

(b) Extending Beyond Lease Term. If during the Term there shall be a Taking for the temporary use of the whole or substantially all of the Premises or a lesser portion thereof for a period extending beyond the Term, the consequences specified in clauses (i), (ii) and (iii) of Section 13.03(a) hereof shall result, except that the award or payment payable with respect to such Taking shall be apportioned between Landlord and Tenant as of the last day of the Term. The amount of the award or payment attributable to the period up to and including the last day of the Term shall be paid and applied in accordance with the provisions of Section 13.03(a)(iii) hereof, and the portion of the award attributable to the period after the last day of the Term shall belong to Landlord; provided however, that the amount of any award or payment allowed or retained to pay for a Condemnation Restoration which shall not have been previously applied for that purpose, shall remain the property of, and shall be paid over to Landlord if this Lease shall terminate for any reason prior to completion of the Condemnation Restoration in accordance with the provisions of this Article 13.

Section 13.04 Governmental Action Not Resulting in a Taking. In case of any governmental action not resulting in a Taking but creating a right to compensation therefor, such as the changing of the grade of any street upon which the Premises abut, then this Lease shall continue in full force and effect without reduction or abatement of Rental; provided, however, that if such governmental action results in changes or alterations of the Premises, then Tenant shall effect a Condemnation Restoration with respect thereto. Any award payable in the case of such governmental action shall be paid to Landlord and shall in Landlord's sole discretion either (i) be retained by Landlord for the purpose of paying the cost of said Condemnation Restoration, and shall be disbursed by Landlord to Tenant, (ii) Landlord will elect to pay such Condemnation Restoration funds to the Landlord for disbursement to Tenant in accordance with Section 13.05(a) hereof and any balance of the award remaining after completion of the Condemnation Restoration shall be disbursed to Tenant and/or Landlord, as applicable in amounts based upon the value of their respective interests in the Premises at that time.

Section 13.05 Condemnation Restoration Procedure.

(a) Intentionally Omitted.

(b) Performance of Condemnation Restoration. The Construction Work in connection with a Condemnation Restoration, submission of the estimated cost thereof by Tenant and approval thereof by Landlord, Tenant's obligation to provide additional security, and disbursement of the condemnation award by Landlord shall be done, determined, made and governed in accordance with the provisions of Sections 12.02(c), 12.03, 12.04 and 12.05, and Article 17 hereof. If the portion of the award paid to Landlord or Tenant is insufficient for the purpose of paying for the cost of the Construction Work in connection with the Condemnation Restoration, then, subject to all other applicable provisions of this Lease, Tenant shall nevertheless be required to perform such Construction Work as required hereby and pay any additional sums required for such Construction Work.

Section 13.06 Collection of Awards. Each of the parties shall execute documents that are reasonably required to facilitate collection of any awards made in connection with any condemnation referred to in this Article and shall cooperate with each other to permit collection of the award.

Section 13.07 Landlord's Right To Award on Termination. Notwithstanding anything to the contrary contained herein, the amount of any award or payment allowed or retained to effect a Condemnation Restoration which shall not have been previously applied to that purpose or otherwise in accordance with the Lease shall become the property of and shall be paid over to the Landlord, if this Lease shall terminate for any reason prior to completion of said Condemnation Restoration in accordance with the provisions of this Article 13.

Section 13.08 Condemnation Proceedings. Tenant shall not file in any Taking any claim on account of the leasehold estate created by this Lease or Tenant's leasehold interest in the Premises. Notwithstanding the foregoing, Tenant may file a claim on account of the value of the Improvements Taken, but any such claim shall be limited to Tenant's Improvements.

Section 13.09 Waiver of Rights under Statute. Landlord and Tenant hereby stipulate that neither the provisions of Section 227 of the Real Property Law of New York nor those of any other similar statute shall extend or apply to this Lease.

ARTICLE 14

ASSIGNMENTS, SUBLEASES AND TRANSFERS

Section 14.01 Landlord.

Landlord may transfer or assign its interests in the Premises or its interest under this Lease to any other governmental or quasi-governmental entity, in whole or in part, at any time, in its sole discretion. In such event, from and after the date of such assignment or transfer, the term Landlord shall mean 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 and it shall be deemed and construed without further agreement between the parties or their successors in interest that the transferee or assignee under such transfer or assignment has assumed 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 14.02 Tenant.

(a) Tenant covenants and agrees that it will not pledge, transfer, hypothecate, license or assign its interest in the Premises, whether in whole or in part, or merge, consolidate or sell substantially all of its assets, without the prior written consent of the Landlord (which consent shall not be unreasonably withheld conditioned or delayed); provided that Tenant may assign this Lease or sublet the Premises in whole or in part without Landlord's consent to an Affiliate of Tenant, provided that Tenant gives Landlord at least thirty (30) days advance written notice of such assignment.

(b) Notwithstanding Section 14.02(a), without the consent of Landlord, this Lease may be assigned to (i) an entity created by merger, reorganization or recapitalization of or with Tenant or its Affiliates or (ii) a direct or indirect purchaser of all or substantially all of the business or assets of Tenant however structured (whether by asset sale, stock sale or otherwise) whether alone or together with other operations of Tenant's Affiliates; provided that, in the case of both clause (i) and clause (ii), that (A) Landlord shall have received a notice of such assignment from Tenant, (B) the assignee assumes and confirms by customary written instrument reasonably satisfactory to Landlord all of Tenant's obligations under this Lease (C) such assignment is for a valid business purpose, and (D) the assignee is able to make the representations and warranties in Section 21.09.

(c) The provisions of this Section shall not be construed so as to prohibit Tenant from permitting its subsidiaries or affiliates to operate at the Premises on its behalf, in performing the operations expressly permitted under this Lease and, in this connection, Tenant represents and warrants to Landlord that (i) any and all usage of the Premises by any of Tenant's subsidiaries or affiliates at the Premises shall be strictly in accordance with the purposes set forth in Article 9 of this Lease; (ii) no use of the Premises or any part thereof by any of Tenant's subsidiaries or affiliates shall entitle any of the same to any rights as a third party beneficiary of this Lease; and (iii) that all such operations shall be conducted strictly in accordance with the terms and conditions of this Lease.

Section 14.03 Management Agreement(s). Tenant shall not enter into any management agreement, services agreement or any other similar type of agreement with a non-affiliated third party for the performance of all or substantially all of Tenant's obligations under this Lease without the prior written consent of Landlord, in its sole and absolute discretion; provided that the foregoing shall not limit Tenant's ability to enter into contracts for Concessions in accordance herewith.

ARTICLE 15

OPERATIONS, REPAIRS, MAINTENANCE, ETC.

Section 15.01 Tenant Operations. In connection with Tenant's use of the Premises hereunder, Tenant shall provide maintenance, stevedoring, security, passenger services, event coordination services, and marketing services all as more particularly described on Exhibit D attached hereto and made a part of the Lease. In addition, Tenant shall provide, operate, and maintain all equipment needed to provide stevedoring, security, and passenger services including, but not limited to, the following: forklifts, telescopic forklifts, mobile dock crane, x-ray equipment, luggage carts or cages, and pedestrian stanchions as required (the "Tenant Operations").

Section 15.02 Intentionally Omitted.

Section 15.03 Maintenance of the Premises, Etc. Except as otherwise provided in Section 10.01, Section 15.06 and Article 40, which set forth Landlord's maintenance and repair obligations, Tenant shall, at its sole cost and expense, at all times during the Term, put, keep and maintain in good and sufficient repair and condition, the Premises, including, without limitation, gangways, fenders, all surfaces, roofs, parking areas, areas open to the public, foundations and appurtenances thereto, any alleys, sidewalks, walkways/bikeways, vaults, gutters and curbs that are part of the Premises, water, sewer and gas connections, pipes and mains from and after the public utility connection within the Premises ("Tenant Maintenance Obligations"). Except as otherwise provided in Section 15.06, 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, nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary or desirable to keep the foregoing in good and safe order and condition as are specifically required under Tenant's capital expenditure obligations set forth in Exhibit C ("Tenant Improvement Obligations").

Except as provided in Section 15.06, Tenant shall be responsible for the maintenance of the underground sanitary sewer systems and storm drainage systems from and after the public utility connection within the Premises. Tenant shall not be responsible for those items and repairs set forth in Landlord's Improvement Obligations below or items that are not a Tenant Improvement Obligation or Tenant Maintenance Obligations. As used in this Section, the term "repairs" shall include all necessary replacements, removals, alterations, paving, and additions. Tenant shall neither commit nor suffer, and shall use all commercially reasonable precaution to prevent, waste, damage or injury to the Premises. All repairs and maintenance for which Tenant is responsible shall be made at no cost or expense to Landlord and shall be made in compliance with the Requirements and Article 16 and Article 17 hereof, and all materials therefor shall be at least equal in quality and class to the original materials. As used in this Section, the term "repairs" shall include all necessary replacements, removals, alterations, paving, and additions.

The Parties acknowledge that the Tenant Improvement Obligations shall be paid for by Tenant under its capital commitment for projects set forth in Exhibit C. Tenant will be responsible for all of the capital costs associated with the Tenant Improvement Obligations at the MCT, Landlord shall have no responsibility for any costs of the Tenant Improvement Obligations,

including but not limited to any cost overruns. After completion of the Tenant Improvement Obligations, Tenant will also be responsible for the operation and maintenance of those improvements.

Section 15.04 Removal of Equipment. Tenant shall not, without the prior consent of Landlord, remove or dispose of any Equipment (except for Trade Fixtures), unless such Equipment (a) is promptly replaced by Equipment of at least equal utility and quality (which replacement shall be at Tenant's sole cost and expense), (b) 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 or (c) is obsolete and interferes with operations at the Premises. 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.

Section 15.05 Free of Dirt, Snow, Etc. Tenant shall keep clean and free from dirt, snow, ice, rubbish, obstructions, and encumbrances the sidewalks and grounds, 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 in front of, or adjacent to, the Premises for which Tenant would be responsible by law if it were the fee owner of the Premises and which are not the responsibility of any other party (e.g., the Hudson River Park Trust).

Section 15.06 Landlord's Maintenance and Repair Obligations. Except as otherwise set forth 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 to the improvements on the Premises. Notwithstanding the foregoing, Landlord shall be responsible for the maintenance and repair of the viaduct structure on the Premises, excluding striping, signage, and traffic control measures, dredging, and the pier substructure and material structural items at the Premises, including existing bulkheads, piles, caps and pier support structures and Landlord shall be required to perform the items listed on Exhibit J ("Landlord Improvement Obligations"). Landlord shall be responsible to insure delivery, maintenance and repair of the gas, water, and electric services, storm drainage and the sewer connection (the "Essential Utilities") to the Premises at the Essential Utilities' connection within the Premises to enable Tenant to maintain operations at the Manhattan Cruise Terminal in accordance with and to otherwise comply with its obligations under the Lease. Landlord shall be responsible to perform the Landlord Improvement Obligations in accordance with the Construction Schedule.

The Parties acknowledge that Landlord will pay for the Landlord Improvement Obligations as set forth in this Section 15.06; provided, that the Parties may mutually agree that, if requested by Landlord, Tenant shall undertake to perform certain work at the MCT, and in such event, Tenant shall pay for the completion of this work and Landlord shall reimburse Tenant, without setoff or claim or any kind, by permitting Tenant to submit its invoice to Landlord and then deduct this amount from Landlord's Facility Usage Fee Share payable to Landlord by Tenant that Tenant has collected on Landlord's behalf or providing an increase in

the Minimum Retention Amount for such Lease Year for the full amount of any designated improvements performed by Tenant on behalf of Landlord as agreed between the Parties.

During the Term, Landlord shall make certain additional Landlord Improvements, as agreed upon by Landlord and Tenant in accordance with a mutually agreed upon construction schedule. The Parties acknowledge that any Landlord Improvement Obligation or Landlord Improvement that is required to be completed prior to Tenant performing Tenant's Work, is to be undertaken and completed by Landlord in conformity with the Construction Schedule as a condition precedent to Tenant's performance of any such Tenant Improvement Obligation.

Section 15.07 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 any other Governmental Authority having jurisdiction.

Section 15.08 Landlord to Inspect and Determine Necessity of Repairs.

(a) Landlord may, in its reasonable discretion, determine the necessity or the adequacy of repairs and maintenance at, to, or on the Premises.

(b) Each quarter during the Term of this Lease, or at such other time as Landlord shall determine, in its reasonable discretion, upon notice to Tenant, Landlord or their representatives or designees may, but shall have no obligation to, make a survey and inspection of the condition of the Premises and make a report thereon. Any such survey or inspection shall be at Landlord's sole cost and expense. The outgoing condition survey will be made as provided in Section 15.08.

(c) The survey and inspection report shall specify, the maintenance required to keep and maintain the Premises and every part thereof in good working order and condition under this Article 15. All maintenance and repairs to be conducted pursuant to this Section 15.08 shall be conducted in accordance with Article 16 and Article 17 of the Lease, as applicable. A copy of said survey and inspection report shall be delivered to Tenant. Tenant, promptly and with diligence, shall commence and continuously and diligently perform all repairs and replacements, and do all the rebuilding, inside and outside, ordinary and extraordinary, partial and entire, foreseen and unforeseen, structural or otherwise as specified in the survey and inspection report, regardless of the cause of the condition requiring such repairs, rebuilding or replacements, which repairs, rebuilding and replacements by Tenant shall be in quality and class not inferior to the original in materials and workmanship. If needed, an architect, engineer or other design professional, as appropriate, shall be engaged to perform necessary design work in connection with any repairs or maintenance specified in the report (and reasonably agreed to by Landlord and Tenant) and commencement of such repairs and maintenance shall be deemed to have occurred upon such engagement. Upon the timely completion of the design professional's design work, Tenant shall continuously and diligently prosecute the identified repairs and maintenance to completion. The failure of Landlord or its designees to make the reports shall not limit, or be deemed a waiver of, Tenant's obligation to perform or observe, or to relieve Tenant of liability for failure to comply with any, of the terms, conditions and covenants of this Article 15.

Section 15.09 Loss, Theft or Damage. Without limiting the obligations of the Tenant stated elsewhere in the Lease, the Tenant shall be solely responsible to Landlord for loss or theft of or damage to any and all personal property, equipment and fixtures belonging to Landlord or for which Landlord is responsible, located or to be located at the Premises, and shall promptly replace or repair the same within twenty (20) days after such loss, theft or damage (except that if any such repair requires activity over a period of time, then the Tenant shall commence to perform such repair within such twenty (20) day period and shall diligently proceed therewith without interruption); and the Tenant shall yield and deliver the same or replacements thereof to Landlord at the expiration or earlier termination of the letting under this Lease in the same condition as at the commencement of the letting, reasonable wear not materially affecting the efficient use and functioning of the same excepted. Notwithstanding the provisions set forth above in this paragraph, the Tenant's responsibilities under this paragraph shall extend only to the Landlord's property or property for which the Landlord is responsible that shall be specifically described as such property in any move-in survey conducted by the Landlord and the Tenant in connection with the commencement of the letting hereunder.

Section 15.10 Outgoing Condition Survey.

(a) Within three (3) months after the expiration or earlier termination of this Lease, Tenant shall cause to be presented to Landlord an outgoing condition survey and inspection report based on a survey made within one week after the Expiration Date. The engineer selected by Tenant to prepare such report shall be acceptable to Landlord, and shall be accompanied on the inspection by an engineer or engineers selected and paid for by Landlord. Tenant shall bear the full cost and expense of preparation of the outgoing condition survey and inspection report.

(b) Based upon the outgoing condition survey and inspection report, Landlord shall notify Tenant of any repair work reasonably necessary to be performed by Tenant so that the Premises are in the condition they were required to be maintained by this Lease. Upon receipt thereof, Tenant shall perform or cause to be performed all work at its sole cost and expense. Landlord shall reasonably determine the necessity for and the adequacy of any necessary repairs, provided that, if Tenant disputes Landlord's determination regarding the necessity and adequacy of a repair, Landlord and Tenant shall submit their dispute to arbitration in accordance with Section 39.01 hereof.

Section 15.11 Access of Landlord to Premises to Perform Obligations; Emergency Repairs. The provisions of this Section 15.11 shall survive the expiration or termination of the Lease.

(a) The Landlord (upon reasonable advance notice to Tenant) shall have access to, over and through the Premises, subject to reasonable security measures specified by Tenant, for the purpose of performing their respective obligations and/or exercising their respective inspection rights under this Lease, and Tenant shall cooperate therewith. During such periods of access, Tenant or an agent of Tenant may accompany Landlord. The Landlord's presence on the Premises pursuant to this Section 15.11 shall not unreasonably interfere with Tenant's use of or access to the Premises

(b) Landlord also reserves the right to make emergency repairs; the cost of any such repairs shall be the responsibility of Tenant (except to the extent that such repairs are the responsibility of Landlord under Section 15.06 above).

(c) Landlord shall, at all times and in all instances, remain liable for the gross negligence, willful misconduct and/or intentional tortious acts of its respective employees, contractors, agents and representatives.

ARTICLE 16

CHANGES AND ALTERATIONS

Section 16.01 No Alterations Without Consent. Except for Tenant's Improvement Obligations or other Tenant's Work required by Article 18 hereof and Tenant's Maintenance Obligations under Section 15.03, Tenant shall make no changes, alterations, improvements, installations, additions or perform any Construction Work (collectively "Alterations") in or to the Premises, of any nature, without the prior written consent of Lease Administrator or Landlord (which consent shall not be unreasonably withheld or delayed). For purposes hereof, the term "Alteration" does not include ordinary maintenance and repair, decorations, Trade Fixtures and installation of equipment (other than any Equipment (other than Trade Fixtures), which upon installation or annexation to the Premises would constitute fixtures). In each instance under this Article 16, where the prior consent of Lease Administrator or Landlord shall be required, such consent shall be deemed granted if Lease Administrator or Landlord shall fail to respond to Tenant's request for consent within thirty (30) days after receipt thereof.

Section 16.02 Compliance with Requirements Governing Alterations. All Alterations shall be made in compliance with the requirements for Construction Work set forth in Article 17 hereof. Tenant shall, at its sole cost and expense, comply with all Requirements applicable to any Alteration undertaken by it, including, without limitation, obtaining, prior to commencement of any such Alteration, permits and licenses that may be required in connection with such Alteration, and, upon completion thereof, obtaining any requisite certificates, including, without limitation, certificates of completion or certificates of occupancy. All Alterations shall comply with the Building Code of New York City. Landlord shall not be required to pay for or contribute to the costs of any such Alteration. Tenant will reimburse Landlord for any reasonable costs and expenses incurred by Landlord in connection therewith, including reasonable fees of architects and engineers engaged by Landlord or Lease Administrator (but who are not employees of Landlord or Lease Administrator) to review Tenant's plans and specifications, and verifying conformance therewith during, or following the completion of any such Alterations, and reasonable expenses incurred on account of any failure of Tenant to comply with any requirements of this Lease pertaining to the making of such Alterations. Notwithstanding the foregoing, Landlord may not seek reimbursement from Tenant under this Article 16 for costs related only to the costs of the Landlord's employees. Landlord's or Lease Administrator's approval of Tenant's plans and specifications for any such proposed Alterations, or any revisions thereto, or Landlord's or Lease Administrator's inspection of such Alterations to verify conformance with Tenant's plans and specifications therefor, shall not constitute an opinion or agreement by Landlord or Lease administrator that the same are adequate or sufficient or that the same are in compliance with applicable Requirements nor shall

such approval or inspection impose any liability on Landlord and Lease Administrator, waive any of Landlord's or Lease Administrator's rights or release Tenant from any of its obligations hereunder.

Section 16.03 Landlord's Right to Inspect Alterations. At all times during the progress of such Alterations and until final certificates of approval therefor shall have been delivered to the Lease Administrator or Landlord, Lease Administrator and Landlord shall have the right upon reasonable prior written notice, subject to such reasonable security measures as Tenant may from time to time prescribe, to have its representatives inspect the work being performed in the Premises and to verify compliance with the plans and specifications therefor approved by Landlord or Lease Administrator, whatever the case may be, provided, that, (except in the case of an emergency), (i) with respect to Landlord's and Lease Administrator's inspection right, Landlord or Lease Administrator shall give Tenant reasonable advance notice of Landlord's or Lease Administrator's intention to inspect the Premises, (ii) employees of Tenant shall be present at the Premises, and (iii) Landlord and Lease Administrator shall not unreasonably interfere with Tenant Operations or Tenant's access to the Premises (or any portion thereof) when conducting such inspections.

Section 16.04 No Allowances. In no event shall Tenant be entitled to any abatement, allowance, reduction or suspension of the Rent 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 16.05 Intentionally Omitted.

Section 16.06 Removal of Trade Fixtures and Equipment. The Tenant shall have the right at any time during the letting to remove from the Premises, all its equipment, Trade Fixtures and other personal property, and all property of third persons for which the Tenant is responsible, and on or before the expiration or earlier termination of the letting it shall remove all of the same from the Premises, repairing all damage caused by any removal. If the Tenant shall fail to remove such property on or before the termination or expiration of the letting, Landlord may remove such property to a public warehouse for deposit or may retain the same in its own possession and in either event may sell the same at public auction, the proceeds of which shall be applied: first to the expenses of removal, including repair required thereby, and of storage and sale; second, to any sums owed by the Tenant to Landlord, with any balance remaining to be paid to the Tenant; if the expenses of such removal, repair, storage and sale shall exceed the proceeds of sale, the Tenant shall pay such excess to Landlord upon demand.

Section 16.07 Sprinklers. Tenant shall be responsible for ensuring that the Premises complies with the current Building Code of New York City with respect to all sprinklers and/or sprinkler systems. Anything elsewhere in this Lease to the contrary notwithstanding, if the New York Board of Fire Underwriters or the New York Fire Insurance Exchange or any bureau, department or official of the federal, state or city government require the installation of a sprinkler system or that 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, or if any such sprinkler system installations, modifications, alterations,

additional sprinkler heads or other such equipment, become necessary to prevent the imposition of a penalty or charge against the full allowance for a sprinkler system in the fire insurance rate set by either the New York Board of Fire Underwriters or the New York Fire Insurance Exchange or by any fire insurance company, 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 whether the work involved shall be structural or non-structural in nature and in accordance with this Article 16.

ARTICLE 17

CONSTRUCTION WORK

Section 17.01 Construction Work. Tenant shall undertake all Construction Work, including, without limitation, the Construction Work required in connection with the construction of the Tenant's Improvement Obligations in accordance with the requirements of this Article 17.

(a) Prior to the commencement of any Construction Work, Tenant shall submit to Lease Administrator or Landlord, for their respective approval a construction application (the "Construction Application"), setting forth in detail by appropriate plans and specifications the work that Tenant proposes to perform and the manner of and time periods for performing the same, including without limitation a schedule listing each contract proposed to be entered into by Tenant for the performance of the work and the estimated cost of the work to be performed under each such contract. The data to be supplied by the Tenant shall identify each of the items constituting the Construction Work, and shall describe in reasonable detail the systems, improvements, fixtures and equipment to be installed by Tenant. Tenant shall be responsible at its sole expense for retaining all architectural, engineering and other technical consultants and services as may be required by Lease Administrator or Landlord and for developing, completing and submitting detailed plans and specifications for the work. The plans and specifications to be submitted by the Tenant shall be in sufficient detail for a contractor to perform the work and shall bear the seal of a qualified architect or professional engineer who shall be responsible for the administration of the work in accordance with Landlord's requirements. In connection with review by Lease Administrator or Landlord of Tenant's submissions under this Section, Tenant shall submit to Lease Administrator or Landlord, as the case may be, at their respective reasonable request(s), such additional data, detail or information as Lease Administrator or Landlord may find reasonably necessary, including without limitation, the identity and background of any contractor or subcontractor proposed by Tenant to perform any of the Construction Work. Lease Administrator or Landlord shall complete its initial review of the Construction Application within thirty (30) days after receipt thereof and shall complete its review of each revision or modification of the Construction Application within thirty (30) days of Lease Administrator's or Landlord's receipt thereof. In the event of a failure by Lease Administrator or Landlord to respond and notify Tenant of any required revision or modification within the time periods set forth above such failure shall be deemed to evidence approval by Lease Administrator or Landlord of the Construction Application and the materials submitted therewith. Tenant shall not engage any contractor or permit the use of any subcontractor if Lease Administrator or Landlord has notified the Tenant that such contractor or subcontractor is

unacceptable to Lease Administrator or Landlord. In the event that Tenant submits in conjunction with its submission of the Construction Application described above in this paragraph a list of its proposed contractors and subcontractors for the performance of the work set forth in the Construction Application, Lease Administrator or Landlord shall within ten (10) Business Days of receipt of such list notify Tenant if any of the listed contractors or subcontractors are unacceptable to Lease Administrator or Landlord, as the case may be; if Lease Administrator or Landlord does not so notify the Tenant within said ten (10) day period, the Tenant's listed contractors and subcontractors will be deemed to have been accepted by Landlord for the performance of the work set forth in the Construction Application. Tenant shall include in any such contract or subcontract such provisions as are required in accordance with the provisions of this Lease, and the Construction Application approved by Landlord. Tenant shall obtain and maintain or cause each contractor to obtain and maintain in force such insurance coverage as is described in Article 11 hereof in connection with the performance of Construction Work and such performance bonds as Lease Administrator or Landlord may specify. All of Tenant's Work shall be performed by Tenant in accordance with the Construction Application and final plans and specifications approved by Lease Administrator or Landlord. Upon Substantial Completion (as defined hereafter) of the Tenant's Work, the Tenant shall deliver to Lease Administrator and Landlord, a certification to such effect signed by an authorized officer of the Tenant and by the architect or engineer who sealed the Tenant's plans pursuant to the provisions of this paragraph or his or her replacement approved by Lease Administrator or Landlord (hereinafter called "the Sealing Professional") certifying that the Tenant's Work is substantially complete and has been performed substantially in accordance with the approved plans and specifications and the provisions of this Lease, identifying the "punch list" items to be completed. Following its receipt of Tenant's certification and application, Lease Administrator or Landlord shall inspect the work and, unless such certification is not correct, or Lease Administrator or Landlord determines that the Premises are unsuitable for occupancy and use by the Tenant, Lease Administrator or Landlord shall deliver a certificate of substantial completion to Tenant permitting Tenant to occupy and use the Premises for the purposes set forth in Article 9 hereof, subject to Lease Administrator or Landlord later obtaining Tenant's certification of final completion following satisfactory completion of all "punch work." Upon completion of all punch work in connection with the Tenant's Work, Tenant shall deliver to Lease Administrator or Landlord a certification of final completion signed by an authorized officer of Tenant and the Sealing Professional certifying that all of the Tenant's Work has been performed substantially in accordance with the approved plans and specifications and the provisions of this Lease and applying for a certificate of final completion from Landlord. In addition, Tenant shall supply Lease Administrator or Landlord with as-built drawings of the Tenant's Work in such form and number requested by Landlord, and Tenant shall keep said drawings current during the term of the letting under this Lease. No material changes or modifications to such work shall be made without prior Landlord consent. Following its receipt of the Tenant's certification and application, Landlord shall inspect the work and, unless the certification is not correct, or Landlord determines that the Premises are unsuitable for occupancy and use by the Tenant, Lease Administrator or Landlord shall deliver a certificate of final completion to the Tenant.

(b) Tenant shall not commence any portion of the Tenant's Work until the Construction Application and plans and specifications covering such work, referred to in paragraph (a) of this Section, have been finally approved by Landlord.

Section 17.02 Definitions. As used in this Lease, the following terms shall have the meanings set forth below:

“Final Completion” means, with respect to all Improvements constructed by Tenant in accordance with this Lease, including, without limitation, the Tenant’s Work, that Landlord has determined that the following conditions have been satisfied: (a) all work, including all punch list items, remaining after Substantial Completion, have been completed substantially in accordance with the Construction Application and have been accepted by Lease Administrator or Landlord; and (b) all Governmental Authorities having jurisdiction have authorized occupancy and use of the entire Premises (as evidenced by issuance of a final certificate of occupancy or certificate of completion and any other permits or licenses required for occupancy and the intended use and purpose).

“Substantial Completion” or “Substantially Complete(d)” means, with respect to all Improvements constructed by Tenant in accordance with this Lease, including, without limitation, the Tenant’s Work, that Landlord has determined that the following conditions have been satisfied: (a) Tenant has received a temporary certificate (or certificates) of occupancy or completion, as the case may be, for the Premises; (b) all utilities are connected; (c) Tenant may use and occupy the entire Premises for the use and purpose authorized by this Lease; (d) all work has been completed in accordance with the Construction Application, all systems of the Premises are operating and such work and 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), except for minor repairs, corrections, and adjustments of a “punch list” nature which can be completed promptly and with minimal interference to the occupancy and use of the Premises by Tenant; and (e) the Architect, Tenant, the Contractor, and Lease Administrator or Landlord have approved in writing a final punch list of such minor repairs, corrections and adjustments. For purposes of determining “Substantial Completion” or “Substantially Completed” means that the foregoing conditions have been satisfied as applied to the Tenant’s Work.

Section 17.03 No Representations or Warranties. Tenant understands and agrees that Landlord nor Lease Administrator shall incur any liability to any Person for any act or omission in connection with the review and approval of the Construction Application, plans and specifications, or any other document, or failure to review or approve the foregoing in accordance with the provisions of this Lease, and Landlord’s and/or Lease Administrator’s approval of the Construction Application, plans and specifications, or any other document shall not be, or be construed or interpreted, or otherwise relied upon, by any Person as: (1) a representation, warranty or determination by Landlord or Lease Administrator that the Construction Application and/or plans and specifications comply with applicable Requirements, or that the plans and specifications used by Tenant are structurally or architecturally sound or safe, or technically correct, (2) an opinion by Landlord or Lease Administrator that the Tenant’s Work (or any other Construction Work) constructed pursuant to the Construction Application and/or plans and specifications are, adequate or sufficient for any purpose or use, or (3) a waiver of any of Landlord’s rights, or (4) a release of Tenant from any of its obligations under this Lease. Lease Administrator and/or Landlord shall have no obligation or liability in connection with the performance of any of the Construction Work or for the contracts for the performance

thereof entered into by the Tenant. Any warranties extended or available to Tenant in connection with the aforesaid work shall be for the benefit of Landlord, as well as the Tenant.

Section 17.04 Systems Installation. Without limiting or affecting any other term or provision of this Lease, Tenant shall be responsible for the design, adequacy and operation of all utility, mechanical, electrical, communications and other systems installed in the Premises by Tenant and all other improvements, additions, fixtures, finishes, decorations and equipment made or installed by Tenant in the Premises and shall do all preventive maintenance and make all repairs, replacements, rebuilding (ordinary or extraordinary, structural or non-structural) and painting necessary to keep such systems, improvements, additions, fixtures, finishes, decorations and equipment (whether the same involves structural or non-structural work) in the condition they were in when made or installed except for reasonable wear and tear.

Section 17.05 Conditions Precedent to Tenant's Commencement of All Construction Work. Prior to the commencement of any Construction Work, including, without limitation, the construction of the Tenant's Work, Tenant shall comply with the following terms, covenants and conditions:

(a) Permits and Approvals. Tenant shall deliver to Lease Administrator and Landlord (i) copies of any and all bonds, permits, consents, certificates and approvals of all Governmental Authorities required for the performance of the Construction Work, certified by Tenant or the Architect, and (ii) the bonds required by subsection (g) of this Section 17.05. At the request of Tenant, Landlord (acting in its proprietary capacity) shall cooperate with Tenant in obtaining the permits, consents, certificates and approvals required by this Section 17.05 and any necessary utility easements, and shall not unreasonably withhold its consent to any application required to obtain such permits, consents, certificates, approvals and easements made by Tenant. Tenant shall reimburse Landlord within ten (10) days after demand therefor, the amount of any out-of-pocket costs or expenses for third party consultants and/or professionals incurred by Landlord (acting in its proprietary capacity) in cooperating with Tenant to obtain the permits, consents, certificates and approvals required by this Section 17.05 and any necessary utility easements and such amounts shall constitute Rental hereunder.

(b) Insurance. Tenant shall deliver to Landlord and Lease Administrator evidence of the insurance required in connection with the performance of Construction Work pursuant to the provisions of Section 11.01(g) hereof.

(c) Construction Contract. Tenant shall deliver to Landlord or Lease Administrator a stipulated sum or cost-plus contract, with a guaranteed maximum price, or construction management contract, or other form of contract reasonably approved by Landlord, in form assignable to Landlord ("Construction Contract").

(d) Landlord Approval of Contractor. Tenant's construction contract shall be made with a reputable and responsible contractor or construction manager who is reasonably satisfactory to Landlord ("Contractor") providing for the completion of the Construction Work in accordance with the Construction Application, applicable Requirements and this Lease. Each Contractor, upon Landlord's request, shall complete the Required Disclosure Statement, as shown on Exhibit G hereto.

(e) Assignment of Construction Contract. Tenant shall deliver to Landlord an assignment of the Construction Contract (“Assignment of Construction Contract”) to Landlord duly executed and acknowledged by Tenant (and consented to by the Contractor) effective by its terms upon any termination of this Lease, or upon Landlord’s re-entry upon the Premises following an Event of Default before the complete performance of the Construction Contract required in connection with the Construction Work in question. The Assignment of Construction Contract shall also include 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.

(f) Sufficient Funds. Tenant shall deliver to Landlord evidence, reasonably satisfactory to Landlord that Tenant has sufficient funds available to it to complete the Construction Work in accordance with the Construction Application, applicable Requirements and this Lease.

(g) Bonds. Tenant shall deliver to Landlord (i) a performance or completion bond naming Landlord as a dual obligee in an amount equal to one hundred percent (100%) of the aggregate costs and expenses of the Construction Work required for the construction of the Construction Work in question to secure the faithful performance and completion of such Construction Work; and (ii) a payment bond in an amount equal to one hundred per cent (100%) of the aggregate costs and expenses of such Construction Work guaranteeing prompt payment of monies due to all Persons furnishing labor or materials for such Construction Work. Each bond shall be satisfactory to Landlord in form and substance and shall be issued by a surety company that is licensed or authorized to do business in New York State and is approved by the Comptroller. In the alternative, Tenant may deliver to Landlord in lieu of any bond a cash deposit or letter of credit in the face amount of one hundred percent (100%) of the estimated costs and expenses of the Construction Work.

(h) Claims. Tenant shall pay all claims lawfully made against it by its contractors, subcontractors, materialmen and workmen, and all claims lawfully made against it by other third persons arising out of or in connection with or because of the performance of the work, and shall cause its contractors and subcontractors to pay all such claims lawfully made against them. Nothing herein contained shall be deemed to constitute consent to the creation of any lien or claim against the Premises or any part thereof, nor to prevent Tenant from contesting claims in good faith.

Section 17.06 Performance of Construction Work.

(a) All Construction Work shall be performed diligently and, subject to delays resulting from Landlord’s exercise of rights under Section 17.06(c), shall be completed on or before the Scheduled Completion Date (subject to Section 45.20) in good and workmanlike manner and substantially in accordance with the Construction Application (including approved plans and specifications), all applicable Requirements and this Lease. All materials and equipment utilized or furnished in connection with any and all Construction Work shall be new (unless otherwise specified in the Construction Application) and in good condition, fully

operational, without patent or latent defects, suitable for its intended purpose and shall comply with the requirements of the Construction Application (including all plans and specifications). At all times during the performance of any Construction Work, Tenant shall maintain the Premises in a neat and orderly condition and shall protect the Premises against deterioration, loss, damage and theft.

(b) Without limiting the generality of any of the provisions of this Lease, Tenant shall use commercially reasonable efforts to minimize, in the performance of any Construction Work, any air pollution, water pollution or any other type of pollution, including noise emanating from, arising out of, or resulting from construction. Subject to the provisions of this Lease, Tenant shall construct such reasonable structures, fences, equipment, devices and other facilities as may be necessary or appropriate to accomplish the objectives set forth in this paragraph, , and, without limiting the generality of the foregoing, such construction shall be subject to review and reasonable approval by Landlord.

(c) In the performance of any Construction Work, Tenant shall not permit any situation or condition to continue that is reasonably likely to cause any labor troubles at the Premises which interferes with the progress of other construction work at the Premises. The determinations of Landlord shall be conclusive on the Tenant. Upon notice from Landlord, Tenant shall or shall cause its contractor to immediately rectify any condition specified in the notice. In the event of failure by Tenant or any of its contractors to immediately comply (or, if compliance requires activity over a period of time, to commence to comply and with diligence to proceed to remedy any such failure in accordance) with the requirements of this paragraph (whether or not such failure is due to Tenant's fault) Landlord by notice shall have the right to suspend Landlord's permission to Tenant to proceed with any portion of the Construction Work being performed by or on behalf of Tenant, and Tenant shall thereupon immediately cease the same. When labor troubles shall be so settled that such interference or the danger thereof no longer exists, Landlord by notice to Tenant shall reinstate the permission to Tenant to perform the work on all the same terms and conditions as before the suspension. "Labor troubles" shall mean and include strikes, boycotts, picketing, work-stoppages, slowdowns or any other type of labor trouble, regardless of the employer of the person involved or their employment status, if any.

Section 17.07 Supervision of Architect. All Construction Work shall be supervised by an Architect and all changes to the Construction Application shall be undertaken by an Architect.

Section 17.08 Rights of Inspection.

(a) Landlord (upon reasonable advance notice) Lease Administrator, and their representatives shall have the right, from time to time, to visit the Premises (pursuant to Section 10.01 and/or Section 29.02(c) hereof) and/or in Lease Administrator's sole discretion, to maintain their field personnel at the Premises to observe the performance of Construction Work by Tenant (including, without limitation, the means, methods, procedures and techniques utilized by Tenant) solely for the purpose of ensuring that the Construction Work is undertaken in accordance with the Construction Application (including the approved plans and specifications) and all Requirements and this Lease. Tenant shall invite Lease Administrator to attend Tenant's job and/or safety meetings, if any and shall provide Landlord with reasonable

prior notice thereof. Nothing herein shall impose any responsibility upon Landlord or Lease Administrator 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 respects with the Construction Application (including the approved plans and specifications), applicable Requirements or the provisions of this Lease. The use of field personnel by Lease Administrator shall be at its sole cost and expense, unless the necessity therefor results from Tenant's negligence or willful misconduct.

(b) Tenant shall keep Landlord fully informed of Tenant's progress in undertaking any construction work, including, without limitation, the construction of the Tenant's Work. In furtherance of the foregoing, promptly, upon Landlord's request, Tenant shall provide Landlord with copies of all materials that are customarily provided to a construction lender (and other materials requested by Landlord) including, but not limited to, scheduling of payments, projections and certifications of constructions costs and sources of funds, and all construction documents and all plans and specifications.

Section 17.09 Compliance with Requirements and the Building Code of New York City. Tenant assumes sole responsibility for compliance with all applicable Requirements and the Building Code of New York City in the performance of Construction Work. Accordingly, Tenant shall ensure that the Construction Application and any Construction Work undertaken at the Premises during the Term comply with all applicable Requirements and the Building Code of New York City.

Section 17.10 Risks of Loss. Tenant hereby assumes all risks of demolition, removal, and construction of the Improvements in performing Tenant's Work.

Section 17.11 Costs and Expenses. Tenant understands and agrees that the Improvements constructed or required to be constructed by Tenant, including, without limitation, the Tenant's Work, will be designed, constructed, maintained, secured and insured entirely at Tenant's sole 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 provided in this Lease, including Sections 4.03 and 15.06). 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 such Improvements; provided that the foregoing shall not prevent Tenant from contesting the same in good faith.

Section 17.12 Title to the Improvements and Materials. Tenant understands and agrees that Landlord has all right, title and interest to the Premises and that title to all Improvements constructed by Tenant, including, without limitation, Tenant's Work, shall be vested in Landlord, immediately, upon commencement of construction thereof and at all times thereafter. Tenant further understands and agrees that all materials to be incorporated into the Premises shall, immediately upon their purchase and at all times thereafter, constitute the property of Landlord, and upon construction of the Tenant's Work (or part thereof) or any other Improvement, or the incorporation of such materials therein, title thereto shall be and continue in Landlord. Notwithstanding the foregoing, Tenant further 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 materials, and (b) except as provided in Section 12.03, 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 shall include Equipment, but shall not include Trade Fixtures.

