

Torres Rojas, Genara

FOI # 13514

From: colella.ja3@gmail.com
Sent: Tuesday, October 09, 2012 1:49 PM
To: Duffy, Daniel
Cc: Torres Rojas, Genara; Van Duyne, Sheree
Subject: Freedom of Information Online Request Form

Information:

First Name: Joe
Last Name: Colella
Company: Individual
Mailing Address 1: 16 Rambling Drive
Mailing Address 2:
City: SP
State: NJ
Zip Code: 07076
Email Address: colella.ja3@gmail.com
Phone: 7182669385
Required copies of the records: No

List of specific record(s):

Lease agreement between Port Authority of New York New Jersey and NYCEDC regarding Pier 12 Brooklyn Cruise Terminal - dated as of December 23, 2004 and subsequently amended as of January 1, 2009,

THE PORT AUTHORITY OF NY & NJ

Daniel D. Duffy
FOI Administrator

November 9, 2012

Mr. Joe Colella
16 Rambling Drive
Scotch Plains, NJ 07076

Re: Freedom of Information Reference No. 13514

Dear Mr. Colella:

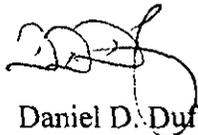
This is a response to your October 9, 2012 request, which has been processed under the Port Authority's Freedom of Information Code (the "Code"), for a copy of the Lease Agreement between Port Authority of New York New Jersey and the NYCEDC regarding Pier 12 Brooklyn Cruise Terminal - dated as of December 23, 2004 and subsequently amended as of January 1, 2009.

Material responsive to your request and available under the Code may be found on the Port Authority's website at <http://www.panynj.gov/corporate-information/foi/13514-LPA.pdf>. Paper copies of the available records may be requested.

Certain material responsive to your request is exempt from disclosure pursuant to exemptions (1) and (4) of the Code.

Please refer to the above FOI reference number in any future correspondence relating to your request.

Very truly yours,



Daniel D. Duffy
FOI Administrator

225 Park Avenue South
New York, NY 10003
T: 212 435 3642 F: 212 435 7555

PCL

Lease No. BP-304

AGREEMENT

between

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

and

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

Dated as of December 23, 2004

CONFORMED COPY

@me

Leasing Files

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Lease No. BP-304

THIS AGREEMENT OF LEASE, made as of the 23rd day of December, 2004, by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called "the Port Authority"), a body corporate and politic created by Compact between the States of New Jersey and New York, with the consent of the Congress of the United States of America, and having an office and place of business at 225 Park Avenue South, New York 10003; and NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION (hereinafter called "the Lessee"), a local development corporation formed pursuant to Section 1411 of the Not-for-Profit Corporation Law of the State of New York and having an office and place of business at 110 William Street, New York, New York 10038, whose representative is: Andrew M. Alper.

WITNESSETH, THAT:

The Port Authority and the Lessee, for and in consideration of the covenants and agreements hereinafter contained, hereby agree as follows:

Section 1. Letting

(a) The Port Authority hereby lets to the Lessee and the Lessee hires and takes from the Port Authority, at the Brooklyn-Port Authority Marine Terminal (sometimes hereinafter called "the Facility" or "the Brooklyn Cruise Terminal"), in the City of New York, the County of Kings and the State of New York, the open area and the enclosed space shown in diagonal crosshatching, and the water area shown in diagonal hatching, all as so shown on a sketch hereto attached, hereby made a part hereof, and marked "Exhibit A", together with the buildings, structures, fixtures, improvements, and other property, if any, of the Port Authority located therein or thereon, the said open area, enclosed space and water area, and the said buildings, structures, fixtures, improvements and other property of the Port Authority being hereinafter collectively called "the Pier 12 Premises" and the said water area being sometimes hereinafter called "the Pier 12 Berthing Area"; and

(b) Subject to the provisions of paragraph (d) of this Section, the Port Authority hereby lets to the Lessee and the Lessee hires and takes from the Port Authority, at the Red Hook Container Terminal (sometimes hereinafter called "the Facility"

or "the Brooklyn Cruise Terminal"), in the City of New York, the County of Kings and the State of New York, the open area shown in stipple and the enclosed space shown in diagonal crosshatching, and the water areas shown respectively in horizontal hatching and vertical hatching, all as so shown on a sketch hereto attached, hereby made a part hereof, and marked "Exhibit A-1", together with the buildings, structures, fixtures, improvements, and other property, if any, of the Port Authority located therein or thereon, the said open area, enclosed space and water areas, and the said buildings, structures, fixtures, improvements and other property of the Port Authority being hereinafter collectively called "the Pier 11 Premises", the said open area being sometimes hereinafter called "the Pier 11 Open Area Premises", the said enclosed space being sometimes hereinafter called "the Pier 11 Shed Premises", the said water area shown in horizontal hatching being sometimes hereinafter called "the Pier 11 Berthing Area", and the Pier 11 Berthing Area and the water area shown in vertical hatching being sometimes hereinafter called "the Atlantic Basin".

(c) The Pier 12 Premises and the Pier 11 Premises shall hereinafter in this Agreement be collectively called "the Premises" during the term of the letting of both the Pier 12 Premises and the Pier 11 Premises, and the Pier 12 Premises shall hereinafter in this Agreement be called "the Premises" during the term of the letting of the Pier 12 Premises but not the Pier 11 Premises. In addition, the Pier 12 Berthing Area and the Pier 11 Berthing Area shall hereinafter in this Agreement be collectively called "the Berthing Area" during the term of the letting of both the Pier 12 Premises and the Pier 11 Premises, and the Pier 12 Berthing Area shall hereinafter in this Agreement be called "the Berthing Area" during the term of the letting of the Pier 12 Premises but not the Pier 11 Premises. The Port Authority and the Lessee hereby acknowledge that the Pier 12 Premises and the Pier 11 Premises constitute non-residential property.

(d) The letting of the Pier 11 Premises shall be conditional upon the occurrence of any of the following events, upon the occurrence of any of which the Port Authority shall let to the Lessee and the Lessee shall hire and take from the Port Authority the Pier 11 Premises: the agreement dated as of December 18, 1979, by and between the Port Authority, the City of New York (hereinafter called "the City"), and the State of New York regarding the construction and operation of the Red Hook Container Terminal (which agreement, as it has been heretofore amended, modified and supplemented, is hereinafter called "the Marine Project Agreement") shall be (1) amended to permit the use of the Pier 11 Premises for the purposes set forth in this

Agreement; (2) amended to remove the Pier 11 Premises from the properties under the Marine Project Agreement; or (3) terminated by the mutual agreement of the parties and the properties thereunder returned or provided to the respective parties as set forth in the Marine Project Agreement. In addition, and subject to all of the provisions of Section 35 hereof, the letting of the Pier 11 Premises shall not commence until any entity occupying the Pier 11 Premises shall have vacated the Pier 11 Premises. Nothing set forth above in this paragraph shall create or be deemed to create any obligation on the part of the Port Authority to effect any amendment or termination of the Marine Project Agreement.

Section 2. Term

(a) (1) The term of the letting under this Agreement of the Pier 12 Premises shall commence at 12:01 o'clock A.M. on December 21, 2004 (hereinafter called "the Commencement Date") and, unless sooner terminated, shall expire at 11:59 o'clock P.M. on December 31, 2009.

(2) The term of the letting under this Agreement of the Pier 11 Premises shall commence on such date as one of the conditions set forth in paragraph (d) of Section 1 shall have been met and, unless sooner terminated, shall expire at 11:59 o'clock P.M. on December 31, 2009.

(b) (1) The Lessee shall have the right in accordance with the provisions of this paragraph, to extend the term of the letting under this Agreement for a five (5) year period (hereinafter called the "First Extension Period"), effective upon December 31, 2009 in the event said date is the expiration date of the term of the letting, and thereafter for a second five (5) year period (hereinafter called the "Second Extension Period"; each of the First Extension Period and the Second Extension Period hereinafter called an "Extension Period"), effective upon the expiration date of the First Extension Period (hereinafter called the "First Extended Expiration Date"). Not later than three hundred sixty-five (365) days before the Expiration Date or the First Extended Expiration Date, as the case may be, the Lessee shall give the Port Authority irrevocable, unconditional written notice (hereinafter called the "Extension Notice") stating that the Lessee thereby exercises its right to extend this Agreement and the term of the letting hereunder; provided, however, that no Extension Notice pursuant to this paragraph (b) shall be effective if (x) on the date of the giving of the Extension Notice or on the effective date thereof the Lessee has received a notice of default from the Port Authority under

Section 24 hereof and has not cured said default (or if such cure requires activity over a period of time, the Lessee has not commenced and continued to cure in accordance with the provisions of paragraph (a)11 of said Section 24), or (y) on the date of the giving of the Extension Notice or on the effective date thereof the Lessee has been served by the Port Authority, pursuant to Section 24 of this Agreement, entitled "Termination", with a notice of termination of this Agreement or (z) on the date of the giving of the Extension Notice this Agreement is not then in full force and effect. Within thirty (30) days of its receipt of an effective Extension Notice, the Port Authority shall send a notice to the Lessee confirming that this Agreement and the term of the letting hereunder are extended as provided herein.

(2) In the event that this Agreement and the term of the letting hereunder have been extended as provided in subparagraph (1) of this paragraph, then the letting during each Extension Period shall be upon all of the same terms, covenants, conditions and provisions of this Agreement except as may be specifically set forth in this Agreement.

Section 3. Basic Rental

(a) For purposes of this Section and for all other purposes under this Agreement the following terms shall have the respective meanings provided below:

(1) "Annual Period" shall mean as the context requires the twelve-month period commencing with the Cruise Operations Rental Payment Start Date, as hereinafter defined, and each of the twelve-month periods thereafter occurring during the term of the letting under this Agreement commencing on each anniversary of the Cruise Operations Rental Payment Start Date occurring during the term of the letting hereunder, except that if the Cruise Operations Rental Payment Start Date shall occur on a day other than the first day of a calendar month then the first Annual Period shall mean the portion of the calendar month in which the Cruise Operations Rental Payment Start Date shall occur commencing with the Cruise Operations Rental Payment Start Date and the eleven-month period following said month and each succeeding Annual Period shall mean the twelve-month period commencing on the anniversary of the first day of the calendar month in which the Cruise Operations Rental Payment Start Date shall occur; provided, however, that the last Annual Period shall expire in any event on the expiration date of the term of the letting under this Agreement.

(2) "Cruise Operations Rental Payment Start Date" shall mean the earliest of the following dates:

(i) September 1, 2005; or

(ii) the date as of which the first "Passenger Ship" (as such term is defined in paragraph (a) (3) of Section 4 of this Agreement) shall berth in the Berthing Area for the purpose of the embarkation or disembarkation of "Passengers" (as such term is defined in paragraph (a) (2) of Section 4 of this Agreement) to or from said Passenger Ship; provided, however, that the commencement of the payment of the basic rentals set forth in this Section for the Pier 11 Premises shall be subject to the provisions of paragraph (1) of this Section; and further, provided, that this subdivision shall not apply to a Passenger Ship berthing in the Berthing Area as a result of an emergency or berthing in the Berthing Area for the sole purpose of announcing, advertising or celebrating the Brooklyn Cruise Terminal.

(3) "ULURP" shall mean the Uniform Land Use Review Procedure as set forth in Chapter 8, Section 197-c and d of the Charter of the City of New York.

(b) The Lessee shall pay basic rental to the Port Authority for the Pier 12 Premises during the term of the letting as follows: (1) during the first Annual Period, at the annual rate of Four Hundred Thousand Four Hundred Dollars and No Cents (\$400,400.00) payable in advance in equal monthly installments of Thirty-three Thousand Three Hundred Sixty-six Dollars and Sixty-seven Cents (\$33,366.67) on the Cruise Operations Rental Payment Start Date and on the first day of each calendar month occurring thereafter during such Annual Period, except that if the Cruise Operations Rental Payment Start Date shall be a day other than the first day of a calendar month the installment of basic rental payable on the Cruise Operations Rental Payment Start Date shall be an amount equal to the amount of the installment described in this subdivision multiplied by a fraction the numerator of which shall be the number of days from the Cruise Operations Rental Payment Start Date to the last day of the calendar month in which the Cruise Operations Rental Payment Start Date shall fall and the denominator of which shall be the number of days in that calendar month; (2) during the second Annual Period, at the annual rate of Four Hundred Eight Thousand Four Hundred Eight Dollars and No Cents (\$408,408.00) payable in advance in equal monthly installments of Thirty-four Thousand Thirty-four Dollars

and No Cents (\$34,034.00) on the first day of the second Annual Period and on the first day of each calendar month occurring thereafter during such Annual Period; (3) during the third Annual Period, at the annual rate of Four Hundred Sixteen Thousand Five Hundred Seventy-six Dollars and Sixteen Cents (\$416,576.16) payable in advance in equal monthly installments of Thirty-four Thousand Seven Hundred Fourteen Dollars and Sixty-eight Cents (\$34,714.68) on the first day of the third Annual Period and on the first day of each calendar month occurring thereafter during such Annual Period; (4) during the fourth Annual Period, at the annual rate of Four Hundred Twenty-four Thousand Nine Hundred Seven Dollars and Sixty-eight Cents (\$424,907.68) payable in advance in equal monthly installments of Thirty-five Thousand Four Hundred Eight Dollars and Ninety-seven Cents (\$35,408.97) on the first day of the fourth Annual Period and on the first day of each calendar month occurring thereafter during such Annual Period; and (5) during the fifth Annual Period, at the annual rate of Four Hundred Seventy Thousand Four Hundred Seven Dollars and Sixty-eight Cents (\$470,407.68) payable in advance in equal monthly installments of Thirty-nine Thousand Two Hundred Dollars and Sixty-four Cents (\$39,200.64) on the first day of the fifth Annual Period and on the first day of each calendar month occurring thereafter during such Annual Period.