Section 17.13 Names of Contractors, Materialmen, etc.; Approval of Consultants, etc.

(a) Pursuant to Section 17.01 hereof, Tenant shall furnish Lease Administrator with a list of all Persons entering into contracts or otherwise engaged to perform any labor or supply any materials in connection with any Construction Work. The list shall state the name and address of each such Person and the capacity in which such Person is under contract performing work at the Premises. All persons employed by Tenant with respect to any Construction Work shall be paid, without subsequent deduction or rebate unless expressly authorized by law, not less than the prevailing minimum hourly rate required by law.

(b) All architects, engineers, and consultants retained by Tenant shall be subject to the prior written approval of Landlord or Lease Administrator, in its reasonable discretion (not to be unreasonably withheld, conditioned or delayed). Tenant shall permit Lease Administrator to participate in regular meetings with the Architect and such other architects, engineers, and consultants, upon prior written notice to Tenant.

(c) Tenant shall furnish Lease Administrator with the name of each proposed consultant, engineer, contractor and subcontractor in connection with any Construction Work or Alteration(s) to be performed on the Premises, and the names of the principals of each of the foregoing. Tenant shall cause each such proposed consultant, engineer, contractor and subcontractor and principals thereof to complete and submit to Lease Administrator the Internal Background Investigation Questionnaire, as shown on Exhibit F hereto, as part of its internal background investigation procedure (or successor system and/or forms serving the same function) at least fifteen (15) days prior to the proposed commencement date of any work to be performed by any of the foregoing. Tenant shall not contract with any such proposed consultant, engineer, contractor and subcontractor, or permit any such proposed Contractor to perform any work, unless and until Lease Administrator shall have advised Tenant that no such proposed consultant, engineer, contractor and subcontractor nor any of its principals violates any of the Lease Administrator's requirements pursuant to its internal background investigation procedure.

(d) Tenant agrees to and shall require its contractors to use good faith efforts to provide for meaningful participation by Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) in any Construction Work. Tenant shall work with the City Department of Small Business Services ("DSBS") to implement any programs developed by DSBS pursuant to Executive Order No. 36 of June 12, 2003 ("EO 36") to encourage and facilitate the prospects of M/WBEs participating in the construction work. As contemplated by EO 36, Tenant shall make reasonable efforts to increase M/WBEs' awareness of opportunities to participate as Contractors in the construction and shall work with them to improve their ability to bid successfully on construction contracts for Construction Work.

Section 17.14 Minority and Women-Owned Business Enterprises. Tenant shall submit to Lease Administrator an M/WBE Participation Proposal (the "M/WBE Participation Proposal")

together with the Construction Application, which shall state the Tenant's proposed plans for participation by MBEs and WBEs, together with "MBEs" collectively referred to as "M/WBEs") in design and construction components of work performed in accordance with the Lease.

Not later than sixty (60) days prior to the commencement of construction on the Premises, Tenant shall submit to Lease Administrator, for Lease Administrator's reasonable approval, an M/WBE Participation Plan that reflects the M/WBE Participation Proposal. If the submitted M/WBE Participation Plan does not meet with Lease Administrator's reasonable approval, Tenant shall amend and resubmit to Lease Administrator such M/WBE Participation Plan until Lease Administrator's final approval is obtained.

Tenant agrees that from the date hereof, Tenant and its successors and assigns shall use good faith efforts to comply with the terms and conditions and reach the goals outlined in the M/WBE Participation Proposal and the M/WBE Participation Plan and agrees to be bound by all the covenants in Tenant's M/WBE Participation Plan and applicable M/WBE program requirements attached hereto as Exhibit K.

Section 17.15 Hiring and Workforce Programs. (a) HireNYC: Construction requires the Tenant to enroll with the HireNYC portal for the City found within DSBS's website, to report all new and replacement entry to mid-level job opportunities with Tenant arising from construction activity related to the Lease that are located in the City, and to interview qualified candidates from HireNYC: Construction for those opportunities. The Tenant must participate in HireNYC: Construction from the time that it enters into a construction contract relating to the Lease until the end of the related construction activities. Tenant represents, warrants and covenants that it shall perform the requirements of HireNYC: Construction, attached hereto as Exhibit L.

(b) HireNYC: Permanent. Tenant has submitted to Lease Administrator a HireNYC: Permanent Plan (the "Tenant's HireNYC: Permanent Plan") which states Tenant's proposed plans for participation in NYCEDC's hiring and workforce development program which aims to create employment opportunities for low-income persons and includes certain hiring, retention, advancement and training goals ("Goals") as well as other requirements, as more particularly described in Tenant's HireNYC: Permanent Plan, attached hereto as Exhibit M.

Tenant and its successors and assigns and all subtenants at the Premises shall use good faith efforts to reach the Goals set forth in the Tenant's HireNYC: Permanent Plan.

Section 17.16 Construction Agreements.

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

(i) "[Contractor]/[Subcontractor]/[Materialman]" hereby agrees that immediately upon the purchase from ["contractor"/"subcontractor"/"materialman"] of any building materials to be incorporated in the Project [or other Improvements] (as such terms are defined in the lease pursuant to which the contract purchase hereunder acquired a leasehold interest in the property (the "Lease")), such materials shall become the sole property of the Landlord (as defined in the Lease), notwithstanding that such materials have not been

incorporated in, or made a part of the Premises 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 Landlord shall not have any obligation to pay any compensation to ["contractor"]/["subcontractor"]/["materialman"] by reason of such materials becoming the sole property of the Landlord."

(ii) "[Contractor]"/["Subcontractor"]/["Material-man"] hereby agrees that notwithstanding that ["contractor"]/["sub-contractor"]/["materialman"] performed work at or furnished any materials for the Premises (as such term is defined in the Lease) or any part thereof, Landlord shall be liable in any manner for payment or otherwise to ["contractor"]/ ["subcontractor"]/["materialman"] in connection with the work performed at or materials furnished for the Premises.

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

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

(v) "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) Definitions.

(i) "Contractor" as used in this Section 17.16 shall include each contractor and subcontractor at any tier of construction.

(ii) "Construction Contract(s)" means a written contract to do any Construction Work.

ARTICLE 18

TENANT'S WORK

Section 18.01 Tenant's Work. Tenant shall undertake the Construction Work in accordance with the requirements of this Lease. All such Construction Work shall comply with the requirements of Article 17 hereof and this Article 18.

Section 18.02 Construction Application. Tenant shall submit to Lease Administrator for Lease Administrator's prior review and approval the Construction Application for the Tenant's Work in accordance with the Construction Schedule. The review and approval of the Construction Application for the Tenant's Work shall be conducted by Lease Administrator in accordance with Article 17.

Section 18.03 Construction of the Tenant's Work. Tenant shall commence the Tenant's Work on the Construction Commencement Date (subject to Unavoidable Delays and Landlord Delays and the provisions of Section 29.01(d) hereof), and shall prosecute such Construction Work with diligence and continuity, and shall Substantially Complete the Tenant's Work on or before the Scheduled Completion Date, subject to, in each case, Unavoidable Delays and Landlord Delays, in accordance with the Construction Application and all other requirements of this Lease (including, without limitation, compliance with the Building Code of New York City).

ARTICLE 19

REQUIREMENTS OF GOVERNMENTAL AUTHORITIES

Section 19.01 Obligation to Comply with Requirements. Tenant shall comply and shall cause its officers, employees and others at the Premises to comply with all governmental regulations governing the Tenant's operations and the Building Code of New York City now in effect, and such further reasonable rules and regulations (including amendments and supplements thereto) governing the conduct and operations of the Tenant as may from time to time be promulgated by a Governmental Authority (in such capacity) with respect to (a) safety, health, or preservation of property and (b) the maintenance, management, use and operation of the Premises, including, without limitation, (i) the maintenance of the good, and orderly appearance of the Premises, (ii) the safe and efficient operation of the Premises, and (iii) the performance of any Construction Work (including, without limitation, the Tenant's 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.

Section 19.02 Intentionally Omitted.

Section 19.03 Environmental Remediation. In the event of any clean-up, remediation or other response action for which Landlord is responsible under Section 42.02(d), Tenant shall cooperate fully with Landlord and the Governmental Authority as is reasonably necessary to accommodate the remediation activities required to complete the Required Remediation, including, if there is no reasonable alternative, vacating the Premises (with the Rental being abated) for as long as is necessary to facilitate the remediation activities. Landlord shall be responsible for all liabilities, costs, charges and expenses incurred by the Tenant that arise from or relate to such remediation activities or any necessary vacation of the Premises.

ARTICLE 20

DISCHARGE OF LIENS; BONDS

Section 20.01 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. Nothing herein contained shall be deemed to constitute consent to the creation of any lien or claim against the Premises or any part thereof, nor to prevent the Tenant from contesting claims in good faith.

Section 20.02 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, then Tenant shall, within thirty (30) days after receiving notice of the filing of such 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 20.02(a) hereof, Tenant shall not be required to discharge a Lien if Tenant shall have (i) furnished Landlord with a letter of credit, 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 promptly cause such Lien to be discharged of record, or Landlord may use the security furnished by Tenant to it in order to so discharge the Lien for which such security was given.

Section 20.03 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 of, alteration to, or repair of, the Premises, or any part thereof, nor as giving Tenant any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any Lien 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 21

CERTAIN REPRESENTATIONS AND WARRANTIES OF TENANT

Tenant hereby represents and warrants to Landlord as follows:

Section 21.01 Incorporation, Good Standing and Due Qualification. Tenant is a Delaware corporation, 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 the State of New York and each other jurisdiction in which such qualification is required.

Section 21.02 Corporate Power and Authority; No Conflicts. The execution, delivery and performance by Tenant of this Lease have been duly authorized by all necessary corporate action and do not and will not: (a) require any consent or approval of its stockholders; (b) contravene its charter or by-laws; (c) 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) 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.

Section 21.03 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.

Section 21.04 Litigation. There are no actions, suits or proceedings pending or, to the knowledge of Tenant, threatened against, or 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.

Section 21.05 Taxes. Tenant has filed all tax (federal, state and local) returns required to be filed 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.

Section 21.06 Operation of Business; Compliance with Laws. Tenant possesses all licenses, permits, franchises, patents, copyrights, trademarks and trade names, or rights thereto, to operate as described in the Lease and conduct its business substantially as now conducted and as presently proposed to be conducted, and Tenant is not in violation of any valid intellectual

property rights of others with respect to the foregoing. Tenant is in compliance in all respects with all Requirements. Tenant also hereby covenants to ensure that all licenses, certificates, permits and other authorizations shall remain in full force and effect throughout the term of the Lease. Tenant shall provide copies of all licenses, certificates, permits, and other authorizations which may be necessary for the conduct of its operations to Landlord upon Landlord's request.

Section 21.07 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. This representation shall survive the expiration or earlier termination of this Lease.

Section 21.08 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 and that Landlord would not enter into the Lease of 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 terminate this Lease upon twenty-four (24) hours' notice to Tenant and to rescind this transaction in all respects.

Section 21.09 Dealings with Landlord.

Except as set forth on the Required Disclosure Statement (Schedule A of Exhibit G) attached hereto, Tenant represents and warrants that neither Tenant nor any principal thereof:

- (a) is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with Landlord, unless such default or breach has been waived in writing by Landlord;
- (b) has been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) years;
- (c) has been convicted of a felony in the past ten (10) years;
- (d) has received a formal written notice from a federal, state or local governmental agency or body that such Person is currently under investigation for a felony offense; or
- (e) has received a written notice of default in the payment to the City of any taxes, sewer rents or water charges, which have not been paid, unless such default is currently being contested with due diligence in proceedings in a court or other appropriate forum.

As used herein, the following capitalized terms shall have the respective meanings set forth below:

“Control or Controls” shall mean the power to direct the management and policies of a Person (x) through the ownership of not less than a majority of its voting securities, (y) through the right

to designate or elect not less than a majority of the members of its Governing Body, or (z) by contract or otherwise.

“Governing Body” shall mean, when used with respect to any Person, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Person are exercised.

“Person” shall mean any individual or entity, whether a trustee, corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, Governmental Authority, governmental instrumentality or otherwise.

“Principal(s)” shall mean, with respect to any Person that is an entity, the chief executive officer, the chief financial officer and the chief operating officer of such Person, or any individual holding equivalent positions.

Tenant shall inform Landlord within ten (10) Business Days of any change to its status with respect to the representations and warranties made pursuant to this Section 21.09 and/or the Required Disclosure Statement.

Section 21.10 No Other Representations. Tenant or its authorized representatives have inspected the Premises and are fully familiar with the Premises, their physical condition, and Requirements applicable thereto. Except as otherwise provided herein, Tenant warrants and represents that: (a) no representations, statements, or warranties, express or implied, have been made by, or on behalf of Landlord with respect to the Premises, the transactions contemplated by the Lease (and the Lease itself), the status of title to the Premises, the physical condition of the Premises, the Requirements applicable thereto, the use that may be made of the Premises, or the absence of “Hazardous Materials” on or under the Premises, and (b) Tenant has relied on no such representations, statements or warranties in its determination to enter into this Lease.

Section 21.11 Continuing Representations/Warranties. If at any time during the term of the Lease, a representation or warranty made by Tenant pursuant to this Article 21 hereof would, if made on any date during the term of the Lease and deemed made as of such date, be false, misleading or incorrect in any material respect, then, Tenant shall be deemed to be in default under the Lease (subject to the cure and notice provisions in Section 29.01(e) hereof) unless the Landlord shall, upon written request by the Tenant, either waive such default in writing or consent in writing to an exception to such representation or warranty so that such representation or warranty shall no longer be false, misleading or incorrect in a material respect.

ARTICLE 22

LIMITATION ON LIABILITY

Section 22.01 Landlord not Liable for Injury or Damage, Etc. Except as expressly provided in the Lease:

(a) From and after the Commencement Date Landlord shall not be liable for any injury or damage to Tenant or to any Person happening on, in or about the Premises or its appurtenances, nor for any injury or damage to the Premises, or to any property belonging to Tenant or to any other Person, that may be caused by fire, by breakage, or by the use, misuse or abuse of any portion of the Premises, 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 Landlord, or its respective agents', employees' or contractors' gross negligence, willful misconduct or intentional tortious acts or omissions.

(b) From and after the Commencement Date, Landlord shall not be liable to Tenant or to any Person for any failure of water supply, gas or electric current, nor for any injury or damage to any property of Tenant or of any Person or to the Premises, caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storm or disturbance, or by or from water, rain or snow which may leak or flow from the street, sewer, gas mains or subsurface area or from any part of the Premises, or body of water under or adjacent to the Premises, or by or from leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein, or from any other place, nor for interference with light or other incorporeal hereditaments by any Person, or caused by any public or quasi-public work, unless, and only to the extent that such failure, injury or damage is caused by Landlord, or its respective agents', employees' or contractors' gross negligence, willful misconduct or intentional tortious acts.

(c) Landlord shall not be liable for any latent or patent defect in the Premises.

Section 22.02 Landlord Exculpation. None of the elected officials, Commissioners, directors, officers, partners, joint venturers, principals, shareholders, employees, agents, representatives or servants of Landlord shall be personally liable hereunder or be subject to levy, execution or other enforcement procedure for the satisfaction of any remedies of Tenant available hereunder. Notwithstanding the foregoing, Landlord and Lease Administrator shall each be liable for its own respective gross negligence, willful misconduct and intentional tortious acts. The liability of Landlord for damages or otherwise shall be limited to Landlord's interest in the Premises, the proceeds payable to Landlord of any insurance policies covering or relating to the Premises, and any awards payable to Landlord in connection with any condemnation of part or all of the Premises. In no event, however, shall Landlord's interest in the Premises include: (i) any rights, claims, or interests of Landlord that at any time may arise from or be a result of Landlord's governmental powers or rights or Landlord's actions in its governmental capacity; (ii) any rents, issues, or proceeds from or in connection with the Premises, or that would otherwise be within Landlord's interest in the Premises, from and after such time as such items have been received by Landlord; or (iii) any proceeds resulting from a levy under execution or attachment against Landlord's fee interest (it being understood and agreed that Tenant shall not seek to effect such a levy under execution or attachment).

Section 22.03 Governs Lease. The provisions of this Article 22 shall govern every other provision of this Lease. The absence of explicit reference to this Article 22 in any particular provision of this Lease shall not be construed to diminish the application of this Article 22 to such provision. This Article 22 shall survive the expiration or earlier termination of this Lease.

Section 22.04 Other Remedies. Nothing in this Article 22 is intended to limit the remedies available to the Landlord under this Lease. Nothing in this Article 22 is intended to prevent or preclude the Landlord from obtaining injunctive or declaratory relief with respect to any claim arising under this Lease or in connection with the Premises.

ARTICLE 23

INDEMNIFICATION

Section 23.01 Tenant's Obligation to Preserve Landlord against Liability. Tenant is solely responsible for the security of the Premises and Tenant's operations on, above or about the Premises and shall manage and operate the same so as to avoid bodily injury and/or property damage. Tenant shall not knowingly perform any act, or do any thing, or permit any act to be performed or thing to be done at the Premises, or any portion thereof, that subjects or is reasonably likely to subject Landlord or Lease Administrator 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 and Lease Administrator against any such liability.

Section 23.02 Tenant's Obligation to Indemnify. Tenant shall defend, indemnify and save Landlord and Lease Administrator, and their respective Commissioners, directors, officers, employees, agents and servants (collectively, the "Indemnitees") harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, court costs and reasonable attorneys' fees and disbursements, that may be imposed upon, or incurred by, or asserted against, any of the Indemnitees by reason of any of the following, except that no Indemnitee shall be so indemnified and saved harmless to the extent that such liabilities, etc., are caused by the gross negligence, willful misconduct or intentional tortious acts of such Indemnitee:

- (a) Construction Work. Any Construction Work or act done in, on, or about the Premises or any part thereof by or on behalf of Tenant;
- (b) Control. The control or use, non-use, possession, occupation, alteration, condition, operation, maintenance or management of the Premises, or any part thereof by Tenant, including any street, plaza, sidewalk, curb, vault, body of water, or space comprising a part thereof or adjacent thereto, including, without limitation, any violations imposed by any Governmental Authorities in respect of any of the foregoing;
- (c) Acts or Failure to Act of Tenant. Any act, failure to act, and/or omission on the part of Tenant or any of its respective partners, joint venturers, contractors, subcontractors or their employees, representatives, officials, officers, shareholders, directors, agents, contractors, servants, employees, guests, licensees or invitees at or in connection with the Premises;
- (d) Accidents, Injury to Person or Property. Any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in, on, or about the Premises, or any part thereof, or in, any sidewalk, comprising a part thereof;

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

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

(g) Intentionally Omitted;

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

(i) Contest and Proceedings. With respect to Landlord in its proprietary capacity, any contest or proceeding brought by Tenant, or permitted to be brought by Tenant pursuant to Article 38 hereof;

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

(k) Tenant Environmental Damage. Arising out of, or related to Tenant Environmental Damage (as defined in Section 42.01), including with respect thereto, any such liability, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses imposed upon, incurred by or asserted against Landlord or Lease Administrator under the federal Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§9601 et seq.

Section 23.03 Contractual Liability. The obligations of Tenant under this Article 23 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.

Section 23.04 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 23.02 hereof, 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), by attorneys selected by Tenant and approved by Landlord (such approval shall not be unreasonably conditioned or withheld), or Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance). The foregoing notwithstanding, any such Indemnitee may engage its own attorneys to defend such Indemnitee, or to assist such Indemnitee in such Indemnitee's defense

of such claim, action or proceeding, as the case may be, at such Indemnitee's sole cost and expense.

Section 23.05 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 23.05 within fifteen (15) business days after Landlord's request therefor if Tenant is obligated to make such payment pursuant to the terms of this Lease; any non-payment thereof by Tenant shall constitute a Default for which Landlord may declare an Event of Default in accordance with the provisions of Article 29 hereof.

Section 23.06 Survival Clause. The provisions of this Article 23 shall survive the expiration or earlier termination of this Lease.

ARTICLE 24

LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

Section 24.01 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 11 hereof, or to make any other payment or perform any other act on its part to be made or performed hereunder, including, without limitation, the obligation to cause the discharge of Liens pursuant to Article 20, then, upon not less than thirty (30) days' prior 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 11 hereof, 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 provided that Landlord may undertake (i) any maintenance or repair obligation imposed on Tenant pursuant to Article 15 hereof, 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, only in the case of an emergency or an Event of Default.

Section 24.02 Amounts Paid by Landlord are Rental. All reasonable sums so paid by Landlord and all reasonable costs and expenses incurred by Landlord in connection with the performance of any such act shall bear interest thereon at the Late Charge 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 later than the first day of the month following the giving of any notice related thereto.

Section 24.03 Proof of Damages. Landlord shall not be limited in the proof of any damages that it may claim against Tenant arising out of, or by reason of, Tenant's failure to provide and keep insurance in force in accordance with the provisions of this Lease to the amount of the insurance premium or premiums not paid. 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 24.04 Right to Use Deposited Funds. Subject to Article 12 and Article 13, upon Landlord's election to commence or complete any Construction Work pursuant to Section 24.01 above, Tenant shall pay immediately, or cause to be paid immediately, 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), 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.

Section 24.05 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 20 hereof, 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 upon demand therefor by Landlord.

Section 24.06 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 25

NO SUBORDINATION

Landlord's interest in the Premises and in this Lease, as the same may be modified, amended or renewed, shall not be subject or subordinate to (a) any mortgage now or hereafter existing, (b) any other Liens or encumbrances hereafter affecting Tenant's interest in this Lease and the leasehold estate created hereby, or (c) any sublease, Liens or encumbrances now or hereafter placed on any subtenant's interest in the Premises. This Lease and the leasehold estate of Tenant created hereby and all rights of Tenant hereunder are and shall be subject to the Title Matters. Furthermore, this Lease and the letting hereunder are and shall be subject and subordinate to all mortgages which may now or hereafter affect the Premises, and to all renewals, modifications, consolidations, replacements and extensions thereof, and although the provisions of this Article 25 shall be deemed to be self-operating and effective for all purposes without any further instrument on the part of the Tenant, the Tenant shall execute on demand and without expense to Landlord such further instruments confirmatory of the provisions of this Article as Landlord may request.

ARTICLE 26

REPORTS, BOOKS AND RECORDS, INSPECTION AND AUDIT

Section 26.01 Financial Reports. Tenant shall furnish to Landlord at any time that the Premises are used such that, if Tenant owned fee title to the Premises, the Premises would be "income-producing property" as that term is used in City Administrative Code Section 11-208.1 (or successor thereto), income and expense statements of the type required by such code section (or successor thereto) as if Tenant were the "owner" of the Premises as such term is used in said Section 11-208.1, 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 Landlord holds fee title to the Premises.

Section 26.02 Books and Records.

(a) Maintenance of Books and Records. Tenant shall keep and maintain at the Premises complete and accurate books and records of the operations of the Premises in accordance with generally accepted accounting principles, consistently applied ("GAAP"), and Tenant shall preserve such records for a period of at least six (6) years. However, if, at the expiration of such six (6) year period, Landlord is seeking to contest or is contesting any matter relating to such records or any matter to which such records may be relevant, Tenant shall preserve such records until one (1) year after the final adjudication, settlement or other disposition of any such contest.

(b) Inspection and Audits of Books and Records. Landlord, the Comptroller and their agents or representatives shall have the right from time to time during regular business hours, upon 24 hours' notice, to inspect and audit Tenant's books and records, and all other papers and files of Tenant, relating in any manner to Tenant's compliance with any provision of this Lease. Tenant shall produce all such books, records, papers and files, upon request of Landlord, the

Comptroller or their agents and representatives for inspection at the Premises. Subject to applicable law, all information obtained from Tenant's books, records, papers and files shall be held in confidence, except as may be necessary for the enforcement of Landlord's rights under this Lease.

(c) Survival Clause. The obligations of Tenant under this Article shall survive the expiration or earlier termination of this Lease.

(d) Attornment. To the extent that Tenant is obligated to attorn to Landlord or otherwise make payments directly to Landlord under the Lease, Landlord shall, at its sole discretion, in lieu of any records or books of account of Tenant, employ its own records and books of account for the calculation of any amounts to be paid by the Tenant to Landlord.

Section 26.03 Employment Reports.

(a) Within seven (7) days after the date hereof, Tenant, if it has not already done so, shall complete and deliver to Landlord a questionnaire, on the form prescribed by Landlord, setting forth, in substance, how many and what types of jobs it in good faith estimates will be created or retained at the Premises when Tenant's Work is complete and such supplementary documentation as may be required by the form (the "Questionnaire" as shown on Exhibit E hereto). Tenant agrees, on behalf of itself and its successors and assigns, that thereafter, with regard to each period beginning on July 1 and ending on June 30, from and after the Commencement Date until the first June 30 falling after the date that is seven years after the Commencement Date (such periods, collectively, the "Reporting Period"), unless waived by Landlord, Tenant will submit to Landlord, by August 1, on an annual basis, a report (on a form presented to it by NYCEDC) of the number of jobs created and retained at the Premises during the previous July 1 - June 30 period relating to Tenant's and its successors' and assigns' own employees at the Premises, and the employees of any entity affiliated therewith, signed by an officer of Tenant, and the attachments required by such form. If Tenant should sublease all or any portion of the Premises, then Tenant shall take all appropriate measures, including such as Landlord may direct, to insure that employee information with respect to any such subtenant is furnished to Landlord in a manner equivalent to that provided above.

(b) Tenant on behalf of itself, its successors and assigns further agrees that Tenant (and its successors and assigns) shall receive and in good faith consider such proposals as the City and City-related entities (including, without limitation, the Brooklyn Borough President's Task Force Initiative, and the Southwest Brooklyn Industrial Development Corporation, or the then current agency(ies)) may make with regard to jobs Tenant (or its successors or assigns) will seek to fill in relation to its activities in or concerning the Premises and provide the City and such entities with the opportunity (I) to refer candidates who are City residents (and, in particular for the BCT, Brooklyn residents) having the requisite experience for the positions in question, and/or to promote a program(s) to train City residents for those jobs and (B) and with regard to each July 1 - June 30 period that falls in whole or in part within the Reporting Period, report to Landlord, by August 1, on an annual basis, with regard to the previous July 1 - June 30 period, its response to any proposals, job referrals and training programs made and/or created by the City and/or City-related entities pursuant to this Section 26.03(b). Tenant will use commercially reasonable efforts to include its commitment pursuant to this Section 26.03(b) in contractual

arrangements with any and all labor organizations, subcontractors, and/or subtenants. Notwithstanding the foregoing, Tenant shall not be required to amend its current collective bargaining agreements nor to contravene its current labor agreements and relationships to comply with the requirement of this Section 26.03(b).

(c) 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 Section 26.03 are a material inducement for Landlord to enter into this Lease.

ARTICLE 27

NON - DISCRIMINATION

(a) Obligations. So long as the City shall be Landlord, but subject to Tenant's collective bargaining agreements, Tenant shall be bound by the following requirements:

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

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

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

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

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

By signing this contract, contractor agrees, subject to any collective bargaining agreements, that it:

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

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

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

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

ARTICLE 28

INVESTIGATIONS; REFUSAL TO TESTIFY

Section 28.01 Cooperation. Tenant shall cooperate fully with any investigation, audit, or inquiry conducted by a 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 the Inspector General of a 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 28.02 Hearings.

(a) If any person 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, NYCEDC or any local development organization, or any public benefit corporation organized under the laws of the State; or

(b) If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a Governmental Authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the 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, NYCEDC or any local development corporation;

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

Section 28.03 Adjournments of Hearing, Etc. If any non-governmental party to the hearing requests an adjournment, the commissioner or the agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit or license pending the final determination pursuant to Section 28.05 below without Landlord incurring any penalty or damages for delay or otherwise.

Section 28.04 Penalties. The penalties that may attach after the final determination by the commissioner or agency head may include, but shall not exceed:

(a) The disqualification for a period not to exceed five (5) years from the date of any adverse determination for any person or any entity of 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 City or NYCEDC contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Lease, nor the proceeds of which pledged to an unaffiliated and

unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City or NYCEDC incurring any penalty or damages on account of such cancellation or termination.

Section 28.05 Criteria for Determination. The commissioner or agency head shall consider or address in reaching his or her other determination and in assessing an appropriate penalty the factors in paragraphs (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (c) and (d) below, in addition to any other information which may be relevant and appropriate.

(a) 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.

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

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

(d) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in a party or entity subject to penalties under Section 28.04 above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in Section 28.02 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 adverse impact such a penalty would have on such person or entity.

Section 28.06 Definitions. For the purposes of this Article 28, 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.

(a) 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.

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

(c) 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 the City or otherwise transacts business with the City.

(d) 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 28.07 Failure to Report Solicitations. In addition to, and notwithstanding any other provision of this Lease, the commissioner or the agency head may, at his or her discretion, terminate this Lease upon twenty-four (24) hours’ written notice in the event Tenant fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City, 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 this Lease.

ARTICLE 29

EVENTS OF DEFAULT, REMEDIES, ETC.

Section 29.01 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 the Rental (including, without limitation, any payment of Participation Rent, or Annual Base Rent, or Impositions) or any payment of Landlord’s Facility Usage Fee Share when due hereunder and such failure shall continue for a period of thirty (30) days after notice thereof from Landlord;

(b) if Tenant shall fail to maintain the Premises in accordance with its requirements under Article 15 hereof and such failure shall continue for a period of fifty-five (55) days after notice (unless such failure requires work to be performed, acts to be done or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed within such fifty-five (55) day period, in which case no Event of Default shall exist as long as Tenant shall commence to undertake the requisite maintenance of the Premises within such fifty-five (55) day period and shall diligently and in good faith prosecute the same to completion);

(c) if Tenant shall fail to Commence Construction of Tenant’s Work in accordance with the terms, covenants and conditions of Article 17 and Article 18 hereof, and such failure shall continue for a period of fifty-five (55) days after notice, or if Tenant shall fail to diligently prosecute the construction of the Tenant’s Work in accordance with the terms, covenants and conditions of said Article 18 and such failure shall continue for fifty-five (55) days after notice;

(d) if Tenant shall fail to Substantially Complete the construction of the Tenant’s Work in accordance with the terms, covenants and conditions of Article 18, and such failure shall continue for a period of fifty-five (55) days after notice (unless such failure requires work to be performed, acts to be done or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed within such fifty-five (55) day period, in which case no Event of Default shall exist as long as Tenant shall commence to undertake the requisite construction within such fifty-five (55) day period and shall diligently and in good faith prosecute the same to completion within a reasonable period; but in no event later than the Outside Completion Date;

(e) if Tenant shall fail to observe or perform one or more of the other terms, conditions, covenants or agreements of this Lease on Tenant's part to be performed or observed and such failure shall continue for a period of fifty-five (55) days after notice thereof 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 fifty-five (55) day period, in which case no Event of Default shall be deemed to exist as long as Tenant shall commence the requisite performance or observance within such fifty-five (55) day period and shall diligently and in good faith prosecute the same to completion);

(f) Except as may be permitted by Section 14.02, Tenant shall, without the prior written approval of Landlord, become a successor or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or

(g) Except as may be permitted by Section 14.02 hereof, in the event that the letting or the interest of the Tenant under the Lease shall be transferred to, pass to or devolve upon, by operation of law or otherwise, any person, firm or corporation; or

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

(i) to the extent permitted by law, 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 29.01(f) or 29.01(g) hereof or this Section 29.01(k);

(j) to the extent permitted by law, 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 if, within ninety (90) days after the appointment, without the consent or acquiescence of Tenant, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, or of all or any substantial part of its properties, or of the Premises or any interest of Tenant therein, such appointment shall not be vacated or stayed on appeal or otherwise, or if, within ninety (90) after the expiration of any such stay, such appointment shall not be vacated;

(k) if any of the representations or warranties made by Tenant in Article 21 hereof or elsewhere in this Lease shall be false or incorrect in any material respect as of the time when made or deemed made; provided, however, as to any such breach of any representation or

warranty which was unintentionally made and has not materially impacted Landlord or Lease Administrator, if such representation or warranty can either be made true and correct in all material respects or may otherwise be cured, Tenant shall have a period of five (5) days, after Tenant receives written notice thereof, to undertake and complete any required action to make such representation or warranty either true and correct in all material respects or otherwise to cure the same;

(l) if (i) Tenant shall voluntarily vacate or abandon the Premises, or any portion thereof (the fact that any of Tenant's property remains in the Premises shall not be evidence that Tenant has not abandoned the Premises) for a period exceeding sixty (60) consecutive days after receipt of written notice from Landlord, or such shorter period as would cause the property or liability insurance coverage required to be maintained pursuant to Article 11 hereof to be subject to, or in jeopardy of, cancellation or unenforceability of coverage for breach of or default in the terms of such insurance coverage, or (ii) after exhausting or abandoning any right of further appeal or, if a legally authorized period to cure exists or is established, after exhausting or abandoning any such right to cure, Tenant shall be prevented for a period of ninety (90) days by action of any governmental agency from conducting its operations at the Premises if such governmental agency's action results from or arises out of the Tenant's acts or omissions; or

(m) if a levy under execution or attachment shall be made against the Premises or any part thereof, the income therefrom, this Lease or the leasehold estate created hereby on account of work, labor and services performed by Tenant or on its behalf and such execution or attachment shall not be vacated or removed by court order, bonding or otherwise within a period of ninety (90) calendar days;

(n) if prior to Final Completion of any Construction Work and payment of all costs and expenses thereof either of the bonds required by Section 17.05(g) shall expire, or be cancelled or otherwise shall cease to be in full force and effect, or the rights of Landlord as obligee under either of the bonds shall be impaired in any way whatsoever and Tenant shall fail to replace such bonds with substitute security reasonably acceptable to Landlord ("Substitute Security"), within ten (10) Business Days after demand by Landlord for such Substitute Security;

(o) if Tenant fails to notify Landlord of any change in its status, within five (5) Business Days thereof, with respect to the warranties and representations set forth in Section 21.09 and/or the Required Disclosure Statement; or

(p) if any change to Tenant's status and/or the representations made pursuant to Section 21.09 and/or the Required Disclosure Statement are not reasonably acceptable to Landlord, acting in its reasonable discretion.

Section 29.02 Remedies.

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

(b) Expiration and Termination of Lease. If an Event of Default occurs 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 ten (10) days after the giving of the notice, then, this Lease and the Term and all rights of Tenant under this Lease to use and occupy the Premises shall expire and terminate as if the date specified in the notice were the Expiration Date, and Tenant shall quit and peacefully surrender the Premises to Landlord on the date so specified. If such termination is stayed by order of any court, or by federal or state statute, then following the expiration of any such stay, or if the trustee appointed in any such case, Tenant or Tenant as debtor-in-possession fails to assume Tenant's obligations under this Lease within the period prescribed therefor by law, or within ninety (90) 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 29.09 hereof, Landlord, to the extent permitted by law or by leave of the court having jurisdiction over such case, shall have the right, at its election, to terminate this Lease on thirty (30) days' notice to Tenant, Tenant as debtor-in-possession or the trustee. Upon the expiration of the thirty (30) day period this Lease shall cease and Tenant, Tenant as debtor-in-possession and the trustee immediately shall quit and surrender the Premises.

(c) Certain Consequences of Termination of Lease. If this Lease is terminated as provided in Section 29.02(b) hereof:

(i) Landlord may, without notice, reenter and repossess the Premises and may dispossess Tenant and all other persons or property by summary proceedings or otherwise.

(ii) Tenant shall pay to Landlord all Rental payable under this Lease to the date on which the Term expired and comes to an end, and use and occupancy at fair market value until the Tenant vacates the Premises.

(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 Tenant shall remain liable to pay for the cost and expense incurred by Landlord in completing such Construction Work.

(iv) Landlord may let or relet or otherwise operate or cause the operation of the Premises or any portion thereof for the whole or any part of the remainder of the Term or for a longer period.

Section 29.03 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 law, 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 29.04 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 29.05 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 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 29.06 Strict Performance. No failure by Landlord to insist upon Tenant's strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy available to Landlord 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, shall be waived, altered or modified except 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 29.07 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 29.08 Payment of All Costs and Expenses. Tenant shall pay the Landlord all actual costs and expenses, including, without limitation, court costs and reasonable attorneys' fees and disbursements, incurred by the 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, but only if Landlord shall prevail in such action or proceeding. Tenant shall also pay Landlord all its or their actual 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 (provided that it is ultimately determined or agreed that Tenant was in fact not conforming with a covenant or provision hereof). All of the sums actually paid or obligations actually incurred by Landlord shall bear interest, at the Late Charge Rate, and shall be paid by Tenant within ten (10) days after demand.

Section 29.09 Tenant Self-help, Generally. If Landlord defaults in any of its maintenance or repair obligations, Tenant shall submit a written notice to Landlord of such default, requesting approval to commence Tenant's performance of such obligations with respect to such default, following a reasonable opportunity for Landlord to cure to be mutually agreed upon by the parties (but not to exceed more than six (6) months, unless otherwise agreed by the parties); such notice shall also contain a statement from a licensed engineer or other qualified professional ("Engineer's Statement") that (i) describes the scope of the proposed Construction Work with respect to such repair and maintenance and (ii) provides a cost estimate for such Construction Work (the "Self-help Request"). Landlord shall have forty-five (45) days from the receipt of such notice in which to accept and/or reject, in writing, Tenant's Engineer's Statement. If Landlord accepts Tenant's Engineer's Statement, as part of its written response to Tenant with respect to such acceptance, Landlord shall either (i) elect to proceed to cure such default within a reasonable time period or (ii) waive its right to cure such default and approve Tenant's performance of Landlord's obligations hereunder pursuant to the Tenant's Engineer's Statement ("Landlord Approved Engineer's Statement"), subject to all required approvals with respect to Construction Work under the Lease. If Landlord rejects the Tenant's Engineer's Statement, Landlord, at its election and at its own cost, may engage a licensed professional engineer or registered architect to prepare its own Engineer's Statement and any disputes which arise as a result of discrepancies between Tenant's Engineer's Statement and Landlord's Engineer's Statement shall be resolved by a licensed professional engineer, chosen by agreement of Landlord and Tenant (such agreement not to be unreasonably withheld 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 Engineer's Statement which choice shall be binding on the Parties (the "Binding Engineer's Statement" and the Landlord Approved Engineer's Statement are hereinafter referred to individually as the "Final Engineer's Statement"). Within ten (10) Business Days after the Final Engineer's Statement has been received by Landlord, Landlord shall elect in writing to either (i) cure such default within a reasonable time period to be mutually agreed upon by the Parties or (ii) waive its right to cure such default and approve Tenant's performance of Landlord's obligations hereunder pursuant to the Binding Engineer's Statement,

subject to all required approvals with respect to Construction Work under the Lease. If Landlord shall fail to accept or reject Tenant's Engineer's Statement within forty-five (45) days of receipt thereof, Tenant's Engineer's Statement shall be deemed approved, Landlord's right to cure such default shall be deemed waived, and Tenant's performance of Landlord's obligations pursuant to the Tenant's Engineer's Statement shall be deemed approved, subject to all required approvals with respect to Construction Work. All amounts actually paid by Tenant pursuant to Tenant's performance under the Final Engineer's Statement, up to the amount of the total cost estimate included in the Final Engineer's Statement, shall be paid by Landlord to Tenant within ninety (90) days of written notice of demand. If Landlord fails to make such payment within such ninety (90) day demand period, Tenant's sole remedy shall be to deduct all such costs and expenses from any future payments of Annual Base Rent due pursuant to this Lease.

Section 29.10 Tenant Expedited Self-help. Notwithstanding Section 29.09, if Landlord defaults in any of its maintenance or repair obligations and such default poses an imminent threat to health and safety at the Premises, Tenant shall submit a Self-help Request to Landlord. Landlord shall have five (5) Business Days from the receipt of the Self-help Request in which to accept and/or reject, in writing, Tenant's Engineer's Statement. If Landlord accepts Tenant's Engineer's Statement ("Expedited Landlord Approved Engineer's Statement"), as part of its written response to Tenant with respect to such acceptance, Landlord shall either (i) elect to proceed to cure such default within a reasonable time period to be mutually agreed upon by the parties or (ii) waive its right to cure such default and approve Tenant's performance of such obligations with respect to such default pursuant to the Tenant's Engineer's Statement, subject to all required approvals with respect to Construction Work under the Lease. If Landlord disputes Tenant's Engineer's Statement, Landlord, at its election and at its own cost, may engage a licensed professional engineer or registered architect to prepare its own Engineer's Statement, to be completed within (15) fifteen Business Days of rejecting Tenant's Engineer's Statement, a copy of which shall be provided to Tenant. Landlord's Engineering Statement shall be binding on Tenant (the Expedited Binding Engineer's Statement and the Expedited Landlord Approved Engineer's Statement are hereinafter referred to individually as the "Expedited Final Engineer's Statement"). Simultaneously with Landlord's submittal of the Expedited Binding Engineer's Statement to Tenant, Landlord shall elect in writing to either (i) cure such default within a reasonable time period to be mutually agreed upon by the Parties or (ii) waive its right to cure such default and approve Tenant's performance of Landlord's obligations hereunder pursuant to the Expedited Binding Engineer's Statement, subject to all required approvals with respect to Construction Work under the Lease. If Landlord shall fail to accept or reject the Tenant's Engineer's Statement within the initial five (5) Business Day response period, Tenant's Engineer's Statement shall be deemed approved, Landlord's right to cure such default shall be deemed waived, and Tenant's performance of Landlord's obligations hereunder pursuant to the Tenant's Engineer's Statement shall be deemed approved, subject to any additionally required approvals with respect to Construction Work under this Lease. All amounts actually paid by Tenant pursuant to Tenant's performance under the Expedited Final Engineer's Statement, up to the amount of the total cost estimate included in the Expedited Final Engineer's Statement, shall be paid by Landlord to Tenant within ninety (90) days of written notice of demand. If Landlord fails to make such payment within such ninety (90) day demand period, Tenant's sole remedy shall be to deduct all such costs and expenses from any future payments of Annual Base Rent due under this Lease.

Section 29.11 Remedies Under Bankruptcy and Insolvency Codes. If an order for relief is entered or if any stay of proceeding or other act becomes effective against Tenant or Tenant's interest in this Lease in any proceeding which is commenced by or against Tenant under the present or any future Federal Bankruptcy 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 include, but shall not be limited to, each and every one of the following requirements:

- (a) that Tenant shall comply with all of its obligations under this Lease;
- (b) that Tenant shall pay Landlord, on the first day of each month occurring after the entry of such order, or on the effective date of such stay, a sum equal to the aggregate Rental payable for such monthly period;
- (c) that Tenant shall continue to use the Premises in the manner required by this Lease; and
- (d) that if Tenant's trustee, Tenant or Tenant as debtor-in-possession assumes this Lease and proposes to assign it (pursuant to Title 11 U.S.C. Article 365, as it may be amended) to any person who has 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) assurances as Landlord may reasonably require, shall be given to the Landlord by the trustee, Tenant or Tenant as debtor-in-possession of such offer, not later than twenty (20) 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 and 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 (including any higher or better offers made that may be made in such proceedings), less any brokerage fees, finders' fees, procuring fees, or commissions, or any similar fees or commissions which may be payable out of the consideration to be paid by such person for the assignment of this Lease ("Brokerage Commissions"). Landlord shall have no obligation to pay such Brokerage Commissions. If Tenant attempts to arrange such an assignment of this Lease, then as an element of the required adequate assurance to Landlord and as a further condition to Tenant's right to make such an assignment, Tenant's agreement(s) with brokers shall, to Landlord's reasonable satisfaction, provide that Tenant shall have no obligation to pay such Brokerage Commission if Landlord exercises the Tenant's rights under this Article 29.

Section 29.12 Intentionally Omitted.

Section 29.13 Funds held by Tenant. From and after the date, if any, on which Tenant receives notice from Landlord that a Default or an Event of Default shall have occurred hereunder, 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 12 or 13 hereof), any undistributed cash, certificates of deposit, United States Treasury bills or similar cash equivalents arising out of or in any way connected with the Premises or this Lease or any portion thereof or any other sums or receivables appurtenant to the Premises or this Lease or any portion thereof except to Landlord in payment of amounts due or payable under this Lease.

Section 29.14 Proof of Damages. Landlord may look to any of the assets of Tenant for satisfaction of any obligation of Tenant under this Lease or for any damages for the breach hereof. Landlord shall not be limited in the proof of any damages that may be claimed 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 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 costs and expenses of any suit in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements.

Section 29.15 Survival. The rights and remedies of the Landlord and the other provisions of this Article 29 shall survive the expiration or earlier termination of this Lease.

ARTICLE 30

TERMINATION AND SURRENDER

Section 30.01 Surrender of Premises. Upon expiration of this Lease or upon a re-entry by Landlord upon the Premises pursuant to Article 29 hereof, Tenant, without any payment or allowance whatsoever by Landlord, shall surrender the Premises to Landlord in good order, condition and repair, reasonable wear and tear excepted, free and clear of all Liens and encumbrances other than easements. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises on the expiration or earlier termination of this Lease.

Section 30.02 Delivery of Contracts, etc. Upon expiration or upon a re-entry by Landlord upon the Premises pursuant to Article 29 hereof, Tenant shall deliver to Landlord Tenant's executed counterparts of any service and maintenance contracts then affecting the Premises, true and complete maintenance records for the Premises for the three (3) immediately preceding years, all original licenses and permits then pertaining to the Premises, Certificates of Occupancy then in effect for the Improvements, and 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), and copies of all financial reports, books and records required by Article 26 hereof and any and all other documents of every kind and nature whatsoever relating to the operation of the Premises and the condition of the Improvements.

Section 30.03 Personal Property. Tenant shall have the right at any time during the letting to remove from the Premises, all its equipment, removable fixtures, Trade Fixtures and other personal property, and all property of third persons for which Tenant is responsible, and on or before the expiration or earlier termination of the letting it shall remove all of the same from the Premises, repairing all damage caused by any removal. If Tenant shall fail to remove such property on or before the termination or expiration of the letting, Landlord may remove such property to a public warehouse for deposit or may retain the same in its own possession and in either event may sell the same at public auction, the proceeds of which shall be applied: first to the expenses of removal, including repair required thereby, and of storage and sale; second, to any sums owed by the Tenant to Landlord, with any balance remaining to be paid to the Tenant; if the expenses of such removal, repair, storage and sale shall exceed the proceeds of sale, Tenant shall pay such excess to Landlord upon demand.

Section 30.04 Survival Clause. The provisions of this Article shall survive the expiration or earlier termination of this Lease.

ARTICLE 31

CLAIMS, JURISDICTION, IMMUNITIES, PROCESS

Section 31.01 Waiver of Trial by Jury. Landlord and Tenant hereby waive, for the benefit of Landlord, 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 Landlord commences any proceeding for nonpayment of any rent or any other sums required to be paid by Tenant or caused to be paid by Tenant under the terms of this Lease, Tenant will not interpose any counterclaim of any nature whatever or description in any such proceedings.

Section 31.02 Jurisdiction. Except as provided in Section 15.10 and Article 39, any and all claims asserted by or against Landlord 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 Tenant agrees as follows:

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

(c) Tenant 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 law. However, Tenant does not waive its right to appeal or to obtain a stay.

(d) If Tenant commences any action against Landlord in a court located other than in the City, County and State of New York, upon request of Landlord, Tenant 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, Tenant 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 31.03 Process. Tenant irrevocably consents to the service of any and all process in any action or proceeding instituted against Tenant by the mailing of copies of such process to Tenant to its address, and in the manner, set forth in Article 32 hereof. Landlord irrevocably consents 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 to its address, and in the manner, set forth in Article 32 hereof. Nothing in this Section shall affect the right of Landlord to serve legal process in any other manner permitted by law.

ARTICLE 32

NOTICES

Section 32.01 Notice

(a) All notices, permissions, requests, consents and approvals given or required to be given to or by either party shall be in writing, and all such notices and requests shall be (i) personally delivered to the party or to the duly designated officer or representative of such party during regular business hours, (ii) or, if directed to the Tenant, delivered to the Premises during regular business hours, or (iii) forwarded to such party, officer or representative at the office address by certified or registered mail, return receipt requested, or by acceptable overnight courier. Until further notice, (a) the Landlord hereby designates NYCEDC Senior Vice President for Asset Management as its representative, (b) Tenant hereby designates its General Counsel, the respective address of each (a) and (b) are set forth in Section 32.02 below, to which is the respective office(s) where notices and requests may be served.

(b) If any notice is mailed or delivered, the giving of such notice shall be complete upon receipt or, in the event of a refusal by the addressee, upon the first tender of the notice to the addressee or at the permitted address.

Section 32.02 Notice Delivery Address(es)

(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 in the manner prescribed herein:

Title: Senior Vice President for Asset Management
Address: New York City Economic Development Corporation
110 William Street
New York, New York 10038

with copies to:

Title: General Counsel
Address: New York City Economic Development Corporation
110 William Street
New York, New York 10038

with copy to:

Title: Chief, Economic Development
Address: NYC Law Department
100 Church Street
New York, NY 10007

(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:

Title: General Counsel
Address: Ports America, Inc.,
525 Washington Boulevard, #1600
Jersey City, New Jersey 07310

(c) All notices from Landlord may be given by Lease Administrator.

ARTICLE 33

STREET WIDENING

Section 33.01 Proceedings for Widening Street. If any proceedings are instituted or orders made for the widening or other enlargement of any street contiguous to the Premises requiring removal of any projection or encroachment on, under or above any such street, or any changes or alterations upon the Premises, or in the appurtenant sidewalks, grounds, parking facilities, plazas, areas, vaults, gutters, alleys, curbs or other appurtenances, Tenant shall comply promptly with such requirements, the cost and expense of which to be borne equally by the parties, and if Tenant shall fail to comply with such requirements within thirty (30) days after notice thereof by Landlord to Tenant specifying such failure (or if compliance with such requirements requires work to be performed, acts to be done or conditions to be removed which

cannot, by their nature, reasonably be performed, done or removed, as the case may be, within such thirty (30) day period, if, within such thirty (30) day period, Tenant shall fail to commence to remedy such failure or Tenant shall fail to diligently and continuously, subject to Unavoidable Delays and Landlord Delays, prosecute the same to completion), then Landlord, upon notice to Tenant may comply with the same, and the reasonable amount expended therefor, together with any interest, fines, penalties, reasonable architects' and attorneys' fees and disbursements or other costs and expenses incurred by Landlord in effecting such compliance or as a result of Tenant's failure to so comply, shall constitute Rental hereunder and shall be payable by Tenant to Landlord on demand.

Section 33.02 Contest of Proceedings. Tenant shall be permitted to contest in good faith any proceedings or orders for street widening or any changes or alterations resulting therefrom or necessitated thereby, provided that such contest shall be brought in accordance with the provisions of Section 38.03 hereof as though Tenant were contesting a Requirement thereunder.

Section 33.03 Distribution of Award. Any award made in connection with such proceedings shall be deemed to be an award made in connection with a taking of less than all or Substantially All of the Premises and shall be paid, distributed and applied in accordance with provisions of Section 13.02 hereof.

ARTICLE 34

EXCAVATIONS AND SHORING

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

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

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

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

land owner(s) notwithstanding that such adjacent land owner(s) may be the City of New York or any of its subdivisions.

ARTICLE 35

CERTIFICATES BY LANDLORD AND TENANT

Section 35.01 Certificate of Tenant. Tenant shall, within twenty (20) days after request by Landlord, execute, acknowledge and deliver to Landlord, or any other Person specified by Landlord, a written statement (which may be relied upon by such Person) (a) certifying (i) that this Lease is unmodified and in full force and effect (or if there are modifications, that this Lease, as modified, is in full force and effect and stating such modifications and providing a copy thereof if requested), (ii) the date to which each item of Rental payable by Tenant hereunder has been paid, and (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.

Section 35.02 Certificate of Landlord. Landlord shall, within twenty (20) days after request by Tenant, execute, acknowledge and deliver to Tenant, or any other Person specified by Tenant, a written statement (which may be relied upon by such Person) (a) certifying (i) that this Lease is unmodified and in full force and effect (or if there are modifications, that this Lease, as modified, is in full force and effect and stating such modifications and providing a copy thereof if requested), (ii) the date to which each item of Rental payable by Tenant hereunder has been paid, and (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.

Section 35.03 Failure to Deliver Certificate. Tenant's failure to deliver the certificate required by Section 35.01 hereof within such twenty (20) day period shall be conclusive upon Tenant that (a) this Lease is in full force and effect, without modification except as may be represented by Landlord, (b) there are no uncured defaults on the part of Landlord, (c) not more than two (2) months' rent has been paid in advance, and (d) no notice has been sent to Landlord of any default by Landlord which has not been cured. Landlord's failure to deliver the certificate required by Section 35.02 hereof within such twenty (20) day period shall be conclusive upon Landlord that (a) this Lease is in full force and effect, without modification except as may be represented by Tenant, (b) there are no uncured Defaults on the part of Tenant hereunder, (c) the Rental has been paid to date, and (d) no notice has been sent to Tenant of any Default by Tenant which has not been cured.

ARTICLE 36

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.

ARTICLE 37

NO RECORDING OF LEASE

Neither the Lease nor a memorandum of the Lease shall be recorded by the Tenant or the Landlord.

ARTICLE 38

ADMINISTRATIVE AND JUDICIAL PROCEEDINGS, CONTESTS, ETC.

Section 38.01 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.

Section 38.02 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 Section 5.03 hereof, payment of such Imposition may be postponed or deferred if, and only as long as:

(a) by reason of such postponement or deferment of such Imposition, in Landlord's 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 the amount for which Tenant has furnished security as provided in Section 38.02(b); and

(b) (i) Tenant shall have delivered 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 are reasonably likely to 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 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. 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;

(ii) If at any time during the continuance of such proceedings Landlord, in its 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, reasonably satisfactory to Landlord, in Landlord's reasonable discretion, as Landlord may request. If Tenant shall fail to deliver to Landlord such additional collateral security within thirty (30) 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 thirty (30) days after Landlord's demand.

Section 38.03 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, reasonably satisfactory to Landlord in Landlord's reasonable discretion, securing compliance with the contested Requirement and payment of all interest, penalties, fines, civil liabilities, fees and reasonable 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 19 hereof, if by reason of noncompliance therewith, in Landlord's 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 38.04 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 reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by Landlord in connection therewith.

ARTICLE 39

ARBITRATION

Section 39.01 Procedure for Arbitration. In cases where this Lease expressly provides for the settlement of a dispute or question by arbitration, and only in such cases, the Arbitration shall be conducted in accordance with the following:

(a) The party desiring arbitration shall appoint a disinterested person that satisfies the requirements of Section 39.01(g), below, as arbitrator on its behalf and give notice thereof to the other party who shall, within fifteen (15) days thereafter, appoint a second disinterested person that satisfies the requirements of Section 39.01(g), below, as arbitrator on its behalf and give notice thereof to the first party.

(b) The two (2) arbitrators thus appointed shall together appoint a third disinterested person that satisfies the requirements of Section 39.01(g), below, within fifteen (15) days after the appointment of the second arbitrator, and said three (3) arbitrators shall, as promptly as possible, determine the matter that is the subject of the arbitration and the decision of the majority of them shall be conclusive and binding on all parties and judgment upon the award may be entered in any court having jurisdiction.

(c) If a party who has the right pursuant to the foregoing to appoint an arbitrator fails or neglects to do so, then and in such event, the other party (or if the two (2) arbitrators appointed by the parties fail to appoint a third arbitrator when required hereunder, then either party) may apply to the American Arbitration Association (or any organization successor thereto) for the appointment of such arbitrator, or in its absence, refusal, failure or inability to act, may apply for a court appointment of such arbitrator.

(d) The arbitration shall be conducted in the City and County of New York, and shall be administered by the American Arbitration Association and conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect at the time of such arbitration or any successor body of similar function. Each party shall have the right to present evidence in the arbitration.

(e) Any costs incurred by or payable to the arbitrators in any proceeding shall be paid by the party which does not prevail or as shall be determined by the arbitrator, and each party shall bear the costs of its own attorneys and other experts.

(f) Landlord and Tenant shall sign all documents and do all other things necessary to submit any such matter to arbitration and further shall, and hereby do, waive any and all rights they or either of them may at any time have to revoke their agreement hereunder to submit to arbitration. The arbitrators shall have no power to vary or modify any of the provisions of this Lease and their jurisdiction is limited accordingly.

(g) Each of the arbitrators shall be a professional having at least ten (10) years' experience in the design and construction of facilities similar in all material respects to the Premises.

ARTICLE 40

LANDLORD'S MAINTENANCE EASEMENT

Landlord hereby reserves an easement for ingress and egress to, from and over the Premises in order to maintain, replace and repair (i) utilities installed by Landlord, (ii) bulkheading adjacent to the Premises, and (iii) the mooring and fendering systems at the Premises.

Landlord and their respective designees shall have the right at all times, but on reasonable notice, to enter upon the Premises (subject to reasonable security conditions specified by Tenant) with workers, materials and equipment to construct, reconstruct, lay, relay, maintain, operate and inspect facilities described in the preceding sentence, if any, in or adjacent to the Premises. Landlord shall be responsible to promptly repair any damage to the Premises caused by Landlord or other Person acting by or under or in connection with the easement herein granted and shall indemnify and hold Tenant harmless from and against any claims, damages, liabilities costs and expenses suffered or incurred by Tenant as a result of the activities described in this Article 40.

Landlord's entry onto or permitted use of the Premises shall not interfere with Tenant's use of, operations at or access to the Premises or with any Construction Work undertaken by Tenant, including, without limitation, Tenant's Work.

ARTICLE 41

ADVERTISING AND SIGNAGE

Section 41.01 Signs.

(a) Tenant shall not erect, maintain, or display any advertising, signs, posters or similar devices at the Premises without the prior written consent of Landlord (which consent shall not be unreasonably withheld, conditioned or delayed).

(b) Upon demand by Landlord, the Tenant shall remove, obliterate, or paint out any and all advertising, signs, posters, and similar devices placed by the Tenant on the Premises and in connection therewith at the expiration or earlier termination of the letting, shall restore the Premises to the condition thereof prior to the placement of such advertising, sign, poster or device. In the event of a failure on the part of the Tenant so to remove, obliterate or paint out each and every such piece of advertising, sign, poster or device and so to restore the Premises,

Landlord may perform the necessary work and the Tenant shall pay the costs thereof to Landlord on demand.

(c) Notwithstanding any provision to the contrary set forth in paragraphs (a) and (b) of this Section 41.01, Landlord's consent shall not be required for advertising signs directly related to Tenant's permitted operations under the Lease, safety instruction signs, direction signs and signs setting forth public service information issued by the City provided that such signs comply with Section 41.03 below.

Section 41.02 Terminal Sponsorships. Any Terminal Sponsorships shall be subject to Landlord's prior approval, and shall comply with Section 41.03 below. Any revenue generated by Terminal Sponsorships shall be the sole property of Tenant, subject to any Participation Rent payment to Landlord as set forth in Section 4.02 hereof.

Section 41.03 Prohibited Advertising and Signage. Notwithstanding anything set forth in Sections 41.01 and 41.02 above, Tenant shall neither accept for display, install nor maintain any signage, public notice or advertisement on the outside of the Building (each, an "advertisement") that falls within one or more of the following categories: (a) such advertisement contains obscene or offensive sexual material (for purposes of this provision, the term "obscene" shall have the meaning contained in New York Penal Law §235.00, et seq., as such provisions may be amended, modified, or supplemented from time to time and the term "offensive sexual" shall have the meaning described in New York Penal Law §245.11, as such provision may be amended, modified, or supplemented from time to time), (b) such advertisement, or any information contained in it, is libelous or violates New York Civil Rights Law §50 as such provision may be amended, modified or supplemented from time to time, (c) such advertisement or information in it promotes unlawful or illegal goods, services, or activities, (d) such advertisement contains an image of a person, who appears to be a minor or otherwise, in a sexually suggestive dress, pose, or context, (e) such advertisement contains images or information that are so violent, frightening, or otherwise disturbing as to be harmful to minors, (f) such advertisement contains images or information that demean an individual or group of individuals on account of race, color, religion, national origin, ancestry, gender, age, disability or sexual orientation, (g) such advertisement or information contained in it is false, misleading or deceptive, (h) such advertisement or information contained in it implies or declares an endorsement by Landlord or Lease Administrator of any service, product or point of view without the prior written authorization of the Landlord and Lease Administrator, (i) such advertisement promotes an escort service, dating service, or sexually oriented business, (j) such advertisement promotes alcohol or alcohol related products, (k) such advertisement promotes gambling or a gambling establishment, (l) such advertisement promotes the sale or use of firearms, (m) such advertisement does not clearly propose a legal commercial transaction, (n) such advertisement provides a display or placement of tobacco advertising or advertising of alcoholic beverages (except on-site signs related to alcohol available for sale at the Event), or (o) such advertisement promotes a medication or other products or services that must be dispensed or prescribed by a licensed physician.

ARTICLE 42

ENVIRONMENTAL RESPONSIBILITIES

Section 42.01 Definitions. As used in the Lease, the following terms shall have the meanings set forth below:

“Tenant Environmental Damage” and “Tenant Environmental Damages” shall mean any one or more of the following: (i) the presence on, about or under the Premises of any Hazardous Substance whose presence first occurred during the term of the Lease and to the extent caused by Tenant or its representatives, agents, contractors or invitees, and/or (ii) the disposal, release or threatened release of any Hazardous Substance on, under or migrating from the Premises during the term of the Lease to the extent caused by Tenant or its representatives, agents, contractors or invitees, and/or (iii) any personal injury, including wrongful death, property damage and/or natural resource damage arising out of or related to any such Hazardous Substance subject of (i) or (ii) above, and/or (iv) the violation or negligent act or omission by Tenant or its representatives, agents, contractors or invitees of any Environmental Requirements pertaining to any such Hazardous Substances subject of (i) or (ii) above, the Premises and/or the activities thereon. Notwithstanding the foregoing, Tenant Environmental Damages shall not include (i) any Landlord Environmental Condition, except to the extent of a violation of Environmental Requirements or negligent act or omission in either case by Tenant or its representatives, agents, contractors or invitees respecting such Landlord Environmental Condition, or (ii) any Hazardous Substances migrating onto the Premises.

“Environmental Requirement” and “Environmental Requirements” shall mean all applicable present and future laws, statutes, enactments, regulations, rules, ordinances, codes, licenses, permits and orders, common law standards and treaties, and similar items of all Governmental Authorities having the force and effect of law and all applicable judicial, administrative and regulatory decrees, judgments and orders, in all cases relating to the protection of human health or the environment, the foregoing to include, without limitation:

(i) All such legally binding requirements pertaining to reporting, licensing, permitting, investigation, remediation and mitigation of the emissions, discharges, releases or threatened releases of Hazardous Substances into the air, surface water, groundwater or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances;

(ii) All legally binding requirements pertaining to the protection of the health and safety of employees or the public; and

(iii) All legally binding requirements pertaining to the protection of natural resources, species or ecological amenities.

“Hazardous Substance” and “Hazardous Substances” shall mean and include any pollutant, contaminant, toxic or hazardous waste, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, flammable, explosive or radioactive material, special nuclear byproduct material, asbestos in any form, asbestos containing material, polychlorinated

byphenyls ("PCBs"), solutions thereof, urea formaldehyde foam insulation, chemicals known to cause cancer or reproductive toxicity, petroleum, petroleum products and petroleum based derivatives, and other substances which have been or in the future shall be chemicals, materials, waste or other substance that are listed, designated, classified, determined to be or defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "pollutants," "contaminants," "toxic substances," "toxic pollutants," "hazardous constituents," or words of similar import, under or pursuant to any Environmental Requirement and inclusive of any mixture or solution thereof, or the regulation or removal of which have been or in the future shall be required, or the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling or ownership of which have been or in the future shall be restricted, prohibited, regulated or penalized by any Environmental Requirement. When an Environmental Requirement defines any of the foregoing terms more broadly than another, the broader definition shall apply.

"Landlord Environmental Condition" shall mean (i) any Hazardous Substances that were present, disposed, released or threatened to be released on, about, under or migrating from the Premises prior to the commencement of the Term under this Agreement; (ii) any Hazardous Substances whose presence at, on or under or migration from the Premises resulted from any act or omission of Landlord, or any of their respective employees, consultants, contractors, lessees or invitees; or (iii) the violation by Landlord or its representatives, agents, contractors or invitees of any Environmental Requirements.

Section 42.02 Risks Arising After the Commencement Date.

(a) Without limiting the generality of any of the other terms and provisions of the Article 42, Tenant's sole indemnity obligation respecting Hazardous Substances or Environmental Requirements is set out in Section 23.02(k) hereto. Tenant further agrees not to make any claim against the City of New York and/or State of New York for contribution under any Environmental Requirement, as well as not to make claims against Landlord, with respect to Tenant Environmental Damages.

(b) In addition to and without limiting the generality of the obligations of Tenant set forth above, Tenant shall at its sole cost and expense, upon notice from Landlord, to the extent required by applicable Environmental Law, with reasonable promptness take all actions to remove and remediate any Hazardous Substance whose presence constitutes Tenant Environmental Damage. Such removal and remediation shall include, but not limited to, to the extent required by Environmental Requirements, the investigation of the environmental condition of the area to be remediated, the preparation of feasibility studies, reports and remedial plans, and the performance of any cleanup, remediation, mitigation, containment, operation, maintenance, monitoring or restoration work. The removal and remediation required under this Section shall include all restoration work in order to completely remediate the Environmental Damages. All monitoring wells shall be flush mounted. With respect to any approvals required by Landlord pursuant to this Section 42.02(b), Landlord's approval may not be unreasonably delayed or withheld. Any actions required under this paragraph shall be performed in a good, safe and workmanlike manner and shall minimize any impact on activities off the Premises. Tenant shall promptly provide to Landlord all copies of final test results and reports generated in

connection with such actions. Promptly upon completion of such investigation and remediation, Tenant shall seal or cap all monitoring wells and test holes, remove all associated equipment and restore the remediated property.

(c) Without limiting any other of Tenant's obligations under this Article 42, Tenant shall provide the Landlord at the sole cost and expense of Tenant with such information, documentation, records, correspondence, notices, reports, test results, and certifications and any other information as Landlord shall reasonably request in connection with any Environmental Requirements or Environmental Damages, in each case to the extent relating to the Manhattan Cruise Terminal and as may be necessary for the preparation of any application, registration, statement, certification, notice, non-applicability affidavit, communication, negative declaration, clean-up plan or other information, documentation or communication required by the Environmental Requirements, provided, however, that Tenant shall have no obligation to make, sign, execute or certify any statement or document that purports to impose on Tenant any obligation that is inconsistent with Tenant's obligations under this Lease, or make any admission that is inconsistent with Tenant's obligations or factually incorrect. Except as provided in the immediately foregoing sentence, Tenant shall promptly swear to, sign or otherwise fully execute the same. Tenant agrees that any of the foregoing may be filed by Landlord with the appropriate Governmental Authority on behalf of Tenant, provided that Tenant has approved the same. Further, upon request by Landlord, Tenant agrees, at its sole cost and expense, unless directed otherwise by Landlord, with reasonable promptness to provide Landlord with copies of all information, documentation, records, correspondence, notices, certifications, reports, test results and all other submissions provided by Tenant to a Governmental Authority and by a Governmental Authority to Tenant, in each case to the extent relating to the Premises.

(d) Notwithstanding any other provision in this Lease to the contrary, Landlord shall be responsible for, and Tenant shall not be responsible for, any action to remove or remediate any Landlord Environmental Condition.

(e) Without limiting Landlord's remedies that it may have under the Lease at law or in equity, Landlord shall have the right during the term of the Lease and subsequent to the termination or expiration thereof to such equitable relief, including restraining injunctions and declaratory judgments, as may be required to enforce compliance by Tenant with its environmental removal or remediation obligations under this Section. In the event Tenant fails to comply with or perform any such obligations hereunder, Landlord at any time during the Term of this Lease and subsequent to the termination or expiration thereof may elect (but shall not be required) to perform such obligations and Tenant shall pay to the Landlord upon demand its reasonable costs thereof provided that Landlord has first given written notice to Tenant citing this subsection (e) and Tenant has not corrected such condition within thirty (30) days or such additional time as reasonably may be technically and practicably feasible.

(f) Without limiting the generality of any other term or provision of the Lease, the obligations of Tenant under this Article 42 shall survive the expiration or termination of the Lease.

ARTICLE 43

SERVICES

Section 43.01 No Obligation to Provide Services. Except as expressly set forth herein, Landlord shall be under no obligation to supply Tenant with any services provided by utility companies and other service providers, including but not limited to water, gas, electricity, sewer service, sanitation, heat, steam, air-conditioning, telephone, telegraph, cable, or electrical guard or watch service and Tenant shall be responsible, at its sole cost and expense, for the obtaining and providing of all utilities and other services necessary for its operations at the Premises.

Section 43.02 Water-bills. Tenant shall promptly pay all water-bills covering consumption at the Premises. In the event that any such water-bill or bills shall remain unpaid for a period of six (6) months after the same becomes due and payable, or in the event that any such bill remains unpaid at the date of expiration or earlier termination of the letting under the Lease, Landlord may pay the same and any interest or penalties thereon, and the total payment or payments shall constitute Rental, payable to Landlord on demand.

Section 43.03 Maintain Adequate Temperature at Premises. Tenant agrees to heat the enclosed portions of the Premises to a sufficient temperature, or to bleed pipes, so that the plumbing, fire-protection and sprinkler system, if any, will not be damaged by reason of low temperatures.

Section 43.04 Assessments and Fees. In the event any federal, state, municipal or other governmental body, authority or agency, or any public utility or other entity providing any service, assesses, levies, imposes, makes or increases any charge, fee, rent or assessment on Tenant, Landlord, for any service, system or utility now or in the future supplied to or used at the Premises or by Tenant, Tenant shall, at the option of Landlord, exercised at any time and from time to time by notice to Tenant, pay, in accordance with any such notice, such charge, fee, rent or assessment or such increase thereof either directly to the governmental body, authority or agency, or to the public utility or other entity or directly to Landlord, as such notice may direct. All such payments shall constitute Rental.

Section 43.05 Service Interruptions. No failure, delay or interruption in any service or services, whether such service or services shall be provided by Landlord or by others, shall relieve or be construed to relieve Tenant of any of its obligations hereunder, or shall be or be construed to be an eviction of Tenant, or shall constitute grounds for any diminution or abatement of the rental or rentals payable under this Lease, or grounds for any claim by Tenant for damages, consequential, or otherwise.

Section 43.06 Meters. Without in any wise affecting the obligations of Tenant elsewhere stated in this Lease, Tenant shall provide, maintain and keep in good order, condition and repair any and all meters (to be located as designated by Landlord, or other Governmental Authority or utility).

ARTICLE 44

INGRESS AND EGRESS

Section 44.01 Ingress and Egress. Ingress to and egress from the Premises shall be by means of existing pedestrian or vehicular ways. Tenant shall not do or permit anything to be done which will interfere with the free access and passage of others to space adjacent to the Premises or in, along, across or through any streets, ways and walks near the Premises, except as may be authorized by the City's Department of Transportation acting within its jurisdiction with respect to a public street.

Section 44.02 Intentionally Omitted.

ARTICLE 45

MISCELLANEOUS

Section 45.01 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 45.02 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 45.03 Amendments. This Lease may not be amended except with the prior written consent of Landlord and by an instrument in writing signed by Landlord and Tenant.

Section 45.04 Acceptance of Partial Performance; No Waiver. The acceptance by either Party of any partial performance of any obligation hereunder on the part of the other to be performed hereunder, or the failure by either Party to enforce any provision of this Lease shall not be considered a waiver of any of said Party's rights under this Lease.

Section 45.05 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 them concerning the Premises 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.

Section 45.06 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 law.

Section 45.07 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 45.08 Consents and Approvals.

(a) Effect of Granting or Failure to Grant Approvals or Consents. All consents and approvals which may be given under this Lease shall, as a condition of their effectiveness, be in writing. The granting of any consent or approval by a party to perform any act requiring consent or approval under the terms of this Lease, or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not, 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) Remedy for Refusal to Grant Consent or Approval. If, pursuant to the terms of this Lease, any consent or approval by Landlord or Tenant is not to be unreasonably withheld or is subject to a specified standard, then in the event there shall be a final determination that the consent or approval was unreasonably withheld or that such specified standard has been met so that the consent or approval should have been granted, the consent or approval shall be deemed granted and such granting of the consent or approval shall be the only remedy to the party requesting or requiring the consent or approval.

(c) No Unreasonable Delay; Reasonable Satisfaction; Discretion. Wherever this Lease provides that the Landlord's or Tenant's consent or approval is not to be unreasonably withheld, such consent or approval also shall not be unreasonably delayed. 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 specifically stated otherwise, wherever the Lease provides for Landlord's consent or approval, all such approvals or consents shall be at Landlord's sole and absolute discretion, and may be withheld and/or delayed, in Landlord's respective sole and absolute discretion.

(d) No Fees, Etc. Except as specifically provided herein, no fees or charges of any kind or amount shall be required by either party hereto as a condition of the grant of any consent or approval which may be required under this Lease (but this provision shall limit Landlord only in its proprietary capacity as underlying lessee of the Premises and landlord under this Lease; it shall not affect Landlord in its governmental capacity).

Section 45.09 "Including". "Including" as used in this Lease, shall be deemed to mean "including, without limitation."

Section 45.10 Remedies Not Exclusive. No right or remedy conferred upon Landlord or Tenant in this Lease is intended to be exclusive of any other right or remedy 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 at law, in equity, by statute or otherwise.

Section 45.11 Required Provisions of Law Controlling. 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 45.12 Successors and Assigns. The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of, Landlord and Tenant and, except as otherwise provided herein, their respective successors and assigns.

Section 45.13 No Warranty. It is understood and agreed that any approval by Landlord of any plans and specifications, or any inspection by Landlord of any construction on the Premises shall not be construed as a warranty by any of the foregoing of the design of any such drawings and specifications, or workmanship or materials contained in such construction.

Section 45.14 Publicity. Tenant shall use its best efforts to consult with Landlord concerning any publicity announcements to any news media prior to or upon Substantial Completion.

Section 45.15 Security. Without limiting the generality of any provision of the Lease, the Tenant shall be responsible, at its sole cost and expense, to provide all necessary security for the protection and safeguarding of the Manhattan Cruise Terminal and persons and property at or on the Premises.

Section 45.16 Intentionally Omitted.

Section 45.17 Construction of Terms and Words. All terms and words used in the 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 45.18 Intentionally Omitted.

Section 45.19 Non-liability of Individuals. No Commissioner, officer, agent, representative or employee of Landlord shall be charged personally by Tenant with any liability, or held liable to Tenant under any term or provision of the Lease or because of its execution or because of any breach or alleged breach thereof. Likewise, no Commissioner, officer, agent, representative or employee of Tenant shall be charged personally by Landlord with any liability,

or held liable to Landlord under any term or provision of the Lease or because of its execution or because of any breach or alleged breach thereof.

Section 45.20 Unavoidable Delays. Tenant shall not be considered in breach or default of its obligations under the Lease, and times for performance of obligations hereunder shall be extended in the event of any delay caused by force majeure, including without limitation, damage or destruction by fire or casualty; strike, lockout; civil disorder; war; acts of God; or similar causes beyond the reasonable control of Tenant and without Tenant's fault or negligence, including Landlord Delays, but not including Tenant's insolvency, financial condition or inability to obtain financing, that prohibit Tenant from performing its obligations under the Lease. This Section 45.20 shall become effective only if Tenant (i) notifies Landlord of the extent and nature of the problem within ten (10) business days after Tenant knows or has reason to know of any such condition or event, (ii) limits delay or suspension of performance to that required by the event, and (iii) takes all reasonable steps to minimize delays or suspension of performance.

Section 45.21 Counterparts. This Lease may be executed in one or more counterparts which, when taken together, shall constitute one and the same.

Section 45.22 Landlord. Any references to Landlord in this Lease shall mean the City in its proprietary capacity.

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

CITY OF NEW YORK

By: _____

Name:

Title:

PORTS AMERICA, INC.

By: _____

Name:

Title:

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

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

Notary Public

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

On this _____ day of _____, 20__, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he resides at _____; that he is the Chief Executive Officer/President of _____, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporation seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

Notary Public

EXHIBIT A

PREMISES



EXHIBIT B

TITLE MATTERS

The Premises are leased subject to the following:

Any state of facts that an accurate survey may show;

Building restrictions and regulations now or hereafter in force and present and future zoning laws, ordinances, resolutions and regulations of all boards, bureaus, commissions and bodies of any municipal, county, state or federal sovereigns now having or hereafter acquiring jurisdiction of the Premises and the use and improvement thereof;

Rights, easements, licenses or privileges to use vaults, areas, tunnels, ramps or structures under highways, roads, streets, avenues or sidewalks on which the Premises abut, and consents or grants prior to the date of this Lease for the erection of any structures on, under or above said highways, roads, streets, avenues or sidewalks and any grants, easements, licenses or consents with respect to present or future sewers, public utility lines, pipes, conduits and equipment;

Violations of law, ordinances, regulations, orders or requirements, if any, whether or not of record and whether or not the same might be disclosed by an examination and inspection or search of the Premises, noted or issued by any federal, state, municipal or other governmental department or authority having jurisdiction, as the same may exist on the Commencement Date of this Lease;

The condition and state of repair of the Premises on the Commencement Date of this Lease.

Dedications, restrictions, covenants, consents, easements and agreements, if any, made or given by any prior owner of the Premises.

Any encroachments existing on the Commencement Date of this Lease;

An easement reserved for Landlord, its tenants and designees to repair, maintain or perform work on any utility lines on the Premises, including, without limitation, electrical lines; and

An easement for the City, its agents and representatives, to construct, install or repair any sewer, water line or any other public utility or improvement.

EXHIBIT C
TENANT'S WORK

**EXHIBIT C
TENANTS WORK**

CAPITAL IMPROVEMENTS PLAN

Project / Capital Expenditure	\$	Year
New Apron at Pier 90	\$21.9M	2020
WIFI Installation	\$0.12M	2018
Repainting MCT Piers	\$1.0 M	2018
Docking Plan Program	\$0.125M	2018
Parking Payment System	\$0.1M	2018
Online Berthing Schedule	\$0.05M	2018
Solar Panel Installation	TBD	TBD

Apron at Pier 90

Ports America will develop and construct a new 32-foot apron on the north side of Pier 90 at MCT. The apron is required in order to accommodate super-post-panamax vessels. The construction of an apron will also provide the necessary space for two new gangways. In addition, a new apron will increase the operating efficiency of loading baggage and stores at Pier 90, while decreasing the area where dredging is required (by approximately 32,000 square feet).

Fenders at Pier 90

The fenders used on Pier 90 at MCT are obsolete and can no longer be maintained. Ports America will develop and install a modern fender system at Pier 90.

Gangways at Pier 90

The two gangways currently in use on Pier 90 were installed in the 1970's. Despite ongoing maintenance and repair, including the fabrication of custom parts required for repairs, the gangways must be replaced in the near future and the gangways must be comply with the American's Disability Act.

Installation of WIFI

The design and implementation of a multifunctional, high-capacity building wireless network at the Terminals will improve the passenger experience and operating efficiency. Cruise lines and their passengers will have access to free WIFI through their smart-phones and computers while boarding the vessel. WIFI infrastructure will also allow Ports America to collect data on passenger cycle/dwell times through the tracking of smart devices in the Terminals. Such data, when analyzed, will facilitate process improvements and passenger arrival time scheduling.

Furthermore, WIFI will enhance various business development initiatives, including the coordination of sponsorships, events and meetings. Currently, events held at MCT and BCT must install their own WIFI capabilities. Terminal-wide WIFI installation will make the Terminals a more attractive venue for events, meetings and film shoots.

Future improvements may include the automation of the passenger check-in process through the use of tablets, enabled by WIFI.

Parking Scheduling & Payment System

Ports America will develop and install new wireless handheld data terminals to further expedite and improve the parking process. These handhelds will also benefit special events (like trades shows) that tend to demonstrate higher parking volumes at specific time slots. Additionally, the upgraded parking system will provide additional capabilities, such as the ability to integrate with external parking reservation systems like Best Parking, Ticket Master, Tickets.com, and Park Whiz Click & Park (any Paciolan-based system).