(c) In the event that the Lessee shall elect to extend the term of the letting for the First Extension Period under the provisions of Section 2(b) hereof, the Lessee shall pay basic rental to the Port Authority for the Pier 12 Premises during the First Extension Period as follows: (1) during the remainder of the fifth Annual Period, at the annual rate of Four Hundred Seventy Thousand Four Hundred Seven Dollars and Sixty-eight Cents (\$470,407.68) payable in advance in equal monthly installments of Thirty-nine Thousand Two Hundred Dollars and Sixty-four Cents (\$39,200.64) on January 1, 2010 and on the first day of each calendar month occurring thereafter during the remainder of the fifth Annual Period; (2) during the sixth Annual Period, at the annual rate of Five Hundred Fifteen Thousand Nine Hundred Seven Dollars and Sixty-eight Cents (\$515,907.68) payable in advance in equal monthly installments of Forty-two Thousand Nine Hundred Ninety-two Dollars and Thirty-one Cents (\$42,992.31) on the first day of the sixth Annual Period and on the first day of each calendar month occurring thereafter during such Annual Period; (3) during the seventh Annual Period, at the annual rate of Five Hundred Twenty-six Thousand Two Hundred Twenty-five Dollars and Eighty-four Cents (\$526,225.84) payable in advance in equal monthly installments of Forty-three Thousand Eight Hundred Fifty-two Dollars and Fifteen Cents (\$43,852.15) on the first day of the seventh Annual Period and on the first day of each

calendar month occurring thereafter during such Annual Period; (4) during the eighth Annual Period, at the annual rate of Five Hundred Thirty-six Thousand Seven Hundred Fifty Dollars and Thirty-five Cents (\$536,750.35) payable in advance in equal monthly installments of Forty-four Thousand Seven Hundred Twenty-nine Dollars and Twenty Cents (\$44,729.20) on the first day of the eighth Annual Period and on the first day of each calendar month occurring thereafter during such Annual Period; (5) during the ninth Annual Period, at the annual rate of Five Hundred Forty-seven Thousand Four Hundred Eighty-five Dollars and Thirty-six Cents (\$547,485.36) payable in advance in equal monthly installments of Forty-five Thousand Six Hundred Twenty-three Dollars and Seventy-eight Cents (\$45,623.78) on the first day of the ninth Annual Period and on the first day of each calendar month occurring thereafter during such Annual Period; and (6) during the tenth Annual Period, at the annual rate of Five Hundred Fifty-eight Thousand Four Hundred Thirty-five Dollars and Seven Cents (\$558,435.07) payable in advance in equal monthly installments of Forty-six Thousand Five Hundred Thirty-six Dollars and Twenty-six Cents (\$46,536.26) on the first day of the tenth Annual Period and on the first day of each calendar month occurring thereafter through December 31, 2014.

(d) In the event that the Lessee shall elect to extend the term of the letting for the Second Extension Period under the provisions of Section 2(b) hereof, the Lessee shall pay basic rental to the Port Authority for the Pier 12 Premises during the Second Extension Period as follows: (1) during the remainder of the tenth Annual Period, at the annual rate of Five Hundred Fifty-eight Thousand Four Hundred Thirty-five Dollars and Seven Cents (\$558,435.07) payable in advance in equal monthly installments of Forty-six Thousand Five Hundred Thirty-six Dollars and Twenty-six Cents (\$46,536.26) on January 1, 2015 and on the first day of each calendar month occurring thereafter during the remainder of the tenth Annual Period; (2) during the eleventh Annual Period, at the annual rate of Six Hundred Three Thousand Nine Hundred Thirty-five Dollars and Seven Cents (\$603,935.07) payable in advance in equal monthly installments of Fifty Thousand Three Hundred Twenty-seven Dollars and Ninety-two Cents (\$50,327.92) on the first day of the eleventh Annual Period and on the first day of each calendar month occurring thereafter during such Annual Period; (3) during the twelfth Annual Period, at the annual rate of Six Hundred Forty-nine Thousand Four Hundred Thirty-five Dollars and Seven Cents (\$649,435.07) payable in advance in equal monthly installments of Fifty-four Thousand One Hundred Nineteen Dollars and Fifty-nine Cents (\$54,119.59) on the first day of the twelfth Annual Period and on the first day of each calendar month occurring thereafter during such Annual

Period; (4) during the thirteenth Annual Period, at the annual rate of Six Hundred Sixty-two Thousand Four Hundred Twenty-three Dollars and Seventy-seven Cents (\$662,423.77) payable in advance in equal monthly installments of Fifty-five Thousand Two Hundred One Dollars and Ninety-eight Cents (\$55,201.98) on the first day of the thirteenth Annual Period and on the first day of each calendar month occurring thereafter during such Annual Period; (5) during the fourteenth Annual Period, at the annual rate of Six Hundred Seventy-five Thousand Six Hundred Seventy-two Dollars and Twenty-four Cents (\$675,672.24) payable in advance in equal monthly installments of Fifty-six Thousand Three Hundred Six Dollars and Two Cents (\$56,306.02) on the first day of the fourteenth Annual Period and on the first day of each calendar month occurring thereafter during such Annual Period; and (6) during the fifteenth Annual Period, at the annual rate of Six Hundred Eighty-nine Thousand One Hundred Eighty-five Dollars and Sixty-nine Cents (\$689,185.69) payable in advance in equal monthly installments of Fifty-seven Thousand Four Hundred Thirty-two Dollars and Fifteen Cents (\$57,432.15) on the first day of the fifteenth Annual Period and on the first day of each calendar month occurring thereafter through December 31, 2019.

(e) (1) The Port Authority and the Lessee contemplate that in the near future the City and the staff of the Port Authority will negotiate the terms for the transfer by the Port Authority to the City of Piers 7 through 12 and their related upland and structures (which terms are hereinafter called "the Memorandum of Understanding", which properties are hereinafter collectively called "the Brooklyn Piers" and which transfer is hereinafter called "the Brooklyn Piers Transfer"). The Port Authority and the Lessee acknowledge that the Brooklyn Piers Transfer will require the ULURP of the Brooklyn Piers. In the event that (i) the Lessee in conjunction with the City shall have completed the ULURP application for the Brooklyn Piers and such application shall have received all required approvals by the City for its full effectiveness, and (ii) at the time of said full effectiveness of the ULURP of the Brooklyn Piers, the Port Authority's Board of Commissioners shall not have authorized the Port Authority to enter into an agreement substantially as set forth in the Memorandum of Understanding or on such other terms as the City and the staff of the Port Authority shall have subsequently agreed upon (hereinafter called "the Final Pier Transfer Agreement"), then from and after said full effectiveness of the ULURP of the Brooklyn Piers the Lessee shall pay basic rental for the Pier 12 Premises at the annual rates for the respective Annual Periods as set forth in the schedule attached hereto, hereby made a part hereof and marked "Schedule A", which annual rates set forth in Schedule A shall be in lieu of the

annual rates set forth for said Annual Periods in paragraph (b), (c) and (d) of this Section. Notwithstanding the provisions of the immediately preceding sentence, in the event that the Port Authority's Board of Commissioners shall subsequently authorize the Final Pier Transfer Agreement, then from and after the first day of the first calendar month in which such authorization shall become effective (including the passage of the period for the veto of said authorization by the respective governors of the State of New York and the State of New Jersey) the Lessee shall resume the payment of basic rental for the Pier 12 Premises at the annual rates for the respective Annual Periods as set forth for said Annual Periods in paragraphs (b), (c) and (d) of this Section as if the event set forth in this paragraph had not occurred. Nothing set forth in this subparagraph shall be binding in any way on the Board of Commissioners of the Port Authority, and said Board of Commissioners shall have and retain full discretion as to any authorization regarding the Brooklyn Piers Transfer.

(2) Notwithstanding the provisions of subparagraph (1) of this paragraph, in the event that (i) the Lessee in conjunction with the City shall have completed the ULURP application for the Brooklyn Piers but such application shall not have received all required approvals by the City for its full effectiveness by August 31, 2009 (and whether or not the Port Authority's Board of Commissioners shall have then authorized the Final Pier Transfer Agreement or shall authorize the Final Pier Transfer Agreement during the "Deferral Period" as defined below in this subparagraph), or (ii) the Lessee in conjunction with the City shall have completed a ULURP application for the Pier 12 Premises and the Pier 11 Premises apart from the remainder of the Brooklyn Piers but such application shall not have received all required approvals by the City for its full effectiveness by August 31, 2009, or (iii) the Lessee in conjunction with the City shall have completed a ULURP application for the Pier 12 Premises and the Pier 11 Premises apart from the remainder of the Brooklyn Piers and such application shall have received all required approvals by the City for its full effectiveness by August 31, 2009, but the Port Authority's Board of Commissioners shall not have authorized the Port Authority to enter into an agreement for the transfer of the Pier 12 Premises and the Pier 11 Premises to the City substantially on terms that shall have been agreed to by the City and the staff of the Port Authority, then the Lessee shall pay basic rental for the Pier 12 Premises during the period from September 1, 2009 through the earlier of (aa) the date upon which the ULURP application for the Brooklyn Piers shall have received all required approvals by the City for its full effectiveness, or (bb) August 31, 2011 (which period is

hereinafter called "the Deferral Period") at the annual rates set forth in Schedule A hereto; provided, however, that the difference in the amount of the basic rental payable for the Pier 12 Premises under Schedule A hereto during the Deferral Period pursuant to the provisions of this subparagraph and the amount of the basic rental that would have been payable for the Pier 12 Premises under the provisions of paragraph (b)(5), paragraph (c)(1) and paragraph (c)(2) of this Section during the Deferral Period were it not for the provisions of this subparagraph (hereinafter called "the Pier 12 Deferral Differential Amount") shall be paid in full by the Lessee to the Port Authority within thirty (30) days of the end of the Deferral Period. The aforesaid payment of the Pier 12 Deferral Differential Amount shall include the payment of interest on such amount for the Deferral Period at the annual rate equal to the average of the weekly Index of 25 Revenue Bonds as reported in the publication "The Bond Buyer" for the one hundred eighty (180) day period immediately preceding the expiration of the Deferral Period. The Port Authority and the Lessee acknowledge and agree that the Pier 12 Deferral Differential Amount for the period from September 1, 2009 through August 31, 2010 is equal to Three Thousand Eighty-three Dollars and Forty-nine Cents (\$3,083.49) per month and that the Pier 12 Deferral Differential Amount for the period from September 1, 2010 through August 31, 2011 is equal to Six Thousand One Hundred Fifty-two Dollars and Eighty-one Cents (\$6,152.81) per month. Nothing set forth in this subparagraph shall be binding in any way on the Board of Commissioners of the Port Authority, and said Board of Commissioners shall have and retain full discretion as to any authorization regarding the transfer of the Pier 12 Premises and the Pier 11 Premises to the City.

(f) Subject to the provisions of paragraph (m) of this Section, the Lessee shall pay basic rental to the Port Authority for the Pier 11 Shed Premises during the term of the letting as follows: (1) during the first Annual Period, at the annual rate of Three Hundred Thousand Eight Hundred Ten Dollars and No Cents (\$300,810.00) payable in advance in equal monthly installments of Twenty-five Thousand Sixty-seven Dollars and Fifty Cents (\$25,067.50) on the Cruise Operations Rental Payment Start Date and on the first day of each calendar month occurring thereafter during such Annual Period, except that if the Cruise Operations Rental Payment Start Date shall be a day other than the first day of a calendar month the installment of basic rental payable on the Cruise Operations Rental Payment Start Date shall be an amount equal to the amount of the installment described in this subdivision multiplied by a fraction the numerator of which shall be the number of days from the Cruise Operations Rental Payment

Start Date to the last day of the calendar month in which the Cruise Operations Rental Payment Start Date shall fall and the denominator of which shall be the number of days in that calendar month; (2) during the second Annual Period, at the annual rate of Three Hundred Six Thousand Eight Hundred Twenty-six Dollars and Twenty Cents (\$306,826.20) payable in advance in equal monthly installments of Twenty-five Thousand Five Hundred Sixty-eight Dollars and Eighty-five Cents (\$25,568.85) on the first day of the second Annual Period and on the first day of each calendar month occurring thereafter during such Annual Period; (3) during the third Annual Period, at the annual rate of Three Hundred Twelve Thousand Nine Hundred Sixty-two Dollars and Seventy-two Cents (\$312,962.72) payable in advance in equal monthly installments of Twenty-six Thousand Eighty Dollars and Twenty-three Cents (\$26,080.23) on the first day of the third Annual Period and on the first day of each calendar month occurring thereafter during such Annual Period; (4) during the fourth Annual Period, at the annual rate of Three Hundred Nineteen Thousand Two Hundred Twenty-one Dollars and Ninety-eight Cents (\$319,221.98) payable in advance in equal monthly installments of Twenty-six Thousand Six Hundred One Dollars and Eighty-three Cents (\$26,601.83) on the first day of the fourth Annual Period and on the first day of each calendar month occurring thereafter during such Annual Period; and (5) during the fifth Annual Period, at the annual rate of Four Hundred Fifty-four Thousand Seven Hundred Twenty-one Dollars and Ninety-eight Cents (\$454,721.98) payable in advance in equal monthly installments of Thirty-seven Thousand Eight Hundred Ninety-three Dollars and Fifty Cents (\$37,893.50) on the first day of the fifth Annual Period and on the first day of each calendar month occurring thereafter during such Annual Period.