Online Berthing Schedule

The Terminals' cruise vessel berthing schedule is currently maintained in an excel spreadsheet that is distributed to all parties on a monthly basis. Moving the berthing schedule to a shared drive online - viewable by all parties-would promote a dynamic, real-time schedule and automated data capture. Other benefits include increased transparency, improved coordination between cruise lines, passengers, NYCEDC, and Ports America, and improved analytical/KPI tracking capabilities.

Docking Plan Program

The current docking plan process involves a manual comparison of the Terminals' berth dimensions to the incoming vessel's dimensions in order to make operational decisions, such as where gangways should be placed and where baggage/stores will be loaded / offloaded. Automating the docking plan process in a computer program would optimize the terminal operation's efficiency, improve the passenger experience, promote a safe working environment, and reduce costs. A cruise docking plan program would incorporate vessel definitions, local tide information and terminal layouts to optimize and coordinate accurate berthing locations. The software will take all of these components into account so that Ports America can immediately see the impact of and issues associated with berthing a vessel in one of the berths. Ports America will also know – almost immediately where a vessel should be berthed (which stanchion), and where the gangway(s) and stores/baggage compartments are located within the vessel.

Solar Power

In order to reduce the Terminals' electricity costs and environmental footprint, Ports America is evaluating the viability of installing solar panels. While solar power would be an option at both MCT and BCT, Ports America is initially focused on evaluating solar power at MCT because of MCT's higher electricity usage. MCT's electricity costs exceed \$1.2M annually.

Solar panels would either be secured to the sides of the piers or would be placed on the pier's roofs. At MCT, solar panels could be installed on carports located on the top of the piers, allowing for continued parking there. In addition to providing 'green' electricity, carports would protect parked cars from the elements and reduce the cost of snow removal.

Ports America estimates that the installation of solar panels, which is limited by the space and weight bearing capabilities of the piers, would provide roughly 600KW-1,000KW of electricity annually. This comprises roughly 8% - 13% of MCT's total annual electricity usage of 7,600KW. Ports America estimates that an investment in solar panels would lead to annual electricity savings exceeding \$100k at MCT. Ports America is evaluating the engineering and financial feasibility of solar panel installation. The current estimated cost of installing solar panels would be \$2.0M-\$4.0M. These amounts are not reflected in Ports America capital investment plan as they are in the due diligence and assessment phase.

EXHIBIT D

TENANT'S ADDITIONAL USE AND OPERATIONAL OBLIGATIONS

A. Vessel Stevedoring and Operations:

1. Tenant shall manage all facility operations, supervision, administration, and direct all stevedoring services required in connection with the servicing of passenger cruise vessels or any other vessels arriving and berthing at the Premises (the "Stevedoring Services").
2. Tenant shall: handle, sort, and store baggage to and from ships arriving and berthing at the Premises; manage movement and handling of all ship-passenger baggage within the Premises.; and coordinate with the vessel operators and federal inspection services to maximize rapid, convenient, and efficient movement and handling of passenger baggage.
3. Tenant shall manage the care, custody, and handling of all vessel provisions and stores and materials to be loaded on or off of ships while berthed at the Premises.
4. Tenant shall supervise and coordinate the berthing of ships at the Premises subject to the right of Landlord, at any time (other than with respect to priority berthing rights previously granted by Tenant), to grant any vessel a right to berth at either of the Premises.
5. Tenant shall spot ships and handle all lines, in respect to all ships berthing at the Premises
6. Tenant shall be the first and primary point of contact for labor union communications.
7. Tenant shall be responsible for the hiring of union labor.
8. Tenant shall provide training and supervision of labor in proper utilization, positioning, and maintenance of ship gangways and passenger boarding bridges.
9. Tenant shall negotiate directly with cruise line operators for the provision of services, such as labor, supervision, equipment, and materials necessary to effect the efficient and economical performance of the foregoing.
10. Tenant shall coordinate all activities related to the berthing of ships, which will principally be cruise ship activities at the Premises including:
 - a. Tenant shall coordinate arrivals and departures of passenger vessels and coordinate berthing assignments with cruise line and vessel operators, in cooperation with Landlord and in accordance with berthing policies set forth by Landlord.
 - b. Tenant shall develop and maintain a monthly updated report of all vessel arrivals and berthing assignments that occur at the Premises.
 - c. Tenant shall attend all vessel dockings and undockings and, upon vessel departures, conduct berth inspections and prepare written reports of any evidence of damage to wharfs, pilings and fender systems, and give immediate notification of such damage to Landlord.

B. Cruise Operations and Facility Management

1. Tenant shall test the passenger boarding bridges, gangways, elevators and escalators prior to the arrival of each vessel and coordinate any necessary repairs.
2. Tenant shall coordinate all required parking at Manhattan Cruise Terminal and ground transportation activities relating to the access to and egress from the Premises by passengers in accordance with the procedures and requirements adopted or approved by Landlord.
3. Tenant shall assist Landlord in the development, implementation, and operation of parking and ground transportation systems and programs including the development of annual and daily parking and ground transportation plans and promotions.
4. Tenant shall provide traffic control services in and about the Premises and in and about adjacent premises in order to maximize safe and efficient flow of vehicular and pedestrian traffic.
5. Tenant shall coordinate with cruise line tour operators/ground handlers on all passenger movements within and through the Premises, and on ground transportation outside or the Premises, including off-site staging areas during embarkation and disembarkation.
6. Tenant shall be the first and primary point of contact for all consumer, cruise line and travel industry parking.
7. Tenant shall be primary point of contact for all traffic communications such as notice of street closures, events, and parking limitations to consumers, ground operators, and cruise lines.
8. Tenant shall issue or cause to be issued necessary licenses, permits and concessions, in accordance with the Lease for premises within the Premises to third-party concessionaires, operators, and service providers.
9. Tenant shall act as Landlord's representative in communicating with tenants and concessionaires and addressing any concerns or requests such tenants and concessionaires might have, subject to Landlord's prior approval.
10. Tenant shall respond to inquiries received from third parties wishing to rent premises within the Premises, and to the extent Landlord's consent is required under the Lease Agreement, and advise Landlord of the nature of all such inquiries, providing recommendations in respect of same.
11. As periodically requested by Landlord, Tenant shall assist in the marketing of licensing, permitting and concession opportunities within the Premises.
12. CBP currently occupies and will continue to occupy space at the Premises (the "CBP Space"). Tenant shall work with CBP and other agencies with oversight over security to set forth an access and utilization plan necessary to support cruise ship activity at the Premises. Tenant shall coordinate its operations with CBP and ensure that CBP's operational requirements are met and are not interfered with.

13. Tenant shall pay, at its own expense, without reimbursement by Landlord or CBP, all utility and maintenance costs in connection with use and operation of the CBP Space.

14. Areas 5-9 of the Premises, as indicated in Figure 7, are shared space with third parties. Tenant may use this space for the staging of cruise vessels, but shall cooperate with such third parties for the use of such space as directed by Landlord.

15. Tenant shall provide water to the ships and use the metered water lines at the Premises and record all water supplied to ships. The Tenant shall invoice the cruise lines for all water supplied. Tenant may set rates by which the cruise lines are charged (the “Water Charges”), and collect all Water Charges on behalf of Landlord while simultaneously remitting payment for water use to the New York City Department of Environmental Protection.

C. Passenger Services and Activity Reviews

1. Tenant shall develop and submit for the approval of Landlord all plans and procedures to be adopted with respect to the efficient transit of passengers to and from ships berthed at the Premises, such approval not to be unreasonably withheld, conditioned or delayed. Upon the approval of such plans and procedures by Landlord, Tenant shall implement and carry out such plans.

2. Tenant shall communicate and coordinate all approved passenger transit plans and procedures with all other related users of the Premises including, but not limited to, the United States Coast Guard (the “USCG”), United States Customs and Border Protection (“CBP”), cruise line representatives, and other tenants, licensees, and concessionaires to maximize rapid, convenient and efficient movement of passengers, handling of luggage, and transportation.

3. Tenant shall coordinate and secure at own expense any necessary street and or parking permits to support cruise activity as required.

4. Tenant and Landlord shall mutually agree on the development and implementation of a program of regular review of the services and activities within the Premises, including organizing and coordinating meetings of Manhattan Cruise Terminal operational stakeholders to ascertain their concerns and objectives, undertaking needs assessments and cost benefit analyses, and providing recommendations to Landlord.

5. Tenant and Landlord shall mutually agree on the development and implementation of performance monitoring programs with respect to various aspects of cruise ship services and terminal management and operations including the stevedoring services, berthing services, passenger services, security services, ground transportation services, tenant relations and terminal facilities administration.

D. Security and Safety

1. Tenant shall assume responsibility for maintaining and enforcing the USCG-approved Facility Security Plan. Tenant shall obtain compliance with all applicable regulations, and arrange for the provision of a Facility Security Officer and any alternates, as may be required. Tenant shall submit revised plan for approval by USCG.

2. Tenant shall ensure berth safety, waterside and landside, for all docking and undocking procedures. Landlord shall be responsible for annual maintenance dredging and ensure all active berths are dredged to a safe depth to allow for the safe movement of vessel activity at all times.
3. Tenant shall provide and supervise all required security personnel.
4. Tenant shall oversee and coordinate with all related personnel, subcontractors, and providers of related services. Tenant shall provide or cause to be provided trained, competent, and efficient security guards in accordance with a Landlord-approved security plan.
5. Tenant shall take reasonable precautions to protect the overall safety of all passengers and other persons within the Premises.
6. Tenant shall conduct regular audits and exercises of the sufficiency, suitability, and performance of the Facility Security Plan per USCG regulation. Results of such audits and exercises must be reported to Landlord. The Tenant will be responsible for all terminal security including perimeter security, traffic control, night watch, and limited patrol security as required by the facility's security plan.
7. Tenant shall maintain sufficient and effective security communications and monitoring equipment to facilitate security operations.
8. Tenant shall provide necessary security for the protection and safeguarding of the Premises and persons and property at the Premises. Tenant shall provide additional safety and security procedures and equipment as may be further and occasionally required by City, state, and federal authorities with jurisdiction over passenger terminal operations.
9. Emergency Services: Tenant shall respond to site emergency situations as they arise, which will likely require the Tenant to engage and request the assistance of the New York City Police Department and/or the Port Authority Police Department, as applicable, to respond to emergencies.
10. Tenant's staff will be required to be on-call 24 hours a day, seven days a week.
11. Tenant shall provide Landlord with emergency and contingency plans for approval.

E. Hospitality Services and Special Events

1. Tenant shall coordinate all hospitality services including food and beverage services to passengers and guests on cruise ship days.
2. If and to the extent provided to Tenant by Landlord, Tenant shall make available to passengers visitor information such as city maps, destination information, etc.
3. Tenant shall coordinate any special events, travel agent and VIP tours with tour operators, port agents, security, Landlord staff, and cruise line representatives, as applicable.
4. Promote events and tours to maximize the revenue potential and utility of the Premises.

5. Tenant shall, to the extent possible, make the Premises available for events; however, cruise ship activity shall take priority over any events at the Premises. Events include, but are not limited to, parties, weddings, conferences, trade shows, and meetings as well as all food and beverage service provided in connection with ship activities at the Premises.

6. Tenant shall coordinate, schedule and manage all events at the Premises, providing necessary operations and maintenance staffing for events. The Tenant shall be responsible for entering into all arrangements and agreements needed for such events which may include, without limitation, procuring and paying vendors and/or subcontractors for event setup, hosting, food and beverage service and post event restoration of the facility.

7. Tenant must coordinate with Landlord to ensure all appropriate measures are taken to satisfy Lease requirements, including review and approval process for event operations plans, security obligations and appropriate insurance coverage.

F. Maintenance, Repair, and Capital Improvements

1. Tenant shall, at its sole cost and expense, at all times during the term of the Lease Agreement, put, keep, preserve and maintain the Premises in good and sufficient repair and condition in accordance with the terms of the Lease, including, without limitation, all surfaces, roofs, and parking area. Except as set forth in Exhibit J, Tenant shall be responsible for repairing all damage to any of the above items.

2. Tenant shall maintain and repair all equipment and perform required capital improvements at the Premises set forth in Exhibit C as necessary to keep the Premises in a good and sufficient repair and condition.

3. Tenant shall be responsible for maintenance, landscaping, and grounds keeping of the Premises to ensure a professional and welcoming appearance and the safety and security of all users.

4. Tenant shall maintain the Premises in a neat, clean, safe and orderly condition.

5. Tenant shall retain sufficient personnel, equipment and contracted services in order to keep the Premises, including all aprons, storage and cargo areas, gangways, baggage rooms, escalators, passenger concourses, elevators, and parking areas in a clean and orderly manner and shall promptly remove all debris and waste material.

6. Tenant is responsible for the maintenance and pruning of all trees, shrubs, grass, and providing and caring of flower pots as well as the removal of weeds within the perimeter of the Premises as outlined in the site plan. The areas must be surveyed weekly and before every cruise call and landscaping work completed wherever and whenever needed.

7. With the exception of equipment related to the operation of the Premises that is owned by Landlord at the commencement of the Term; including, but not limited to gangways, passenger boarding bridges, check-in booths, and traffic control stanchions, which shall be made available to the Tenant by Landlord, the Tenant shall provide all operating equipment and materials required to perform the Tenant Obligations, including any additional or replacement gangways

or conveyors as necessary. Subject to the foregoing sentence, Tenant shall provide all equipment and gear necessary for all cruise terminal operations.

8. Tenant shall maintain and ensure that all terminal equipment is in satisfactory operational condition, including all interior fixtures, equipment (including security- screening equipment, baggage conveyance systems and stevedoring equipment such as forklifts, etc.) and furniture.

G. Marketing and Media Communications

1. Tenant shall coordinate with Landlord in the planning, development, and implementation of all marketing, advertising, sales calls, and promotional activities undertaken by NYCruise.

2. Tenant shall to the best of its knowledge report to Landlord on all business opportunities and meetings within the cruise industry related to the Premises.

3. No media communications except for emergency or crisis communications will occur without coordinating with Landlord for content approval.

4. The Parties mutually agree to the joint development of a tourism promotion package to encourage cruise passengers to book pre-or post-cruise hotel packages. The Parties will cooperate to the extent possible to provide in-kind marketing.

H. Administrative, Billing Services, and Provision of Information

1. Tenant shall provide sufficient personnel to manage and operate the Premises for cruise days and non-cruise days.

2. Tenant shall respond to all consumer and travel trade inquiries and requests regarding hours of operation, directions, and parking.

3. Tenant shall provide responses to cruise line pro forma requests in a timely manner.

4. Tenant shall confirm and send to Landlord the passenger transit figures for each ship call in order to verify the appropriate charges per ship call.

5. Tenant shall calculate, bill, and collect all fees on behalf of Landlord with respect to operation of the Premises. Bills will be coordinated with Landlord for approval prior to distribution.

6. Tenant shall remit invoices to cruise lines berthing at the Premises after each vessel call, in accordance with tariffs established by Landlord including all berthing service and terminal facility fees.

7. Tenant shall assist Landlord with the scheduling of vessels and calendar upkeep.

8. Tenant shall prepare and furnish Landlord with reports, work programs, plans, budgets, statements, data, and information relating to the operation of the Premises as may be reasonably requested by Landlord, as set forth in the Lease. At the time of submission of such information

Tenant may identify the specific information in its submission which it has determined is a trade secret and which, if disclosed, would substantially harm its competitive position and its basis for such determination. While Tenant's characterization shall not be determinative, it will be considered by Landlord and NYCEDC when evaluating the applicability of any exemptions in response to a FOIL request.

I. System Improvement Services

Tenant agrees to work with Landlord to develop, maintain and operate certain services which consist generally of the following key components (the "System Improvements")

1. Internal and External Wayfinding at BCT
2. Written Protocol and Training for Traffic and Curb Management.

EXHIBIT E
EMPLOYMENT REPORT

EMPLOYMENT & BENEFITS REPORT

For the Fiscal Year July 1, 2015 – June 30, 2016 (FY '16)

In order to comply with State and Local Law reporting requirements, the Company is required to complete and return this form to NYCEDC, 110 William Street, New York, NY 10038, Attention: Compliance, no later than **August 1, 2016**. PLEASE SEE THE ATTACHED INSTRUCTIONS AND DEFINITIONS OF CAPITALIZED TERMS USED ON THIS PAGE.

1. Number of Permanent Full-Time Employees (including those of Tenants) as of June 30, 2016..... _____
2. Number of Non-Permanent Full-Time Employees (including those of Tenants) as of June 30, 2016 _____
3. Number of Permanent Part-Time Employees (including those of Tenants) as of June 30, 2016..... _____
4. Number of Non-Permanent Part-Time Employees (including those of Tenants) as of June 30, 2016..... _____
- 5a. Number of Contract Employees as of June 30, 2016..... _____
- 5b. Average number of Contract Construction Employees during Fiscal Year ending June 30, 2016..... _____
6. Total Number of employees of the Company and its Affiliates included in Items 1, 2, 3 and 4 _____
(Excluding Tenants)

For each employee included in this item 6, attach the Summary Page of the NYS-45 Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return for the period including June 30, 2016.

7. Number of employees included in item 6 above who reside in the City of New York..... _____
8. Do the Company and its Affiliates offer health benefits to all Full-Time Employees? Yes No All Part-Time Employees?..... Yes No

If the answer to item 6 above is fewer than 250 employees, please skip question 9-13 and continue with questions 14-16

9. Number of employees in Item 6 who are "Exempt" _____
10. Number of employees in Item 6 who are "Non-Exempt" _____
11. Number of employees in item 6 that earn up to \$25,000 annually..... _____
12. Number of employees in item 6 that earn \$25,001 - \$40,000 annually..... _____
13. Number of employees in item 6 that earn \$40,001 - \$50,000 annually..... _____

For Items 14-16, indicate the value of the benefits realized by the Company and its Affiliates at Project Locations during FY'16.

14. Does the Company and/or its Affiliates receive Commercial Expansion Program ("CEP") benefits? Yes No
If yes, what was the value realized during FY'16. \$ _____
15. Does the Company and/or its Affiliates receive Relocation and Employment Assistance Program ("REAP") benefits? Yes No
If yes, what was the value realized during FY'16..... \$ _____
16. Has the Company and/or its Affiliates applied for Industrial and Commercial Abatement Program ("ICAP") benefits for new physical improvements at the Project Location(s)? Yes No
If yes, please provide the application number(s)

Include all Permanent Full-Time, Temporary Full-Time, Permanent Part-Time, Temporary Part-Time and Contract Employees

- | | |
|---|---|
| 17a. Total Number of Industrial Jobs: _____ | 17b. Number of Industrial Jobs Earning a Living Wage or more: _____ |
| 18a. Total Number of Restaurant Jobs: _____ | 18b. Number of Restaurant Jobs Earning a Living Wage or more: _____ |
| 19a. Total Number of Retail Jobs : _____ | 19b. Number of Retail Jobs Earning a Living Wage or more: _____ |
| 20a. Total Number of Other Jobs: _____ | 20b. Number of Other Jobs Earning a Living Wage or more: _____ |
| 21a. Total Number of Jobs: _____ | 21b. Number of Jobs Earning a Living Wage or more: _____ |

For Items 22-23, indicate the value of the benefits realized by the Company and its Affiliates at Project Locations during FY'16.

22. What was the value of sales and use tax exemption savings realized by the Company and its Affiliates as a result of the Company's receipt of NYCEDC Financial Assistance during the FY'16. (Do not include any sales and use tax savings realized under the NYS Empire Zone Program or through a not-for-profit exemption) \$ _____
23. What was the value of BIR Energy Assistance realized by the Company and its Affiliates during the FY'16..... \$ _____

Certification: I, the undersigned, an authorized officer or principal owner of the Company, hereby certify to the best of my knowledge and belief that all information contained in this report is true and complete. This form and information provided pursuant hereto may be disclosed to the New York City Economic Development Corporation ("NYCEDC"), New York City Industrial Development Agency ("NYCIDA") and/or Build NYC Resource Corporation ("BUILD NYC") and may be disclosed by NYCEDC, NYCIDA and/or BUILD NYC in connection with the administration of the programs of NYCEDC, NYCIDA and/or BUILD NYC and/or the City of New York; and, without limiting the foregoing, such information may be included in (x) reports prepared by NYCEDC pursuant to New York City Charter Section 1301 et. seq., (y) other reports required of NYCIDA, BUILD NYC or NYCEDC, and (z) any other reports or disclosure required by law.

Project Name: _____

Signature: _____ Date _____

Name: _____ Title: _____

DEFINITIONS

“**Affiliate**” is (i) a business entity in which more than fifty percent is owned by, or is subject to a power or right of control of, or is managed by, an entity which is a party to a Project Agreement, or (ii) a business entity that owns more than fifty percent of an entity which is a party to a Project Agreement or that exercises a power or right of control of such entity.

“**Company**” includes any entity that is a party to a Project Agreement.

“**Contract Construction Employee**” is a person who is an independent contractor or subcontractor, or an employee thereof, who provides construction services to the Company, an Affiliate or a Tenant at a Project Location.

“**Contract Employee**” is a person, other than a Contract Construction Employee, who is an independent contractor (i.e., a person who is not an “employee”), or is employed by an independent contractor, who provides services at a Project Location.

“**Financial Assistance**” is any of the following forms of financial assistance provided or administered by NYCEDC: a loan, grant, tax benefits or energy assistance benefits through any discretionary program, such as the Business Incentive Rate (BIR) Program, in each case in excess of \$160,000, and any sale or lease of City-owned land where the project is estimated to retain or create not less than 25 jobs.

“**Living Wage**” is an hourly compensation package as of June 30, 2016 that is no less than the sum of \$10.50 per hour (paid in cash wages) and \$1.70 per hour (paid in health benefits, cash, or any combination of the two). The value of any health benefits received shall be determined based on the prorated hourly cost to the employer of the health benefits received by the employee. For employees who customarily and regularly receive tips, any tips received and retained by the employee may be credited towards the living wage rate.

“**Non-Permanent Full-Time Employee**” is an employee, other than a Contract Employee, hired for temporary employment for seasonal or other temporary purposes, who works at least 35 hours per week at a Project Location.

“**Non-Permanent Part-Time Employee**” is an employee, other than a Contract Employee, hired for temporary employment for seasonal or other temporary purposes, who works on average at least 17.5 hours, but less than 35 hours, per week at a Project Location.

“**Permanent Full-Time Employee**” is an employee, other than a Contract Employee, hired for permanent employment and not for seasonal or temporary purposes, who works at least 35 hours per week at a Project Location.

“**Permanent Part-Time Employee**” is an employee, other than a Contract Employee, hired for permanent employment and not for seasonal or temporary purposes, who works on average at least 17.5 hours, but less than 35 hours, per week at a Project Location.

“**Project Agreement**” is any agreement pursuant to which NYCEDC provides Financial Assistance in connection with a project

“**Project Location**” is any location (a) with regard to which Financial Assistance has been provided to the Company and/or its Affiliates during the fiscal year reporting period covered by the Employment and Benefits Report, or (b) that is occupied by the Company and/or its Affiliates at which such entities have employees who are eligible to be reported per the terms of the Agreement with the Company and/or its Affiliates.

“**Tenant**” is any entity other than the Company and its Affiliates that occupies space at any Project Location.

INSTRUCTIONS

For each Project Agreement, please submit one report that covers (i) the Company and its Affiliates and (ii) Tenants at all Project Locations covered by the Project Agreement. All Tenant employment info should be aggregated, combined with employment information for the Company and its Affiliates at all Project Locations and reported on the Company’s Employment and Benefits Report. Please include the completed Tenant’s Employment and Benefits Report(s) along with the Company’s Employment and Benefits Report when submitting to NYCEDC. The Company must retain for six (6) years all forms completed by its Affiliates and Tenants and at NYCEDC’s request must permit NYCEDC upon reasonable notice to inspect such forms and provide NYCEDC with a copy of such forms.

1- 4. Items **1, 2, 3 and 4** must be determined as of June 30, 2016 and must include Permanent Full-Time Employees, Permanent Part-Time Employees, Non-Permanent Full-Time Employees and Non-Permanent Part-Time Employees at all Project Locations, including those employed by the Company or its Affiliates and by Tenants. **Do not include Contract Employees or Contract Construction Employees in Items 1, 2, 3 and 4.**

5(a) Report all Contract Employees providing services to the Company and its Affiliates and Tenants at all Project Locations. Do not include Contract Construction Employees in question 5a. **(b)** Report the 12 month average of Contract Construction Employees providing services to the Company and its Affiliates and Subtenants at all Project Locations for the previous fiscal year. Use the number of Contract Construction Employees on the last payroll date of each month to compute this average.

6-8. If applicable, report information requested only with respect to the Company and its Affiliates at all Project Locations. For item 6, report only the employees, of the Company and its Affiliates. Do not report Contract Employees, Contract Construction Employees or employees of Tenants.

9-10. If applicable, Indicate the number of employees included in item 6 who are classified as “Exempt” or “Non Exempt”, as defined in the federal Fair Labor Standards Act. Generally, an Exempt employee is not eligible for overtime compensation and a Non-Exempt employee is eligible for overtime compensation.

14-15. Report all CEP and/or REAP benefits received by the Company and its Affiliates and any Tenants at all Project Locations. CEP is a package of tax benefits, administered by the New York City Department of Finance, designed to help qualified businesses to relocate or expand in designated relocation areas in New York City. REAP is designed to encourage qualified businesses to relocate employees to targeted areas within NYC. For more information regarding CEP or REAP, please visit <http://www.nyc.gov/dof>.

16. If you have applied for ICAP list your application number. ICAP provides abatements for real property taxes to Companies that build modernize, expand or otherwise physically improve eligible industrial and commercial buildings. ICAP is administered through the Department of Finance. Visit <http://www.nyc.gov/dof> to confirm if you are a recipient of ICAP.

17-21. Include Permanent Full-Time Employees (including those of Tenants), Non-Permanent Full-Time Employees (including those of Tenants), Permanent Part-Time Employees (including those of Tenants), Non-Permanent Part-Time Employees (including those of Tenants), and Contract Employees. The sum for 21a should equal the sum of lines 17a-20a, which should also equal the sum of lines 1-5a. The sum for 21b should equal the sum of lines 17b-20b.

22. If applicable, report all sales and use tax exemption benefits realized at all Project Locations by the Company and its Affiliates and granted by virtue of the exemption authority of NYCIDA or NYCEDC. Do not include any savings realized under the NYS Empire Zone Program or through a not-for-profit exemption.

23. If applicable, and for purposes of this form, “BIR Energy Assistance” is any reduction in energy delivery charges or other benefits or energy discounts provided pursuant to the Business Incentive Rate (BIR) program administered by Consolidated Edison Company of New York, Inc.

Please provide the information required below for the location or locations that are receiving benefits.

Eligible Project Locations:

Please provide the current Project Contact Information: (Please print CLEARLY)

Project Name: _____

Name: _____ Title: _____

Address: _____

Phone: _____ Fax: _____ E-mail: _____

Signature: _____

Backup Contact Information:

Name: _____ Title: _____ Phone: _____

PLEASE MAIL TO:
New York City Economic Development Corporation
Attention: Compliance
110 William Street
New York, NY 10038

OR FAX YOUR RESPONSE TO: (212) 618-5738

QUESTIONS? Please contact the Compliance Hotline at (212) 312-3963

In order to comply with State and Local Law reporting requirements, please complete and return this form no later than **August 1, 2016**. **PLEASE SEE BELOW FOR THE INSTRUCTIONS AND DEFINITIONS OF CAPITALIZED TERMS USED ON THIS PAGE.**

Each Tenant occupying space at a Project Location must complete a Tenant's Employment and Benefits Report. All responses should be limited to Tenant's employees occupying such space. If the Tenant has subleased space to a subtenant, the subtenant must also complete this form with respect to employees and its subtenants and its affiliates occupying such space. The completed forms must be returned to the landlord (the "Company") it within twenty (20) business days of receipt by Tenant.

1. Number of Permanent Full-Time Employees as of June 30, 2016
2. Number of Non-Permanent Full-Time Employees as of June 30, 2016.....
3. Number of Permanent Part-Time Employees as of June 30, 2016
4. Number of Non-Permanent Part-Time Employees as of June 30, 2016.....
- 5a. Number of Contract Employees as of June 30, 2016.....
- 5b. Average number of Contract Construction Employees during Fiscal Year ending June 30, 2016
6. Does the Company receive Commercial Expansion Program ("CEP") benefits? Yes No
If yes, what was the value realized during FY'16
7. Does the Company receive Relocation and Employment Assistance Program ("REAP") benefits? Yes No
If yes, what was the value realized during FY'16
- 8a. Total Number of Industrial Jobs:..... 8b. Number of Industrial Jobs Earning a Living Wage or more :
- 9a. Total Number of Restaurant Jobs:..... 9b. Number of Restaurant Jobs Earning a Living Wage or more:
- 10a. Total Number of Retail Jobs:..... 10b. Number of Retail Jobs Earning a Living Wage or more :
- 11a. Total Number of Other Jobs:..... 11b. Number of Other Jobs Earning a Living Wage or more:
- 12a. **Total Number of Jobs:**..... 12b. **Number of Jobs Earning a Living Wage or more:**

Certification: I, the undersigned, an authorized officer or principal owner of the Company/Affiliate/Tenant, hereby certify to the best of my knowledge and belief that all information contained in this report is true and complete. This form and information provided pursuant hereto may be disclosed to the New York City Economic Development Corporation ("NYCEDC"), New York City Industrial Development Agency ("NYCIDA") and/or Build NYC Resource Corporation ("BUILD NYC") and may be disclosed by NYCEDC, NYCIDA and/or BUILD NYC in connection with the administration of the programs of NYCEDC, NYCIDA and/or BUILD NYC and/or the City of New York; and, without limiting the foregoing, such information may be included in (x) reports prepared by NYCEDC pursuant to New York City Charter Section 1301 et. seq., (y) other reports required of NYCIDA, BUILD NYC or NYCEDC, and (z) any other reports or disclosure required by law.

LANDLORD NAME _____

TENANT NAME _____

NAME/TITLE _____

SIGNATURE _____

DATE _____

DEFINITIONS:

“**Contract Construction Employee**” is a person who is an independent contractor or subcontractor, or an employee thereof, who provides construction services to the Tenant at a Project Location.

“**Contract Employee**” is a person, other than a Contract Construction Employee, who is an independent contractor (i.e., a person who is not an “employee”), or is employed by an independent contractor, who provides services to the Tenant at a Project Location.

“**Financial Assistance**” is any of the following forms of financial assistance provided by or at the direction of NYCEDC: a loan, grant, tax benefits or energy assistance benefits through any discretionary program, such as the Business Incentive Rate (BIR) Program, in each case in excess of \$160,000, and any sale or lease of City-owned land where the project is estimated to retain or create not less than 25 jobs.

“**Living Wage**” is an hourly compensation package as of June 30, 2016 that is no less than the sum of \$10.50 per hour (paid in cash wages) and \$1.70 per hour (paid in health benefits, cash, or any combination of the two). The value of any health benefits received shall be determined based on the prorated hourly cost to the employer of the health benefits received by the employee. For employees who customarily and regularly receive tips, any tips received and retained by the employee may be credited towards the living wage rate.

“**Non-Permanent Full-Time Employee**” is an employee of Tenant, other than a Contract Employee, hired for temporary employment for seasonal or other temporary purposes, who works at least 35 hours per week at a Project Location.

“**Non-Permanent Part-Time Employee**” is an employee of Tenant, other than a Contract Employee, hired for temporary employment for seasonal or other temporary purposes, who works on average at least 17.5 hours, but less than 35 hours, per week at a Project Location.

“**Permanent Full-Time Employee**” is an employee of Tenant, other than a Contract Employee, hired for permanent employment and not for seasonal or temporary purposes, who works at least 35 hours per week at a Project Location.

“**Permanent Part-Time Employee**” is an employee of Tenant, other than a Contract Employee, hired for permanent employment and not for seasonal or temporary purposes, who works on average at least 17.5 hours, but less than 35 hours, per week at a Project Location.

“**Project Agreement**” is any agreement pursuant to which NYCEDC provides Financial Assistance in connection with a project.

“**Project Location**” is any location (a) with regard to which Financial Assistance has been provided to the Company and/or its Affiliates during the fiscal year reporting period covered by the Employment and Benefits Report, or (b) that is occupied by the Company and/or its Affiliates at which such entities have employees who are eligible to be reported per the terms of the Agreement with the Company and/or its Affiliates.

“**Tenant**” is a tenant or subtenant at any Project Location.

INSTRUCTIONS:

Please copy this form and have each Tenant occupying space at a project location complete.

1- 4. Items 1, 2, 3 and 4 must be determined as of June 30, 2016 and must include all of Tenant’s Permanent Full-Time Employees, Permanent Part-Time Employees, Non-Permanent Full-Time Employees and Non-Permanent Part-Time Employees at all Project Locations. Do not include Tenant’s Contract Employees or Contract Construction Employees in 1- 4.

5. (a) Report all Contract Employees providing services to the Tenant at all Project Locations. Do not include Contract Construction Employees in question 5a. **(b)** Report the 12 month average of Contract Construction Employees providing services to the Tenants at all Project Locations for the previous fiscal year. Use the number of Contract Construction Employees on the last payroll date of each month to compute this average.

6. & 7. Report all CEP and/or REAP benefits received by the Tenant at all Project Locations. CEP is a package of tax benefits, administered by the New York City Department of Finance, designed to help qualified businesses to relocate or expand in designated relocation areas in NYC. REAP is designed to encourage qualified businesses to relocate employees to targeted areas within NYC. For more information regarding CEP or REAP, please visit <http://www.nyc.gov/dof>.

8-12. Include Permanent Full-Time Employees (including those of Tenants), Non-Permanent Full-Time Employees (including those of Tenants), Permanent Part-Time Employees (including those of Tenants), Non-Permanent Part-Time Employees (including those of Tenants), and Contract Employees. The sum for 10a should equal the sum of lines 6a-9a, which should also equal the sum of lines 1-5a. The sum for 10b should equal the sum of lines 6b-9b.

Checklist of Items Submitted to NYCEDC

- Employment and Benefits Report (This is required from all Projects.)
- NYS-45 (This is requested beneath item 6 on the Employment and Benefits Report. Please only submit the summary page; not social security numbers)
- Tenant's Employment and Benefits Report (Any Tenants at a Project Location must complete this.)
- Location and Contact Information (Confirm locations, note any address changes, and update contacts as needed)
- Online Certifier Form (Optional. This is if you would like to set up an online option for future reports.)

EXHIBIT F

INTERNAL BACKGROUND INVESTIGATION QUESTIONNAIRE

Exhibit F



Internal Background Investigation Questionnaire

THIS FORM IS FOR:

Contracts under \$100,000,
Land Sales, Leases, Licenses, Permits,
NYCIDA Projects and any Discretionary Reviews

New York City Economic Development Corporation • New York City Industrial Development Agency
110 William Street, New York, NY 10038

INSTRUCTIONS FOR COMPLETING NYCEDC INTERNAL BACKGROUND INVESTIGATION QUESTIONNAIRE

1. Please submit, with this Questionnaire, the organizational documents for the submitting business entity.
2. For purposes of completing this Questionnaire, the following defined terms shall have the meanings given to them below (unless provided otherwise with respect to specific questions in the Questionnaire):

“Affiliate” – A Person is “affiliated with” or an “affiliate” of another Person if the Person controls, is controlled by or is under common control with that other Person.

“Applicant” – The submitting business entity.

“Control” – A Person controls another Person if the Person (i) owns ten percent (10%) or more of the voting interest or has a ten percent (10%) or greater ownership interest in that other Person or (ii) directs or has the right to direct the management or operations of that other Person or (iii) is a member of that other Person’s Board of Directors*.

“Executive Officer” – Any individual who serves as chief executive officer, chief financial officer, or chief operating officer of the Applicant, by whatever titles known, and all other executive officers of Applicant.

“Family Member” – With respect to a particular Person, includes spouse, children, grandchildren, parents, parents-in-law, brothers, sisters, brothers-in-law, sisters-in-law, and all family members living in the same household as such Person (except if such individuals are minors).

“Person” – Any individual, corporation, partnership, joint venture, sole proprietorship, limited liability company, trust or other entity.

“Principal” – each of the following Persons is a Principal of the Applicant and must be identified in Section B, Part I on page 2 of the Questionnaire.

- Executive Officers
- Persons that “Control” the Applicant
- For Limited Liability Companies, ALL members
- For Partnerships, ALL general partners and ALL partners performing on the contract or able to bind the Partnership

*For a not-for-profit corporation, ONLY the Chairperson of the Board of Directors and any director who is also an employee of Applicant needs to be considered for purposes of determining “Control” under this clause (iii).

SECTION A

The following questionnaire is to be completed by Persons desiring to do business with the New York City Economic Development Corporation or the New York City Industrial Development Agency or Apple Industrial Development Corp.

This form may be duplicated for additional space. PLEASE COMPLETE THIS QUESTIONNAIRE CAREFULLY AND COMPLETELY.

Refer to attached instruction sheet for specific instructions and definitions of terms required to complete this Questionnaire.

BUSINESS NAME: _____ EIN/SSN: _____

BUSINESS ADDRESS: _____
City State Zip Code

BUSINESS TELEPHONE: _____ TYPE OF ENTITY: _____

BUSINESS FAX: _____ BUSINESS E-MAIL: _____

SECTION B

I. PRINCIPALS OF APPLICANT

PRINCIPAL NAME	TITLE	HOME ADDRESS	PERCENTAGE OF VOTING INTEREST	PERCENTAGE OF OWNERSHIP	DATE OF BIRTH	SOCIAL SECURITY NUMBER/EMPLOYER IDENTIFICATION NUMBER
(1)						
(2)						
(3)						
(4)						
(5)						

II. FAMILY MEMBERS OF EACH INDIVIDUAL PRINCIPAL

Note: Only the following Family Members need to be identified in this Section B. Part II:

- Spouse
- Family Members who are employed by, are officers of or have a less than 10% voting or ownership interest in the Applicant
- Family Members who are directly or indirectly providing services and/or supplies with respect to the subject project (e.g. consultants, subcontractors, suppliers or an employee thereof)

PRINCIPAL NAME	IMMEDIATE FAMILY MEMBER	RELATIONSHIP TO PRINCIPAL	HOME ADDRESS
(1)			
(2)			
(3)			
(4)			
(5)			

SECTION B (Continued)

PROVIDE A DETAILED RESPONSE TO ALL QUESTIONS CHECKED "YES" ON THE FOLLOWING PAGE

NO YES

1. Does the Applicant or any Principal have any Affiliates? If yes, please identify the Affiliates, with SSN/EIN and respective addresses, and describe the nature of the affiliation, on the following page.
2. In the past 7 years, has the Applicant, any Principal, or any entity affiliated with the Applicant (each of the foregoing individually, a "Subject Person" and collectively, the "Subject Persons") been adjudicated bankrupt or placed in receivership, filed bankruptcy, or is any Subject Person currently the subject of any bankruptcy or similar proceedings? If yes, please explain on the following page.
3. In the past 5 years, has any Subject Person been a plaintiff or defendant in any civil proceeding (including any court and federal, state and local regulatory agency proceedings) other than a domestic relations proceeding (e.g., divorce, separation, support, alimony, maintenance, adoption, custody)? If yes, please identify all adjudicated, settled and pending lawsuits on the following page.
4. In the past 5 years, has any Subject Person or any Family Member identified in Section B. Part II (a "Subject Family Member"):
 - been disqualified as a bidder, or defaulted or terminated, on a permit, license, concession, franchise, lease, or other agreement with the City of New York or any governmental agency? If yes, please explain on the following page.
 - failed to file any required tax returns or to pay any applicable federal, state, or New York City taxes or other assessed New York City charges or fines, including but not limited to water and sewer charges and administrative fees? If yes, please explain on the following page.
5. In the past 10 years, has any Subject Person or any Subject Family Member used an EIN, SSN, name, trade name, or abbreviation other than the name or number provided in response to Section A or Section B, Part I or II of this Questionnaire or provided in response to question 1 above, as the case may be? If yes, please specify on the following page.
6. In the past 5 years, has any Subject Person, any Subject Family Member, any Affiliate of any Subject Family Member or any managerial employee of Applicant:
 - been the subject of any criminal investigation and/or civil anti-trust investigation (by any federal, state or local prosecuting or investigative agency) and/or investigation by any governmental agency (including, but not limited to federal, state and local regulatory agencies)? If yes, please explain on the following page.
 - had any judgment, injunction or sanction obtained against it in any judicial or administrative action or proceeding other than a domestic relations proceeding or motor vehicle proceeding? If yes, please explain on the following page.
7. In the past 10 years, has any Subject Person, any Subject Family Member, any Affiliate of any Subject Family Member or any managerial employee of Applicant been convicted, after trial or by plea, of any criminal offense and/or are there any felony or misdemeanor charges pending against any of them? If yes, please explain on the following page.