(g) Subject to the provisions of paragraph (m) of this Section, in the event that the Lessee shall elect to extend the term of the letting for the First Extension Period under the provisions of Section 2(b) hereof, the Lessee shall pay basic rental to the Port Authority for the Pier 11 Shed Premises during the First Extension Period as follows: (1) during the remainder of the fifth Annual Period, at the annual rate of Four Hundred Fifty-four Thousand Seven Hundred Twenty-one Dollars and Ninety-eight Cents (\$454,721.98) payable in advance in equal monthly installments of Thirty-seven Thousand Eight Hundred Ninety-three Dollars and Fifty Cents (\$37,893.50) on January 1, 2010 and on the first day of each calendar month occurring thereafter during the remainder of the fifth Annual Period; (2) during the sixth Annual Period, at the annual rate of Four Hundred Sixty-three Thousand Eight Hundred Sixteen Dollars and Forty-two Cents (\$463,816.42) payable in advance in equal monthly installments of

Thirty-eight Thousand Six Hundred Fifty-one Dollars and Thirty-seven Cents (\$38,651.37) on the first day of the sixth Annual Period and on the first day of each calendar month occurring thereafter during such Annual Period; (3) during the seventh Annual Period, at the annual rate of Four Hundred Seventy-three Thousand Ninety-two Dollars and Seventy-five Cents (\$473,092.75) payable in advance in equal monthly installments of Thirty-nine Thousand Four Hundred Twenty-four Dollars and Forty Cents (\$39,424.40) on the first day of the seventh Annual Period and on the first day of each calendar month occurring thereafter during such Annual Period; (4) during the eighth Annual Period, at the annual rate of Four Hundred Eighty-two Thousand Five Hundred Fifty-four Dollars and Sixty Cents (\$482,554.60) payable in advance in equal monthly installments of Forty Thousand Two Hundred Twelve Dollars and Eighty-eight Cents (\$40,212.88) on the first day of the eighth Annual Period and on the first day of each calendar month occurring thereafter during such Annual Period; (5) during the ninth Annual Period, at the annual rate of Four Hundred Ninety-two Thousand Two Hundred Five Dollars and Sixty-nine Cents (\$492,205.69) payable in advance in equal monthly installments of Forty-one Thousand Seventeen Dollars and Fourteen Cents (\$41,017.14) on the first day of the ninth Annual Period and on the first day of each calendar month occurring thereafter during such Annual Period; and (6) during the tenth Annual Period, at the annual rate of Five Hundred Two Thousand Forty-nine Dollars and Eighty-one Cents (\$502,049.81) payable in advance in equal monthly installments of Forty-one Thousand Eight Hundred Thirty-seven Dollars and Forty-eight Cents (\$41,837.48) on the first day of the tenth Annual Period and on the first day of each calendar month occurring thereafter through December 31, 2014.

(h) Subject to the provisions of paragraph (m) of this Section, in the event that the Lessee shall elect to extend the term of the letting for the Second Extension Period under the provisions of Section 2(b) hereof, the Lessee shall pay basic rental to the Port Authority for the Pier 11 Shed Premises during the Second Extension Period as follows: (1) during the remainder of the tenth Annual Period, at the annual rate of Five Hundred Two Thousand Forty-nine Dollars and Eighty-one Cents (\$502,049.81) payable in advance in equal monthly installments of Forty-one Thousand Eight Hundred Thirty-seven Dollars and Forty-eight Cents (\$41,837.48) on January 1, 2015 and on the first day of each calendar month occurring thereafter during the remainder of the tenth Annual Period; (2) during the eleventh Annual Period, at the annual rate of Six Hundred Thirty-seven Thousand Five Hundred Forty-nine Dollars and Eighty-one Cents (\$637,549.81) payable in advance in equal monthly installments of

Fifty-three Thousand One Hundred Twenty-nine Dollars and Fifteen Cents (\$53,129.15) on the first day of the eleventh Annual Period and on the first day of each calendar month occurring thereafter during such Annual Period; (3) during the twelfth Annual Period, at the annual rate of Six Hundred Fifty Thousand Three Hundred Dollars and Eighty Cents (\$650,300.80) payable in advance in equal monthly installments of Fifty-four Thousand One Hundred Ninety-one Dollars and Seventy-three Cents (\$54,191.73) on the first day of the twelfth Annual Period and on the first day of each calendar month occurring thereafter during such Annual Period; (4) during the thirteenth Annual Period, at the annual rate of Six Hundred Sixty-three Thousand Three Hundred Six Dollars and Eighty-two Cents (\$663,306.82) payable in advance in equal monthly installments of Fifty-five Thousand Two Hundred Seventy-five Dollars and Fifty-seven Cents (\$55,275.57) on the first day of the thirteenth Annual Period and on the first day of each calendar month occurring thereafter during such Annual Period; (5) during the fourteenth Annual Period, at the annual rate of Six Hundred Seventy-six Thousand Five Hundred Seventy-two Dollars and Ninety-two Cents (\$676,572.92) payable in advance in equal monthly installments of Fifty-six Thousand Three Hundred Eighty-one Dollars and Eight Cents (\$56,381.08) on the first day of the fourteenth Annual Period and on the first day of each calendar month occurring thereafter during such Annual Period; and (6) during the fifteenth Annual Period, at the annual rate of Six Hundred Ninety Thousand One Hundred Four Dollars and Forty-one Cents (\$690,104.41) payable in advance in equal monthly installments of Fifty-seven Thousand Five Hundred Eight Dollars and Seventy Cents (\$57,508.70) on the first day of the fifteenth Annual Period and on the first day of each calendar month occurring thereafter through December 31, 2019.

(i)(1) The Port Authority and the Lessee contemplate that in the near future the City and the staff of the Port Authority will negotiate the Memorandum of Understanding for the Brooklyn Piers Transfer and that there will be a ULURP of the Brooklyn Piers, all as recited in paragraph (e) of this Section. In the event that (i) the Lessee in conjunction with the City shall have completed the ULURP application for the Brooklyn Piers and such application shall have received all required approvals by the City for its full effectiveness, and (ii) at the time of said full effectiveness of the ULURP of the Brooklyn Piers, the Port Authority's Board of Commissioners shall not have authorized the Port Authority to enter into an agreement substantially as set forth in the Memorandum of Understanding or on such other terms as the City and the staff of the Port Authority shall have subsequently agreed upon (hereinafter called "the Final Pier Transfer Agreement"), then from and after said full effectiveness

of the ULURP of the Brooklyn Piers the Lessee shall pay basic rental for the Pier 11 Shed Premises at the annual rates for the respective Annual Periods as set forth in the schedule attached hereto, hereby made a part hereof and marked "Schedule B", which annual rates set forth in Schedule B shall be in lieu of the annual rates set forth for said Annual Periods in paragraph (f), (g) and (h) of this Section. Notwithstanding the provisions of the immediately preceding sentence, in the event that the Port Authority's Board of Commissioners shall subsequently authorize the Final Pier Transfer Agreement, then from and after the first day of the first calendar month in which such authorization shall become effective (including the passage of the period for the veto of said authorization by the respective governors of the State of New York and the State of New Jersey) the Lessee shall resume the payment of basic rental for the Pier 11 Shed Premises at the annual rates for the respective Annual Periods as set forth for said Annual Periods in paragraphs (f), (g) and (h) of this Section as if the event set forth in this paragraph had not occurred. Nothing set forth in this subparagraph shall be binding in any way on the Board of Commissioners of the Port Authority, and said Board of Commissioners shall have and retain full discretion as to any authorization regarding the Brooklyn Piers Transfer.

(2) Notwithstanding the provisions of subparagraph (1) of this paragraph, in the event that (i) the Lessee in conjunction with the City shall have completed the ULURP application for the Brooklyn Piers but such application shall not have received all required approvals by the City for its full effectiveness by August 31, 2009 (and whether or not the Port Authority's Board of Commissioners shall have then authorized the Final Pier Transfer Agreement or shall authorize the Final Pier Transfer Agreement during the "Deferral Period" as defined below in this subparagraph), or (ii) the Lessee in conjunction with the City shall have completed a ULURP application for the Pier 12 Premises and the Pier 11 Premises apart from the remainder of the Brooklyn Piers but such application shall not have received all required approvals by the City for its full effectiveness by August 31, 2009, or (iii) the Lessee in conjunction with the City shall have completed a ULURP application for the Pier 12 Premises and the Pier 11 Premises apart from the remainder of the Brooklyn Piers and such application shall have received all required approvals by the City for its full effectiveness by August 31, 2009, but the Port Authority's Board of Commissioners shall not have authorized the Port Authority to enter into an agreement for the transfer of the Pier 12 Premises and the Pier 11 Premises to the City substantially on terms that shall have been agreed to by the City and the staff of the Port Authority, then the Lessee

shall pay basic rental for the Pier 11 Shed Premises during the period from September 1, 2009 through the earlier of (aa) the date upon which the ULURP application for the Brooklyn Piers shall have received all required approvals by the City for its full effectiveness, or (bb) August 31, 2011 (which period is hereinafter called "the Deferral Period") at the annual rates set forth in Schedule B hereto; provided, however, that the difference in the amount of the basic rental payable for the Pier 11 Shed Premises under Schedule B hereto during the Deferral Period pursuant to the provisions of this subparagraph and the amount of the basic rental that would have been payable for the Pier 11 Shed Premises under the provisions of paragraph (f) (5), paragraph (g) (1) and paragraph (g) (2) of this Section during the Deferral Period were it not for the provisions of this subparagraph (hereinafter called "the Pier 11 Deferral Differential Amount") shall be paid in full by the Lessee to the Port Authority within thirty (30) days of the end of the Deferral Period. The aforesaid payment of the Pier 11 Deferral Differential Amount shall include the payment of interest on such amount for the Deferral Period at the annual rate equal to the average of the weekly Index of 25 Revenue Bonds as reported in the publication "The Bond Buyer" for the one hundred eighty (180) day period immediately preceding the expiration of the Deferral Period. The Port Authority and the Lessee acknowledge and agree that the Pier 11 Deferral Differential Amount for the period from September 1, 2009 through August 31, 2010 is equal to Ten Thousand Seven Hundred Fifty-nine Dollars and Sixty-three Cents (\$10,759.63) per month and that the Pier 11 Deferral Differential Amount for the period from September 1, 2010 through August 31, 2011 is equal to Ten Thousand Nine Hundred Seventy-four Dollars and Eighty-two Cents (\$10,974.82) per month. Nothing set forth in this subparagraph shall be binding in any way on the Board of Commissioners of the Port Authority, and said Board of Commissioners shall have and retain full discretion as to any authorization regarding the transfer of the Pier 12 Premises and the Pier 11 Premises to the City.

(j) Subject to the provisions of paragraph (m) of this Section, the Lessee shall commence to pay basic rental to the Port Authority for the Pier 11 Open Area Premises during the period commencing on the first day of the fifth Annual Period through December 31, 2009 at the annual rate of Four Hundred Twenty-nine Thousand One Hundred Sixty-six Dollars and Eleven Cents (\$429,166.11) payable in advance in equal monthly installments of Thirty-five Thousand Seven Hundred Sixty-three Dollars and Eighty-four Cents (\$35,763.84) on the first day of the fifth Annual Period and on the first day of each calendar month occurring thereafter through December 31, 2009.

(k) Subject to the provisions of paragraph (m) of this Section, in the event that the Lessee shall elect to extend the term of the letting for the First Extension Period under the provisions of Section 2(b) hereof, the Lessee shall pay basic rental to the Port Authority for the Pier 11 Open Area Premises during the First Extension Period as follows: (1) during the remainder of the fifth Annual Period, at the annual rate of Four Hundred Twenty-nine Thousand One Hundred Sixty-six Dollars and Eleven Cents (\$429,166.11) payable in advance in equal monthly installments of Thirty-five Thousand Seven Hundred Sixty-three Dollars and Eighty-four Cents (\$35,763.84) on January 1, 2010 and on the first day of each calendar month occurring thereafter during the remainder of the fifth Annual Period; (2) during the sixth Annual Period, at the annual rate of Four Hundred Thirty-seven Thousand Seven Hundred Forty-nine Dollars and Forty-three Cents (\$437,749.43) payable in advance in equal monthly installments of Thirty-six Thousand Four Hundred Seventy-nine Dollars and Twelve Cents (\$36,479.12) on the first day of the sixth Annual Period and on the first day of each calendar month occurring thereafter during such Annual Period; (3) during the seventh Annual Period, at the annual rate of Four Hundred Forty-six Thousand Five Hundred Four Dollars and Forty-two Cents (\$446,504.42) payable in advance in equal monthly installments of Thirty-seven Thousand Two Hundred Eight Dollars and Seventy Cents (\$37,208.70) on the first day of the seventh Annual Period and on the first day of each calendar month occurring thereafter during such Annual Period; (4) during the eighth Annual Period, at the annual rate of Four Hundred Fifty-five Thousand Four Hundred Thirty-four Dollars and Fifty-one Cents (\$455,434.51) payable in advance in equal monthly installments of Thirty-seven Thousand Nine Hundred Fifty-two Dollars and Eighty-eight Cents (\$37,952.88) on the first day of the eighth Annual Period and on the first day of each calendar month occurring thereafter during such Annual Period; (5) during the ninth Annual Period, at the annual rate of Four Hundred Sixty-four Thousand Five Hundred Forty-three Dollars and Twenty Cents (\$464,543.20) payable in advance in equal monthly installments of Thirty-eight Thousand Seven Hundred Eleven Dollars and Ninety-three Cents (\$38,711.93) on the first day of the ninth Annual Period and on the first day of each calendar month occurring thereafter during such Annual Period; and (6) during the tenth Annual Period, at the annual rate of Four Hundred Seventy-three Thousand Eight Hundred Thirty-four Dollars and Six Cents (\$473,834.06) payable in advance in equal monthly installments of Thirty-nine Thousand Four Hundred Eighty-six Dollars and Seventeen Cents (\$39,486.17) on the first day of the tenth Annual Period and on the first day of each calendar month occurring thereafter through December 31, 2014.

(1) Subject to the provisions of paragraph (m) of this Section, in the event that the Lessee shall elect to extend the term of the letting for the Second Extension Period under the provisions of Section 2(b) hereof, the Lessee shall pay basic rental to the Port Authority for the Pier 11 Open Area Premises during the Second Extension Period as follows: (1) during the remainder of the tenth Annual Period, at the annual rate of Four Hundred Seventy-three Thousand Eight Hundred Thirty-four Dollars and Six Cents (\$473,834.06) payable in advance in equal monthly installments of Thirty-nine Thousand Four Hundred Eighty-six Dollars and Seventeen Cents (\$39,486.17) on January 1, 2015 on the first day of each calendar month occurring thereafter during the ten Annual Period; (2) during the eleventh Annual Period, at the annual rate of Four Hundred Eighty-three Thousand Three Hundred Ten Dollars and Seventy-four Cents (\$483,310.74) payable in advance in equal monthly installments of Forty Thousand Two Hundred Seventy-five Dollars and Ninety Cents (\$40,275.90) on the first day of the eleventh Annual Period and on the first day of each calendar month occurring thereafter during such Annual Period; (3) during the twelfth Annual Period, at the annual rate of Four Hundred Ninety-two Thousand Nine Hundred Seventy-six Dollars and Ninety-six Cents (\$492,976.96) payable in advance in equal monthly installments of Forty-one Thousand Eighty-one Dollars and Forty-one Cents (\$41,081.41) on the first day of the twelfth Annual Period and on the first day of each calendar month occurring thereafter during such Annual Period; (4) during the thirteenth Annual Period, at the annual rate of Five Hundred Two Thousand Eight Hundred Thirty-six Dollars and Fifty Cents (\$502,836.50) payable in advance in equal monthly installments of Forty-one Thousand Nine Hundred Three Dollars and Four Cents (\$41,903.04) on the first day of the thirteenth Annual Period and on the first day of each calendar month occurring thereafter during such Annual Period; (5) during the fourteenth Annual Period, at the annual rate of Five Hundred Twelve Thousand Eight Hundred Ninety-three Dollars and Twenty-three Cents (\$512,893.23) payable in advance in equal monthly installments of Forty-two Thousand Seven Hundred Forty-one Dollars and Ten Cents (\$42,741.10) on the first day of the fourteenth Annual Period and on the first day of each calendar month occurring thereafter during such Annual Period; and (6) during the fifteenth Annual Period, at the annual rate of Five Hundred Twenty-three Thousand One Hundred Fifty-one Dollars and Nine Cents (\$523,151.09) payable in advance in equal monthly installments of Forty-three Thousand Five Hundred Ninety-five Dollars and Ninety-two Cents (\$43,595.92) on the first day of the fifteenth Annual Period and on the first day of each calendar month occurring thereafter through December 31, 2019.

(m) Notwithstanding any provision set forth in this Section, the basic rental for the Pier 11 Premises shall in no event commence until the Pier 11 Premises shall have become part of the Premises under this Agreement. In the event that the Pier 11 Premises become part of the Premises under this Agreement, then upon the effective date of their addition to the leasehold the Lessee shall pay the basic rental for the Pier 11 Premises at the annual rate then in effect under the provisions of this Agreement for the respective Annual Period in which such addition to the leasehold occurs and shall thereafter pay the basic rental at the respective rates for the succeeding Annual Periods to occur during the term of the letting of the Pier 11 Premises. In addition, and notwithstanding the provisions set forth in this Section, in the event that the Pier 11 Premises are added to the leasehold prior to September 1, 2005, the basic rental for the Pier 11 Premises shall not commence until the earlier of September 1, 2005 or the date upon which all or any portion of the Pier 11 Premises are employed for purposes of generating revenue as permitted hereunder.

Section 4. Passenger Throughput Rental

(a) For purposes of this Section and for all other purposes under this Agreement the following terms shall have the respective meanings provided below:

(1) "Lease Year" shall mean each twelve-month period commencing on January 1st and ending on December 31st to occur during the period commencing on January 1, 2005 and continuing throughout the term of the letting under this Agreement, except that for purposes of the rentals payable under this Section and Section 5 hereof the period from the Cruise Operations Rental Payment Start Date through the next following December 31st shall be a Lease Year regardless of length.

(2) "Passenger" shall mean any person traveling on a Passenger Ship other than the officers and crew of the Passenger Ship.

(3) "Passenger Ship" shall mean a seagoing vessel, other than one in military or naval service, engaged primarily in carrying more than three hundred twenty (320) persons as Passengers, and loading or unloading not more than one thousand (1,000) long tons of cargo, on voyages extending for not less than twenty-four (24) hours, and actually operated on voyages of at least such duration, from or to the Port of New York, or other vessels, calls of which are recommended by the

Lessee for handling at the Premises and approved in writing by the Port Authority.

(4) "Tier 1 Number of Passengers" shall mean, for each Lease Year, the number of Passengers from one (1) Passenger through one hundred thousand (100,000) Passengers.

(5) "Tier 2 Number of Passengers" shall mean, for each Lease Year, the number of Passengers from one hundred thousand one (100,001) Passengers through two hundred thousand (200,000) Passengers.

(6) "Tier 3 Number of Passengers" shall mean, for each Lease Year, the number of Passengers above two hundred thousand (200,000) Passengers.

(b) In addition to all other rentals payable under this Agreement, the Lessee shall pay a Passenger throughput rental (hereinafter called the "Passenger Throughput Rental") for each Lease Year from the Cruise Operations Rental Payment Start Date through the expiration of the term of the letting under this Agreement as follows: (1) during each Lease Year to occur during the period commencing on the Cruise Operations Rental Payment Start Date and ending on December 31, 2008, in an amount equal to the combined product obtained by (i) multiplying One Dollar and Seventy-five Cents (\$1.75) by the Tier 1 Number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during such Lease Year; (ii) multiplying Two Dollars and Twenty-five Cents (\$2.25) by the Tier 2 Number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during such Lease Year; and (iii) multiplying Two Dollars and Seventy-five Cents (\$2.75) by the Tier 3 Number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during such Lease Year; and (2) during the Lease Year commencing on January 1, 2009 and ending on December 31, 2009, in an amount equal to the combined product obtained by (i) multiplying Two Dollars and Fifty Cents (\$2.50) by the Tier 1 Number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during such Lease Year; (ii) multiplying Three Dollars and No Cents (\$3.00) by the Tier 2 Number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during such Lease Year; and (iii) multiplying Three Dollars and Fifty Cents (\$3.50) by the Tier 3 Number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during such Lease Year.

(c) In the event that the Lessee shall elect to extend the term of the letting for the First Extension Period under the

provisions of Section 2(b) hereof, the Lessee shall pay the Passenger Throughput Rental for each Lease Year to occur during the First Extension Period in an amount equal to the combined product obtained by (1) multiplying Two Dollars and Fifty Cents (\$2.50) by the Tier 1 Number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during such Lease Year; (2) multiplying Three Dollars and No Cents (\$3.00) by the Tier 2 Number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during such Lease Year; and (3) multiplying Three Dollars and Fifty Cents (\$3.50) by the Tier 3 Number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during such Lease Year.

(d) In the event that the Lessee shall elect to extend the term of the letting for the Second Extension Period under the provisions of Section 2(b) hereof, the Lessee shall pay the Passenger Throughput Rental for each Lease Year to occur during the Second Extension Period in an amount equal to the combined product obtained by (1) multiplying Two Dollars and Fifty Cents (\$2.50) by the Tier 1 Number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during such Lease Year; (2) multiplying Three Dollars and No Cents (\$3.00) by the Tier 2 Number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during such Lease Year; and (3) multiplying Three Dollars and Fifty Cents (\$3.50) by the Tier 3 Number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during such Lease Year.

(e) In connection with the Lessee's obligation to pay the Passenger Throughput Rental under this Section, the Lessee shall pay to the Port Authority a minimum Passenger Throughput Rental (hereinafter called "the Minimum Passenger Throughput Rental") as follows: if during any Lease Year the Port Authority shall not receive Passenger Throughput Rental in at least the "Guaranteed Annual Passenger Throughput Rental Amount", as hereinafter defined, with respect to Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during such Lease Year, the Lessee shall pay to the Port Authority a sum equal to the "Guaranteed Annual Passenger Throughput Rental Amount" for that Lease Year less the amount of the Passenger Throughput Rental received by the Port Authority for that Lease Year under the provisions of paragraph (b), (c) or (d) of this Section. The "Guaranteed Annual Passenger Throughput Rental Amount" for the respective Lease Year shall be the amount set forth opposite such Lease Year in the schedule attached hereto, hereby made a part hereof and marked "Schedule C".

(f) The Passenger Throughput Rental and the Minimum Passenger Throughput Rental shall be payable as set forth below in this paragraph, based on the number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises:

(1) On each April 30th, July 31st, October 31st, and February 28th (or 29th if a leap year) to occur following the calendar month in which the Cruise Operations Rental Payment Start Date shall occur, the Lessee shall render to the Port Authority a statement (hereinafter called "the Passenger Quarterly Report") certified by a responsible officer of the Lessee showing the total number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during the preceding three-month period (or the last three months of the preceding Lease Year in the case of the report made on the last day of February) and the cumulative number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises from the date of the commencement of the Lease Year for which the Passenger Quarterly Report is made through the last day of the preceding month; each Passenger Quarterly Report shall be accompanied by monthly vessel activity reports to substantiate such report, showing the total number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during the three-month period for which such report is made.

(2) For each Lease Year to occur during the term of the letting under this Agreement, the Lessee shall pay to the Port Authority in advance on the first day of each calendar month during that Lease Year an amount equal to one-twelfth (1/12th) of the Guaranteed Annual Passenger Throughput Rental Amount for that Lease Year as set forth opposite that Lease Year in Schedule C attached hereto. In addition, whenever any Passenger Monthly Report shall show that the amount of the Passenger Throughput Rental, calculated in accordance with the provisions of this Section for the period from the first day of that Lease Year through the last day of the three-month period for which the report is made, exceeds the Guaranteed Annual Passenger Throughput Rental Amount for that Lease Year (which excess of the Passenger Throughput Rental owed over the Guaranteed Annual Passenger Throughput Rental Amount is hereinafter called "the Quarterly Excess Amount"), the Lessee shall pay to the Port Authority at the time of rendering such Passenger Quarterly Report an amount equal to the Quarterly Excess Amount, and thereafter at the time of rendering each subsequent Passenger Quarterly Report for the Lease Year, and the month following the Lease Year, pay a sum equal to the appropriate Quarterly Excess

Amount for each such three-month period for which such report is made.

(3) The Passenger Quarterly Report made on the last day of each February shall include a reconciliation of the amount of the Passenger Throughput Rental payable for the preceding Lease Year and the Lessee shall pay at the time of rendering such Passenger Quarterly Report any amount of the Passenger Throughput Rental then owed to the Port Authority. In the event that the aforesaid reconciliation shall show that the Lessee has paid in excess of the Passenger Throughput Rental owed for such Lease Year, the difference shall be credited against the rentals payable under this Agreement.

(g) The computation of the Passenger Throughput Rental for each Lease Year, or a portion of a Lease Year, shall be individual to such Lease Year, or such portion of a Lease Year, and without relation to any other Lease Year, or any other portion of any Lease Year. Whenever reference is made to any Tier Number of Passengers, it shall mean the Tier Number of Passengers reduced by operation of the proration provisions hereof. Without limiting any other provision of this Agreement, in the event that the period from the Cruise Operations Rental Payment Start Date through the last day of the Lease Year in which the Cruise Operations Rental Payment Start Date shall occur is less than 365 days, the Tier 1 Number of Passengers, the Tier 2 Number of Passengers, the Tier 3 Number of Passengers, and the Guaranteed Annual Passenger Throughput Rental Amount for the Lease Year in which the Cruise Operations Rental Payment Start Date shall occur shall be prorated on a daily basis for the period from the Cruise Operations Rental Payment Start Date through the last day of the Lease Year in which the Cruise Operations Rental Payment Start Date shall occur.