Section B (Continued)

INDICATE
QUESTION #

BELOW PROVIDE A DETAILED EXPLANATION TO ALL QUESTIONS CHECKED "YES". IF YOU NEED MORE SPACE,
PHOTOCOPY THIS PAGE AND ATTACH IT TO THIS QUESTIONNAIRE.

Section C – IDENTIFICATION OF PROPERTY INTERESTS

1. Identify Project Property:

Block & Lot(s): _____

Street Address: _____

Borough of _____

2. The following, together with attachment(s) hereto, if any, is a complete list of properties in which any of the Subject Persons or any of the Subject Family Members have an ownership interest and which are located in the City of New York, together with a statement as to each such property of any current arrears in real estate taxes, sewer rents, sewer surcharges, water charges or assessments due and owing to the City of New York.

PROPERTY OWNED IN THE CITY OF NEW YORK

PROPERTY OWNER	BOROUGH	BLOCK/LOT	STREET ADDRESS	DATE OF PURCHASE	AMOUNT OF ARREARS	TYPE OF ARREARS

SECTION C (Continued)

PROVIDE A DETAILED RESPONSE TO ALL QUESTIONS CHECKED "YES" ON THE FOLLOWING PAGE

NO YES

3. In the past 5 years, has any Subject Person or any Subject Family Member, been a former owner of the Project Property?
4. Is any Subject Person or any Subject Family Member a tenant of the City of New York? If yes, please list below; Agency, Borough, Block, Lot, Account Number, Monthly Rent, and Current Balance.
5. Has any Subject Person or any Subject Family Member previously purchased property from the City of New York? If yes, please list below; Agency, Borough, Block, Lot, Sale Date, Parcel Number, and Closing Date.
6. Does any Subject Person or any Subject Family Member have a mortgage with the City of New York? If yes, please list below; Agency, Borough, Block, Lot, Account Number, Principal Amount, Monthly Installment, and Current Balance.

Section C (Continued)

INDICATE
QUESTION #

BELOW PROVIDE A DETAILED EXPLANATION TO ALL QUESTIONS CHECKED "YES". IF YOU NEED MORE SPACE,
PHOTOCOPY THIS PAGE AND ATTACH IT TO THIS QUESTIONNAIRE.

CERTIFICATION

A FALSE STATEMENT WILLFULLY OR FRAUDULENTLY MADE OR ANY FALSE INFORMATION WILLFULLY OR FRAUDULENTLY SUBMITTED IN CONNECTION WITH THIS QUESTIONNAIRE MAY RESULT IN RENDERING THE APPLICANT NOT RESPONSIBLE WITH RESPECT TO THE PRESENT PROJECT OR FUTURE PROJECTS INVOLVING THE NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION, THE NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY, APPLE INDUSTRIAL DEVELOPMENT CORP. AND THE CITY OF NEW YORK AND, IN ADDITION, MAY SUBJECT THE PERSON MAKING THE FALSE STATEMENT TO CRIMINAL CHARGES.

I, _____, being duly sworn, state that I have read and understand the items contained in the foregoing 8 pages of this questionnaire and ___ pages of attachments, if any, and that, having made due inquiry, I supplied full, complete, and truthful answers to each item therein to the best of my knowledge, information and belief; that I will notify the New York City Economic Development Corporation, the New York City Industrial Development Agency, or Apple Industrial Development Corp., as the case may be, in writing of any change in circumstance occurring after the submission of this Questionnaire and before (i) the execution of any contract or agreement with any of them and/or the City of New York and (ii) in the case of an agreement to purchase or enter into a ground lease for real property and/or a financing through or straight lease or retention transaction with the New York City Industrial Development Agency, the closing of the transaction; and that all information supplied by me is true to the best of my knowledge, information and belief. I understand that the New York City Economic Development Corporation, the New York City Industrial Development Agency, or Apple Industrial Development Corp., as the case may be, will rely on the information supplied by me in this Questionnaire as an inducement to enter into a contract or agreement and to close a transaction with the Applicant.

Sworn to me

This ____ Day of _____ 20____

Notary Public

Name of Applicant

By: _____
Signature of Authorized Person

Print Name and Title of Authorized Person

Date

EXHIBIT G

FORM OF REQUIRED DISCLOSURE STATEMENT

The undersigned, an authorized representative of _____, a _____ organized and existing under the laws of the State of _____, DOES HEREBY CERTIFY, REPRESENT AND WARRANT to New York City Economic Development Corporation (“NYCEDC”) THAT:

None of the [entity], any of the Principals of such entity, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with such entity:

Except as set forth on Schedule A attached hereto, all of which exceptions so set forth being subject to approval of NYCEDC:

(i) _____ is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with NYCEDC or The City of New York (the “City”), unless such default or breach has been waived in writing by NYCEDC or the City, as the case may be;

(ii) _____ has been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) years;

(iii) _____ has been convicted of a felony in the past ten (10) years;

(iv) _____ has received a formal written notice from a federal, state or local governmental agency or body that such Person is currently under investigation for a felony offense; or

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

As used herein, the following capitalized terms shall have the respective meanings set forth below:

Control or Controls shall mean the power to direct the management and policies of a Person (x) through the ownership of not less than a majority of its voting securities, (y) through the right to designate or elect not less than a majority of the members of its Governing Body, or (z) by contract or otherwise.

Governing Body shall mean, when used with respect to any Person, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Person are exercised.

Person shall mean any individual or entity, whether a trustee, corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate,

unincorporated organization, business association, tribe, firm, joint venture, governmental authority, governmental instrumentality or otherwise.

Principal(s) shall mean, with respect to any Person that is an entity, the chief executive officer, the chief financial officer and the chief operating officer of such Person, or any individual holding equivalent positions.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this ____ day of _____, 200_.

[NAME OF CERTIFYING ENTITY]

By: _____

Name:

Title:

Schedule A

Exhibit H

Pre-Approved Events

Event Name	Event Type	Location	Brief Description	Frequency/Timing
Toyota Taxi Promotions	Promotional Event	Pier 88	Toyota produced an event promoting green taxis in NYC	To Be Determined
The NYC Big Flea	Antique Show	Pier 90	Antique sale open to general public	To Be Determined
Finn Partners Promotional Event	Cruise Industry Event	Pier 90	Cruise industry promotional event	To Be Determined
Harrison/Boston Coach	Corporate Holiday Event	Pier 90	Vehicle staging for company corporate gala	Annual/December
Liberty Travel	Corporate Event	Pier 90	Vehicle staging for corporate gala	To Be Determined
NYPD Emerald Society	Luncheon	Pier 90	NYPD Emerald Society St. Patrick's Day Parade Luncheon	Annual/March
Volta NY Art Show	Art Show	Pier 90	Art show open to the general public	Annual/February or March
Cruise Canada New England	Industry Promotional Event	Pier 90	Symposium in support of Canada New England Alliance	Every 5 years/June
Mediterranean Spring	Travel Industry Event	Pier 90	Promotional event sponsored by Mediterranean Shipping	Annual/September or October

EXHIBIT I

INITIAL SCHEDULE OF FEES

EXHIBIT I
DOCKAGE AND WHARFAGE FEES

Revenue Item	Rate (2017)
Dockage (per GRT per day)	\$0.14
Wharfage Per Passenger	\$22.30

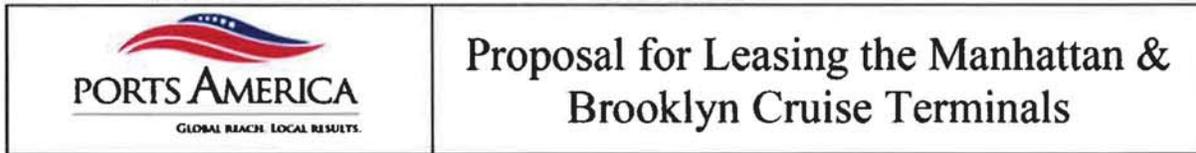
EXHIBIT J

LANDLORD IMPROVEMENT OBLIGATIONS

- Roof of Pier 90 – complete re-decking
- West End of Pier 88 apron replacement
- Berth 3 Elevator repair
- Pier 90 west end subsidence mitigation project
 - Over the years the west end of Pier 90 has naturally settled into the river as a result of the impact of the water current and constant load on pier. To offset any further settling, Pier 90 will be pinned in place.

EXHIBIT K

MWBE



X. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PLAN

Ports America has partnered with McKissack to ensure Ports America's compliance with M/WBE and HireNYC imperatives. The Ports America and McKissack Project Team ("Project Team") believes that community involvement and providing opportunities for construction labor professionals and minority- and women-owned business enterprises ("M/WBE") is a critical goal of every project. We begin by understanding our client's goals and then assessing their needs to recommend specifically designed, customized diversity consulting solutions. We develop and implement outreach programs to solicit small businesses and workforce candidates that are qualified and interested in working on specific projects. One of our most important corporate commitments is embodied in our diversity consulting services which provide workforce development, M/WBE mentoring and support services, and a range of other services in traditionally under-served communities. Our diversity consulting initiatives are designed to yield M/WBE utilization rates that exceed the goals established by our clients; not just because it's required, but because it is the right to do. We possess the experience, personnel and drive to provide the best possible diversity services for our construction projects - while effectively stimulating neighborhood and community involvement and growth.

The Project Team will establish a M/WBE, Community Outreach and HireNYC Employment Program for the Terminals. The primary goal of the Program is to engage and assist qualified M/WBE subcontracting firms and disadvantaged, labor force professionals in providing contracting and employment opportunities in order to meet the participation goals set forth by the project. We also intend to utilize public outreach methods and techniques to ensure the community is kept informed about the impact of the project. Our team recognizes that job training and employment for local residents and contracting opportunities for small businesses helps foster local economic development, neighborhood economic improvement, and individual self-sufficiency. We also recognize that the coordination of construction activities with community concerns is vital to the success of any project. As such, we translate our presence on construction projects into economic opportunities for the communities in which we work, leveraging our extensive network to mentor, support and provide guidance to M/WBE firms.

Program Approach

The Project Team knows that providing meaningful participation for M/WBE firms is one of the most important elements of any successful project. We will establish an innovative M/WBE and HireNYC Employment Program to support the City's programmatic goals, in association with the development and expansion of the Terminals operations, passenger services and capital improvements. We aim to meet or exceed the project goals by taking affirmative action to ensure M/WBEs, minority group members and women, share in the economic opportunities and competitive strength generated by this project. We understand the City's M/WBE goals specifically as follows: 20%-35% M/WBE firm participation, for City certified firms, for all construction contracts. As we have achieved comparable goals and implemented similar programs on many projects, we believe in exploring ideas and methods to expand our reach in order to maximize opportunities for small businesses. To increase our pool of qualified firms and individuals, we recommend defining a broad local catchment area, utilizing the census tracks of the federally mandated



Proposal for Leasing the Manhattan & Brooklyn Cruise Terminals

New York Empowerment Zone (NYEZ) to identify what it means to be local, for the Targeted Population, on this project.

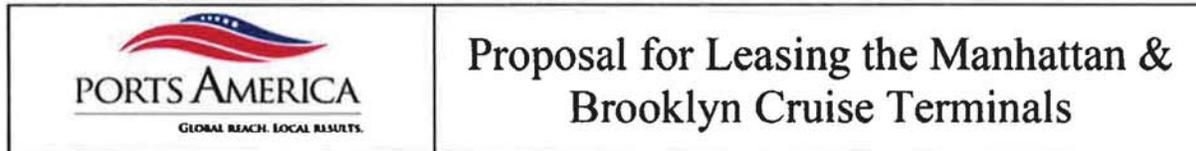
We will establish innovative initiatives and incentives to promote small businesses enterprise development and growth and work with NYCEDC's Opportunity M/W/DBE program and NYC Small Business Services to identify and source qualified M/WBE firms and coordinate outreach events. We will serve as a resource for small businesses by providing direction, resources, guidance, and assistance in navigating the procurement process, as these relate to other specific project requirements and standards.

We are equipped with the conventional construction knowledge base and experience needed to facilitate conversations with the Project Team on specific bidding geared toward M/WBE firms. As with the procurement of the contractors, the project team will work in collaboration with the NYCEDC to develop bidding strategies and bid packages to maximize opportunity for M/WBE firms to compete for the work to be completed in connection with the Terminal projects. During preconstruction, the team must create specifications and drawings to intentionally separate and de-bundle bid packages to support an inclusive procurement philosophy. This is an important and critical factor in formulating the basic first steps in starting to purchase the project, in an effort to optimize M/WBE participation at all levels. In order to achieve this philosophy, you have to know the landscape. We are fortunate to have an extensive database of firms in our network, from our long history and experience working with these small businesses. We aspire to utilize the firms within our network who have been awarded contracts and performed well on construction projects in the local area.

Program Objectives

- **Participation Goal: 24%**
- Meet the NYCEDC compliance requirements and goals for M/WBE participation
- Accelerate and guide the small business collaboration process through due diligence in research, strategic planning, and implementation of EEO initiatives
- Engaging stakeholder participation, buy-in, and ownership through customized facilitation and development of an action-plan and process for the small business program
- Utilize ESD NYS/NYC, and internal M/WBE Directory of Certified Firms to identify qualified firms for bidding opportunities
- Support project construction outreach seminars and workshops to identify qualified businesses
- Participate in all project bidding and procurement opportunities for M/WBE's
- Prequalify, interview and refer eligible M/WBE subcontracting firms for contracting opportunities
- Provide technical resources and assistance to M/WBE as needed
- Maintain, manage and track all compliance reporting and documentation, including good faith efforts

We believe in giving back to our communities and supporting important causes, as this project intends to spur positive growth and development of the community's urban fabric and improve the passenger experience for global travelers. We offer a broad range of tools that help provide community insight, including, but not limited to, a geographic resource guide which includes neighborhood demographics, local businesses, vendors and service providers as well community board members, local leadership and



governmental officials. We drive messaging points for our clients to advertise the actions being taken to address the expectations of the community.

Our Experience

Our team has a long history and reputation for building programs to attract and employ local, women, and minority candidates on projects in the areas where construction is present. We are experienced in attracting, vetting and presenting qualified candidates for many types of construction projects. We have been successful in identifying local resources, contractors, vendors and labor force professionals for private clients as well as several New York City agencies, including the Port Authority of New York & New Jersey, and the Metropolitan Transportation Authority through management or oversight contracts, as well as New York State agencies the Dormitory Authority – State of New York (DASNY), and the NYS Office of General Services (OGS).

McKissack is currently providing Employment Program Management Services for projects which fall under Federal Grant, CDBG-DR HUD-Section 3 and Housing Trust Fund Corporation (HTFC) regulations, which include DASNY Recreate NY Smart Home Project, NYC EDC Rockaway Boardwalk Reconstruction, NY Rising Damage Assessments and Property Maintenance Services and Governor's Office of Storm Recovery Section 3 Program Management. For these projects, we customized a geographic action plan and process for community involvement and enhancement of ongoing workforce development for the specific areas.

The Section 3 Program addresses and includes: specific trade opportunities for low income individuals and Business Concerns; employment referral process; methods to liaise with Trade Unions and Associations; potential partnerships with community based/job readiness/training organizations; community outreach events, seminars and open houses; key stakeholder engagement; and program reporting procedures and measurement mechanisms. We work in accordance with the construction management team to assess and forecast hiring plans for the project. We are actively providing job opportunities to local individuals at our employment centers and field offices and referring others who do not qualify to organizations that can provide employment assistance. We maintain and house project databases containing interested persons and businesses that meet project requirements, for referrals to contractors and vendors working on our projects. McKissack is involved in all monthly, quarterly and annual reporting to ensure project compliance and will keep these files on record for the required five years.

McKissack is as passionate about solving our clients' problems and helping them explore new opportunities as we are about providing opportunities to M/WBE firms and workers from traditionally under-served communities. The firm's rich history gives it a sensitivity that enables us to celebrate cultural, race, gender, sexual orientation, gender identity and other individual and community differences - and to capitalize on the power and resilience that diversity engenders.

McKissack is providing Diversity Consulting Services on several large projects in NYC.

- Henry J. Carter Hospital
- Harlem Hospital
- Mother Clara Hale Bus Depot
- Adam Clayton Powell Office Building
- Columbia University Manhattanville Development
- Henry J. Carter Specialty Hospital Goldwater North



Proposal for Leasing the Manhattan & Brooklyn Cruise Terminals

- NYCEDC/NYCDEP Green Infrastructure
- NYCEDC Rockaway Boardwalk
- NYCEDC West Thames Bridge
- Kingsbridge National Ice Center
- Studio Museum of Harlem
- WTC Transportation Hub/Retail
- Government Office of Storm Recovery

Each is a major construction project with extensive M/WBE and/or MWL workforce development requirements.

McKissack's Office of Community Employment has worked successfully for several agencies, including:

- Port Authority of New York & New Jersey
- NYC Economic Development Corporation
- Metropolitan Transportation Authority
- Dormitory Authority – State of New York
- NYS Office of General Services
- City University of New York

These projects represent the exact mix of professional construction management services and capacity to manage the M/WBE utilization, workforce development and community-oriented project goals.

EXHIBIT L

HIRENYC CONSTRUCTION

EXHIBIT L

HIRENYC

HireNYC: Construction applies to all contracts related to Tenant's Construction Activities (as defined below) for goods, services, and construction with a value of \$1,000,000 or more. With respect to this program, "Construction Activities" are any endeavors, actions and processes undertaken in furtherance of the project (i) to improve, alter, build or demolish the Manhattan Cruise Terminal; (ii) as a prerequisite to improve, alter, build, or demolish the Premises; or (iii) to facilitate, monitor or supervise the improvement, alteration, building or demolition of the Premises.

The requirements of HireNYC: Construction do not limit Tenant's ability to assess the qualifications of prospective workers or to make final hiring and retention decisions. The program does not require Tenant to employ any particular worker.

HireNYC: Construction will apply to Tenant and its successors and assigns. Consistent with these obligations, Tenant will also incorporate the requirements of HireNYC: Construction into all contracts related to Construction Activities for goods, services and construction with a value of \$1,000,000 or more between Tenant and any contractor and will require its contractors to include the requirements in their subcontracts with a value of \$1,000,000 or more.

Tenant will participate in HireNYC: Construction from the time it enters into its initial contract for Construction Activities until the end of the Construction Activities. After or near the end of the Construction Activities, Tenant will transition into HireNYC: Permanent, applicable to permanent positions.

I. HireNYC: Construction Requirements.

- a. Enrollment. Tenant must enroll in the program through the HireNYC portal (http://www.nyc.gov/html/sbs/wf1/html/contact/targeted_hiring.shtml) within 20 business days of full execution of the Lease. Tenant will provide information about its Project, designate a primary contact and state whether it intends to hire for any entry to mid-level job opportunities arising from Construction Activities related to the Lease that are located in New York City, and, if so, the approximate start date of the first hire. For the purposes of HireNYC: Construction "entry to mid-level job opportunities" are employment opportunities that require, as determined by the New York State Department of Labor,¹ any of the following minimum levels of education: less than a high school diploma, a high school diploma or equivalent, postsecondary non-degree award, some college, no degree or an associate's degree.
- b. Job Recruitment Requirements.

¹ See Columns F and G of <https://labor.ny.gov/stats/2012-2022-NYS-Employment-Prospects.xls>.

- i. Tenant must update the HireNYC portal with:
 - all new and replacement entry to mid-level job opportunities arising from Construction Activities related to the Lease that are located in the City, if any,
 - the requirements of the jobs to be filled,
 - the number of positions,
 - the anticipated schedule of initiating the hiring process for these positions, and
 - the contact information for Tenant's representative charged with overseeing hiring.
- ii. Tenant must provide this information for such an entry or mid-level job opportunity no fewer than 30 business days prior to the intended first day of employment for the applicable entry or mid-level position (although Tenant is encouraged to provide that information as early as practicable). With respect to such an available entry or mid-level position, the period beginning on the date that Tenant provides that information and ending on the date 15 business days later will be known as the "Recruitment Period." During the Recruitment Period for an entry or mid-level position, Tenant must exclusively consider and only hire candidates provided by DSBS; provided that, after the tenth business day of that Recruitment Period, DSBS will not send any additional candidates for the applicable position to Tenant for exclusive consideration.
- iii. At the request of DSBS, Tenant will also be required to provide information on Tenant's construction schedule for Project milestones, deadlines or delivery dates and expected new hiring required, which information may be used by DSBS to create a tailored recruitment plan.
- iv. DSBS will screen applicants based on Tenant's employment requirements and refer applicants whom DSBS believes are qualified to Tenant for interviews. Tenant must interview referred applicants whom it believes are qualified for the available position.
- v. After completing an interview of a candidate referred through HireNYC: Construction, Tenant must provide feedback through the portal within 20 business days to indicate whether the candidate was hired. If a candidate is not interviewed, Tenant must provide information on why such candidate was not qualified for consideration within 20 business days of the candidate's referral. In addition, Tenant

must provide the start date of and compensation for new hires, and additional information reasonably requested by DSBS about such hires, within 20 business days after the start date.

- vi. This Section I(b) shall not apply to positions that Tenant intends to fill with employees employed pursuant to the job retention provision of Section 22-505 of the Administrative Code of the City of New York (the “Building Service Code”). Tenant shall not be required to report such openings through the HireNYC portal. However, Tenant shall enroll through the HireNYC portal pursuant to section I(a), above, and, if additional positions that are not governed by the Building Service Code subsequently become open, the provisions of this Section I(b) will apply.
- c. Reporting Requirements. In the event Tenant does not have any job openings covered by HireNYC: Construction in any given year, Tenant must provide an annual update through the HireNYC portal to that effect. For this purpose, the reporting year will run from the date of the full execution of the Lease and each anniversary date, until the end of the Project’s Construction Activities.²

II. Construction Requirements.

- a. Tenant’s construction contractors or consultants must comply with HireNYC: Construction requirements set forth above for all non-trades jobs (e.g., for an administrative position arising out of the work of the Construction Activities and located in the City) and for all nonunion trade jobs as set forth above.
- b. In addition, Tenant’s construction contractors or consultants shall reasonably cooperate with DSBS and the [NYCEDC] on specific outreach events, including Hire on the Spot events, for the hiring of trades workers for the work of this Project.

III. Breach and Liquidated Damages.

- a. If Tenant or its contractors or their subcontractors fail to comply with the terms of HireNYC: Construction (1) by not enrolling its business through the HireNYC portal; (2) by not informing DSBS through the HireNYC portal, as required, of open positions; or (3) by failing to interview a qualified candidate, NYCEDC may assess liquidated damages in the amount of \$2,500 per breach. For all other events of noncompliance with the terms of HireNYC: Construction, NYCEDC may assess liquidated damages in the amount of \$500 per breach.

² In the event that this Project includes a federal funding agreement, additional reporting and federal hiring requirements may apply.

- b. The failure of Tenant or its contractors or their subcontractors to interview a qualified candidate will be determined by NYCEDC in its sole discretion based on factors such as, and without limitation, the information provided through the HireNYC portal, the recruitment plan, if any, and an assessment of whether Tenant or its contractors or their subcontractors acted in good faith with respect to a referred candidate. If no reason is provided for failing to interview a referred candidate or if only insufficient information is provided within 20 business days of a candidate's referral, then such candidate will be deemed to be qualified (and liquidated damages may apply). Regardless as to the number of candidates that Tenant may fail to interview for a particular job opening, no more than five candidates will be used to calculate the total amount of liquidated damages attributable to that job opening.
- c. In the event Tenant or its contractors or their subcontractors breaches the requirements of HireNYC: Construction during the term of the Lease, NYCEDC may hold the Tenant in default.

EXHIBIT M

HIRENYC PERMANENT

HIRENYC: PERMANENT

NYCEDC recognizes the importance of creating employment opportunities for low-income persons, enabling them to participate in the City's economic growth. To this end, NYCEDC has developed the HireNYC Program. The program requires **Developer** to use good faith efforts to achieve the hiring and workforce development goals and perform the requirements of NYCEDC's HireNYC Program set forth below.

The Designated City Agency by NYCEDC will assist **Developer** in implementing the HireNYC Program including the screening of candidates from the target population ("Target Population") defined as persons who have an income that is below two hundred percent (200%) of the poverty level as determined by the New York City Center for Economic Opportunity (a description of the income level meeting this threshold for each household size is available at http://www.nyc.gov/html/ceo/downloads/pdf/ceo_poverty_measure_2005_2013.pdf).

The HireNYC Program will be in effect for a period of eight (8) years from the commencement of the first business operations in connection with the project ("HireNYC Program Term").

HireNYC Program will apply to **Developer**, its successors and assigns, and to all tenants (which term also includes subtenants) at the project location during the HireNYC Permanent Program Term.

Goals. HireNYC Program requires the following hiring and workforce development goals (collectively, the "Goals"):

- | | |
|-------------------|--|
| Hiring Goal: | Fifty percent (50%) of all new permanent jobs created in connection with the project (including jobs created by contractors and subcontractors) will be filled by members of the Target Population referred by the Designated City Agency for a period beginning, for each employer, at commencement of business operations in connection with the project and continuing through the end of the HireNYC Program Term. Notwithstanding the foregoing, the Hiring Goal shall only apply to hiring on occasions when Developer , its successors and assigns, and all tenants and subtenants, is hiring for five (5) or more permanent jobs. |
| Retention Goal: | Forty percent (40%) of all employees whose hiring satisfied the Hiring Goal will be retained for at least nine (9) months from date of hire. |
| Advancement Goal: | Thirty percent (30%) of all employees whose hiring satisfied the Hiring Goal will be promoted to a higher paid position within one (1) year of date of hire. |
| Training Goal: | Cooperation with NYCEDC and the Designated City Agency to provide skills-training or higher education opportunities to members of the Target Population. |

- I. Program Requirements. HireNYC Program includes all of the following requirements:

1. Designation of a workforce development liaison by **Developer** to interact with NYCEDC and the Designated City Agency during the course of the HireNYC Program.

2. **Developer** shall do all of the following:
 - a. use good faith efforts to achieve the Goals;
 - b. notify NYCEDC six (6) weeks prior to commencing business operations;
 - c. with respect to initial hiring for any new permanent jobs associated with the commencement of business in connection with the project (but only if initial hiring is for five (5) or more permanent jobs):
 - (i) provide NYCEDC and the Designated City Agency with the approximate number and type of jobs that will become available, and for each job type a description of the basic job qualifications, at least three (3) months before commencing hiring; and
 - (ii) consider only applicants referred by the Designated City Agency for the first ten (10) business days, until the Hiring Goal is achieved or until all open positions are filled, whichever occurs first;
 - d. with respect to ongoing hiring on occasions when hiring for five (5) or more permanent jobs:
 - (i) provide NYCEDC and the Designated City Agency with the approximate number and type of jobs that will become available, and for each job type a description of the basic job qualifications, at least one (1) month before commencing hiring or as soon as information is available, but in all cases not later than one (1) week before commencing hiring; and
 - (ii) consider only applicants referred by the Designated City Agency for the first five business days, until the Hiring Goal is achieved or until all open positions are filled, whichever occurs first;
 - e. notify NYCEDC thirty (30) days prior to execution of any contract with a contractor or subcontractor in connection with the project;
 - f. provide NYCEDC with one (1) electronic copy of all contractor and subcontractor contracts in connection with the project within fifteen (15) days of execution;
 - g. submit to NYCEDC quarterly HireNYC Employment Reports in the form provided by NYCEDC;
 - h. cooperate with annual site visits and, if requested by NYCEDC, employee satisfaction surveys relating to employee experience with the HireNYC Program;
 - i. provide information related to the HireNYC Program and the hiring process to NYCEDC upon request; and
 - j. allow information collected by NYCEDC and the Designated City Agency to be included in public communications, including press releases and other media events.

II. General Requirements. **Developer** must also comply with all of the following general requirements:

1. **Developer's** HireNYC Program requirements and goals apply to **Developer**, its successors and assigns, and all tenants and subtenants in connection with the project during the HireNYC Program Term. **Developer** is required to incorporate the terms of the HireNYC Program into all tenant and subtenant leases obligating tenants and subtenants to comply with the Goals and other requirements of the HireNYC Program to the same extent as **Developer** is required to comply with such Goals and other requirements.
2. Enforcement. In the event NYCEDC determines that Respondent, its tenants or subtenants, have violated any of Respondent's HireNYC Program requirements, including, without limitation, a determination that Respondent, its tenants or subtenants, have failed to use good faith efforts to fulfill the Goals, NYCEDC may (1) assess liquidated damages set forth immediately below; and/or (2) assert any other right or remedy it has under the project agreement to which Respondent's HireNYC Program applies.
3. Liquidated Damages. If Respondent, its tenants or subtenants, do any of the following:

(i) fail to comply with their obligations set forth in Section II(2) clauses (a)(with respect to the Hiring Goal), (c), and/or (d), and as a result the Designated City Agency was unable to refer applicants or participate in the hiring process as required by the program; or

(ii) fail to comply with their obligations set forth in Section II(2) clauses, (f), (g), (h), (i), and/or (j) and such failure shall continue for a period of thirty (30) days after receipt of notice from NYCEDC, then, in the case of clause (i), NYCEDC may assess liquidated damages in the amount of \$2,500 for each position for which the Designated City Agency was unable to refer applicants or otherwise participate in hiring as required by the program; and in the case of clause (ii), NYCEDC may assess damages for breach of each requirement in the amount of \$1,000. In view of the difficulty of accurately ascertaining the loss which NYCEDC will suffer by reason of Respondent's failure to comply with program requirements, the foregoing amounts are hereby fixed and agreed as the liquidated damages that NYCEDC will suffer by reason of such failure, and not as a penalty.

Respondent shall be liable for and shall pay to NYCEDC all damages assessed against Respondent, any tenant or subtenant at the project upon receipt of demand from NYCEDC.



Proposal for Leasing the Manhattan & Brooklyn Cruise Terminals

XI. HIRENYC: PERMANENT

Program Goals and Requirements

Ports America has designated McKissack as its workforce development liaison to interact with NYCEDC and its Designated City Agency during the course of the HireNYC Permanent Program. Our team understands the importance of this Program to help create jobs that pay well and provide access to long term employment and economic resilience for low-income residents. One of the goals of the program is to address these difficult challenges and create an effective system that ensures that low-income residents have the skills needed to attain and keep employment.

The Project Team will develop a Program which provides services to traditionally under-served populations (i.e. the “Targeted Population” – displaced workers, unemployed and underemployed individuals) as determined by the New York City Center for Economic Opportunity. The program will offer a broad range of workforce development services for construction personnel, skilled and non-skilled labor, entry-mid level positions and administrative support. We will establish and increase working relationships with community-based organizations, City employment agencies and non-profits regarding workforce development and improved job readiness and training, with a focus to prepare individuals for future opportunities in construction, terminal operations and supportive areas of employment. Our program will address the greater needs of the client, tenants and the community with a full complement of resources and partnerships.

The Project Team will complete the following tasks in order to demonstrate good faith efforts as it pertains to requirements for the HireNYC Permanent Program:

- Send notices of job availability to NYCEDC and its Designated Agencies recruitment sources and trade organizations or other community groups that are capable of referring applicants, including Workforce 1, the Department of Labor and NYCHA, etc.
- Send NYCEDC and its Designated Agencies the number of available jobs and description of the positions
- Include a statement in all advertisements and solicitations to encourage eligible candidates to apply
- Advertise employment opportunities in local papers, project websites, job boards, field offices, community organizations and/or major circulators.
- Maintain a database of candidates from the targeted population who have applied for employment
- Maintain a list of applicant referrals and status of candidates
- Support for community outreach events and workshops
- Support project sponsored training programs and referrals to external job readiness programs

Program Objectives

- Act as a labor resource for contractors, consultants, suppliers, subtenants and vendors
- Enroll in the employment program through the HireNYC portal
- Promote and advertise, whenever possible, opportunities for applicants to acquire training, construction trade and non-construction positions
- Regularly provide information about project employment opportunities for any entry to mid-level job opportunities to NYCEDC and its Designated Agencies

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- Notify NYCEDC of all tenant and subtenant leases
- Attend Manhattan and Brooklyn Community Board meetings, as needed
- Prescreen and assess employment candidates
- Provide referrals for training, educational and technical courses
- Partner with community based organizations for training programs, outreach and networking events for hiring trade and non-trade workers
- Collaborate with the Department of Small Business Services and the NYCEDC on specific outreach events, including Hire on the Spot events
- Maintain HireNYC Employment Reports
- Cooperate with annual Site visits
- Adherence to all compliance and workforce reporting

Program Implementation

The Workforce Development Liaison will conduct regular orientation meetings that consist of comprehensive analysis and evaluation of the tenants and subtenant’s compliance with HireNYC Permanent Program. The Workforce Development Liaison will serve as a resource for the project team and will monitor and maintain comprehensive documentation of the obligations and requirements for the HireNYC Permanent Program. Such documentation includes, but is not limited to:

- Contractual Agreements
- Leases
- Advertisement for employment opportunities
- Employment Reports
- Retention Reports
- Training Programs
- Good Faith Effort Log

To ensure we collaborate effectively with the tenants and subtenants, when identifying open positions, the project team will strive to comply with the goals established in this section. We will partner with NYCEDC Designated Agencies, Workforce 1 and other employment development groups to create and implement public outreach events to identify and solicit candidates that are qualified and interested in working on the project. Workers enrolled in the program will be recruited through multiple sources. Participants for employment are provided with referrals for sustainable employment and quality educational courses which promote self-sufficiency and meet employers’ needs. Participants in the program will obtain supportive services for successful completion of programs and entry into productive employment with opportunities for advancement.

All tenants and subtenants will be required to submit a HireNYC Employment Plan. This Plan includes a forecast for entry-mid level positions, administrative support and potential training opportunities. The numerical goals established in this section represent minimum numerical targets:

Hiring Goal	50%
Retention Goal	40%
Advancement Goal	30%

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Training Goal	15%
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For the duration of the program, we will interview, vet and assess applicant’s credentials and refer these individuals to facility tenants.

The Project Team will develop a strategy through all forms of outreach to include advertising through local based businesses, community board meetings, community based organizations, not-for-profit agencies aimed at advancing workforce, political representatives and community workforce leadership, to maximize announcements of employment. We will present a plan to schedule presentations and meetings with NYCEDC and its Designated Agencies to evaluate the Program, review internal applicant databases, hiring resources and compliance reporting. We will also utilize these meetings to discuss alternative procedures and new strategies to improve Program results.

To support the HireNYC Permanent Program, our team will utilize public outreach methods and techniques to ensure public participation and project transparency. Methods and techniques will include, but are not limited to: public informational or outreach meetings; workshops; discussion groups; surveys; and public meetings and hearings. Public participation will occur early and consistently throughout the process. We will prepare, update and maintain a community contact list that includes the names, addresses, telephone numbers, and e-mail addresses of individuals and organizations with a stake in the proposed action, to be used on a regular basis to keep the contacts informed of progress on the plan.

In an effort to provide local economic development, neighborhood economic improvement and individual self-sufficiency, we plan to contact and have the notices broadly distributed in the surrounding communities to assist in providing information to qualified candidates and businesses interested in participating in the program. We will advertise project opportunities via newspaper, project websites, e-blasts mailings, posting notices in the community and at the field office that provide general information about the project requirements. We will contact the County or Municipal Agencies, employment assistance agencies, training programs and Veterans programs and community and religious organizations to inform them of project opportunities and to request their assistance in identifying eligible candidates and small businesses.

Outreach and Partnership Associations
HireNYC Agencies
NYCEDC Employment Opportunities Program
U.S. Dept. of Housing and Urban Development NY Local Office
New York City Housing Authority
New York City Board of Education – Adult Education Programs
Workforce 1
Brooklyn Workforce Innovations
St. Nicks Alliance
Goodwill Industries of Greater New York, Inc.
Fortune Society
Green City Force
Sanctuary for Families
The Center for Children and Families - Strive International Program
Hellenic American Neighborhood Action Committee (HANAC)
Non-traditional Employment for Women (NEW)
Jobs First
Proprietary Databases



Proposal for Leasing the Manhattan & Brooklyn Cruise Terminals

We have long-standing working relationships with non-profit organizations and agencies. Among our contacts are organizations that serve housing authority residents, training programs and social service agencies. We have working relationships with technical certification programs offering innovative coursework focused on providing targeted training for the construction sector as well as administrative roles. We will also work with the project team to customize specific training and educational programs for the community. We will be proactive to ensure and direct eligible candidates to continued training and employment programs as opportunities are made known of these established programs.

In addition to partnerships with community based/job placement organizations, we would like to work with NYCEDC to connect applicants to educational and training opportunities, some ideas include:

- Entry Level Construction 101 for Individuals
 - Construction Management - What does it mean?
 - Construction 101 – The basics
 - Trades Development: Carpentry, Drywall Skills and Credentials
 - How to position yourself for construction employment opportunities
 - OSHA Training
- Understanding Human Service
- New technologies in construction & engineering
- Computer Basics

EXHIBIT N

CONSTRUCTION SCHEDULE

EXHIBIT O

CUSTOMER AGREEMENTS

NEW YORK CRUISE TERMINALS USAGE AGREEMENT

THIS CRUISE TERMINAL USAGE AGREEMENT (this "Agreement"), dated as of June 25, 2004 between NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION ("NYCEDC"), a local development corporation formed pursuant to Section 1411 of the Not-for-Profit Corporation Law of the State of New York, whose mailing address is 110 William Street, New York, New York 10038 and NCL (Bahamas) Ltd. d/b/a NCL ("NCL"), a company organized and existing under the laws of Bermuda, whose mailing address is 7665 Corporate Center Drive, Miami, Florida 33126. NYCEDC and NCL will be collectively referred to herein as the "Parties."