(h) Upon any termination of the letting (even if stated to have the same effect as expiration), the Lessee shall within sixty (60) days after the effective date of termination render to the Port Authority a statement certified by a responsible officer of the Lessee setting forth the information and a final calculation of the Passenger Throughput Rental required to be set forth in the statement rendered by the Lessee on the last day of the month following the end of each Lease Year pursuant to the provisions of paragraph (f) of this Section, except that (i) the statement shall set forth the total number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during the three-month period or portion thereof through the effective date of termination and, if not already set forth therein, the cumulative number of Passengers

embarked to or disembarked from Passenger Ships berthing at the Premises during from the date of the commencement of the Lease Year in which the effective date of termination occurred through the effective date of termination, and (ii) the final calculation of the Passenger Throughput Rental shall be made for the period from the first day of the Lease Year in which the effective date of termination shall occur through the effective date of termination. Any amount of the Passenger Throughput Rental determined to be owed to the Port Authority pursuant to such final calculation shall be paid by the Lessee at the time of rendering the statement.

(i) In the event that the Lessee shall under any provision of this Agreement become entitled to an abatement of basic rental, then the respective Guaranteed Annual Passenger Throughput Rental Amount for each Lease Year, the Tier 1 Number of Passenger, the Tier 2 Number of Passengers, and the Tier 3 Number of Passengers shall each be reduced proportionately to the reduction of the basic rental.

(j) Notwithstanding any other provision of this Section, the Passenger Throughput Rental and the Minimum Passenger Throughput Rental shall not commence to be payable until the Pier 11 Premises shall be added to the leasehold. Upon the addition of the Pier 11 Premises to the leasehold, the Passenger Throughput Rental and the Minimum Passenger Throughput Rental shall commence to be payable at the rate for the Lease Year in which the effective date of such addition occurs and for each succeeding Lease Year as set forth in this Section, except that if the Pier 11 Premises shall be added to the leasehold on a day other than the first day of a Lease Year, the Passenger Throughput Rental and the Minimum Passenger Throughput Rental shall be subject to the proration provisions of paragraph (g) of this Section.

(k) In the event that a Passenger shall both disembark from and re-embark to a Passenger Ship berthing at the Premises in the course of a stopover and as part of the same itinerary, such Passenger shall be counted as one Passenger (and not two Passengers) for purposes of the computation of the Passenger Throughput Rental; in addition, in the event that a Passenger shall disembark from a Passenger Ship berthing at the Premises and re-embark to a connecting Passenger Ship as part of the same itinerary for the Passenger, such Passenger shall be counted as one Passenger (and not two Passengers) for purposes of the computation of the Passenger Throughput Rental; in all other instances, any Passenger who both embarks to and disembarks from (in whichever order) a Passenger Ship berthing at the Premises

shall be counted as two Passengers (and not one Passenger) for purposes of such computation of the Passenger Throughput Rental.

Section 5. Parking Percentage Rental

(a) In addition to all other rentals payable under this Agreement, the Lessee shall pay to the Port Authority a percentage rental (hereinafter called "the Parking Percentage Rental") in the amount of five percent (5%) of the "Gross Parking Receipts", as such term is hereinafter in this Section defined, during the period from the Cruise Operations Rental Payment Start Date through December 31, 2008 and in the amount of fifteen percent (15%) of the Gross Parking Receipts during the period from January 1, 2009 through December 31, 2009. In the event that the Lessee shall elect to extend the term of the letting for the First Extension Period under the provisions of Section 2(b) hereof, the Lessee shall pay to the Port Authority the Parking Percentage Rental in the amount of fifteen percent (15%) of the Gross Parking Receipts during the period from January 1, 2010 through December 31, 2011 and in the amount of twenty percent (20%) of the Gross Parking Receipts during the period from January 1, 2012 through December 31, 2014. In the event that the Lessee shall elect to extend the term of the letting for the Second Extension Period under the provisions of Section 2(b) hereof, the Lessee shall pay to the Port Authority the Parking Percentage Rental in the amount of twenty percent (20%) of the Gross Parking Receipts during the Second Extension Period.

(b) "Gross Parking Receipts" shall include all revenues, amounts, monies, income, and receipts of any kind paid or payable to the Lessee or otherwise derived by the Lessee (without deduction therefrom) from or in connection with the providing of space for the parking of motor vehicles at or outside the Premises for persons or entities making any use of the Premises (regardless of when the order therefor is received or whether received inside or outside the Premises), including but not limited to all such amounts paid or payable to the Lessee by any sublessee or other third party; provided, however, that any taxes imposed by law which are separately stated to and paid by a customer and directly payable to the taxing authority by the Lessee, shall be excluded therefrom.

(c) The Parking Percentage Rental shall be payable on a quarterly basis on April 30th, July 31st, October 31st, and February 28th (or 29th if a leap year) of each Lease Year (each of which dates is hereinafter called the "Quarterly Reporting Date"). On each Quarterly Reporting Date to occur during the term of the letting, the Lessee shall render to the Port

Authority a statement (hereinafter called "the Parking Receipts Quarterly Report") certified by a responsible officer of the Lessee showing the Gross Parking Receipts for the prior three-month period (or the last three months of the preceding Lease Year in the case of the report made on the last day of February) and the cumulative Gross Parking Receipts from the date of the commencement of the Lease Year for which the Parking Receipts Quarterly Report is made through the last day of the preceding month of said Lease Year. The Lessee shall pay at the time of rendering the Parking Receipts Quarterly Report the amount of the Parking Percentage Rental due for the three-month period for which the report is made pursuant to the provisions of paragraph (a) of this Section. The Parking Receipts Quarterly Report made on the last day of each February shall include a reconciliation of the amount of the Parking Percentage Rental payable for the preceding Lease Year and the Lessee shall pay at the time of rendering such Parking Receipts Quarterly Report any amount of the Parking Percentage Rental then owed to the Port Authority. In the event that the aforesaid reconciliation shall show that the Lessee has paid in excess of the Parking Percentage Rental owed for such Lease Year, the difference shall be credited against the rentals payable under this Agreement.

(d) Upon any termination of the letting (even if stated to have the same effect as expiration), the Lessee shall within sixty (60) days after the effective date of termination render to the Port Authority a statement certified by a responsible officer of the Lessee setting forth the information and a final calculation of the Parking Percentage Rental required to be set forth in the statement rendered by the Lessee on the last day of the month following the end of each Lease Year pursuant to the provisions of paragraph (c) of this Section, except that (i) the statement shall set forth the Gross Parking Receipts for the three-month period or portion thereof through the effective date of termination and, if not already set forth therein, the cumulative Gross Parking Receipts from the date of the commencement of the Lease Year in which the effective date of termination occurred through the effective date of termination, and (ii) the final calculation of the Parking Percentage Rental shall be made for the period from the first day of the Lease Year in which the effective date of termination shall occur through the effective date of termination. Any amount of the Parking Percentage Rental determined to be owed to the Port Authority pursuant to such final calculation shall be paid by the Lessee at the time of rendering the statement.

(e) Except as specifically set forth in this Agreement, the rentals payable under this Section shall not be

subject to abatement or suspension or reduction for any reason whatsoever.

Section 6. Ancillary Percentage Rental

(a) In addition to all other rentals payable under this Agreement, the Lessee shall pay to the Port Authority a percentage rental (hereinafter called "the Ancillary Percentage Rental") in the amount of five percent (5%) of the "Gross Revenues from Ancillary Operations", as such term is hereinafter in this Section defined, during the period from the Commencement Date through December 31, 2009. In the event that the Lessee shall elect to extend the term of the letting for the First Extension Period under the provisions of Section 2(b) hereof, the Lessee shall pay to the Port Authority the Ancillary Percentage Rental in the amount of fifteen percent (15%) of the Gross Revenues from Ancillary Operations during the First Extension Period. In the event that the Lessee shall elect to extend the term of the letting for the Second Extension Period under the provisions of Section 2(b) hereof, the Lessee shall pay to the Port Authority the Ancillary Percentage Rental in the amount of fifteen percent (15%) of the Gross Revenues from Ancillary Operations during the Second Extension Period.

(b) "Gross Revenues from Ancillary Operations" shall include all revenues, amounts, monies, income, and receipts of every kind paid or payable to the Lessee or otherwise derived by the Lessee (without any deductions therefrom) from or in connection with the operations permitted under Section 7(b)(1), Section 7(b)(3), Section 7(b)(4), Section 7(b)(5), Section 7(b)(6) and Section 7(b)(7) of this Agreement (regardless of when the order therefor is received or whether received inside or outside the Premises), including but not limited to all such amounts paid or payable to the Lessee by any sublessee or other third party; 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 Lessee, shall be excluded therefrom.

(c) The Ancillary Percentage Rental shall be payable on each Quarterly Reporting Date to occur following the Commencement Date. On each such Quarterly Reporting Date, the Lessee shall render to the Port Authority a statement (hereinafter called "the Ancillary Revenue Quarterly Report") certified by a responsible officer of the Lessee showing the Gross Revenues from Ancillary Operations for the preceding three-month period (or the last three months of the preceding Lease Year in the case of the report made on the last day of February)

and the cumulative Gross Revenues from Ancillary Operations from the date of the commencement of the Lease Year for which the Revenue Quarterly Report is made through the last day of the preceding month of said Lease Year. The Lessee shall pay at the time of rendering the Ancillary Revenue Quarterly Report the amount of the Ancillary Percentage Rental due for the three-month period for which the report is made pursuant to the provisions of paragraph (a) of this Section. The Ancillary Revenue Quarterly Report made on the last day of each February shall include a reconciliation of the amount of the Ancillary Percentage Rental payable for the preceding Lease Year and the Lessee shall pay at the time of rendering such Ancillary Revenue Quarterly Report any amount of the Ancillary Percentage Rental then owed to the Port Authority. In the event that the aforesaid reconciliation shall show that the Lessee has paid in excess of the Ancillary Percentage Rental owed for such Lease Year, the difference shall be credited against the rentals payable under this Agreement.

(d) Upon any termination of the letting (even if stated to have the same effect as expiration), the Lessee shall within sixty (60) days after the effective date of termination render to the Port Authority a statement certified by a responsible officer of the Lessee setting forth the information and a final calculation of the Ancillary Percentage Rental required to be set forth in the statement rendered by the Lessee on the last day of the month following the end of each Lease Year pursuant to the provisions of paragraph (c) of this Section, except that (i) the statement shall set forth the Gross Revenues from Ancillary Operations for the three-month period or portion thereof through the effective date of termination and, if not already set forth therein, the cumulative Gross Revenues from Ancillary Operations from the date of the commencement of the Lease Year in which the effective date of termination occurred through the effective date of termination, and (ii) the final calculation of the Ancillary Percentage Rental shall be made for the period from the first day of the Lease Year in which the effective date of termination shall occur through the effective date of termination. Any amount of the Ancillary Percentage Rental determined to be owed to the Port Authority pursuant to such final calculation shall be paid by the Lessee at the time of rendering the statement.

(e) Nothing set forth in this Section, nor any payment by the Lessee or acceptance thereof by the Port Authority of rental hereunder, shall be or be deemed a waiver by the Port Authority of its right of consent under the provisions of Section 17 entitled "Assignment and Sublease".

(f) Except as specifically set forth in this Agreement, the rentals payable under this paragraph shall not be subject to abatement or suspension or reduction for any reason whatsoever.

Section 7. Rights of User

The Lessee shall use the Premises for the following purposes only, and for no other purpose whatsoever: (a) the handling, accommodation and servicing of Passenger Ships, and the handling, accommodation and servicing of Passengers, mail, visitors and associated cargo, and other activity incidental to such operations; and (b) (1) retail sales of goods and services at the Premises in connection with the activities set forth in paragraph (a) of this Section; (2) the operation of a parking facility to provide space for the parking of motor vehicles for persons or entities making use of the Premises; (3) the operation of a marina to provide mooring and services for nautical craft; (4) the operation of a ferry landing; (5) the production of trade shows for the display of commercial goods and services, and flower shows; (6) the holding of the fireman's examination, the police examination, the civil service examination, the transit worker examination, and the bar examination; and (7) the holding of such group or special events as shall have the prior and continuing consent of the Port Authority; provided, that, all uses and activities within subdivisions (5), (6) and (7) of this Section may take place at the Premises only during periods when the Premises are not being actively used by cruise ship lines for the handling, accommodation and servicing of Passengers. Notwithstanding the foregoing, the permissible uses hereunder shall be undertaken by the Lessee subject to the provisions of Section 17 and Section 23 hereof. The Lessee shall have the right to berth in the Berthing Area those Passenger Ships operated by persons, firms or corporations which shall have the prior and continuing consent of the Port Authority, to be granted, withheld, and withdrawn in the sole discretion of the Port Authority. The Lessee shall not use or permit the use of the Premises except as hereinabove provided.

Section 8. Lessee's Construction Work

(a) The Lessee agrees to and shall perform the following work to prepare the Premises for the Lessee's operations therein (which work is hereinafter called "the Lessee's Construction Work"): the construction and development of a passenger ship marine terminal. The Lessee's Construction Work shall be paid for by the Port Authority to the extent and as provided for in paragraphs (p) and (q) of this Section.

(b) With respect to the Lessee's Construction Work the Lessee shall indemnify and save harmless the Port Authority, and its Commissioners, officers, agents and employees against the following distinct and several risks, whether they arise from acts or omissions of the Lessee, any contractors of the Lessee, the Port Authority, third persons, or from acts of God or the public enemy, or otherwise, excepting only risks which result solely from affirmative wilful acts done by the Port Authority subsequent to commencement of the work:

(i) The risk of loss or damage to all such construction prior to the completion thereof. In the event of such loss or damage, the Lessee shall forthwith repair, replace and make good the work without cost to the Port Authority;

(ii) The risk of death, injury or damage, direct or consequential, to the Port Authority, and its Commissioners, officers, agents and employees, and to its or their property, arising out of or in connection with the performance of the work. The Lessee shall indemnify the Port Authority, and its Commissioners, officers, agents and employees, for all such injuries and damages, and for all loss suffered by reason thereof;

(iii) The risk of claims and demands, just or unjust, by third persons against the Port Authority, and its Commissioners, officers, agents and employees, arising or alleged to arise out of the performance of the work. The Lessee shall indemnify the Port Authority, and its Commissioners, officers, agents and employees, against and from all such claims and demands, and for all loss and expense incurred by it and by them in the defense, settlement or satisfaction thereof including without limitation thereto, claims and demands for death, for personal injury or for property damage, direct or consequential.

(c) Prior to the commencement of any of the Lessee's Construction Work, the Lessee shall submit to the Port Authority for its approval a Construction Application in the form supplied by the Port Authority, and containing such terms and conditions as the Port Authority may include, setting forth in detail by appropriate plans and specifications the work the Lessee 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 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 Lessee shall identify each of the items constituting the Lessee's Construction Work, and shall describe in detail the systems, improvements, fixtures and equipment to be installed by the Lessee. The Lessee shall be responsible at its sole expense for retaining all architectural, engineering and other technical consultants and services as may be required by the Port Authority and for developing, completing and submitting detailed plans and specifications for the work. The plans and specifications to be submitted by the Lessee 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 the Port Authority's requirements. In connection with review by the Port Authority of the Lessee's submissions under this Section, the Lessee shall submit to the Port Authority, at the Port Authority's request, such additional data, detail or information as the Port Authority may find necessary, including without limitation, the identity and background of any contractor or subcontractor proposed by the Lessee to perform any of the Lessee's Construction Work. Following the Port Authority's receipt of the Lessee's Construction Application and complete plans and specifications, the Port Authority shall give its written approval or rejection thereof, or shall request such revisions or modifications thereto as the Port Authority may find necessary. The Port Authority shall endeavor to complete its initial review of the Construction Application and plans and specifications within thirty (30) business days after the Port Authority's receipt of a Construction Application and plans and specifications deemed by the Port Authority to be complete, and shall endeavor to complete its review of each revision or modification thereof within twenty (20) business days of the Port Authority's receipt of a revision or modification deemed by the Port Authority to be complete; provided, that, each such Construction Application and plans and specifications and/or revision or modification thereof shall be prepared in accordance with the highest professional standards, of uniformly high quality and well coordinated with respect to all engineering and architectural disciplines. The Lessee shall not engage any contractor or permit the use of any subcontractor if the Port Authority has notified the Lessee that such contractor or subcontractor is unacceptable to the Port Authority. In the event that the Lessee 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, the Port Authority shall within ten (10) business days notify the Lessee if any of the listed contractors or subcontractors are unacceptable to the Port Authority; if the Port Authority does not so notify the Lessee within said ten (10) day period, the Lessee's listed contractors and subcontractors will be deemed to have been accepted by the Port Authority for the performance of the work set forth in the Construction Application. The Lessee shall include in any such contract or subcontract such provisions as are required in accordance with the provisions of this Agreement and the Construction Application approved by the Port Authority. The Lessee shall obtain and maintain or cause each contractor to obtain and maintain in force such insurance coverage as is described in paragraphs (j) and (k) of this Section and such performance bonds as the Port Authority may specify. All of the Lessee's Construction Work shall be performed by the Lessee in accordance with the Construction Application and final plans and specifications approved by the Port Authority, shall be subject to inspection by the Port Authority during the progress of the work and after the completion thereof, and the Lessee shall redo or replace at its own expense any work not done in accordance therewith. Upon substantial completion of the Lessee's Construction Work, the Lessee shall deliver to the Port Authority a certification to such effect signed by a responsible officer of the Lessee and by the architect or engineer who sealed the Lessee's plans pursuant to the provisions of this paragraph or his or her replacement approved by the Port Authority (hereinafter called "the Sealing Professional") certifying that the Lessee's Construction Work is substantially complete and has been performed in accordance with the approved plans and specifications and the provisions of this Agreement, identifying the "punch list" items to be completed, and applying for a certificate of substantial completion from the Port Authority. Following its receipt of the Lessee's certification and application, the Port Authority shall inspect the work and, unless such certification is not correct, or the Port Authority determines that the Premises are unsuitable for occupancy and use by the Lessee, the Port Authority shall deliver a certificate of substantial completion to the Lessee permitting the Lessee to occupy and use the Premises for the purposes set forth in Section 7 hereof, subject to the Port Authority's later obtaining the Lessee's certification of final completion following satisfactory completion of all "punch work." Upon completion of all punch work in connection with the Lessee's Construction Work, the Lessee shall deliver to the Port Authority a certification of final completion signed by a responsible officer of the Lessee and the Sealing Design Professional certifying that all of the Lessee's Construction Work has been performed in accordance with the approved plans and

specifications and the provisions of this Agreement and applying for a certificate of final completion from the Port Authority. In addition, the Lessee shall supply the Port Authority with as-built drawings of the Lessee's Construction Work in such form and number requested by the Port Authority, and the Lessee shall keep said drawings current during the term of the letting under this Agreement. No changes or modifications to such work shall be made without prior Port Authority consent. Following its receipt of the Lessee's certification and application, the Port Authority shall inspect the work and, unless the certification is not correct, or the Port Authority determines that the Premises are unsuitable for occupancy and use by the Lessee, the Port Authority shall deliver a certificate of final completion to the Lessee.

(d) Except as set forth in paragraph (e) of this Section, the Lessee shall not commence any portion of the Lessee's Construction Work until the Construction Application and plans and specifications covering such work, referred to in paragraph (c) of this Section, have been finally approved by the Port Authority.

(e) If the Lessee desires to commence construction of portions of the Lessee's Construction Work prior to the approval by the Port Authority of the complete Construction Application and plans and specifications covering all of such work pursuant to paragraph (c) of this Section, the Lessee shall submit to the Port Authority a separate Construction Application for each portion of the Lessee's Construction Work the Lessee so desires to commence (each such portion of the Lessee's Construction Work being hereinafter designated as "Partial Approval Work") which shall be executed by an authorized officer of the Lessee and shall be accompanied by final and complete plans, specifications, drawings, and data with respect to such portion of the Lessee's Construction Work (the final and complete plans, specifications, drawings, and data covering each such portion of the Lessee's Construction Work are hereinafter referred to as "the Partial Approval Work Plans" with respect to such portion of the Lessee's Construction Work) setting forth in detail the work to be performed in connection with each such portion of the Lessee's Construction Work. The Port Authority shall have full and complete discretion as to whether to permit the Lessee to proceed with the performance of any Partial Approval Work. If the Port Authority consents to the performance of any Partial Approval Work, the Port Authority shall review the Construction Application covering such work and shall give its written approval or rejection of the Partial Approval Work Plans with respect thereto or shall request such revisions or modifications

thereto as the Port Authority may find necessary. Upon the Port Authority's approval of the Construction Application covering an item of Partial Approval Work and its approval of the Partial Approval Work Plans with respect thereto, the Lessee may proceed to perform such item of Partial Approval Work subject to and in accordance with the following terms and conditions:

(1) The performance by the Lessee of any item of Partial Approval Work in accordance with the Port Authority's approval will be at its sole risk and if for any reason the plans and specifications for the balance of the Lessee's Construction Work or, any part thereof, are not approved by the Port Authority or if the approval thereof calls for modifications or changes in any item of Partial Approval Work undertaken by the Lessee under any approval granted by the Port Authority pursuant to this paragraph, the Lessee will, as directed by the Port Authority, and at the Lessee's sole cost and expense, either restore the area affected to the condition existing prior to the commencement of such item of Partial Approval Work or make such modifications and changes to such work as may be required by the Port Authority.

(2) Nothing contained in any approval given pursuant to this paragraph shall constitute a determination or indication by the Port Authority that the Lessee has complied with any laws, rules, orders, ordinances, enactments, resolutions, regulations, statutes, requirements, codes, directions, and executive orders, including but not limited to those of the City of New York, which may pertain to the Partial Approval Work to be performed and which the Lessee is required to comply with pursuant to this Agreement.

(3) Each item of Partial Approval Work shall be performed in accordance with and subject to the terms and provisions of this Agreement covering the Lessee's Construction Work and in accordance with the approved Construction Application covering such item of Partial Approval Work and in accordance with the approved Partial Approval Work Plans constituting a part of such Construction Application, and subject to any requirements, stipulations, and provisions which the Port Authority may impose in its approval of the performance of such item of Partial Approval Work.

(4) No Partial Approval Work performed by the Lessee pursuant to the provisions of this paragraph shall affect or limit the obligations of the Lessee under any prior approvals it may have obtained with respect to the Lessee's Construction Work.

(5) The fact that the Lessee has performed any item of Partial Approval Work and that the Port Authority has consented to the performance thereof shall not affect or limit the obligations of the Lessee under this Agreement with respect to the Lessee's Construction Work. The Lessee specifically understands that neither the Port Authority's approval of any Construction Application and Partial Approval Work Plans covering any item of Partial Approval Work nor the performance by the Lessee of any item of Partial Approval Work pursuant to such approval shall obligate the Port Authority to approve the Construction Application and plans and specifications submitted by the Lessee for the balance of the Lessee's Construction Work or shall create or be deemed to create any obligation on the part of the Port Authority to permit subsequent Partial Approval Work to be performed. Without limiting the generality of the provisions of this paragraph, it is specifically understood that the Port Authority may withhold its approval of a Construction Application and Partial Approval Work Plans covering any item of Partial Approval Work if the Port Authority determines that review of subsequent items of Partial Approval Work is required before the Port Authority can approve, reject, or comment upon such Partial Approval Work Plans.

(6) In the event that in the opinion of the Port Authority the Lessee at any time during the performance of any portion of any item of Partial Approval Work under the approval granted by the Port Authority pursuant to this paragraph shall fail to comply with all of the provisions of this Agreement with respect to such work or shall fail to comply with the provisions of the Construction Application covering such work and the plans and specifications forming a part thereof, or shall fail to comply with any requirements, stipulations, or provisions imposed by the Port Authority in its approval of the performance of such item of Partial Approval Work, or if in the Port Authority's opinion the Lessee shall be in breach of any of the provisions of this Agreement covering such work or shall be in breach of any of the provisions of the Construction Application and plans and specifications covering the performance of such work, or shall be in breach of any requirements, stipulations, or provisions imposed by the Port Authority in its approval of the work, the Port Authority shall have the right to cause the Lessee to cease all or such part of such item of the Partial Approval Work as is being performed in violation of this Agreement, the Construction Application and plans and specifications, or the conditions of the Port Authority's approval. Upon written direction from the Port Authority, the Lessee shall promptly cease performance of the portion of the Partial Approval Work specified. The Lessee shall thereupon submit to the Port Authority for its written

approval the Lessee's proposal for making modifications, corrections or changes in or to the item of Partial Approval Work that has been or is to be performed so that the same will comply with the provisions of this Agreement, the Construction Application and plans and specifications, or the conditions of the Port Authority's approval covering such work. The Lessee shall not commence construction of the portion of the Partial Approval Work that has been halted until it has received written approval of the proposed modifications, corrections or changes.

(7) It is hereby expressly understood and agreed that the Port Authority has no duty or obligation of any kind whatsoever to inspect or police the performance of any Partial Approval Work by the Lessee and the rights granted to the Port Authority hereunder shall not create or be deemed to create such a duty or obligation. Accordingly, the fact that the Port Authority has not exercised its right to require the Lessee to cease performance of all or any part of the Partial Approval Work shall not be or be deemed to be an agreement or acknowledgment on the part of the Port Authority that the Lessee has in fact performed such work in accordance with the terms of this Agreement, the Construction Application and plans and specifications covering such work, or the conditions of the Port Authority's approval of such work, nor shall such fact be or be deemed to be a waiver by the Port Authority of any of the requirements of this Agreement with respect to such work, or any of the requirements of the Construction Application and plans and specifications covering such work, or any of the conditions of the Port Authority's approval of such work.

(f) Without limiting the generality of any of the provisions of this Agreement, the Lessee shall use its best efforts to minimize, to the maximum extent practicable, in the performance of the Lessee's Construction Work (including any Partial Approval Work performed by the Lessee) 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 Agreement, the Lessee 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 the Port Authority's review and approval in accordance with the provisions of this Section.