WITNESSETH:

WHEREAS, The City of New York (the "City") believes that it is in the best interests of its citizens to promote and foster the growth of the cruise industry operating from the City's cruise terminals; and

WHEREAS, the cruise industry would like to further grow and expand its business coming through the City's passenger cruise terminals; and

WHEREAS, the City is the owner of the premises currently known as the Passenger Ship Terminal (the "PST"), a Hudson River waterfront facility consisting generally of Piers 88, 90 and 92 in the Borough of Manhattan; and

WHEREAS, pursuant to the annual amended and restated maritime contract between the City and New York City Economic Development Corporation ("NYCEDC"), dated as of June 30, 2003 (as amended from time to time, the "Maritime Contract"), the City has retained NYCEDC to

engage in, inter alia, various activities intended to promote the economic development of the City's waterfront, including the operation and management of the PST and such other passenger ship terminals that the City may develop; and

WHEREAS, pursuant to that certain Operating and Reimbursement Agreement dated as of December 31, 1996, as amended from time to time (the "Operating Agreement") between P&O Ports North America, Inc. ("P&O") and NYCEDC, NYCEDC retained P&O to operate, maintain and manage the PST; and

WHEREAS, the City, with assistance from NYCEDC, is negotiating to obtain, through leasehold or fee title, and develop an additional initial cruise terminal to be located at the premises currently known as Pier 12 in Brooklyn, New York (the "Brooklyn Terminal"); and

WHEREAS, the PST and Brooklyn Terminal will be managed and operated collectively as the "New York Cruise Terminals"; and

WHEREAS, the NYCEDC has developed a long-term Master Plan for the future development and redevelopment of the New York Cruise Terminals to meet the needs of the cruise industry; and

WHEREAS, the long term Master Plan includes an initial set of improvements to the New York Cruise Terminals to provide for the needs of the cruise industry over the next ten years (the "Phase I Improvements"); and

WHEREAS, NCL, owns, manages and/or operates, directly or indirectly, cruise vessels, on its behalf, or on behalf of its parent, subsidiary, affiliate, or related beneficially-owned party (such parties collectively, the "NCL Lines") from the City to meet the needs of its customers; and

WHEREAS, NCL desires to continue using the City's cruise facilities to meet the needs of its customers; and

WHEREAS, the Parties agree that it is in their mutual interest to implement the development of the Master Plan for the City's cruise facilities; and

WHEREAS, the Parties entered into a Cruise Utilization Letter of Intent ("LOI"), dated as of April 19, 2004, setting forth the principal terms and conditions to be contained in an agreement between NCL and NYCEDC; and

WHEREAS, the Parties now desire to enter into this Agreement, containing such terms and conditions as set forth in the LOI, and such other terms and conditions as have been agreed to by the Parties.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, the Parties do hereby mutually agree and bind themselves as follows:

Section 1. Design and Construction of Improvements

- (a) Phase I Improvements. Subject to Section 1(e) of this Agreement, NYCEDC agrees to develop, finance, construct and operate the Phase I Improvements of the Master Plan substantially as described in Exhibit A, and which consist generally of the following key components:
 - (i) The development of a phased construction program. Phase I Improvements will consist of development of a total of 4 berths and accompanying terminals. The terminals will be located and will be capable of handling cruise ships as follows:

- (A) The redevelopment of the City's current PST to accommodate three Panamax berths (the "New PST Berths"). All berths and terminals will be capable of handling a 1,000 foot long vessel each.
 - (B) The construction of a berth and accompanying terminal at the Brooklyn Terminal, capable of handling vessels over 1,000 feet long.
 - (ii) Mutually agreed-upon renovations to the surrounding roadwork, ground transportation area, pedestrian crossovers, curbside areas and sidewalks around the New York Cruise Terminals to ease traffic and congestion.
- (b) Costs. Subject to Section 1(e) of this Agreement, NYCEDC will be responsible for all of the capital costs associated with the Phase I Improvements, in an amount not to exceed \$150 million. NYCEDC or its subcontractors will also be responsible for the operation and maintenance of the Phase I Improvements (including annual maintenance dredging), utilities and all other customary costs of maintaining a port and its facilities. These costs exclude any utilities or activities that are dedicated solely to the use of NCL, such as the purchase of water for its ships, or its telecommunications costs, etc.
- (c) Future Improvements. The Parties acknowledge that the Term (as hereinafter defined) of this Agreement, the scope of the Phase I Improvements and the financial arrangements described in this Agreement are designed to meet the projected needs of the cruise industry over the term of this Agreement. These projections are based in part on the estimates provided to NYCEDC by NCL during the negotiation of the LOI and this Agreement. Should faster growth occur, causing the need for acceleration of capacity improvements currently envisioned for subsequent phases of the long-term Master Plan, and should

revenues not be sufficient to support such needed capital program, the Parties agree to negotiate in good faith to amend this Agreement to accommodate, financially and operationally, such accelerated growth.

(d) Schedule. Subject to NYCEDC Executive Committee approval of the individual design contracts, the design of the New York Cruise Terminals will begin promptly and will proceed as expeditiously as possible, it being NYCEDC's intention to commence construction of the Phase I Improvements at both the PST and Brooklyn Terminal within 14 months from the date hereof, subject to receipt of required permits and approvals. NYCEDC will endeavor to complete the Phase I Improvements by no later than April 1, 2009 (the "Completion Deadline"). A detailed schedule for the construction of the Phase I Improvements, subject to the contingencies set forth in Section 1(e) below, is attached hereto as Exhibit B. In the event of any delay in completing the Phase I Improvements that results in NYCEDC's inability or failure to meet the Completion Deadline, then for each month (or any portion of a month) of delay after the Completion Deadline, the Term of this Agreement shall be automatically extended by an amount equal to two (2) times the number of months (or portion of any month) of such delay.

(e) Contingencies.

(i) Permits and Title. NYCEDC will proceed to secure the necessary permits, licenses and approvals for the completion of the Phase I Improvements in a timely manner. NCL acknowledges that the development of the Brooklyn Terminal is further subject to the City's ability to obtain leasehold or fee title thereto, which NYCEDC will use commercially reasonable efforts to assist the City in obtaining, and that certain of the Phase I Improvements, both at the Brooklyn Terminal and at the PST, will be

subject to receipt of governmental permits and approvals, which NYCEDC will use commercially reasonable efforts to obtain. If, despite the City's and NYCEDC's efforts, leasehold or fee title to the Brooklyn Terminal is not obtained or the necessary permits or approvals at either the PST or the Brooklyn Terminal are not granted, the Parties agree to evaluate alternative development options to accommodate the projected traffic, and incorporate the same into the Phase I Improvements. Notwithstanding the foregoing sentence, however, other than with respect to any scale-back of plans due to NYCEDC's inability to obtain the permits or approvals required for the necessary dolphin extension for construction of a super berth, to the extent that such alternative development options would materially and adversely affect NCL's operations and its ability to accommodate projected traffic at the New York Cruise Terminals, as determined by mutual agreement of the Parties, then NCL may, upon notice as set forth in Section 13 hereof, terminate this Agreement.

- (ii) Funding. For the period commencing on the date hereof through and including June 30, 2008 (the "Funding Deadline"), NYCEDC's obligation to develop, pay for and construct the Phase I Improvements pursuant to this Agreement is subject to and contingent upon the appropriation and availability to NYCEDC of the necessary City capital funds in the City's capital budget. By the Funding Deadline, if NYCEDC does not receive funding or is unable to provide confirmation of funding for the Phase I Improvements, NYCEDC must provide notice to NCL that funding will not be available. The failure of NYCEDC to receive such funds from the City, on or before the Funding Deadline, shall be deemed to be the failure of an essential condition for NYCEDC's obligations hereunder, and NCL shall not commence any action or proceeding

against NYCEDC arising out of the failure of this condition. If NYCEDC is unable to secure such funding for the construction of the Phase I Improvements, then NCL may, upon notice, terminate this Agreement pursuant to Section 13 hereof.

- (f) Oversight Committee. NYCEDC will form an oversight committee (the "Committee") composed of NYCEDC, NCL, other cruise line users and other parties as determined by NYCEDC. All cruise line corporate entities that enter into long-term cruise utilization agreements with NYCEDC will have their ideas considered equally on the Oversight Committee. The Committee will meet to review the progress of the design work and provide comments and recommendations to NYCEDC at the following stages of the design process: (i) Master Plan (including the timetable and scheduling of the construction), (ii) Schematic Design, (iii) Design Development, and (iv) Construction Documents. NYCEDC will seek NCL's endorsement of the design during submittals of items (i) through (iii) with respect to its Preferential Berths (as hereinafter defined). NYCEDC will from time to time submit to NCL and the Committee plans and documents at each of the stages of design set forth in (i) through (iii) above for NCL's review and comment. NCL will submit its comments and/or recommendations in writing within ten (10) days after receipt of the plans from NYCEDC. If NCL fails to submit comments in writing within such 10 day period, such plans as presented by NYCEDC shall be deemed approved by NCL. NCL agrees that it will not use such endorsement rights to tailor the Phase I Improvements solely to NCL's needs. NYCEDC will endeavor to provide for the specific needs of NCL, as requested in writing by NCL, at its designated Preferential Berth, provided that the request is submitted at an appropriate time in the design process, and the requested elements can be included within the budget established for the Phase I Improvements and do not compromise the terminal for use by other cruise lines. To the extent any

suggested changes by NCL relate solely to preferences or facilities dedicated solely to NCL rather than to cruise operators generally, and the same would result in a material increase to the budget for the Phase I Improvements, NCL agrees that it will in good faith renegotiate the Facility Charges and/or Passenger Facility Charges (as such terms are hereinafter defined) in order to mitigate such increased costs. NYCEDC agrees that it shall consult with NCL and other cruise lines that have entered into similar preferential berthing agreements and are using the PST in an effort to minimize relocation of their vessels and accommodate, to the extent practicable, the ongoing operational needs of NCL and such other cruise lines during construction of the Phase I Improvements.

Section 2. Term

The term of this Agreement shall commence upon the date hereof and shall terminate on December 31, 2017, subject to the Parties' termination rights as set forth herein.

Section 3. Exclusivity

During the Term of this Agreement, NCL shall not be permitted to dock any of its vessels at or use any other port in the New York-New Jersey harbor area, except (i) by mutual agreement between NYCEDC and NCL or (ii) if NYCEDC cannot provide available berths at the New York Cruise Terminals.

Section 4. Performance Guarantees

(a) Definitions.

- a. "Annual Projected Traffic" for the calendar year commencing on January 1, 2005 through the completion of the Term shall be calculated as shown on Exhibit C.

- b. "Base Passenger Level" shall be [REDACTED] the Annual Projected Traffic.
- c. "Annual GRT" for the calendar year commencing on January 1, 2005 through the completion of the Term shall be calculated as shown on Exhibit C.
- d. "Base GRT" shall be [REDACTED] the Annual GRT.

(b) Calculation of Performance Guarantees. For each year of the Term of this Agreement, NCL will guarantee a payment amount (inclusive of amounts paid to P&O or such successor terminal operator as NYCEDC may designate (whichever, the "Terminal Operator")) equal to the sum of (i) the Base Passenger Level multiplied by the 2005 Wharfage Rate (as hereinafter defined) plus (ii) the Base GRT multiplied by the 2005 Dockage Rate (as hereinafter defined)(the "Annual Guarantee"). Any shortfall resulting from actual numbers below the Annual Guarantee will be paid by NCL within 90 days of the end of the applicable Term year (the "Shortfall Payment").

(i) Assistance to Mitigate If extraordinary circumstances (which are unforeseen and beyond NCL's control) arise which would result in a Shortfall Payment, and NCL has used its best efforts to avoid such situation, then NYCEDC may take commercially reasonable action to assist NCL in (i) removing or mitigating these circumstances and (ii) meeting NCL's payment obligation with respect to the Annual Guarantee. To the extent that NYCEDC takes any such action on behalf of NCL or NCL takes such mitigation action itself, and either NCL or NYCEDC receives payments as a direct result of such mitigation actions (the nature of such mitigation actions being further clarified below), then NYCEDC shall apply such payments it receives and, to the extent NCL has received

such payments and remitted them to NYCEDC, then NYCEDC shall apply such NCL payments, against any amounts due with respect to the Annual Guarantee. For purposes of clarification, NYCEDC shall apply payments it receives for use of the New York Cruise Terminals against amounts owed by NCL with respect to the Annual Guarantee only if, as a result of NCL's ongoing inability to provide the passenger volumes contemplated in this Agreement, NYCEDC is able to fill NCL's unused berth(s) with any user that would provide for any incremental business at the New York Cruise Terminals.

(ii) **Force Majeure** NCL may be excused from performing any of its respective duties, obligations or undertakings under this Agreement (including but not limited to monetary or otherwise) in the event and so long as the performance of such duty, obligation or undertaking regarding cruise operations in the City is unreasonably prevented or delayed by an Act of God, epidemic, fire, hurricane, tornado, earthquake, flood, explosion, action of civil commotion or terrorism, sabotage, strike, lockout or action of labor unions (provided such strike, lockout or labor union action occurs at the New York Cruise Terminals) condemnations, governmental restriction, order of civil or military or naval authorities, embargo, disputes, or impossibility of obtaining materials. In the event of an occurrence as described above, NCL will be entitled to an extension hereunder, and will give written notice to the NYCEDC as soon as may be possible after the occurrence causing such delay of cruise operations in the City, asserting its claim of right to such extension and the reasons therefore.

(iii) Credits

(A) Excess Traffic Credit. If NCL (together with the NCL Lines) shall exceed the Annual Projected Traffic and

Annual GRT for any calendar year during the Term of the Agreement and shall have made full payment of the wharfage and dockage charges for such calendar year, it shall be entitled to a credit in the amount by which its wharfage and dockage payment (excluding any amounts "paid" through a Shortfall Payment Credit (as hereinafter defined)) exceeds the Annual Projected Traffic and Annual GRT payment amount for such year (the "Excess Traffic Credit"). To the extent available as provided hereunder, the Excess Traffic Credit shall begin accruing as of the first year of the Term of this Agreement. The amount of such Excess Traffic Credit that NCL has accrued can be deducted from or offset, on a dollar for dollar basis, the amount of any future payments NCL is required to make on account of a Shortfall Payment, and the amount of such Excess Traffic Credit remaining after such deduction or offset, if any, shall thereupon be reduced accordingly.

- (B) Shortfall Payment Credit. To the extent that there is insufficient Excess Traffic Credit to offset the Shortfall Payment(s) in full, as provided above in Section 4(b)(iii)(A), NCL shall be entitled to a credit in the amount of such Shortfall Payment(s) actually paid (the "Shortfall Payment Credit"). To the extent available as provided hereunder, the Shortfall Payment Credit shall begin accruing as of the first year of the Term of this Agreement. The amount of such Shortfall Payment Credit that NCL has accrued can be deducted from the amount of any future payments NCL owes on account of annual wharfage or dockage charges (as provided in Section 5 below) for any calendar year during the Term where NCL exceeds the Annual Projected Traffic and the Annual GRT.

- (C) To the extent that there is any Excess Traffic Credit or Shortfall Payment Credit remaining at the end of the Term hereof, NCL acknowledges that it shall not be entitled to any refund on account of such unused credits.

Section 5. Facility Charges

The Parties agree to a revised tariff structure whose proceeds will be used to support the capital investment needs and operation of the New York Cruise Terminals throughout the Term of this Agreement. NYCEDC acknowledges that all revenues derived from the tariff increases contemplated herein, to the extent not otherwise used to fund the Phase I Improvements and debt service payments for the Phase I Improvements, shall be reinvested in the development and operation of the New York Cruise Terminals. Payments under this Agreement will be made in the form of facility charges (the "Facility Charges") which consist of (i) the wharfage and dockage amounts received from NCL and the NCL Lines berthing at the New York Cruise Terminals and (ii) the Passenger Facility Charges (the "PFC"), if any, as follows:

- (a) **Wharfage Rate** Beginning January 1, 2005 the wharfage rate applicable to the New York Cruise Terminals for NCL and the NCL Lines will equal \$15.64 per passenger (regardless of cruise duration) each way for a homeport and both ways for a port-of-call. This rate increase and subsequent increases to the wharfage rate (as permitted herein) may be levied via the existing wharfage mechanism set forth in the then-published Rate Schedule or by a separate PFC levied by NYCEDC. The total wharfage rate will consist of all wharfage paid to the Terminal Operator pursuant to the Rate Schedule, plus the PFC levied by NYCEDC, if any (the "Wharfage Rate"). It is agreed and understood that the PFC may only be applicable as a direct offset to amounts otherwise chargeable as wharfage, and that in any event (i) the Wharfage

Rate, inclusive of any PFC, may not exceed the Wharfage Rate that would be chargeable exclusive of any PFC and (ii) a PFC may not be levied or charged in any other manner other than as contemplated under this Section 5(a).

- (b) **Dockage Rate** Beginning January 1, 2005, the New York Cruise Terminals 24-hour dockage rate for each NCL Line vessel will be \$0.10 per Gross Registered Ton of the vessel (the "Dockage Rate").
- (c) **Future Increases** In addition to the changes in the Wharfage Rate and Dockage Rate contemplated in Sections 5(a) and (b) hereof, commencing in calendar year 2006, NYCEDC may increase from time to time the Wharfage Rate and/or the Dockage Rate, provided that no such increase shall be in excess of three percent (3%) per annum (on average over the Term of the Agreement) from the then-existing rate chargeable to NCL. Further, rates may not be increased more than one time in each twelve-month period. NYCEDC shall provide NCL no less than twelve months prior written notice of any such increase. Pursuant to this provision, NYCEDC may implement Wharfage Rate and/or Dockage Rate increases less frequently than annually, in which case at the time it seeks to increase such rate(s) it will be entitled to an annual increase equivalent to the cumulative amount of the increases that would have been permitted for the period of time between increases, so that if NYCEDC does not initiate an increase in the Wharfage Rate for 3 years, it shall be permitted an increase over the then-existing rate equal to 3% compounded annually for the 3 year period.
- (d) **All Facility Charges** will be paid to NYCEDC, its designee or its successors when the existing Operating Agreement with P&O expires or terminates.

Section 6. Preferential Berthing and Berth Requests

Beginning January 1, 2005, and throughout the Term of this Agreement, the City agrees and shall cause NYCEDC, and NYCEDC agrees, to provide preferential berthing to NCL at the PST and to guarantee berthing for other NCL vessels at either the PST or Brooklyn Terminal as follows:

- (a) **Preferential PST Berth** NCL and the NCL Lines will have preferential berthing rights to the use of one berth (the "Preferential Berth") and associated terminal facilities on all days at the PST.
- (b) **Second Preferential PST Berth** NCL and the NCL Lines will have preferential berthing rights to the use of a second berth and associated terminal facilities at the PST (the "Second Preferential Berth," collectively with the Preferential Berth, the "Preferential Berths") on all Sundays, Mondays and Fridays during the Term.

(c) Brooklyn Terminal Option

- (i) Carnival Corporation ("Carnival") has an option to transfer its preferential berthing rights from the PST to the Brooklyn Terminal, which option may be exercised exclusively by Carnival during the "Carnival Option Period" defined as the period terminating the later of (x) December 31, 2005 and (y) the first anniversary of the date upon which the Brooklyn Terminal is safely available for Carnival's beneficial use (the "Carnival Option"). If, at the end of the Carnival Option Period, Carnival has not selected the Brooklyn Terminal as its Second Preferential Berth, then Carnival shall be deemed to have rejected its option to transfer its preferential berthing rights to the Brooklyn Terminal and shall have no further exclusive option to do so. In the event Carnival exercises its

Carnival Option and transfers its preferential berthing rights from the PST to the Brooklyn Terminal, then NCL (and the NCL Lines) shall automatically have use of its Second Preferential Berth at the PST on all days during the Term of this Agreement in the same manner as NCL's first Preferential PST Berth; provided, however, that NCL and the NCL Lines shall continue to have such preferential berthing rights on all days (as opposed to only those days set forth in Section 6(b) above) at the Second Preferential Berth at the PST only to extent and only for so long as NCL and the NCL Lines use such berth in a commercially reasonable manner that balances the needs of NCL's long-term itinerary planning and NYCEDC's need to obtain maximum utilization of the PST berths from year to year.

- (ii) If Carnival does not exercise its Carnival Option, then for a period of twelve (12) months commencing upon the expiration of the Carnival Option, NCL shall have the right to transfer its Second Preferential Berth from the PST to the Brooklyn Terminal (the "NCL Option") by delivering written notice to NYCEDC that it selects the Brooklyn Terminal as its Second Preferential Berth, in which case it will not participate in the shared Second Preferential Berth at the PST. Instead, NCL (and the NCL Lines) will be entitled to preferential berthing rights at the Brooklyn Terminal on all days or, to the extent the Brooklyn Terminal is not available on all days for NCL's (and the NCL Lines') preferential berthing, then at another cruise terminal to be developed, as necessary, in Brooklyn on all days during the remaining years of the Term; provided however, that any alternative cruise terminal developments must be completed for use by NCL or NCL Lines to meet the schedule described below. To the extent NCL selects the Brooklyn Berth as its Second Preferential

Berth, its preferential berthing rights thereat shall begin with the next NCL-submitted Cruise Schedule (as hereinafter defined) (unless the previously-submitted Cruise Schedule has not yet been finalized by NYCEDC or the Terminal Operator, if any). If, at the end of the NCL Option period, NCL has not delivered notice that it has selected the Brooklyn Berth as its Second Preferential Berth, then NCL shall be deemed to have rejected its option to transfer its preferential berthing rights to the Brooklyn Terminal and shall have no further exclusive option to do so under this Agreement, and NYCEDC shall have the right to negotiate preferential use of the Brooklyn Terminal with any third party cruise line seeking its use.

- (d) **Berth Requests** On or prior to June 1, 2004, each of NCL and Carnival (NCL and Carnival collectively, the "Preferred Users"), but no other multi-night cruise line, will submit to NYCEDC its respective annual berth requirements for the fifteen month period beginning the following January 1, and thereafter, on or prior to each June 1 during the Term (beginning June 1, 2005), each of NCL and Carnival will submit its respective annual berth requirements for the twelve month period beginning the following April 1 (its "Cruise Schedule"). The annual berth requirements submitted by NCL (in accordance with the notice provisions set forth in Section 20 hereof) will set forth all berthing requests for the NCL Lines including, but not limited to, those to be assigned to the First Preferential Berth and the Second Preferential Berth. All preferential berth requests submitted by June 1 in the manner provided herein shall be granted in accordance with NCL's preferential berthing rights conferred by this Agreement and will not be changed unless so desired by NCL as provided below. All additional berthing requests of NCL and Carnival submitted by June 1 will also be assigned to NCL and Carnival in accordance with the application of NYCEDC's (or the Terminal Operator's (if

any)) standard cruise-line neutral berthing assignment practices prior to assignments for any other multi-night cruise operator. By June 10 of each year of the Term, NYCEDC will send to NCL (in accordance with the notice provisions set forth in Section 20 hereof) the entire New York Cruise Terminals assigned berth schedule based solely on the Cruise Schedules of NCL and Carnival (and not encompassing any other multi-night cruise line) received on or prior to June 1. During the period from June 10 through June 20 of each year of the Term, each of NCL and Carnival may submit amendments to its respective Cruise Schedule that add, delete or change the itineraries, voyages, ships and/or time of operations of its vessels ("Amendments") to (i) use any unused berths which were not part of the assigned berth schedule sent out June 10 and/or (ii) adjust its already-assigned berths, and such Amendments will be accepted by NYCEDC (and the Terminal Operator (if any)) unless there are conflicts between Amendments submitted by NCL and Carnival (it being understood that in the event of any conflict between the terms of a party's Amendment and the other cruise line's assigned berth schedule sent out on June 10, the other cruise line's June 10 assigned berth schedule will control). All conflicts among the Amendments will be resolved by NYCEDC, first by trying to negotiate in good faith an acceptable solution for both parties, and should that fail, by the application of NYCEDC's (or the Terminal Operator's (if any)) standard cruise-line neutral berthing assignment practices.

During the period from June 10 through June 20, any Amendments sought by NCL that might involve changes to NCL's preferential berthing rights at its Preferential Berths that were locked in at the time of its June 1 berthing submission will not result in NCL's release of such previously requested dates until the final NCL and Carnival schedules have been agreed to by the Preferred Users and published on June 20 (the "Preferred Users Schedule"). By June 30 of each year of the Term, NYCEDC will publish the final berth schedule that will contain all of the berth

assignments as of that date (incorporating in full the Preferred Users Schedule) for all of the cruise lines (including those of other multi-night cruise lines) at the New York Cruise Terminals (the "Final Schedule"). Any amendments to the Final Schedule that NCL or Carnival (or any other cruise line) may submit thereafter shall be treated on a non-preferential basis and will be granted to the extent that the request does not conflict with an existing berth request already submitted by another cruise line or a trade show already scheduled at the associated terminal.

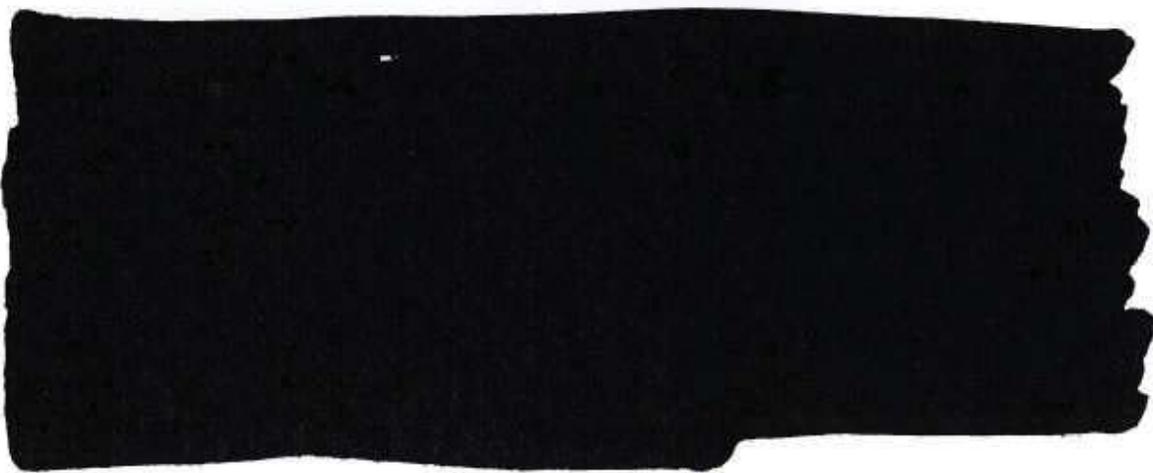
Section 7. Incentives

NYCEDC will provide the following financial incentives to NCL and the NCL Lines to promote the further utilization of the New York Cruise Terminals by NCL and the NCL Lines, thereby maximizing passenger and vessel volumes passing through the New York Cruise Terminals. Beginning January 1, 2005, NCL and the NCL Lines will be entitled to all the following incentives:

[REDACTED]

[REDACTED]

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Section 8. Marketing

The Parties mutually agree to the development of a tourism promotion package to encourage cruise passengers to book pre- or post-cruise hotel packages. The Parties will cooperate to the extent possible to provide in-kind marketing.

Section 9. Provisioning

NCL commits to analyze spending for its purchases of goods and services associated with cruise operations from vendors, providers and labor located within the City and to work with NYCEDC to maximize this spending where commercially feasible over the term of this Agreement.

Section 10. Most Favored Nation

During the Term, NYCEDC will grant NCL "Most Favored Nation" status with respect to the Dockage Rate and Wharfage Rate, and any

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other harbor-related fees and charges under the control of the City, NYCEDC or the Terminal Operator.

Section 11. Other Fees

Other than the fees, tariffs, taxes or charges contemplated by this Agreement, or otherwise provided for in Rate Schedule No. 010182, dated as of December 29, 2003 in the amounts set forth therein (other than the Dockage Rate and Wharfage Rate as is being modified herein, and as can be further modified from time to time as provided herein), neither the City nor NYCEDC shall impose any new fees, tariffs, taxes or charges on NCL or the NCL Lines, for the use of the New York Cruise Terminals by its vessels, it being understood that this provision shall not prevent NYCEDC, the City or the Terminal Operator from imposing (i) new or revised charges for parking and water usage at the New York Cruise Terminals, provided such new or revised parking and water usage charges would be imposed in an equitable manner in relation to all other cruise lines that use the New York Cruise Terminals, and (ii) industry-wide security charges upon cruise lines calling at the New York Cruise Terminals in accordance with decisions taken by members of the Maritime Security Discussion Agreement, F.M.C. Agreement No. 011852-001, as amended, or as otherwise required to comply in full with any and all Homeland Security, U.S. Coast Guard and other federally mandated security procedures; provided, however, that in any case NYCEDC and/or the Terminal Operator's interpretation and implementation of the same must be commensurate with generally accepted industry standards of terminal operators servicing cruise lines within the United States.

Section 12. Insurance and Indemnification

(a) General Insurance Requirements

- (i) Insurance Companies: All insurance required under this Section shall be written with insurance companies authorized and licensed to do business in the State of

New York, which coverage will protect NCL and the NCL Lines from claims set forth below which may arise out of or result from NCL's or the NCL Lines' operations or NCL's undertakings under this Agreement and for which NCL and the NCL Lines and their officers, employees, agents and subcontractors may be legally liable, whether such operations are by NCL or the NCL Lines or an officer, employee, agent or subcontractor or by anyone directly or indirectly employed or hired by any of them, or by anyone for whose acts any of them may be liable, and meeting not less than the minimum requirements shown below. Such insurance is to be provided at the sole cost of NCL.

- (ii) Primary Insurance: All insurance required herein shall be primary.
- (iii) Insurance Certificates: Before this Agreement becomes effective, NCL shall furnish to NYCEDC's risk manager original, manually signed certificates evidencing that it has procured the insurance herein required. NCL shall continue to provide such certificates during the term of this Agreement.
- (iv) Named Insured: Except for the workers' compensation insurance, hull and machinery insurance and P&I insurance, NYCDEC and the City shall be named as an additional insured on all policies required of NCL.
- (v) Waiver of Subrogation: All insurance policies required herein shall provide that the insurers waive any rights of subrogation in favor of NYCEDC.
- (vi) Notice of Cancellation: All policies required herein shall provide for thirty (30) days' written notice of cancellation

or material change shall be sent to NYCDEC in accordance with the notice provisions herein.

- (vii) Deductibles: NCL shall be responsible for all deductibles maintained under any required policy.

- (b) Comprehensive General Liability Insurance. NCL shall procure and maintain at its sole cost and expense comprehensive general liability insurance with limit of liability of not less than 10 million dollars (\$10,000,000) for all injuries or deaths resulting to any one person or from any one occurrence arising out of use or occupancy of the PST or Terminal. The limit of liability for property damage shall be not less than five million dollars (\$5,000,000) for each occurrence and aggregate.

- (c) Comprehensive Motor Vehicle Liability Insurance. NCL shall procure and maintain at its sole cost and expense comprehensive motor vehicle liability insurance which shall include hired car and non-ownership coverage with limit of liability of not less than one million dollars (\$1,000,000) for all injuries or deaths resulting to any one person or from any one occurrence. The limit of liability for property damage shall be not less than one million dollars (\$1,000,000) for each occurrence and aggregate.

- (d) Workers' Compensation Insurance. NCL shall procure and maintain at NCL's sole cost and expense, workers' compensation insurance as will protect NCL from claims under the New York Workers' Compensation Act as well as under the Federal Longshoremen's and Harbor Workers' Compensation Act, if applicable. The limit of liability under the employer's liability section of the workers' compensation insurance policy shall be not less than five hundred thousand dollars (\$500,000). Whenever applicable, protection shall also be provided for liability under the Jones Act and under general maritime law in an amount of not less than five hundred thousand dollars (\$500,000).

If NCL fails to purchase and maintain insurance required hereunder, NYCEDC may, but is not obligated to, purchase such insurance on behalf of NYCEDC and shall be entitled, at NYCEDC's election, to offset the costs thereof from amounts due NCL or to reimbursement by NCL upon demand.

- (e) NCL Indemnification. NCL agrees to indemnify, protect and hold harmless NYCEDC, the City and their agents and employees from and against all suits, actions, claims, demands, damages, losses, penalties or fines, expenses, attorneys' fees, and costs of every kind and description to which NYCEDC, the City and their agents or employees may be subjected which are caused by or arise out of, in whole or in part, the reckless or negligent acts or omissions or intentional misconduct of NCL, an NCL Line or their agents, employees, officers or contractors which arise from, grow out of, or are connected with either (i) the occupancy and use of the New York Cruise Terminals by NCL, an NCL Line or their agents, employees, officers, contractors, subcontractors, invitees or guests under this Agreement, or (ii) any breach of this Agreement by NCL or the NCL Lines, except to the extent that such damage, loss or liability is caused solely by the gross negligence of, or intentional misconduct of NYCEDC, the City or their employees, officers, agents, contractors, subcontractors, invitees or guests. This indemnification obligation shall apply regardless of whether such suits, actions, claims, damages, losses, penalties, or expenses and costs be against or sustained by others to whom NYCEDC or the City or their agents or employees may become liable.
- (f) NYCEDC and the City Indemnification. NYCEDC and the City, jointly and severally, agree to indemnify, protect and hold harmless NCL, the NCL Lines and their agents and employees from and against all suits, actions, claims, demands, damages, losses, penalties or fines, expenses, attorneys' fees, and costs of

every kind and description to which NCL, the NCL Lines and their agents or employees may be subjected which are caused by or arise out of, in whole or in part, the reckless or negligent acts or omissions or intentional misconduct of NYCEDC, the City or their agents, employees, officers or contractors which arise from, grow out of, or are connected with (i) the management and operation of the New York Cruise Terminals, (ii) any breach of this Agreement by NYCEDC, and/or (iii) any failure to perform as provided herein by the Terminal Operator or the City, except to the extent that such damage, loss or liability is caused solely by the gross negligence of, or intentional misconduct of NCL, an NCL Line or their employees, officers, agents, contractors, subcontractors, invitees or guests. This indemnification obligation shall apply regardless of whether such suits, actions, claims, damages, losses, penalties, or expenses and costs be against or sustained by others to whom NCL or an NCL Line or their agents or employees may become liable.

Section 13. Termination

(a) **NCL Termination for Casualty** NCL may terminate this Agreement if the New York Cruise Terminals (or any significant portion thereof) are made inaccessible, damaged or destroyed due to fire, act(s) of terrorism or other casualty, and NYCEDC does not promptly repair or remedy the damage or provide reasonably suitable temporary alternative accommodations within a reasonable period of time to be mutually agreed by the Parties. During the time that either of the PST or Brooklyn Terminal is not available for use, and prior to any termination by NCL as permitted above, NCL will not be responsible for complying with the provisions of Sections 3, 4, 8, and 9 of this Agreement. Notwithstanding anything to the contrary contained in the foregoing sentence, NCL agrees that if NYCEDC provides reasonably suitable alternative accommodations in a timely manner, NCL cannot terminate the Agreement and will remain

responsible for complying with the foregoing sections of this Agreement, subject to the Parties' good faith negotiation of reasonable discounts necessitated by such alternative accommodations. If either the PST and/or the Brooklyn Terminal is not available for more than six (6) months, in lieu of NCL's termination right set forth above, the Parties may mutually agree that the Term of this Agreement may be extended by a period of time equal to the period of time that either of the terminals comprising the New York Cruise Terminals remains unavailable for use.

- (b) NCL Termination For Failure to Construct** Pursuant to and to the extent provided in Section 1(e)(i) of this Agreement, if NYCEDC is unable to obtain required permits, approvals, or licenses for the construction of the Phase I Improvements (with the exception of such permits, approvals or licenses required for the necessary dolphin extension for the super-berth), or the City is unable to obtain leasehold or fee title to the Brooklyn Terminal, or if pursuant to Section 1(e)(ii) of this Agreement, NYCEDC is unable to secure funds from the City for the construction of the Phase I Improvements, then NCL may, after giving NYCEDC sixty (60) days written notice and opportunity to cure, terminate this Agreement. If NYCEDC shall cure any such failure within such sixty (60) day period then NCL's notice of termination shall be rendered ineffective, and this Agreement shall continue in full force and effect. This shall be the exclusive remedy provided to NCL on account of NYCEDC's inability to obtain such permits, approvals or licenses as provided above, or leasehold or fee title to the Brooklyn Terminal, or NYCEDC's inability to obtain funding for the construction of the Phase I Improvements, and NCL shall have no other rights or remedies available to it under this Agreement, at law or in equity.

- (c) NYCEDC Termination**

- (i) If NCL shall fail or refuse to make payment for dockage fees, wharfage fees or any other fees and charges due hereunder that is not cured within thirty (30) days from NCL's receipt of written notice from NYCEDC of failure to meet such payment obligation, then NYCEDC shall have the right to terminate this Agreement and recover from NCL all past due and all uncollected guaranteed fees and charges through the Term of the Agreement.

- (ii) If NCL shall fail to perform or breaches any other material term, covenant or condition of this Agreement which is not cured with forty-five (45) days after receipt of written notice from NYCEDC specifying the nature of such breach, then NYCEDC shall have the right to terminate this Agreement on the basis of the such noncompliance and recover from NCL all past due and all uncollected guaranteed fees and charges through the Term of the Agreement. The failure of NYCEDC to terminate this Agreement on the basis of noncompliance shall not be considered a waiver of the terms of this paragraph or of the terms of this Agreement. In the event NCL takes all reasonable steps and makes all diligent efforts to cure such breach and commences such cure within such 45 day period, but is unable to cure such breach within such cure period, then NYCEDC shall afford NCL an additional cure period of sixty (60) days, effective from the expiration date of the initial 45 day cure period, during which time NCL shall be afforded the opportunity to cure such nonperformance and breach. During this additional cure period, NYCEDC agrees that it shall not take any action against NCL or terminate this Agreement on account of such breach.

- (iii) If NCL shall be adjudicated bankrupt, or if NCL shall make a general assignment for the benefit of creditors, or if any

proceedings based upon the insolvency of NCL are commenced and not dismissed within sixty (60) days of filing or a receiver is appointed for all the property of NCL which is not dismissed within sixty (60) days of such appointment, then NYCEDC shall have the right to terminate this Agreement.

Section 14. Confidentiality

The Parties further agree that neither NCL nor NYCEDC will use any information contained in this Agreement, or otherwise obtained in the course of discussions or negotiations relating to this Agreement or the matters contemplated herein, that is in any way detrimental to, or to the competitive disadvantage of (i) the City or NYCEDC (in the case of NCL) and (ii) NCL (in the case of NYCEDC and the City). NCL agrees that it shall deal solely with NYCEDC or such other parties as NYCEDC shall direct in the implementation of the terms of this Agreement. NCL will not intervene in NYCEDC's negotiations with third parties, agencies and/or governmental entities responsible for issuing permits unless so requested by NYCEDC.

NCL, NYCEDC and the City each agree that during the Term of this Agreement they will maintain the confidentiality of the terms and conditions of this Agreement to the extent permitted by law, including, in the case of NYCEDC and the City, the New York State Freedom of Information Law, Article 6 of the Public Officers Law ("FOIL"). NYCEDC agrees that to the extent that it receives a FOIL request for the Agreement or any proprietary information contained in the Agreement, including NCL's itineraries, vessel deployments, or financial terms, and NYCEDC determines that it must disclose the Agreement or any of such proprietary information sought, it shall promptly notify NCL of such determination prior to disclosure and NCL will be entitled to seek injunctive relief from a court of competent jurisdiction preventing such disclosure. NCL acknowledges that it shall not commence any other action or proceeding against NYCEDC and shall have no other rights or

remedies available to it under this Agreement arising out of or in connection with NYCEDC's determination to disclose such requested information.

Section 15. Compliance With Law

NCL and the NCL Lines shall comply with all applicable laws, rules, orders and regulations relating to NCL's and the NCL Lines' obligations hereunder, and their use of and operations at the New York Cruise Terminals.

Section 16. Amendments; No Oral Waiver

The provisions of this Agreement cannot be amended, modified, varied or waived in any respect except by an agreement executed by the Parties. Any waiver, approval or consent granted to NYCEDC or to NCL shall be limited to those matters specifically and expressly stated thereby to be waived, approved or consented to and shall not relieve NYCEDC or NCL of the obligation to obtain any future waiver, approval or consent. Neither the failure of NYCEDC or NCL to insist upon strict performance of any of the agreements, terms, covenants and conditions hereof shall be deemed a waiver of any rights or remedies that NYCEDC or NCL may have or a waiver of any subsequent breach or default in any of such agreements, terms, covenants and conditions.

Section 17. Governing Law

This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, to the exclusion of Florida rules of conflicts of laws. Any and all claims asserted by or against NYCEDC arising under this Agreement or related hereto shall be heard and determined either in the Federal Courts, located in the City or in the New York State Courts located in the City and County of New York.

Section 18. Waiver of Jury Trial

Any legal proceeding of any nature brought by either party against the other to enforce any right or obligation under this Agreement, or arising out of any matter pertaining to this Agreement, shall be submitted for trial, without jury, to a court of appropriate jurisdiction, and the Parties expressly waive all rights to trial by jury regarding any such matter.

Section 19. Assignability

NCL shall not assign, convey or transfer this Agreement or NCL's rights hereunder without the prior written consent of NYCEDC; provided, however, that to the extent that NCL seeks to assign this Agreement to a parent, subsidiary, affiliate, or related beneficially-owned party (previously referred to collectively as the NCL Lines), or an assignment pursuant to a merger or sale of all or substantially all of its assets, and such proposed assignee agrees to assume all of NCL's obligations under this Agreement, then NYCEDC's consent shall not be unreasonably withheld or delayed. NYCEDC shall have the right to assign, convey or transfer this Agreement or NYCEDC's rights hereunder without the written consent of NCL to the City or any other corporation, agency or instrumentality of the City having authority to accept the assignment. The City herein agrees that at such time, if ever, that NYCEDC seeks to assign this Agreement or at such time, if ever, that the Maritime Contract is not renewed, it will cause NYCEDC's successor to undertake and perform NYCEDC's obligations under this Agreement.

Section 20. No Lease; No Agency

- (a) Nothing in this Agreement shall be construed as granting NCL or the NCL Lines any rights or interests in the New York Cruise Terminals other than the right to use the New York Cruise Terminals in accordance with the terms hereof and, in no event,

shall this Agreement be construed as granting NCL or the NCL Lines a leasehold interest in the New York Cruise Terminals or any portion thereof.

- (b) It is specifically understood and agreed that in the performance of the terms, covenants and conditions of this Agreement, NCL shall not be deemed to be acting as agents, servants or employees of NYCEDC or the City by virtue of this Agreement or by virtue of any approval, permit, license, grant, right or other authorization given by NYCEDC or the City in connection with this Agreement.

Section 21. Notice

Any and all notices, requests, demands and other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been duly given when (i) served in person, with delivery of service acknowledged in writing by the party receiving the same; (ii) sent by nationally known overnight delivery service or telefax; or (iii) deposited in the United States mail, in a sealed, properly stamped envelope, sent by certified mail, return receipt request. Notices shall be addressed to the Parties as follows:

If to NYCEDC: New York City Economic Development Corporation
110 William Street
New York, New York 10038
Attn: Executive Vice President,
Infrastructure Division

With a copy to the General Counsel at the same address.

If to NCL: NCL (Bahamas) Ltd.
7665 Corporate Center Drive
Miami, Florida 33126
Attn: Andy Stuart

Executive Vice President, Marketing, Sales and
Passenger Services

With a copy to the General Counsel at the same address.

Section 22. General

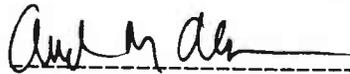
- (a) The captions of divisions, sections, articles, paragraphs, subparagraphs, clauses and the like in this Agreement are for convenience only and shall in no way define, limit or describe the scope or intent of this Agreement or in any way affect this Agreement. The Parties agree that this Agreement shall not be construed more strictly against any party regardless of the identity of the drafter.
- (b) This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (c) If any clause, provision or section of this Agreement is ruled invalid by a court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof and all other provisions of this Agreement shall remain in full force and effect.
- (d) The Parties hereby acknowledge that it is not their intention to create between themselves a partnership, joint venture, fiduciary or employment or agency relationship for the purposes of this Agreement or for any other purpose whatsoever. Accordingly, notwithstanding any expressions or provisions contained herein or in any other document, nothing in this Agreement or in any documents executed or delivered or to be executed or delivered shall be construed or deemed to create, or to express an intent to

create, a partnership, joint venture, fiduciary or employment or agency relationship of any kind or nature whatsoever between the Parties hereto.

- (e) All negotiations relative to this Agreement have been conducted by and between the Parties without intervention of any person or other party as agent or broker. NCL and NYCEDC represent and warrant to the other that there are and will be no broker's commissions or fees payable in connection with this Agreement by reason of their respective dealings, negotiations or communications.
- (f) This Agreement constitutes the entire and sole understanding and agreement of the Parties with respect to the matters stated herein, notwithstanding any prior oral or written statements, instructions, agreements, representations or other communications.

IN WITNESS WHEREOF, NYCEDC and NCL have executed these presents on the date first above written.

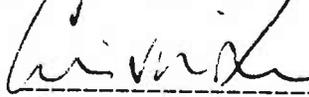
NEW YORK CITY ECONOMIC
DEVELOPMENT CORPORATION

By: 

Name: Andrew M. Alper

Title: President

NCL (BAHAMAS) LTD.

By: 

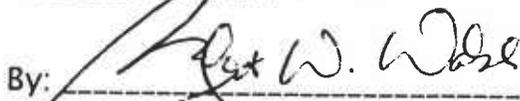
Name: Colin Veitch

Title: President and Chief Executive
Officer

ACCEPTED AND AGREED:

(The City of New York, by its signature hereon, is hereby endorsing this Agreement and the objectives manifest herein; hereby represents that NYCEDC has the power and authority to enter into this Agreement on the terms hereof and grant NCL and the NCL Lines the rights under this Agreement, and that this Agreement is enforceable against it with respect to its obligations hereunder; and hereby accepts and agrees to its obligations under Sections 6, 10, 11, 12(f), 14, and 19)

THE CITY OF NEW YORK

By: 

Commissioner

Department of Small Business Services

Approved as to form:

NEW YORK CITY CORPORATION COUNSEL

By: 

Acting Corporation Counsel

EXHIBIT A
PHASE I IMPROVEMENTS

The New York Cruise Terminal Phase I Improvements to be undertaken under this Agreement are as follows:

Passenger Ship Terminal (PST), Manhattan

- NYCEDC will improve the PST in accordance with the Master Plan. The PST will be reconstructed for the purpose of handling up to three panamax cruise ships with the following characteristics:
 - Three berths will be capable of handling a 1,000 feet long, 2,600 (lower berth) passenger vessel each.

- Collectively, the facility will be designed to accommodate a total passenger load of not to exceed 18,000 passengers on any given 24 hour period.

- The final details of the improvements will be the subject of further discussion among NYCEDC and the Oversight Committee, but in general they will include the following components:
 - Structural rehabilitation of piers to support the intended uses.*

 - Construction of new aprons suitable for the servicing of vessels including new fenders, bollards, utilities and other requirements for the operation of a cruise vessel.

 - One new gangway system per berth, except for the NCL Preferential Berth, which will have two gangways.

* The cost of these improvements to be undertaken by NYCEDC are not included in the Project Budget.

- o Reconstruction of the terminals creating a modern, comfortable and efficient facility. The terminals are expected to accommodate embarkation on the second level and baggage and disembarkation operations on the first level. The third (or roof) level will be reserved for parking.
- o Investigation will be conducted to determine if the roof top parking can be physically and economically covered to better accommodate wintertime operations.
- o Improvements to the building interiors, signage, systems, bathrooms and support spaces, including air-conditioning, heating and electrical improvements.
- o Construction of a generic "Frequent or VIP Passenger Lounge" per terminal. For the avoidance of doubt, there shall be three separate lounges, one for each respective berth and terminal. There are two piers, offering three berths and there will be three terminals, one for each berth. A berth means a single side of a pier.
- o Common use back-of-house facilities for employees. Any specific requirements for dedicated cruise line offices and facilities will be subject to the limitations of Section 1(e) of this Agreement.
- o Improvements required by the Bureau of Customs and Border Protection to meet the standards required as of the date of the Agreement
- o Improvements required to meet the new Coast Guard Security regulations as of the date of the Agreement.

- o Improvements to the ground transportation area, curbside areas and sidewalks within the current PST-designated areas.
- o Improvements to access to the PST, which may include a pedestrian bridge, intersection improvements and/or other projects that may be done within the project budget. The location of the pedestrian bridge will be the subject of a design analysis that will take into account the requirements of NYSDOT and NYCDOT, the landing site at the east end of the West Side Highway and consultation with NCL to determine the optimum location for the pedestrian bridge.

Brooklyn Terminal

- Subject to the conditions stated in the Agreement, NYCEDC will develop an initial terminal at one of the Brooklyn Piers.
- The final details of the improvements will be the subject of further discussion among NYCEDC and the Oversight Committee, but in general the Improvements will include the following components:
 - o Structural rehabilitation of pier to support the intended uses
 - o Construction of new fenders, bollards, utilities and other requirements for the operation of a cruise facility
 - o One new ground-level gangway system
 - o Reconstruction of an existing warehouse building to create a modern, comfortable and efficient facility. The terminal is expected to accommodate separate areas for embarkation and baggage and disembarkation operations on the first level.

- o Improvements to the building interiors, signage, systems, bathrooms and support spaces.
- o Improvements required by the Bureau of Customs and Border Protection to meet the standards required as of the date of the Agreement
- o Improvements required to meet the new Coast Guard Security regulations as of the date of the Agreement.
- o Creation of a new ground transportation area, canopies, curbside areas and sidewalks.
- o New secure surface parking lots
- o Certain access improvements that may include road improvements, beautification, signage, intersection improvements and/or other projects, which may be completed within the above, contemplated budget.



EXHIBIT B
TIMELINE

Present Brooklyn Schematic Design	August 2004
Complete Brooklyn Design	November 2004
Complete Brooklyn Construction (beneficial occupancy)	August 2005
Complete PST Schematic Design of Terminal	October 2004
Submit Permit Applications for Aprons	October 2004
Submit for Pier Extension	October 2004
Complete PST Construction Documents	August 2005
Begin PST Apron Construction	June 2006
Begin PST Terminal Construction	January 2006
Complete PST Construction (beneficial occupancy)	April 1, 2009

Notes:

(1) All dates shown above with the exception of the last completion date are for information purposes only as target milestones and will vary based on cruise line needs, permitting activities and other circumstances.

Exhibit C

Redacted

**NEW YORK CRUISE TERMINALS
USAGE AGREEMENT**

THIS CRUISE TERMINAL USAGE AGREEMENT (this "Agreement"), dated as of June 25, 2004 between NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION ("NYCEDC"), a local development corporation formed pursuant to Section 1411 of the Not-for-Profit Corporation Law of the State of New York, whose mailing address is 110 William Street, New York, New York 10038 and CARNIVAL CORPORATION ("Carnival"), a Panamanian corporation whose mailing address is 3655 NW 87th Avenue, Miami, FL 33178. NYCEDC and Carnival will be collectively referred to herein as the "Parties."

W I T N E S S E T H:

WHEREAS, The City of New York (the "City") believes that it is in the best interests of its citizens to promote and foster the growth of the cruise industry operating from the City's cruise terminals; and

WHEREAS, the cruise industry would like to further grow and expand its business coming through the City's passenger cruise terminals; and

WHEREAS, the City is the owner of the premises currently known as the Passenger Ship Terminal (the "PST"), a Hudson River waterfront facility consisting generally of Piers 88, 90 and 92 in the Borough of Manhattan; and

WHEREAS, pursuant to the annual amended and restated maritime contract between the City and NYCEDC, dated as of June 30, 2003 (as amended from time to time) (the "Maritime Agreement"), the City has retained NYCEDC to engage in, inter alia, various activities intended to promote the economic development of the City's waterfront, including the operation and management of the PST and such other passenger ship terminals that the City may develop (including the Brooklyn Terminal as defined below); and

WHEREAS, pursuant to that certain Operating and Reimbursement Agreement dated as of December 31, 1996, as amended from time to time (the "Operating Agreement") between P&O Ports North America, Inc. ("P&O") and NYCEDC, NYCEDC retained P&O to operate, maintain and manage the PST; and

WHEREAS, the City, with assistance from NYCEDC, is negotiating to obtain through leasehold or fee title to, and NYCEDC will develop an additional initial cruise terminal to be located at, the premises currently known as Pier 12 in Brooklyn, New York (the "Brooklyn Terminal"); and

WHEREAS, the PST and Brooklyn Terminal will be managed and operated collectively as the "New York Cruise Terminals"; and

WHEREAS, NYCEDC has developed a long-term Master Plan for the future development and redevelopment of the New York Cruise Terminals to meet the needs of the cruise industry; and

WHEREAS, the long term Master Plan includes an initial set of improvements to the New York Cruise Terminals proposed by NYCEDC to provide for the needs of the cruise industry over the next ten years (the "Phase I Improvements"); and

WHEREAS, Carnival, owner and/or operator, directly or indirectly (by itself and/or by or with Carnival plc) of individual cruise lines from time to time (the "Carnival Lines") including (but not limited to), as of the date hereof, Carnival Cruise Lines, Princess Cruises, Cunard Line, Holland America Line, and Costa Cruises, has been operating cruises from and to the City to meet the needs of its customers; and

WHEREAS, Carnival and NYCEDC desire to continue to have the Carnival Lines use the City's cruise facilities to meet the needs of the Carnival Lines' customers; and

WHEREAS, the Parties entered into a Cruise Utilization Letter of Intent ("LOI"), dated as of April 19, 2004, setting forth the principal terms and conditions to be contained in an agreement between Carnival and NYCEDC; and

WHEREAS, the Parties now desire to enter into this Agreement, containing such terms and conditions as set forth in the LOI, and such other terms and conditions as have been agreed to by the Parties.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, the Parties do hereby mutually agree and bind themselves as follows:

Section 1. Design, Construction and Maintenance of Improvements and New York Cruise Terminals

(a) Phase I Improvements. Subject to Section 1(d) of this Agreement, NYCEDC will develop, finance, construct and operate the Phase I Improvements of the Master Plan in accordance with the terms set forth in Exhibit A, and which consist generally of the following key components (it being understood that in the event of any inconsistency or conflict between the terms of this Agreement (including the Exhibits) and the Master Plan, the terms of this Agreement (including the Exhibits) shall govern):

(i) The development of a phased construction program. Phase I Improvements will consist of the development of a total of four berths and accompanying terminals. The terminals will be located and will be capable of handling cruise ships as follows:

(A) The redevelopment of the City's current PST to accommodate three berths and accompanying terminals (as redeveloped, the "New PST Berths"). A Panamax berth on the south side of Pier 88 and a Post-Panamax berth on the north side of Pier 88, with a shared terminal, will be capable of handling a 1,000 foot long vessel each, and a third stand-alone Post-Panamax berth with an accompanying terminal located at Pier 90 will be developed as a super-berth (as redeveloped, the "Super-Berth") capable of handling a 1,200 foot long vessel, subject to securing the necessary governmental permits, approvals and/or action in accordance with Section 1(d)(ii).

(B) The construction of a Post-Panamax berth and accompanying terminal at the Brooklyn Terminal, capable of handling vessels over 1,000 feet long (as constructed, the "Brooklyn Berth").

(ii) Mutually agreed-upon renovations to the surrounding roadwork, ground transportation area, pedestrian crossovers, curbside areas and sidewalks around the New York Cruise Terminals to ease traffic and congestion.

(b) Costs and obligations.

(i) Project Budget. Subject to Section 1(d) of this Agreement, NYCEDC will be responsible for the capital costs associated with the Phase I Improvements, in an amount not to exceed \$150 million (the "Project Budget"), which costs are allocated approximately as set forth on Exhibit B, and which Project Budget in any event is exclusive of (i) the costs of the short-term improvements currently under construction at the PST set forth in Schedule 1 (it being understood that such underlying improvements shall not in any event constitute part of the Phase I Improvements) and (ii) all moneys, funds, credits and rebates received, directly or indirectly, from any governmental agency or entity, other than the City, for Phase I Improvements (the "Non-City Funds"), if any. To the extent the capital costs of the Phase I Improvements do not reach an amount equal to \$150,000,000 plus all Non-City Funds, if any, the Parties agree that they will separately negotiate and amend this Agreement to reduce the amounts payable by Carnival and the Carnival Lines (and the related financial guarantees provided for in Section 4 of this Agreement) thereunder accordingly. NYCEDC shall provide Carnival with Project Budget (and Non-City Funds, if any) updates on a quarterly basis, detailing the expenditure of funds on a task by task basis, the percentage of the respective tasks completed and any reallocation of costs on a line item basis.

(ii) P&O Ports. Subject to and contingent upon the terms of the existing Operating Agreement with P&O with respect to the PST, and as further set forth in Section 1(b)(viii) and (ix), NYCEDC will use commercially reasonable efforts to permit each of the Carnival Lines to contract directly with stevedoring and security companies in their reasonable discretion. Absent this, NYCEDC agrees that it will use commercially reasonable efforts to ensure that P&O charges rates and offers services that are commercially competitive with those for port operations of the size and scope of the New York Cruise Terminals and in any event at least in accordance with generally accepted industry standards. Other than such P&O charges for security and stevedoring in accordance with the foregoing, and further subject to Section 11 hereof, neither P&O nor any other Terminal Operator (as defined below) (other than the stevedoring charges of any applicable "house stevedore" pursuant to Section 1(b)(ix) hereof)) may impose any other charges, fees, tariffs or taxes on Carnival or the Carnival Lines.

(iii) Maintenance. NYCEDC shall, or shall cause P&O, or such successor or other terminal operator as NYCEDC may designate for the New York Cruise Terminals (whichever, the "Terminal Operator") to, at all times during the Term, at its own cost and expense, provide electricity, water and sewer service to the New York Cruise Terminals, perform routine maintenance and repairs at the New York Cruise Terminals including maintaining, repairing and replacing, as needed, the electrical, heating, ventilating, air conditioning, mechanical, plumbing, safety systems, wiring systems, carpets, fixtures, furniture, lighting and structural components of the buildings and improvements (including structural pier rehabilitation to support the intended

uses hereof), and paving, all as comprising the New York Cruise Terminals, as necessary, and keep same in good working order consistent with industry standards to accommodate home port, in-transit and related cruise operations of Carnival Line vessels throughout the Term, normal wear and tear excepted. Notwithstanding the foregoing, these costs shall exclude the purchase of water for the Carnival Lines' ships and their telecommunications costs and such other usage or utility costs customarily paid for by cruise lines using port facilities.

(iv) Janitorial Services. NYCEDC shall, or shall cause the Terminal Operator to, at all times during the Term, at its own cost and expense, keep the New York Cruise Terminals in a clean and orderly condition, secure and safe condition, free of rubbish and trash, maintain the landscaping in the interior and exterior of the New York Cruise Terminals, and perform such janitorial services in accordance with NYCEDC's normal practices and generally accepted commercial standards for terminal facilities.

(v) Dredging. NYCEDC shall, or shall cause the Terminal Operator to, perform maintenance dredging for the New York Cruise Terminals at necessary intervals.

(vi) Inspections. Within thirty (30) days of each anniversary of the date hereof and as otherwise reasonably requested by Carnival from time to time, Carnival and NYCEDC agree to jointly inspect the New York Cruise Terminals and Carnival shall prepare a report indicating the condition of said area and specifying any damages and needed repairs which shall be repaired by NYCEDC and/or the Terminal Operator under the terms hereof. To the extent NYCEDC disagrees with any of the terms of the report, it will notify Carnival in writing within five (5) business days from its receipt thereof setting forth in detail the nature of such disagreement(s). The Parties will promptly work in good faith to resolve such disputes. NYCEDC shall see that the necessary repairs are, where reasonably practicable, started within thirty (30) days after the issuance of said report (or resolution of the disagreement(s), as the case may be), and completed promptly thereafter, at no cost to Carnival. Notwithstanding the foregoing, to the extent that the damage and needed repair is caused by one of the Carnival Lines' vessels or their activities or operations while moored at the New York Cruise Terminals, then Carnival shall pay all costs and expenses associated with such damage and repair.

(vii) Self-Help. In the event NYCEDC fails to maintain and repair the New York Cruise Terminals as required under this Section 1(b), then Carnival may, after giving NYCEDC sixty (60) days written notice and opportunity to cure such failure within such sixty (60) day cure period, take all actions reasonably necessary, in the sole and reasonable discretion of Carnival, to remedy such default to enable Carnival to continue to utilize the New York Cruise Terminals for the intended use pursuant to this Agreement. Carnival may credit the cost of such maintenance and repair work against any other payments owed by Carnival to NYCEDC under this Agreement, including dockage and wharfage fees, provided that Carnival shall have provided to NYCEDC appropriate backup documentation for such maintenance and repair costs; provided further, however, that Carnival shall not charge a mark-up or other administrative or management fee for the work performed and provided that the costs shall be based on prevailing market and industry rates and practice.

(viii) Security. Subject to Section 1(b)(ii) and in any event at the Brooklyn Terminal, each Carnival Line will provide, pay for, and contract directly with third parties for, security at

the applicable terminal of the New York Cruise Terminals on such Carnival Lines' vessel cruise day for the particular terminal being used, and will contract for, provide and utilize all baggage screening and metal detection devices at the applicable terminal and the Carnival Line shall be solely responsible for such security measures relating to passengers and baggage handling within the terminal, pierside, and the vessel. Specifically, on vessel call days during which a Carnival Line is conducting vessel operations, such Carnival Line will provide security for the following areas: the sidewalk to the applicable terminal; the applicable terminal building; and the adjacent pier/wharf area where the vessel is berthed. NYCEDC will be responsible for providing and paying for security, whether through the Terminal Operator or another entity, in all other areas of the New York Cruise Terminals, including traffic control and security of the parking lots, security for landside vehicular access to the pier and as otherwise required for the New York Cruise Terminals and surrounding areas by applicable law and consistent with industry standards. During the period in which a Carnival Line vessel is not at a terminal, NYCEDC shall be responsible for and pay for, and shall ensure that, security is provided in accordance with applicable law and industry standards. NYCEDC shall provide all such security for which it is responsible hereunder at no additional fees or charges to Carnival or the Carnival Lines. So long as the same is only applicable to costs for which Carnival is responsible under this Section 1(b)(viii), nothing shall be construed as limiting NYCEDC or the Terminal Operator from levying industry-wide security charges upon cruise lines calling at the New York Cruise Terminals in order to comply in full with any and all Homeland Security, U.S. Coast Guard and other federally mandated security procedures; provided, however, that NYCEDC and/or the Terminal Operator's interpretation and implementation of the same must be commensurate with generally accepted industry standards of terminal operators servicing cruise lines within the United States.

(ix) Stevedoring. Subject to Section 1(b)(ii), NYCEDC agrees that at such time that it is able to do so with respect to each of the PST and the Brooklyn Terminal severally, it shall either (x) designate a "house stevedore" mutually acceptable to NYCEDC and the cruise lines calling at the PST and/or the Brooklyn Terminal, as the case may be, or (y) permit each of the Carnival Lines to provide, and contract directly with third parties for, stevedoring at the applicable terminal at the New York Cruise Terminals on such Carnival Line's vessel cruise day for the particular terminal being used. The same will include longshoremen and line handlers.

(c) Future Improvements. The Parties acknowledge that the Term (as hereinafter defined) of this Agreement, the scope of the Phase I Improvements and the financial arrangements set forth in this Agreement are designed to meet the projected needs of the cruise industry over the Term. These projections are based in part on the Carnival Line projections set forth on Exhibit C attached hereto. Should faster material growth occur on the part of Carnival and the Carnival Lines, causing the need for acceleration of capacity improvements currently envisioned for subsequent phases of the long-term Master Plan, and should revenues not be sufficient to support such needed capital program, NYCEDC will notify Carnival of the same, and either (i) the Parties will agree to separately negotiate and amend this Agreement to reflect the terms needed to support any further investments relating solely to such material accelerated growth of Carnival and the Carnival Lines, (ii) Carnival may choose to reduce its New York Cruise Terminal accelerated future growth accordingly or (iii) NYCEDC may choose not to honor such increased projections in accordance with its standard berthing preference practices, other than as required pursuant to provisions for Carnival's Preferential Berths in accordance herewith.

(d) Contingencies:

(i) Schedule. Subject to NYCEDC Executive Committee (of the Board of Directors) approval of the individual design contracts, the design of the New York Cruise Terminals will begin promptly and will proceed as expeditiously as possible substantially in accordance with the Phase I Improvements construction schedule attached hereto as Exhibit D (the "Timeline"). NYCEDC will use commercially reasonable efforts to adhere to the Timeline, subject to receipt of required permits and approvals in accordance with Section 1(d)(ii) below (but with the understanding that (x) NYCEDC will begin construction of the Super-Berth as soon as possible and (y) NYCEDC will whenever possible work around outstanding permits, approvals and licenses in order to maintain the Timeline and complete the Preferential Berths (as hereinafter defined). If NYCEDC is unable to make safely available Carnival's Preferential Berths for the Carnival Lines' beneficial use as contemplated by this Agreement on or prior to December 31, 2009 (the "Occupancy Date") (the non-compliance with such event an "Occupancy Delay"), then, [REDACTED]

[REDACTED] so long as such Occupancy Delay is continuing, Carnival will be entitled to terminate this Agreement upon sixty (60) days prior written notice to the extent the same is not remedied by NYCEDC within such sixty (60) day notice and cure period; provided, however, that if such failure cannot be reasonably cured within such sixty (60) day period, Carnival will not be entitled to terminate this Agreement if NYCEDC commences to cure such failure within said sixty (60) day period and diligently prosecutes such cure to completion within three (3) months from Carnival's initial notice to terminate.

(ii) Permits and Title. NYCEDC will use commercially reasonable efforts to secure all of the necessary permits, licenses and approvals for the construction and completion of the Phase I Improvements, both at the PST and the Brooklyn Terminal, in a timely manner. Carnival acknowledges that the development of the Brooklyn Terminal is further subject to the City's ability to obtain leasehold or fee title thereto, which NYCEDC will use commercially reasonable efforts to assist the City in obtaining, and that certain of the Phase I Improvements, both at the Brooklyn Terminal and at the PST, will be subject to receipt of governmental permits and approvals, which NYCEDC will use commercially reasonable efforts to obtain. If, despite the City's and NYCEDC's efforts, leasehold or fee title to the Brooklyn Terminal is not obtained or the necessary governmental permits, licenses or approvals at either the PST or the Brooklyn Terminal are not granted, the Parties agree to reasonably evaluate alternative development options to accommodate the projected traffic, and incorporate the same into the Phase I Improvements. Notwithstanding the foregoing sentence, however, other than with respect to the Super-Berth being scaled back to being a New PST Berth only capable of handling a 1,000 foot long vessel solely as a result of non-receipt of U.S. Congressional Approval or other federal or state governmental permits or approvals for the necessary dolphin extension, to the extent that such alternative development options would materially and adversely affect Carnival's operations and its ability to accommodate projected traffic at the New York Cruise Terminals, as solely determined by Carnival in its reasonable discretion, then Carnival may, upon notice as set forth in Section 13 hereof, terminate this Agreement. Alternatively, if as a result of a lack of necessary governmental permits, licenses and approvals there is an Occupancy Delay, Carnival may elect not to terminate this Agreement. [REDACTED]

[REDACTED] NYCEDC shall obtain all non-governmental permits, approvals, licenses and consents necessary to fulfill its obligations hereunder; provided,

however that (x) NYCEDC's limited obligations and responsibilities in connection with matters concerning P&O providing security and stevedoring at the PST are set forth in Section 1(b)(ii), and (y) for the avoidance of doubt and purposes of this Section 1(d)(ii), the Port Authority of New York and New Jersey shall be deemed to be a governmental entity.

(iii) Funding. NYCEDC's obligation to develop, pay for and construct the Phase I Improvements pursuant to this Agreement is subject to and contingent upon the appropriation and availability to NYCEDC of the necessary City capital funds in the City's capital budget, which NYCEDC is and shall continue in good faith to use its commercially reasonable efforts to obtain. Other than in connection with a breach of its obligations under this subclause 1(d)(iii), the failure of NYCEDC to receive such funds from the City shall be deemed to be the failure of an essential condition for NYCEDC's obligations hereunder, and Carnival shall not commence any action or proceeding against NYCEDC arising out of the failure of this condition. If NYCEDC is unable to secure such funding for the construction of the Phase I Improvements so as to result in an Occupancy Delay, Carnival may elect to terminate this Agreement pursuant to Section 13 hereof or, at its option, may elect not to terminate this Agreement, in which case the Occupancy Discount as forth in Section 7(f) shall be applicable as set forth therein.

(e) Oversight Committee.

(i) NYCEDC will form an oversight committee (the "Committee") composed of NYCEDC, Carnival, other cruise lines, users and other parties as determined by NYCEDC. The Committee will meet to review the progress of the design work and provide comments and recommendations to NYCEDC at the following stages of the design process: (w) Master Plan (including the timetable and scheduling of the construction), (x) Schematic Design, (y) Design Development, and (z) Construction Documents. NYCEDC must receive Carnival's prior approval of item (w) above, and with respect to its Preferential Berths only, items (x) and (y) above, which approvals will not be unreasonably withheld or delayed. Carnival acknowledges that it has received from NYCEDC a copy of the Master Plan prepared by Bermello, Ajamil & Partners, Inc., and identified as the New York Cruise Facilities Master Plan, dated May 13, 2004, and that it has reviewed and approved such Master Plan as required herein.

(ii) NYCEDC will from time to time submit to Carnival and the Oversight Committee plans and documents at each of the remaining stages of design set forth in (x) and (y) above for Carnival's review and comment. Carnival will submit its comments and/or requests in writing within ten (10) days after receipt of the plans from NYCEDC. If Carnival fails to submit comments in writing within such ten (10) day period, such plans as presented by NYCEDC shall be deemed approved by Carnival.

(iii) Carnival agrees that it will not use such approval rights to tailor the Phase I Improvements solely to Carnival's needs. NYCEDC will endeavor to provide for the specific needs of Carnival, as requested in writing by Carnival, at its designated Preferential Berths, provided that the request is submitted at an appropriate time in the design process, and the requested elements can be included within the maximum Project Budget of \$150,000,000 plus the Non-City Funds, if any, and do not compromise the terminal for use by other cruise lines. To the extent any suggested changes or disapprovals by Carnival relate solely to preferences or facilities dedicated solely to Carnival rather than to cruise operators generally (it being

understood that this shall not include operational requirements to accommodate a Carnival Line's vessel configuration or standard embarkation/disembarkation operating procedures), and the same would result in a material increase to the maximum Project Budget of \$150,000,000 plus the Non-City Funds, if any, Carnival agrees that it will in good faith renegotiate the Facility Charges and/or Passenger Facility Charges (as such terms are hereinafter defined) in order to mitigate such increased costs.

Section 2. Term

This Agreement shall commence on the date hereof and shall terminate at midnight on December 31, 2017 (the "Term"), subject to the Parties' termination rights as set forth herein; provided, however, that if NYCEDC is unable to make safely available Carnival's Preferential Berths (as hereinafter defined) for the Carnival Lines' beneficial use as contemplated by this Agreement on or prior to April 1, 2009, then for each day thereafter and until such Preferential Berths are so available, Carnival shall have the option to extend the Term on a day for day basis (it being understood that the Annual Guarantee (as defined herein) will be adjusted pro-rata to the extent this results in the last day of the Term ending on a day other than December 31). Carnival may exercise this option by delivering written notice of such decision at any time after April 1, 2009 and at least six (6) months prior to the expiration of this Agreement, and the Term shall be so extended.

Section 3. Exclusivity

Subject to the terms of Section 13(d)(i) and Section 14 hereof, during the Term of this Agreement, Carnival shall not be permitted to dock any of its vessels at or use any other port in the New York-New Jersey harbor area, except (i) by mutual agreement between NYCEDC and Carnival or (ii) if the Parties agree in good faith from time to time that the New York Cruise Terminals cannot accommodate such vessel(s) (which will be considered to have occurred for any Carnival Line berthing request(s) (including related requests that form part of the same deployment schedule for such vessel(s)) that are not assigned berths at the New York Cruise Terminals pursuant to the Final Schedule (as defined in Section 6(b)).

Section 4. Financial Guarantees

(a) Definitions:

(i) "Annual Projected Traffic" for the first full calendar year of the Term of the Agreement shall be [REDACTED]

(ii) "Base Passenger Level" shall be [REDACTED] of the Annual Projected Traffic.

(iii) "Annual GRT" for the first full calendar year of the Term of the Agreement shall be [REDACTED]

(iv) "Base GRT" shall be [REDACTED] of the Annual GRT.

(b) Calculation of Financial Guarantees – Beginning with the calendar year commencing January 1, 2005, and for each calendar year of the Term thereafter, Carnival will guarantee a payment amount to NYCEDC (inclusive of (x) amounts paid to the Terminal Operator (or other entity as directed by NYCEDC) and (y) applicable Credits (as defined in Section 7(f)) utilized in a calendar year) from the Carnival Lines collectively equal to the sum of (i) the Base Passenger Level multiplied by the then-applicable Wharfage Rate (

_____, as applicable and available to the underlying passengers in accordance with the requirements of the underlying discount), plus (ii) the Base GRT multiplied by the then-applicable Dockage Rate (

_____) as applicable and available to the underlying vessels in accordance with the requirements of the underlying discount) (the “Annual Guarantee”). Any shortfall resulting from a cumulative annual payment being below the Annual Guarantee will be paid by Carnival within 90 days of the end of the applicable Term calendar year (the “Shortfall Payment”).

(i) Credits – For every dollar paid or payable by Carnival and the Cruise Lines in each calendar year for dockage and wharfage after having reached the Annual Projected Traffic and the Annual GRT (the “Overage”, it being understood that the Overage will accrue from year to year rather than being reduced to zero each year), Carnival shall be entitled to a credit equal to the Overage (the “Overage Credit”). This Overage Credit will offset any required Shortfall Payment(s) on a dollar for dollar basis, and the Overage shall thereupon be reduced accordingly. If there is insufficient Overage Credit to offset the Shortfall Payment(s) in full, Carnival and the Carnival Lines shall receive a future credit in the amount of such Shortfall Payment(s) actually paid (the “Shortfall Credit”) against any future payments they would otherwise owe on account of annual wharfage or dockage charges (as provided in Section 5 below) after having reached the Annual Projected Traffic and the Annual GRT for any calendar year during the Term of this Agreement; it being understood that the Overage Credit for exceeding the Annual Projected Traffic and the Annual GRT shall begin accruing as of the first year of the Term of this Agreement despite not having had to make any Shortfall Payment at that time. To the extent that there is any Overage Credit or Shortfall Credit remaining at the end of the Term hereof, Carnival acknowledges that it shall not be entitled to any refund on account of such unused credits.

Section 5. Facility Charges

The Parties agree to a revised tariff structure whose proceeds will be used to support the capital investment needs and operation of the New York Cruise Terminals throughout the Term of this Agreement. Payments under this Agreement will be made in the form of facility charges (the “Facility Charges”) which consist of (i) the wharfage and dockage amounts and (ii) the passenger facility charges (the “PFC”) amounts, if any, received in connection with the Carnival Lines berthing at the New York Cruise Terminals as follows:

(a) **Wharfage Rate** - Beginning January 1, 2005 the wharfage rate applicable to the New York Cruise Terminals for Carnival Lines will be \$15.64 per passenger (regardless of cruise duration) each way for a homeport and once for each in-transit port-of-call. This rate increase and subsequent increases to the wharfage rate (as permitted herein) may be levied via the

wharfage mechanism set forth in the then-published tariff schedule (such tariff schedule, as may be modified from time to time in accordance with the terms hereof (including but not limited to Section 11), the "Rate Schedule") or by a separate PFC levied by NYCEDC. The total wharfage rate will consist of all wharfage paid to the Terminal Operator or NYCEDC (or other entity as directed by NYCEDC) pursuant to the Rate Schedule, plus the PFC, if any (the "Wharfage Rate"), but in any event as is increased and/or discounted or decreased herein from time to time pursuant to Sections 5(c) and 7 hereof. It is agreed and understood that the PFC may only be levied as a direct offset to amounts otherwise chargeable as wharfage, and that in any event (i) the Wharfage Rate, inclusive of any PFC, may not exceed the Wharfage Rate that would be chargeable exclusive of any PFC and (ii) a PFC may not be levied or charged in any other manner other than as contemplated under this Section 5(a).

(b) **Dockage Rate** - Beginning January 1, 2005, the New York Cruise Terminals 24-hour dockage rate for each Carnival Line vessel will be \$0.10 per gross registered ton of the vessel (the "Dockage Rate"), as may be increased and/or discounted or decreased herein from time to time pursuant to Sections 5(c) and 7 hereof.

(c) **Future Increases** - Commencing in calendar year 2006, NYCEDC may increase from time to time the Wharfage Rate and/or the Dockage Rate, provided that no such increase shall be in excess of three percent (3%) per annum (on average over the Term of this Agreement) from the then-existing rate chargeable to Carnival and the Carnival Lines. Further, rates may not be increased more than one time in each twelve-month period. NYCEDC shall provide Carnival no less than twelve months prior written notice of any such increase. Pursuant to this provision, NYCEDC may implement Wharfage Rate and/or Dockage Rate increases less frequently than annually, in which case at the time it seeks to increase such rate(s) it will be entitled to an annual increase equivalent to the cumulative amount of the increases that would have been permitted for the period of time between increases, so that if NYCEDC does not initiate an increase in the Wharfage Rate for 3 years, it shall be permitted an increase over the then-existing rate equal to 3% compounded annually for the 3 year period.

(d) All amounts due hereunder (other than any Shortfall Payment as contemplated by Section 4(b)) are payable monthly, in arrears, and only upon the timely submission by NYCEDC or the Terminal Operator, if any, of an invoice to the applicable Carnival Line for the amount due. The Carnival Lines shall pay all such invoices within forty-five (45) days from receipt of an invoice. All amounts collected via the Facility Charges (and not, for the avoidance of doubt, amounts attributable solely to the PFC), will be paid to NYCEDC, its designee or its successors when the existing Operating Agreement with P&O expires or terminates.

Section 6. Preferential Berthing and Berth Requests

Beginning January 1, 2005 and throughout the Term of this Agreement, the City agrees and shall cause NYCEDC, and NYCEDC agrees, to provide Preferential Berthing Rights (defined in Section 6(c)) to Carnival at the PST and the Brooklyn Terminal and to guarantee berthing for other vessels at either the PST or Brooklyn Terminal as follows:

(a) Preferential PST Berth.

(i) First Preferential Berth. Carnival and the Carnival Lines will have Preferential Berthing Rights to the use of one berth (the "Preferential Berth") and associated terminal facilities at the PST. Carnival will adjust its Preferential Berths (defined below) annually during construction of the Phase I Improvements as reasonably necessary to assist in the process, but which permanent Preferential Berth will automatically consist of the Super-Berth upon its substantial completion. If, for whatever reason, the Super-Berth is not constructed, Carnival will have as its first Preferential Berth the New PST Berth built at the location where the Super-Berth was to have been constructed.

(ii) Second Preferential Berth. In addition, Carnival will have Preferential Berthing Rights for the use of a second berth (the "Second Preferential Berth", which collectively with the Preferential Berth and those additional berthing rights set forth in Section 6(b) is hereinafter referred to as the "Preferential Berths"), as follows:

1. Shared Second Preferential Berth – Carnival will have Preferential Berthing Rights to the use of the Pier 88 Post-Panamax berth at the PST on all Saturdays, Tuesdays and Thursdays during the Term (the "Shared Second Preferential Berth").
2. Brooklyn Backup – To the extent that Carnival's Second Preferential Berth is the Shared Second Preferential Berth (and not the Brooklyn Berth), Carnival and the Carnival Lines will have Preferential Berthing Rights to the use of the Brooklyn Berth and associated terminal facilities at the Brooklyn Terminal on those days of the week that it does not have Preferential Berthing Rights at the Shared Second Preferential Berth.
3. Brooklyn Berth – At any time on or prior to the later of (a) December 31, 2005 and (b) the first anniversary of the date upon which the Brooklyn Berth is safely available for the Carnival Lines' beneficial use as contemplated in Section 6(a)(ii)(2) herein (the "Option Period"), Carnival may deliver written notice to NYCEDC that it selects the Brooklyn Berth as its Second Preferential Berth, in which case it will not participate in the Shared Second Preferential Berth and instead will be entitled to full Preferential Berthing Rights at the Brooklyn Berth in the same manner as Carnival's first Preferential Berth (including for the avoidance of doubt Carnival's right to decide the order in which it will designate its vessels to the Super-Berth and the Brooklyn Berth). NYCEDC will then assign the Brooklyn Berth as Carnival's Second Preferential Berth beginning with the next Carnival-submitted Cruise Schedule (unless the previously-submitted Cruise Schedule has not yet been assigned by NYCEDC or the Terminal Operator, if any). If Carnival has not delivered such notice during the Option Period, then Carnival shall be deemed to have rejected its option to transfer its second Preferential Berthing Rights to the Brooklyn Berth and shall have no further exclusive rights to do so under this Agreement, and NYCEDC shall have the right to negotiate preferential use of the Brooklyn Berth with any third party cruise line seeking its use. If Carnival does not select the Brooklyn Berth as its

Second Preferential Berth during the Option Period and NYCEDC subsequently accepts a third party cruise line's offer to utilize the Brooklyn Berth as a preferred berth (the "Third Party Berth"), then in any event such Third Party Berth will nonetheless be subject to Carnival's preferred backup berthing at the Brooklyn Berth pursuant to Section 6(a)(ii)(2) hereof and Carnival's additional berthing rights set forth in Section 6(b) hereof, unless Carnival in its sole discretion agrees in writing to a suitable replacement therefore.

(iii) Carnival and the Carnival Lines will have additional preferential berthing rights as provided in Section 6(b).