(g) Without limiting the generality of paragraph (c) of this Section the Lessee shall be solely responsible for the plans and specifications used by it and for the adequacy or

sufficiency of such plans, specifications and all the improvements, fixtures, and equipment depicted thereon or covered thereby, regardless of the consent thereto or approval thereof by the Port Authority or the incorporation therein of any Port Authority requirements or recommendations. The Port Authority shall have no obligation or liability in connection with the performance of any of the Lessee's Construction Work or for the contracts for the performance thereof entered into by the Lessee. Any warranties extended or available to the Lessee in connection with the aforesaid work shall be for the benefit of the Port Authority as well as the Lessee. The Lessee recognizes that its obligation to pay all of the rentals provided for in this Agreement shall commence pursuant to the provisions of Section 3, Section 4, Section 5 and Section 6 hereof whether or not the Lessee's Construction Work is then completed and regardless of whether the Lessee is then conducting any public operations in the Premises. The Lessee shall conduct no public operations in the Premises with respect to the use of any improvements, fixtures or equipment constituting the Lessee's Construction Work until the Port Authority shall have notified the Lessee in writing that the Lessee's Construction Work has been completed or substantially completed to its satisfaction. In the event of any inconsistency between the provisions of this Agreement and those of the Construction Application referred to in paragraph (c) of this Section the provisions of this Agreement shall control.

(h) Without limiting or affecting any other term or provision of this Agreement, the Lessee shall be solely responsible for the design, adequacy and operation of all utility, mechanical, electrical, communications and other systems installed in the Premises by the Lessee and all other improvements, additions, fixtures, finishes, decorations and equipment made or installed by the Lessee 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 which does not (i) adversely affect the watertight condition or structural integrity of the building subject to repair under this Section, (ii) adversely affect the efficient or proper utilization of any part of the Premises, or (iii) adversely affect the appearance of any part of the Premises.

(i) The Lessee 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 the Lessee from contesting claims in good faith.

(j) In addition to all policies of insurance otherwise required by this Agreement, the Lessee shall procure and maintain or cause to be procured and maintained in effect during the performance of the Lessee's Construction Work:

(i) Commercial General Liability Insurance including but not limited to coverage for Products Liability-Completed Operations and for Broad Form Property Damage and Independent Contractor coverage, with a contractual liability endorsement covering the obligations assumed by the Lessee under paragraph (b) of this Section, and which are customarily insured under such a policy, with a minimum combined single limit coverage for bodily injury and property damage of \$25 million. Said insurance shall also include coverage for explosion, collapse and underground property damage hazards. If the Lessee's Construction Work entails the ownership, maintenance, operation, or use of any watercraft, whether owned, non-owned, or hired, the Lessee shall have any exclusion for such watercraft deleted or shall purchase equivalent coverage under a policy of Protection and Indemnity Insurance and shall provide the Port Authority with a certificate of insurance evidencing such coverage.

(ii) Commercial Automobile Liability Insurance covering all owned, non-owned or hired vehicles used in connection with said construction with a minimum combined single limit coverage for bodily injury and property damage of \$25 million.

(iii) Workers' Compensation and Employers' Liability Insurance in accordance with the requirements of law and in limits of not less than \$1 million per accident. The Workers' Compensation Policy shall be specially endorsed to include coverage afforded by the U.S. Longshoremen's and Harbor Workers' Compensation Act and Coverage B - "Jones Act", maritime (including coverage for Masters or Members of the Crew of Vessels).

(k) In addition to the insurance required pursuant to the provisions of paragraph (j) of this Section, the Lessee shall procure or cause to be procured prior to the commencement of any work Builder's Risk Insurance (All Risk) covering loss or damage (including any loss or damage resulting from flood or earthquake) to any structures, improvements, fixtures and equipment and furnishing and materials on the Premises during said construction, whether or not attached to the land, in the amount of Seventy-five Million Dollars and No Cents (\$75,000,000.00) pursuant to an agreed-upon value endorsement. Such insurance shall name the Port Authority as a loss payee as its interest may appear and such policy shall provide that the loss shall be adjusted with the Port Authority, and that the proceeds thereof shall be paid to the Port Authority and shall be made available to the Lessee for and applied strictly and solely to the payment of the cost of the repair, replacement, rebuilding or other performance of the Lessee's Construction Work.

(l) With the exception of the Workers' Compensation and Employers' Liability Insurance policy each policy of insurance described in paragraph (j) of this Section shall include the Port Authority as an additional insured in its coverages including, without limitation, coverage for premises-operations and completed-operations, and no such policy shall contain any care, custody or control exclusions, or any exclusion for bodily injury to or sickness, disease or death of any employee of the Lessee or of any of its contractors which would conflict with or in any way impair the coverages resulting from the Port Authority's status as an additional insured or the coverage under the contractual liability endorsement described in subdivision (i) of paragraph (j) of this Section. Such insurance shall also contain an endorsement providing that the protection afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third party shall pertain and apply with like effect with respect to any claim or action against the Lessee by the Port Authority and against the Port Authority by the Lessee, but said endorsement shall not limit, vary, change or affect the protections afforded the Port Authority as an additional insured. Such insurance shall contain a provision that the insurer shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority.

(m) Unless otherwise set forth herein, each policy of insurance described in paragraphs (j) and (k) of this Section shall be subject to the applicable provisions of Section 14 of this Agreement.

(n) Title to and property in all improvements, fixtures and equipment placed, constructed or installed in or on the Premises as part of the Lessee's Construction Work shall vest as set forth in Section 8A hereof. Title to any personal property of the Lessee (including equipment and trade fixtures) removable without material damage to the Premises leased to the Lessee pursuant to this Agreement which are installed by the Lessee in or on the Premises leased to the Lessee pursuant to this Agreement and which are not part of the Lessee's Construction Work shall vest in the Lessee upon the installation thereof.

(o) In the performance of the Lessee's Construction Work the Lessee shall not permit any situation or condition to continue that may cause or be conducive to any labor troubles at the Premises which interferes with the progress of other construction work at the Premises. The determinations of the Port Authority shall be conclusive on the Lessee and, upon notice from the Port Authority, the Lessee shall or shall cause its contractor to immediately rectify any condition specified in the notice. In the event of failure by the Lessee 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 the Lessee's fault) the Port Authority by notice shall have the right to suspend the Port Authority's permission to the Lessee to proceed with any portion of the Lessee's Construction Work being performed by or on behalf of the Lessee, and the Lessee shall thereupon immediately cease the same. When labor troubles shall be so settled that such interference or the danger thereof no longer exists, the Port Authority by notice to the Lessee shall reinstate the permission to the Lessee 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, complaints, disputes, controversies or any other type of labor trouble, regardless of the employer of the person involved or their employment status, if any.

(p) In consideration of the performance by the Lessee of the Lessee's Construction Work in accordance with the provisions of this Section, the Port Authority shall pay to the

Lessee an amount (which amount is hereinafter called "the Construction Work Reimbursement Amount") equal to the lesser of: (1) the reasonable cost, as hereinafter defined, of the Lessee's Construction Work, or (2) Thirty-two Million Fifty Thousand Three Hundred Dollars and No Cents (\$32,050,300.00). To the extent permitted by sound accounting practice, the sum of the following items of cost incurred by the Lessee in performing the Lessee's Construction Work shall constitute the reasonable cost thereof for the purposes of this Agreement:

- (1) The Lessee's payments to contractors;
- (2) The Lessee's payments for supplies and materials;
- (3) The Lessee's payments to persons, firms or corporations other than construction contractors or suppliers of materials, for services rendered or rights granted in connection with construction, not including services of the types mentioned in items (4), (5) and (6) of this paragraph;
- (4) The Lessee's payments of premiums for performance bonds and for the insurance the Lessee is required to maintain in effect in accordance with the provisions of paragraph (j) of this Section during the period of construction only;
- (5) The Lessee's payments for engineering services in connection with the Lessee's Construction Work, and during the period of the construction only;
- (6) The Lessee's payments for architectural, planning and design services in connection with the Lessee's Construction Work.

No payment or payments on account of administrative or other overhead costs and no payment to employees of the Lessee shall be included in the cost of the Lessee's Construction Work whether or not allocated to the cost of the Lessee's Construction Work by the Lessee's own accounting practices. No payment to a firm or corporation wholly or partially owned by or in common ownership with the Lessee shall be included in the cost of the Lessee's Construction Work.

(q) Upon the full execution and delivery of this Agreement, the Port Authority shall pay to the Lessee the sum of Three Million Dollars and No Cents (\$3,000,000.00) as an advance payment of a portion of the Construction Work Reimbursement

Amount (hereinafter called "the Advance Payment"). On or about the tenth day of the first calendar month following the commencement of the Lessee's Construction Work the Lessee shall certify to the Port Authority by written certification subscribed by a responsible officer of the Lessee: (i) the amount of the Lessee's Construction Work performed by the Lessee in the preceding month, the cost of the work described in the certificate, the amount of such cost incurred by the Lessee during such month, and the amount paid by the Lessee on account of such cost, if any; (ii) that except for the amount, if any, stated in such certificate to be due for services and materials, there is no outstanding indebtedness known to the persons signing such certificate, after due inquiry, then due on account of the purchase of any equipment or fixtures described in the certificate or for labor, wages, materials, supplies or services in connection with any work described therein which, if unpaid, might become the basis of a vendor's, mechanic's, laborer's or materialmen statutory or similar lien or alleged lien upon such work or upon the Lessee's leasehold interest therein, nor are any of the equipment, or fixtures described in such certificate secured by any liens, mortgages, security interests or other encumbrances. Nothing contained herein shall be deemed or construed as a submission by the Port Authority to the application to itself of any such lien; and (iii) that the work for which the amount set forth in the certificate is due has been performed in accordance with the Lessee's final plans and specifications approved by the Port Authority and the provisions of this Agreement. Such certificate shall also contain a certification by the architect or engineer who sealed the Lessee's plans and specifications pursuant to the provisions of paragraph (c) of this Section certifying that all of the work described in the certificate has been performed in accordance with the Lessee's final plans and specifications approved by the Port Authority. Following its receipt of the Lessee's certificate, the Port Authority shall remit to the Lessee an amount equal to the amount paid by the Lessee for the portion of the Lessee's Construction Work performed by the Lessee in the preceding month as shown in the certificate less ten percent (10%) thereof and also less the amount of any claims made against the Port Authority by subcontractors, materialmen or workmen, if any, in connection with any of the work described in the certificate; provided, however, that the Advance Payment shall be applied to any amount otherwise payable under this sentence and only the excess, if any, of said amount over the Advance Payment shall be payable to the Lessee. On or about the tenth day of each month thereafter during the period of the performance of the Lessee's Construction Work the Lessee shall deliver a similar certificate to the Port Authority signed by a responsible officer

of the Lessee which certificate shall certify the amount of the Lessee's Construction Work performed by the Lessee in the preceding month, the cost of the work described in the certificate performed by the Lessee in the preceding month, the amount of such cost incurred by the Lessee during such month, the amount paid by the lessee on account of such cost, the cumulative amount of such cost incurred by the Lessee on account of the work described in the certificate from the date of the commencement of the work, and the cumulative amount of all payments made on account of such cost from the date of the commencement of the work, and such certificate shall also contain the statements set forth in subdivisions (ii) and (iii) of this paragraph both with respect to the work described in the certificate and all work previously performed by the Lessee. Each such certificate shall also contain a certification by the architect or engineer who sealed the Lessee's plans and specifications pursuant to the provisions of paragraph (c) of this Section, or any different architect or engineer hired by the Lessee in replacement, and approved by the Port Authority as required by paragraph (c) hereof, and certifying that all of the work described in the certificate has been performed in accordance with the Lessee's final plans and specifications approved by the Port Authority. Following its receipt of such certificate the Port Authority shall remit to the Lessee an amount equal to the amount paid by the Lessee for the portion of the Lessee's Construction Work performed by the Lessee in the preceding month as shown in the certificate less ten percent (10%) thereof and less the amount of claims, if any, made against the Port Authority by subcontractors, materialmen or workmen on account of any of the work described in the certificate; provided, however, that any portion of the Advance Payment not yet applied to the amounts owed by the Port Authority to the Lessee under this paragraph shall be applied to the amount otherwise payable under this sentence and only the excess, if any, of the cumulative amounts owed by the Port Authority to the Lessee under this paragraph over the Advance Payment shall be payable to the Lessee. Upon final completion of all of the Lessee's Construction Work to be performed by the Lessee as set forth in the Lessee's approved plans and specifications, the Lessee shall submit to the Port Authority a final certification signed by a responsible officer thereof that all work has been completed, which certificate shall certify separately the final cost of all of the Lessee's Construction Work performed by the Lessee, the cumulative payments made by the Lessee on account of such costs, and shall also certify the items set forth in subdivisions (ii) and (iii) of this paragraph with respect to all of the work. In addition, the architect or engineer who sealed the Lessee's plans and specifications pursuant to the provisions of paragraph (c) of