(b) **Berth Requests.** On or prior to June 1, 2004, each of Carnival and NCL (Bahamas) Ltd. d/b/a NCL ("NCL" and, collectively with Carnival, the "Preferred Users") (on behalf of cruise lines owned or operated by Norwegian Cruise Lines Ltd.), but no other multi-night cruise line, will submit to NYCEDC its respective annual berth requirements for the fifteen month period beginning the following January 1, and thereafter, on or prior to each June 1 during the Term (beginning June 1, 2005), each of Carnival and NCL will submit its respective annual berth requirements for the twelve month period beginning the following April 1 (its "Cruise Schedule"). The annual berth requirements submitted by Carnival (in accordance with the notice provisions set forth in Section 20 hereof) will set forth all berthing requests for the Carnival Lines including, but not limited to, those to be assigned to the First Preferential Berth and the Second Preferential Berth. All preferential berth requests submitted by June 1 in the manner provided herein shall be granted in accordance with Carnival's Preferential Berthing Rights conferred by this Agreement and will not be changed unless so desired by Carnival as provided below. All additional berthing requests of Carnival and NCL submitted by June 1 will also be assigned to Carnival and NCL in accordance with the application of NYCEDC's (or the Terminal Operator's (if any)) standard cruise-line neutral berthing assignment practices prior to assignments for any other multi-night cruise operator. By June 10 of each year of the Term, NYCEDC will send to Carnival (in accordance with the notice provisions set forth in Section 20 hereof) the entire New York Cruise Terminals assigned berth schedule based solely on the Cruise Schedules of Carnival and NCL (and not encompassing any other multi-night cruise line) received on or prior to June 1. During the period from June 10 through June 20 of each year of the Term, each of Carnival and NCL may submit amendments to its respective Cruise Schedule that add, delete or change the itineraries, voyages, ships and/or time of operations of its vessels ("Amendments") to (i) use any unused berths which were not part of the assigned berth schedule sent out June 10 and/or (ii) adjust its already-assigned berths, and such Amendments will be accepted by NYCEDC (and the Terminal Operator (if any)) unless there are conflicts between Amendments submitted by Carnival and NCL (it being understood that in the event of any conflict between the terms of a party's Amendment and the other cruise line's assigned berth schedule sent out on June 10, the other cruise line's June 10 assigned berth schedule will control). All conflicts among the Amendments will be resolved by NYCEDC, first by trying to negotiate in good faith an acceptable solution for both parties, and should that fail, by the application of NYCEDC's (or the Terminal Operator's (if any)) standard cruise-line neutral berthing assignment practices.

During the period from June 10 through June 20, any Amendments sought by Carnival that might involve changes to Carnival's Preferential Berthing Rights at its Preferential Berths that were locked in at the time of its June 1 berthing submission will not result in Carnival's release of such previously requested dates until the final Carnival and NCL schedules have been agreed to by the Preferred Users and published on June 20 (the "Preferred Users Schedule"). By June 30 of each year of the Term, NYCEDC will publish the final berth schedule that will contain all of the berth assignments as of that date (incorporating in full the Preferred Users Schedule) for all of the cruise lines (including those of other multi-night cruise lines) at the New York Cruise Terminals (the "Final Schedule"). Any amendments to the Final Schedule that Carnival (or any other cruise line) may submit thereafter shall be treated on a non-preferential basis and will be granted to the extent that the request does not conflict with an existing berth request already submitted by another cruise line or a trade show already scheduled at the associated terminal.

(c) For purposes herein, "Preferential Berthing Rights" means that Carnival shall have the unconditional right, subject to the terms herein, to conduct home port, in-transit and related facilities operations on the days (i.e., during the 24 hour periods commencing at 0001 hours to 2400 hours on days when such vessels are scheduled to be at the applicable Preferential Berth for the berthing of Carnival Line vessels and embarking and/or disembarking passengers) as set forth in the Cruise Schedule, over and above any other rights, agreements or other preferences granted to any other person, operator (cruise or otherwise), or third party user. Preferential Berthing Rights may include those in connection with inaugural sailings, travel agent and sales employee receptions related to "cruises to nowhere" and other promotional events associated with the marketing of a Carnival Line vessel so long as such events are reflected in the Cruise Schedule.

(d) On each vessel call day as set forth in the Cruise Schedule, the respective Carnival Line shall have the right to use the applicable portion of the New York Cruise Terminals to operate a passenger cruise service (it being understood and agreed that such passenger cruise service shall not include, and Carnival shall not be permitted to use the New York Cruise Terminals for, multi-night hotel stays unrelated to the regular cruise business or itineraries of Carnival Lines' vessels (such regular business and itineraries including but not limited to travel agent functions, charity and/or inaugural events and use by passengers for scheduled Vessel layover days and pre-embarkation days). The Carnival Line may use the applicable portion of the New York Cruise Terminals for passenger parking, passenger and baggage security and screening, embarkation and disembarkation, services required to supply the vessels, and such other necessarily related activities and services. The Carnival Line shall have the right of ingress and egress to and from the applicable portion of the New York Cruise Terminals for its and Carnival's officers, cruise agents, employees and passengers and well as the right to embark and disembark passengers, and to bunker, load, store and moor its vessels thereat. On each vessel call day, the Carnival Line will have the right to use all passenger facilities located at the applicable portion of the New York Cruise Terminals, including the use of all passenger waiting rooms, comfort and washroom facilities, the use by governmental agencies of all U.S. Customs and/or immigration facilities for passenger processing in connection with the embarking and departure, arrival and disembarkation of passengers and the loading and discharging of their luggage, as well as the exclusive use of any space located within the applicable portion of the New York Cruise Terminals for the purposes of conducting the necessary administrative and clerical activities

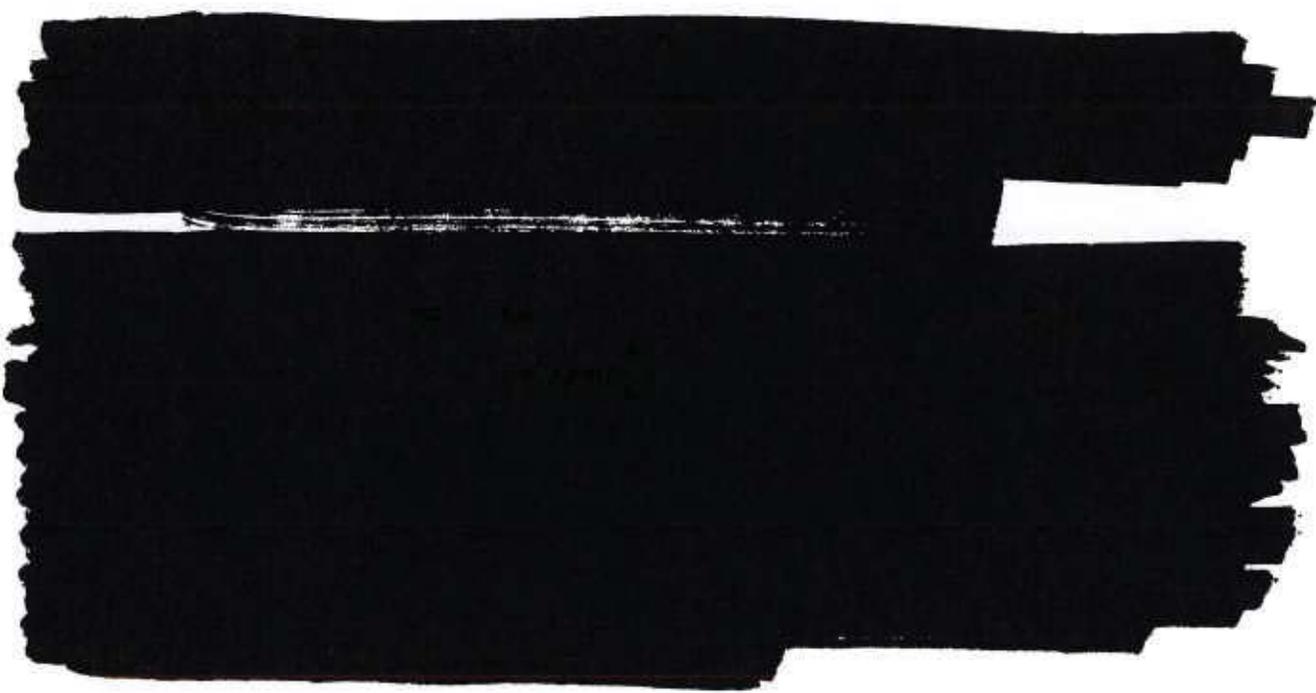
relating to its performance of this Agreement.

(e) Warehouse Area. Each of the Carnival Lines conducting cruise operations at the Preferential Berths shall be permitted to use, at no cost to Carnival or the Carnival Lines, a warehouse space in the Preferential Berths (each of those areas is referred to herein individually as a "Storage Area" and are referred to collectively as the "Storage Areas"). The aggregate square footage of the Storage Areas shall not exceed 2,000 square feet. The location of each Storage Area per Carnival Line will be determined by agreement of the Parties by the date the applicable Carnival Line begins conducting cruise operations under this Agreement.

(f) Signage. NYCEDC will provide the appropriate indoor and outdoor signage for the proper operation of the New York Cruise Terminals. The signage system to be used will be coordinated with Carnival to meet its specific needs to the extent practicable. Signage will designate the respective terminal(s) being used by the different cruise lines and will direct passengers through the entire embarkation and disembarkation process. If Carnival or the Carnival Lines seek to install additional temporary signage on each of their vessel call days, Carnival or such Carnival Line shall submit such signage request to NYCEDC for its approval, which approval shall not be unreasonably withheld or delayed, and, if approved, shall install such signage using a common system to be provided by NYCEDC. Carnival or the Carnival Lines shall remove, or shall cause the removal of, all temporary signage installed by the Carnival Lines promptly after their respective vessel call days.

Section 7. Discounts

Beginning January 1, 2005, NYCEDC will provide the following financial discounts and/or decreases in wharfage and dockage, as applicable, to Carnival and the Carnival Lines to promote the further utilization of the New York Cruise Terminals by the Carnival Lines, thereby maximizing passenger and vessel volumes passing through the New York Cruise Terminals:





Section 8. Representations and Warranties and Covenants

(a) Each party represents to the other that this Agreement has been duly authorized, delivered and executed by such party and constitutes the legal, valid and binding obligation of such party, enforceable in accordance with its terms, and that its execution of and performance under this Agreement will not result in any breach, violation or default of any agreement, contract, understanding or obligation (whether oral or in writing) it has with any other party.

(b) NYCEDC represents that the execution, delivery and performance by the NYCEDC of this Agreement complies with all laws, rules, regulations and orders applicable to it, and that NYCEDC has the full authority to enter into and perform its obligations, and grant Carnival and the Carnival Lines the rights, under this Agreement in accordance with its terms for the duration of the Term.

(c) The City represents that NYCEDC has the power and authority to enter into this Agreement on the terms hereof and grant Carnival and the Carnival Lines the rights under this Agreement and that this Agreement is enforceable against the City with respect to its obligations hereunder.

Section 9. Marketing, Provisioning and Advertising

(a) The Parties will cooperate to the extent possible to provide in-kind marketing in the City.

(b) The Parties will cooperate to provide provisioning in the City, to the extent practicable, and so long as it is consistent with Carnival's overall procurement practices.

(c) The Parties will work together to establish, to the extent possible, a program for permanent signage and advertising of Carnival and the Carnival Lines at and in the vicinity of the New York Cruise Terminals which (i) contemplates the inclusion of electronic outdoor advertising that promotes Carnival and the Carnival Lines at or close by the New York Cruise Terminals (the "Signage") and (ii) can be easily viewed by the public at large from the roadways in surrounding areas of the Brooklyn Berth (to the extent Carnival has selected Brooklyn as its Second Preferential Berth) and the New PST Berth rather than solely to patrons of the New York Cruise Terminals. As part of this program, other than the costs of design, construction, installation and maintenance of the Signage which would be Carnival's financial responsibility, Carnival would not be charged any other fees, rent or amounts for such Signage.

Section 10. Most Favored Nation

During the Term, none of NYCEDC, the City, the Terminal Operator or any other entity under NYCEDC's, the City's or the Terminal Operator's control shall charge Carnival or any Carnival Line any fees or charges (including but not limited to Dockage Rates and Wharfage Rates as discounted hereunder) at rates higher than the lowest rates (inclusive of any discounts, incentives and/or rebates) charged by such entities to any other multiple night cruise operators. Carnival acknowledges that in the respective current long-term usage agreements executed by NYCEDC, each cruise line takes advantage of discounts and/or incentives available to it in a different manner. Each of Carnival and NYCEDC agrees that it will observe and rely upon the terms of this Section in good faith, and account for each such multiple night cruise operator's aggregate comparative costs, benefits and volumes in determining compliance of this Section.

Section 11. Other Fees

Other than the fees, tariffs, taxes or charges contemplated by this Agreement, or otherwise provided for specifically in Rate Schedule No. 010182, dated as of December 29, 2003 in the amounts set forth therein (other than the Dockage Rate and Wharfage Rate as is being modified herein, and as can be further modified from time to time as provided herein), none of

NYCEDC, the City or the Terminal Operator shall impose any new fees, tariffs, taxes or charges on Carnival or the Carnival Lines for the use of the New York Cruise Terminals by its vessels, it being understood that this provision shall not prevent NYCEDC, the City or the Terminal Operator from imposing new or revised charges for parking or water usage at the New York Cruise Terminals, or security charges but only in accordance with Section 1(b)(viii).

Section 12. Insurance and Indemnification

(a) Carnival Insurance. Carnival shall maintain, at its sole cost and expense, the following insurance coverages throughout the Term of this Agreement.

(i) Commercial General Liability Insurance and Protection & Indemnity Coverage. Carnival must maintain commercial general liability insurance for liability for property damage, bodily injury, personal injury and death. The insurance provided under this section must be in the amount of not less than \$1,000,000 per occurrence for property damage and not less than \$1,000,000 per occurrence for personal injury, bodily injury or death. This insurance must protect against liability to any person or persons (other than employees or servants of Carnival) whose property damage, personal injury or death arises out of or in connection with Carnival or the Carnival Lines' occupation or use of the New York Cruise Terminals. In addition, Carnival shall maintain Protection and Indemnity coverage, including pollution liability in the amount of not less than \$5,000,000 per occurrence.

(ii) Workers Compensation. Carnival must maintain workers compensation insurance to protect against claims under New York Workers Compensation laws as well as all Federal acts applicable to Carnival's operations at the New York Cruise Terminals. The limit of liability for such coverage must at least meet applicable statutory requirements. Additionally, each policy must contain an endorsement waiving all rights of subrogation against NYCEDC and its agents and employees.

(iii) Employer's Liability. Carnival must maintain employer's liability insurance in the minimum amount of \$1,000,000 per occurrence for personal injury, bodily injury or death to any employee of Carnival who may bring a claim outside the scope of the New York Worker's Compensation laws or federal acts applicable to Carnival's operations at the New York Cruise Terminal. This insurance must contain all endorsements necessary to cover maritime operations, including but not limited to U.S. Longshoremen and Harbor workers Act and Maritime Coverage (Jones Act), in the minimum amount of \$1,000,000 per occurrence. Additionally, each policy must contain an endorsement waiving all rights of subrogation against NYCEDC and its agents and employees.

(iv) Automobile Insurance. Carnival must maintain automobile liability insurance coverage on all its owned or leased vehicles in the minimum amount of \$1,000,000 combined single limit coverage per occurrence. Additionally, each policy must contain an endorsement waiving all rights of subrogation against NYCEDC and its agents and employees.

(v) Umbrella Liability Insurance. Carnival must maintain umbrella/excess liability insurance. The insurance provided under this section must be in the amount of not less than \$5,000,000 per occurrence and be excess over all underlying insurance coverage in this Section

12(a) (except Protection and Indemnity Coverage).

(vi) Each of the policies evidencing the insurance required above to be maintained by Carnival shall designate (except in the case of Protection and Indemnity Coverage and Workers Compensation insurance) NYCEDC and the City as additional insureds.

(b) Carnival Indemnification. Carnival agrees to indemnify, protect and hold harmless NYCEDC, the City and their agents and employees from and against all suits, actions, claims, demands, damages, losses, penalties or fines, expenses, attorneys' fees, and costs of every kind and description to which NYCEDC, the City and their agents or employees may be subjected which are caused by or arise out of, in whole or in part, the reckless or negligent acts or omissions or intentional misconduct of Carnival, a Carnival Line or their agents, employees, officers or contractors which arise from, grow out of, or are connected with either (i) the occupancy and use of the New York Cruise Terminals by Carnival, a Carnival Line or their agents, employees, officers, contractors, subcontractors, invitees or guests under this Agreement, and/or (ii) any breach of this Agreement by Carnival or the Carnival Lines, except to the extent that such damage, loss or liability is caused by the gross negligence of, or intentional misconduct of, NYCEDC, the City or their employees, officers, agents, contractors, subcontractors, invitees or guests. This indemnification obligation shall apply regardless of whether such suits, actions, claims, damages, losses penalties, or expenses and costs be against or sustained by others to whom NYCEDC or the City or their agents or employees may become liable.

(c) NYCEDC and the City Indemnification. NYCEDC and the City, jointly and severally, agree to indemnify, protect and hold harmless Carnival, the Carnival Lines and their agents and employees from and against all suits, actions, claims, demands, damages, losses, penalties or fines, expenses, attorneys' fees, and costs of every kind and description to which Carnival, the Carnival Lines and their agents or employees may be subjected which are caused by or arise out of, in whole or in part, the reckless or negligent acts or omissions or intentional misconduct of NYCEDC, the City or their agents, employees, officers or contractors which arise from, grow out of, or are connected with (i) the management, operation and conditions of the New York Cruise Terminals, (ii) any breach of this Agreement by NYCEDC, and/or (iii) any failure to perform as provided herein by the Terminal Operator or the City, except to the extent that such damage, loss or liability is caused by the gross negligence of, or intentional misconduct of, Carnival, a Carnival Line or their employees, officers, agents, contractors, subcontractors, invitees or guests. This indemnification obligation shall apply regardless of whether such suits, actions, claims, damages, losses penalties, or expenses and costs be against or sustained by others to whom Carnival or a Carnival Line or their agents or employees may become liable.

Section 13. Events of Default and Termination

(a) Carnival Events of Default. Carnival shall be in default under this Agreement if any of the following events occur and continue beyond the applicable grace period:

(i) Carnival fails to comply with any payment obligation arising hereunder that is not cured within thirty (30) days from Carnival's receipt of written notice from NYCEDC of failure to meet such payment obligation.

(ii) Carnival fails to perform or breaches any term, covenant or condition of this Agreement which is not cured within sixty (60) days after receipt of written notice from NYCEDC specifying the nature of such breach; provided, however, that if such breach cannot be reasonably cured within sixty (60) days, Carnival shall not be in default if it commences to cure such breach within said sixty (60) day period and diligently prosecutes such cure to completion within three (3) months.

(iii) If Carnival shall be adjudicated bankrupt, or if Carnival shall make a general assignment for the benefit of creditors, or if any proceedings based upon the insolvency of Carnival are commenced and not dismissed within sixty (60) days of filing or a receiver is appointed for all the property of Carnival which is not dismissed within sixty (60) days of such appointment.

(b) NYCEDC Events of Default. NYCEDC shall be in default under this Agreement if NYCEDC breaches any term, covenant or condition of this Agreement, or the City or Terminal Operator (as the case may be) fails to perform, or acts in contravention of, any term, covenant or condition of this Agreement, which breach (or failure to perform or contravention) is not cured within sixty (60) days after receipt of written notice from Carnival specifying the nature of the same; provided, however, that if such breach (or failure to perform or contravention) cannot be reasonably cured within sixty (60) days, NYCEDC shall not be in default if it commences to cure such breach (or failure to perform or contravention) within said sixty (60) day period and diligently prosecutes such cure to completion within three (3) months.

(c) Remedies. Upon the occurrence of a default under this Agreement not cured within the applicable grace period, the non-defaulting party may pursue all remedies and damages available at law or in equity, including, without limitation, specific performance of this Agreement; provided, however, that NYCEDC and the City waive any prejudgment right to proceed in rem against any of Carnival's or the Carnival Lines' vessels for a breach of this Agreement.

(d) Additional Carnival Termination Rights. Carnival may terminate the Agreement upon the occurrence of either of the following events:

(i) If the New York Cruise Terminals (or any significant portion thereof) are made inaccessible to Carnival Line vessels or passengers, damaged or destroyed due to fire, act(s) of terrorism or other casualty, NYCEDC shall promptly repair or remedy the damage substantially to the condition that existed immediately prior to such casualty or provide reasonably suitable temporary alternative accommodations. If such casualty renders the New York Cruise Terminals (or any significant portion thereof) unfit for Carnival and the Cruise Lines' operations for a period of forty-five (45) consecutive days, and such state cannot reasonably be cured within such forty-five (45) day period, Carnival shall have the right to terminate this Agreement upon fifteen (15) days written notice to NYCEDC (it being understood that said notice may be given within the cure period but only if such condition cannot practicably be substantially cured within such forty-five (45) day cure period) without penalty. During the time that the New York Cruise Terminals (or any significant portion thereof) are not available for use, and prior to any termination by Carnival as permitted above, Carnival will not be responsible for complying with the provisions of Sections 3, 4, 5 or 9 of this Agreement (provided, however, that with respect to Section 5, to the extent that either the PST or Brooklyn Terminal are available for the Carnival

Lines' use and are being used by the Carnival Lines, Carnival shall still be required to pay the Wharfage Rate and Dockage Rate as discounted herein). Notwithstanding anything to the contrary contained in the foregoing sentence, Carnival agrees that if NYCEDC provides reasonably suitable alternative accommodations during such forty-five (45) day period, Carnival will remain responsible for complying with the foregoing sections of this Agreement, subject to the Parties' good faith negotiation of reasonable discounts necessitated by such alternative accommodations. If either the PST and/or the Brooklyn Terminal is not available for more than forty-five (45) consecutive days, in lieu of Carnival's termination right set forth above, the Parties may mutually agree that the Term of this Agreement may be extended by a period of time equal to the period of time that either of the New York Terminals remains unavailable for use.

(ii) Adverse Termination. If any new or change of applicable law is enacted, whether such law or regulation governs or relates to Carnival's or a Carnival Line's obligations and performance under this Agreement, which imposes a fee, tax or other requirement which, in Carnival's opinion, reasonably exercised, could have a material adverse effect (\$5,000,000 or greater) on Carnival, a Carnival Line and/or its divisions, subsidiaries or affiliates (a "MAC Event") and such adverse effect could be avoided or substantially reduced by repositioning a Carnival Line's vessels, Carnival shall have the right to terminate this Agreement, without liability to NYCEDC except for accrued fees and charges to the date of termination (a "MAC Termination"). Written notice of a MAC Termination shall be delivered by Carnival to NYCEDC, with an explanation of the MAC Event and how such alleged adverse effect could be avoided or reduced by repositioning a Carnival Line's vessels, within 15 calendar days after Carnival's actual knowledge of the occurrence of a MAC Event.

Section 14. Force Majeure

Subject to Carnival's termination rights under Section 13(d) hereof, NYCEDC and Carnival shall not be liable for any failure, delay or interruption in performing their individual obligations hereunder due solely to causes or conditions beyond the reasonable control of NYCEDC, Carnival and their agents, employees, subsidiaries, divisions, affiliates, contractors, subcontractors and guests including, without limitation, acts of God, an act of state or war, public emergency, strikes, boycotts, work stoppages or actions of labor unions, or due to extraordinary causes or conditions not caused or contributed to by NYCEDC, Carnival or either's agents, affiliates, employees, contractors, affiliates or guests including, and without limitation with respect to vessels, destruction, theft or seizing of the vessels, vessel mechanical problems of a material nature (that do not arise as a result of Carnival's improper, delinquent or faulty maintenance or operation of the vessel in contravention of its standard practices), or other causes of similar type and quality beyond the reasonable control of Carnival, the Carnival Lines or its subsidiaries, divisions or affiliates (collectively "Force Majeure"); provided, however, that the party claiming the existence of a Force Majeure event delivers written notice to the other party of such event within fifteen (15) calendar days of the commencement of such event.

Section 15. Compliance With Law

Throughout the Term, (i) Carnival and the Carnival Lines shall comply with all applicable governmental laws, rules, orders and requirements relating to Carnival's and the Carnival Lines' obligations hereunder, and their use and operations at the New York Cruise

Terminals, and (ii) NYCEDC shall, and shall cause the Terminal Operator (if any) to, comply with all applicable governmental laws, rules, orders and requirements relating to NYCEDC's and the Terminal Operator's (if any) obligations hereunder, and its and the Terminal Operator's management and operations of, and the conditions of, the New York Cruise Terminals.

Section 16. Amendments; Waiver

No amendment, modification, or alteration of the terms of this Agreement is binding unless in writing, dated subsequent to the date hereof and executed by authorized officers of NYCEDC and Carnival, or their successors and permitted assigns. This Agreement contains the complete agreement of the Parties. No waiver of any breach of covenants herein shall be construed as a waiver of the covenant itself or any subsequent breach thereof.

Section 17. Governing Law

This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, to the exclusion of Florida rules of conflicts of laws.

Section 18. Waiver of Jury Trial

IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS OR REMEDIES UNDER OR RELATED TO THIS AGREEMENT THE PARTIES HERETO AND THE CITY HEREBY AGREE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY AND HEREBY IRREVOCABLY WAIVE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT SUCH PERSON MAY HAVE TO TRIAL BY JURY IN ANY SUCH ACTION OR PROCEEDING.

Section 19. Assignability

Carnival shall not assign, convey or transfer this Agreement or Carnival's rights hereunder without the prior written consent of NYCEDC. NYCEDC shall not assign, convey or transfer this Agreement or NYCEDC's rights hereunder without the prior written consent of Carnival; provided, however, that NYCEDC shall have the right to assign, convey or transfer this Agreement or NYCEDC's rights hereunder, without the written consent of Carnival, to the City or any other corporation, agency or instrumentality of the City having authority to accept the assignment; provided, further, however, that such assignment shall not affect the City's obligations hereunder. The City herein agrees that at such time, if ever, that NYCEDC seeks to assign this Agreement or at such time, if ever, that the Maritime Contract is not renewed, it would accept such assignment and undertake and perform all of NYCEDC's obligations under this Agreement or will cause NYCEDC's successor to accept such assignment and undertake and perform all of NYCEDC's obligations under this Agreement.

Section 20. No Lease

It is agreed that this Agreement is not a lease, and that no interest or estate in real property or the improvements located at or on the New York Cruise Terminals is created by this Agreement.

Section 21. Notice

All notices required to be given to NYCEDC and Carnival hereunder shall be sent by (a) registered or certified mail, whereupon notice shall be deemed to have been given on the third day after deposit for mailing; or (b) delivery (i.e., courier or other hand delivery), overnight delivery, or facsimile transmission, whereupon notice shall be deemed to have been given on the day of delivery or receipt of facsimile transmittal confirmation. If the day of notice is a Saturday, Sunday, or legal holiday, notice shall be deemed to have been given on the first calendar day thereafter which is not a Saturday, Sunday, or legal holiday.

All notices required to be given to NYCEDC shall be made to NYCEDC at:

Kate Ascher
Executive Vice President – Infrastructure Division
New York City Economic Development Corporation
110 William Street
New York, New York 10038
Facsimile No. (212) 618-5785

With a copy to:

General Counsel
New York City Economic Development Corporation
110 William Street
New York, New York 10038
Facsimile No. (212) 312-3912

or to such other address or facsimile number as NYCEDC may direct from time to time by written notice forwarded to Carnival as provided above.

All notices required to be given to Carnival hereunder shall be sent to Carnival at:

Michael Kaczmarek
Vice President
Carnival Corporation
3655 Northwest 87th Avenue
Miami, Florida 33178
Facsimile No. (305) 406-5080

with a copy to:

Legal Department
Carnival Corporation
3655 Northwest 87th Avenue
Miami, Florida 33178
Facsimile No. (305) 406-4758

or to such other address or facsimile number as Carnival may direct from time-to-time by written notice forwarded to NYCEDC as provided above.

Section 22. No Lien

NYCEDC and the City hereby waive any lien or security interest it might have on a Carnival or Carnival Line vessel for payments due to NYCEDC (or Terminal Operator, if any) arising by statute or otherwise by operation of law, except for any judgment lien that may hereafter arise in favor of NYCEDC or the City.

Section 23. General

- (a) This Agreement may be executed in any number of counterparts, and each counterpart is deemed to be an original instrument, but all such counterparts together constitute but one Agreement.
- (b) A photocopy or facsimile reproduction of an original signature of a party binds that party to the terms, covenants and conditions of this Agreement.
- (c) The headings, captions, and arrangements used in this Agreement are for convenience only and do not affect the interpretation of this Agreement.
- (d) This Agreement is a complete integration of and constitutes the sole and only agreement of the Parties hereto with respect to the subject matter hereof and supersedes any prior understandings or written or oral agreements between the Parties with respect thereto.
- (e) Nothing contained in this Agreement shall be deemed or construed by the Parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between NYCEDC and Carnival.
- (f) If any clause, provision or section of this Agreement is ruled invalid by a court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof and all other provisions of this Agreement shall remain in full force and effect.
- (g) All negotiations relative to this Agreement have been conducted by and between the Parties without intervention of any person or other party as agent or broker. Carnival and NYCEDC represent and warrant to the other that there are and will be no broker's commissions or fees payable in connection with this Agreement by reason of their respective dealings, negotiations or communications.

IN WITNESS WHEREOF, NYCEDC and Carnival have executed these presents on the date first above written.

NEW YORK CITY ECONOMIC
DEVELOPMENT CORPORATION

By: Andrew M. Alper
Name: Andrew M. Alper
Title: President

CARNIVAL CORPORATION

By: Howard S. Frank
Name: Howard S. Frank
Title: Vice Chairman and Chief
Operating Officer

ACCEPTED AND AGREED:
(The City of New York, by its signature hereon, is hereby endorsing this Agreement and the objectives manifest herein, and hereby accepts and agrees to its obligations under Sections 6, 8, 10, 11, 12(c), 13(c), 19 and 22)

THE CITY OF NEW YORK

By: [Signature]
Commissioner
Department of Small Business
Services

Approved as to form:
NEW YORK CITY CORPORATION COUNSEL

By: [Signature]
Acting Corporation Counsel

SCHEDULE 1
SHORT TERM (NON PHASE-1) IMPROVEMENTS

**SCHEDULE I
PST SHORT TERM IMPROVEMENTS**

DESCRIPTION	ESTIMATED TOTAL COST*
PILE REHABILITATION	\$11,000,000
FENDER AND BOLLARD REPAIRS	\$5,600,000
EMERGENCY EGRESS	\$8,000,000
VERTICAL CORES	\$17,600,000
RELOCATION OF EMBARKATION WALL	\$850,000
RELOCATION OF GROUND FLOOR PARTITIONS	\$1,500,000
SIGNAGE	\$500,000
SECURITY ENHANCEMENTS/VENTILATION	\$4,110,000
	<hr style="width: 100%; border: 0.5px solid black; margin-bottom: 5px;"/> \$49,160,000

*NYCEDC will be responsible for payment in full for all costs of the short-term improvements, and the same will not be funded from the Project Budget or through Carnival, the Carnival Lines or their passengers.

EXHIBIT A PHASE I IMPROVEMENTS

The New York Cruise Terminal Phase I Improvements to be undertaken under the Agreement are as follows, together with such further details, changes or additions to the Phase I Improvements as may be agreed to by the Parties and provided for in this Agreement:

Passenger Ship Terminal (PST), Manhattan

- NYCEDC will improve the PST in accordance with Section 1(a)(i) and Section 1(a)(ii) of the Agreement and the Master Plan.
- Collectively, the facility will be designed to accommodate a total passenger load of not to exceed 15,000 passengers on any given 24 hour period.
- The final details of the improvements will be the subject of further discussion among NYCEDC and the Oversight Committee, but in general they will include the following components:
 - Construction of new aprons suitable for the servicing of vessels including new fenders, bollards, utilities and other requirements for the operation of a cruise vessel.
 - One new gangway system per berth.
 - Reconstruction of the terminals creating a modern, comfortable and efficient facility. The terminals are expected to accommodate embarkation on the second level; bus parking, loading dock and provisioning facilities and baggage and disembarkation operations on the first level. The third (or roof) level will be reserved for parking.
 - Improvements to the building interiors, signage, systems, bathrooms and support spaces, including air-conditioning, heating and electrical improvements.
 - Construction of a generic “Frequent or VIP Passenger Lounge” per terminal.
 - Common use back-of-house facilities for employees. Any specific requirements for dedicated cruise line offices and facilities will be subject to the limitations set forth in the Agreement.
 - Improvements required by the Bureau of Customs and Border Protection to meet the standards required as of the date of the Agreement
 - Improvements required to meet the new Coast Guard Security regulations as of the date of the Agreement.

- Improvements to the ground transportation area, curbside areas and sidewalks within the current PST-designated areas.*
- Improvements to access to the PST, which may include a pedestrian bridge, intersection improvements and/or other projects that may be done within the project budget.
- Investigation of across-street parking to increase parking capacity, and provide a secondary taxi/bus intermodal and staging area

Brooklyn Terminal

- Subject to the conditions stated in this Agreement, NYCEDC will develop an initial terminal as set forth in Section 1(a)(i) and Section 1(a)(ii) of the Agreement.
- The final details of the improvements will be the subject of further discussion among NYCEDC and the Oversight Committee, but in general the Improvements will include the following components:
 - Construction of new fenders, bollards, utilities and other requirements for the operation of a cruise facility
 - One new gangway system
 - Reconstruction of an existing warehouse building to create a modern, comfortable and efficient facility. The terminal is expected to accommodate separate areas for embarkation and baggage and disembarkation operations on the first level.
 - Improvements to the building interiors, signage, systems, bathrooms and support spaces.
 - Improvements required by the Bureau of Customs and Border Protection to meet the standards required as of the date of the Agreement
 - Improvements required to meet the new Coast Guard Security regulations as of the date of the Agreement.
 - Creation of a new ground transportation area, canopies, curbside areas and sidewalks.
 - Certain access improvements which should include improved access routing from/to the Brooklyn-Queens Expressway, and may also include road improvements, beautification, signage, intersection improvements and/or other projects that may be completed within the above contemplated budget.

* Should include a departure ramp from the third level of Pier 88 to ground level escape to the City, the cost of which is not currently included in the Project Budget.

EXHIBIT B
ESTIMATED BUDGET

**EXHIBIT B
CRUISE TERMINAL BUDGET - PHASE I IMPROVEMENTS**

DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL COST
BROOKLYN TERMINAL 12				
MARINE IMPROVEMENTS				
DREDGING	1,000	CY	\$65	\$65,000
NEW FENDERS AT EXISTING BERTH	750	LF	\$700	\$525,000
PILE REPAIRS	1	LS	\$2,000,000	\$2,000,000
BUILDING DEMOLITION	8,000	SF	\$5	\$25,000
MOORING POINT	1	LS	\$1,000,000	\$1,000,000
SUB-TOTAL				\$3,615,000
MOBILIZATION	5%			\$180,750
TOTAL - MARINE IMPROVEMENTS				\$3,795,750
CONSTRUCTION CONTINGENCY	25%			\$948,938
SUB-TOTAL				\$4,744,688
OUTSIDE SERVICES	10%			\$474,469
TOTAL				\$5,219,156
TERMINAL, PARKING AND ROADWAY IMPROVEMENTS				
BUILDING REMODELING	80,000	SF	\$120	\$9,600,000
CANOPIES	4,500	SF	\$50	\$225,000
SITE WORK	130,000	SF	\$10	\$1,300,000
ACCESS ROADWAYS	1	LS	\$1,000,000	\$1,000,000
TEMPORARY GANGWAY	1	LS	\$750,000	\$750,000
SUB-TOTAL				\$12,875,000
MOBILIZATION	5%			\$643,750
TOTAL - BUILDING IMPROVEMENTS				\$13,518,750
CONSTRUCTION CONTINGENCY	25%			\$3,379,688
SUB-TOTAL				\$16,898,438
OUTSIDE SERVICES	10%			\$1,689,844
TOTAL				\$18,588,281
GRAND TOTAL BROOKLYN				\$23,807,438

DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL COST
PST				
MARINE IMPROVEMENTS				
NEW APRONS	186,750	SF	\$165	\$30,813,750
PIER EXTENSION	1	LS	\$2,500,000	\$2,500,000
PIER 90 & 88 PARTIAL BUILDING DEMOLITION	192,400	SF	\$5	\$962,000
SUB-TOTAL				\$34,275,750
MOBILIZATION	5%			\$1,713,788
TOTAL - MARINE IMPROVEMENTS				\$35,989,538
CONSTRUCTION CONTINGENCY	25%			\$8,997,384
SUB-TOTAL				\$44,986,922
OUTSIDE SERVICES	10%			\$4,498,692
TOTAL				\$49,485,614
TERMINAL IMPROVEMENTS (PIER 90 & 88)				
RENOVATION OF PUBLIC ASSEMBLY SPACES (SECOND FLOOR)	65,400	SF	\$140	\$9,156,000
RENOVATION OF SERVICE & SUPPORT SPACES (GROUND FLOOR)	131,400	SF	\$115	\$15,111,000
NEW BCBP OFFICES	3,000	SF	\$300	\$900,000
FF&E	2	EA	\$1,000,000	\$2,000,000
VERTICAL TRANSPORTATION	2	EA	\$4,200,000	\$8,400,000
SECURITY ENHANCEMENT	2	EA	\$2,500,000	\$5,000,000
PEDESTRIAN BRIDGE	1	LS	\$2,500,000	\$2,500,000
GANGWAYS	5	EA	\$2,000,000	\$10,000,000
SUB-TOTAL				\$53,067,000
MOBILIZATION	5%			\$2,653,350
TOTAL - TERMINAL IMPROVEMENTS				\$55,720,350
CONSTRUCTION CONTINGENCY	25%			\$13,930,088
SUB-TOTAL				\$69,650,438
OUTSIDE SERVICES	10%			\$6,965,044
TOTAL				\$76,615,481
GRAND TOTAL PST				\$126,101,095
GRAND TOTAL PST + BROOKLYN				\$149,908,533

EXHIBIT C
CARNIVAL LINE PROJECTIONS

Redacted

EXHIBIT D
TIMELINE

Present Brooklyn Schematic Design	August 2004
Complete Brooklyn Design	November 2004
Complete Brooklyn Construction	August 2005
Complete PST Schematic Design of Terminal	October 2004
Submit Permit Applications for Aprons	October 2004
Submit for Pier Extension	October 2004
Complete PST Construction Documents	August 2005
Begin PST Apron Construction	June 2006
Begin PST Terminal Construction	January 2006
Complete PST Construction (beneficial occupancy)	December 31, 2009

Notes:

(1) All dates shown above with the exception of the last completion date are for information purposes only as target milestones and will vary based on cruise line needs, permitting activities and other circumstances.

(2) Design-specific budgets for Brooklyn and for the PST will be presented with the schematic design.

EXHIBIT B



**Small Business
Services**

Andrew Schwartz
Acting Commissioner
110 William Street
New York, NY 10038
212-513-6300

MEMORANDUM

To: File

From: Andrew Schwartz 

Re: Type II CEQR Determination
Block 515 Lot 300, p/o Lot 61, p/o Lot 1
Borough of Brooklyn, Community Board #6
And Block 1107 Lot 12 and Block 1109 Lot 21
Borough of Manhattan, Community Board #4

Date: October 21, 2015

The proposed action is a change in structure from an operating agreement structure to a lease structure at both the Brooklyn Cruise Terminal ("BCT") and Manhattan Cruise Terminal ("MCT") (collectively, the "Terminals"). The BCT is located at Pier 12 Building 112, Brooklyn and the MCT is located at 711 12th Ave, Manhattan and is comprised of Piers 88 and 90. A new tenant operator will be sought for the Terminals through a competitive request for proposals; the new tenant may be the same or different than the current operators, being Metro Cruise Services at the BCT and Ports America at the MCT, but is not expected to result in physical changes at the Terminals.

Under an Amended and Restated Maritime Contract between the City of New York (the "City") and New York City Economic Development Corporation ("NYCEDC"), NYCEDC manages the Terminals on behalf of the City and entered into the operating agreements with the respective Terminal operators. Approval of the dispositions and leases is a discretionary action subject to CEQR.

The Department of Small Business Services, as lead agency, finds that this disposition is a Type II action for the following reasons:

1. The change from an operator under an operating agreement to a tenant under a lease and the change in term of the Terminals leases are, in each case, a Type II action pursuant to 6 NYCRR Part 617.5(c)(26) because the action, in each case, is a "license, lease and permit renewals, or transfers of ownership thereof, where there will be no material change in permit conditions or the scope of permitted activities"

Accordingly, this action is not subject to further review under CEQR.

cc: Nilda Mesa, MOEC
Rob Holbrook, NYCEDC