this Section shall certify that all of the work has been performed in accordance with the Lessee's final plans and specifications approved by the Port Authority. After examination and approval of such certificates, and such supporting documents and records as the Port Authority shall deem necessary to substantiate the certificates, the Port Authority shall finally inspect the Premises and the work and after such inspection the Port Authority shall notify the Lessee if all of the work has been performed in accordance with the approved plans and specifications and the provisions of this Agreement. If all of the work has been completed in accordance with the approved plans and specifications, and the provisions of this Agreement, the Port Authority will pay to the Lessee on account of the cost of the Lessee's Construction Work the difference between the sum obtained by adding together all prior payments made by the Port Authority to the Lessee on account of the cost of the Lessee's Construction Work (including the Advance Payment) and the Construction Work Reimbursement Amount. If the sum of all of the previous payments made by the Port Authority to the Lessee on account of the cost of the Lessee's Construction Work (including the Advance payment) exceeds the Construction Work Reimbursement Amount, the Lessee shall pay to the Port Authority the amount of such excess upon thirty (30) days' notice by the Port Authority to the Lessee of such outstanding amount. No payment made by the Port Authority to the Lessee pursuant to the provisions of this paragraph, including, without limitation, any payment made to the Lessee following the Port Authority's receipt of the Lessee's final certification of cost, shall be deemed final until the cost of the Lessee's Construction Work has been finally determined by the Port Authority. Any payment made to the Lessee following the Port Authority's receipt of the Lessee's final certification of cost shall not be deemed a final determination of the cost of the Lessee's Construction Work. Such final determination shall occur only after the Port Authority has examined and approved the Lessee's final certificate of cost and such records and other documentation of the Lessee as the Port Authority shall deem necessary to substantiate such cost. The Lessee shall permit the Port Authority by its agents, employees and representatives at all reasonable times prior to a final determination of the cost of the Lessee's Construction Work to examine and audit the records and other documentation of the Lessee which pertain to and will substantiate such cost. In no event whatsoever shall the cost of any portion of the Lessee's Construction Work as finally determined and computed in accordance with the provisions of paragraph (p) of this Section and in accordance with the provisions of this paragraph include any expenses, outlays or charges whatsoever by or for the account of the Lessee for or in connection with any improvements, equipment or fixtures or the

performance of any work unless such are actually and completely installed in and/or made to the Premises nor shall cost include the costs of any equipment, fixture or improvements which are secured by liens, mortgages, other encumbrances or conditional bills of sale. If the cost of the Lessee's Construction Work as finally determined shall be less than the amount previously paid to the Lessee pursuant to the provisions of this Section, the Lessee shall pay to the Port Authority the difference upon thirty (30) days' notice by the Port Authority to the Lessee stating the amount thereof. No amount paid by the Port Authority to the Lessee pursuant to the provisions of this Section shall or shall be deemed to imply that the Lessee's Construction Work or any portion thereof has been completed in accordance with law or the provisions of this Agreement.

(r) The Lessee agrees that it will complete the Lessee's Construction Work by September 30, 2006. The Port Authority shall not be obligated to pay for any item constituting a portion of the Lessee's Construction Work which has been constructed or installed subsequent to September 30, 2006. The Port Authority's entire obligation under this Agreement to make payments to the Lessee on account of the cost of the Lessee's Construction Work shall be limited in amount to the Construction Work Reimbursement Amount. In the event that for any reason (including, without limitation, the termination of this Agreement prior to completion of the Lessee's Construction Work), all or any portion of the Advance Payment shall not be applied to the cost of the Lessee's Construction Work pursuant to the provisions of paragraphs (p) and (q) of this Section, the Lessee shall pay to the Port Authority the amount of the unapplied Advance Payment upon thirty (30) days' notice by the Port Authority to the Lessee of such unapplied amount. No contractor or third party shall or shall be deemed to have acquired any rights against the Port Authority by virtue of the execution of this Agreement and nothing contained herein shall operate or give to any such contractor or third party any claim or right of action against the Port Authority and its Commissioners, officers, agents and employees.

(s) The Lessee agrees to and shall require its contractor to use every good faith effort to provide for meaningful participation by Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) in the Lessee's Construction Work. The Lessee shall work with the New York 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, the Lessee shall make every responsible effort to increase M/WBES' awareness of their opportunities to participate as Contractors in the construction and shall work with them to improve their ability to bid successfully on construction contracts for the Lessee's Construction Work.

(t) In addition to and without limiting any terms and provisions hereof, the Lessee shall provide in all of its contracts and subcontracts covering the Lessee's Construction Work, or any portion thereof, that:

(1) The contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and shall undertake or continue existing programs of affirmative action to ensure that minority group persons are afforded equal employment opportunity without discrimination. Such programs shall include, but not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selections for training or retraining, including apprenticeships and on-the-job training;

(2) At the request of either the Port Authority or the Lessee, the contractor shall request such employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding and which is involved in the performance of the contract with the Lessee to furnish a written statement that such employment agency, labor union or representative shall not discriminate because of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will cooperate in the implementation of the contractor's obligations hereunder;

(3) The contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor in the performance of the contract, that all qualified applicants will be afforded equal employment opportunity without discrimination because of race, creed, color, national origin, sex, age, disability or marital status;

(4) The contractor will include the provisions of subdivisions (1) through (3) of this paragraph in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to its work in connection with the contract;

(5) "Contractor" as used in paragraph (s) and in this paragraph shall include each contractor and subcontractor at any tier of construction.

(u) In consideration of the agreement of the Port Authority to pay to the Lessee the Construction Work Reimbursement Amount as set forth in paragraphs (p) and (q) of this Section, and as a condition precedent to any such payment or portion thereof (including the Advance Payment), the Lessee agrees that it will enter into an agreement with the Port Authority in the form attached hereto, hereby made a part hereof and marked "Exhibit B" (hereinafter called "the Supplemental Funding Agreement"). The Port Authority and the Lessee acknowledge and agree that the Supplemental Funding Agreement amends that certain Funding Agreement between the Port Authority and the Lessee dated as of June 11, 2004 and stated on the cover page thereof to be "Relative to Certain Improvements in Connection with the Reactivation of the Staten Island Railroad". The Lessee agrees that it will enter into the Supplemental Funding Agreement prior to or contemporaneously with the full execution and delivery of this Agreement.

(v) The Lessee shall have the right (but not the obligation) to perform the work to construct the marina referred to in Section 7(b)(3) hereof and the ferry landing referred to in Section 7(b)(4) hereof (hereinafter collectively called "the Lessee's Optional Work"). The Lessee's Optional Work shall not be part of the Lessee's Construction Work, but shall be performed in accordance with all of the provisions of this Section, including without limitation the requirement that the Lessee obtain the Port Authority's approval thereof in accordance with the provisions of paragraph (c) of this Section; provided, however, that the provisions of paragraphs (p) and (q) shall not apply to the Lessee's Optional Work and the Port Authority shall have no obligation to reimburse the Lessee on account of the performance of the Lessee's Optional Work.

Section 8A. Lessee's Improvements

Title to and property in all improvements, fixtures and equipment placed, constructed or installed in or to the Premises in the performance of the Lessee's Construction Work or placed, constructed or installed therein or thereto by the Lessee outside of the scope of the Lessee's Construction Work and at the Lessee's expense (hereinafter collectively called "the Lessee's Improvements") shall vest in the Lessee during the term of the letting (including any extension thereof pursuant to Section 2(b) hereof); provided, however, that the Lessee's Improvements shall

not include removable fixtures, removable equipment and similar removable personal property of the Lessee. Upon the expiration or earlier termination of the term of the letting (including any extension thereof pursuant to Section 2(b) hereof), title to and property in the Lessee's Improvements shall vest in the Port Authority as of the effective date of such expiration or earlier termination, and the Lessee shall execute any and all instruments necessary to transfer title to the Lessee's Improvements to the Port Authority. Notwithstanding the provisions set forth above in this Section, in the event of a "Permanent Taking", as that term is defined in Section 18 hereof, that results in the expiration or earlier termination of the letting of the Premises or any portion thereof, title to and property in the Lessee's Improvements shall remain in and with the Lessee to the extent required for the purposes of the calculation and payment to the Lessee of any award payable to the Lessee in connection with the Permanent Taking pursuant to the provisions of said Section 18.

Section 9. Ingress and Egress

Ingress to and egress from the Premises shall be by means of existing pedestrian or vehicular ways. The Port Authority shall preserve the extension of Pioneer Street shown in diagonal crosshatching on the sketch attached hereto, hereby made a part hereof and marked "Exhibit A-2" as a marine terminal highway during the term of the letting. The Port Authority may at any time temporarily or permanently close said extension of Pioneer Street if it determines that such closure is required by an emergency, or temporarily or permanently close, or consent to or request the closing of, any other way or any other area at, in or near the Premises presently or hereafter used for ingress to or egress from the Premises, so long as a reasonable means of ingress and egress remains available to the Lessee. The Lessee hereby releases and discharges the Port Authority, and all municipalities and other governmental authorities, and their respective successors and assigns, of and from any and all claims, demands, or causes of action which the Lessee may now or at any time hereafter have against any of the foregoing, arising or alleged to arise out of the closing of any such way or other area. The Lessee 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 10. Governmental and Other Requirements

(a) The Lessee shall procure from all governmental authorities having jurisdiction over the operations of the Lessee hereunder, all licenses, certificates, permits and other authorization which may be necessary for the conduct of such operations.

(b) The Lessee shall promptly observe, comply with and execute the provisions of any and all present and future governmental laws, rules, regulations, requirements, orders and directions which may pertain or apply to its operations or to its use and occupancy of the Premises, and in addition at its sole cost and expense shall make all improvements, repairs and alterations (structural and non-structural) which may be so required.

(c) The obligation of the Lessee to comply with governmental requirements is provided herein for the purpose of assuring proper safeguards for the protection of persons and property in or near the Premises, and proper operation by the Lessee. Such provision herein is not to be construed as a submission by the Port Authority to the application to itself of such requirements or any of them.

Section 11. Rules and Regulations

(a) The Lessee covenants and agrees to observe and obey (and to compel its officers, employees and others at the Premises with its consent to observe and obey) the Rules and Regulations of the Port Authority now in effect, and such further reasonable rules and regulations (including amendments and supplements thereto) for the government of the conduct and operations of the Lessee as may from time to time during the letting be promulgated by the Port Authority for reasons of safety, health, or preservation of property, or for the maintenance of the good and orderly appearance of the Premises, or for the safe or efficient operation of the Premises. The Port Authority agrees that, except in cases of emergency, it will give notice to the Lessee of every such further rule or regulation at least five (5) days before the Lessee shall be required to comply therewith.

(b) If a copy of the Rules and Regulations is not attached as Exhibit R to this Agreement, then the Port Authority will notify the Lessee thereof either by delivery of a copy or by making a copy available at the office of the Secretary of the Port Authority and notifying the Lessee of same.

(c) No statement or provision in the Rules and Regulations shall be deemed a representation or promise by the Port Authority that the services or privileges described shall be or remain available, or that the charges, prices, rates or fees stated therein shall be or remain in effect throughout the letting, all of the same being subject to change by the Port Authority from time to time whenever it deems a change advisable.

Section 12. Method of Operation

(a) In the performance of its obligations hereunder and in the use of the Premises, the Lessee shall conduct its operations in an orderly and proper manner.

(b) The Lessee shall not allow any garbage, debris or other waste materials (whether solid or liquid) to collect or accumulate at the Premises and the Lessee shall remove from the Premises all garbage, debris and other waste materials (whether solid or liquid) arising out of its operations hereunder. 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 the Lessee therein. Said receptacles shall be provided and maintained by the Lessee and shall be kept covered except when being filled or emptied. The Lessee shall use extreme care when effecting removal of all such material, shall effect such removal at such times and by such means as are first approved by the Port Authority, and shall in no event make use of any facilities or equipment of the Port Authority for the removal of such material except with the prior consent of the Port Authority.

(c) The Lessee 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.

(d) The Lessee 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 in or near the Premises.

(e) The Lessee shall take all reasonable measures to eliminate vibrations tending to damage the Premises or any part thereof.

(f) The Lessee shall not cause or permit to be caused or produced upon the Premises, to permeate the same or to emanate therefrom, any unusual, noxious or objectionable smokes, gases, vapors or odors; and if there shall be any such occurrence, the Lessee shall take proper measures to eliminate any such smoke, gas, vapor or odor.

(g) The Lessee 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.

(h) The Lessee shall permit the use of the Premises (not excluding the Berthing Area) at any time and from time to time for the installation, maintenance and operation of such navigation lights as may be required by the United States Coast Guard or other governmental authority having jurisdiction, and the Lessee shall furnish such electricity as may be required for use by navigation lights which may be so installed.

(i) The Lessee 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 opinion of the Port Authority, may constitute an extra-hazardous condition, so as to increase the risks normally attendant upon the operations permitted by this Agreement, 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. The Lessee 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 the Lessee at the Premises, and the Lessee shall, subject to and in accordance with the provisions of this Agreement relating to construction by the Lessee, 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 the Lessee 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 the Lessee shall pay to the Port Authority that part of all premiums paid by the Port Authority

which shall have been charged because of such violation or failure by the Lessee.

(j) From time to time and as often as required by the Port Authority, the Lessee shall conduct pressure, water-flow and other appropriate tests of the fire-extinguishing system and fire-fighting equipment at the Premises, whether furnished by the Port Authority or by the Lessee. The Lessee 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.

(k) The Lessee 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 the Lessee, or by a corporation, company or other organization or person associated, affiliated or connected with the Lessee or for which the Lessee acts as agent, stevedore or terminal operator, (or of others going to or from the Premises on business with the Lessee) which shall have sunk, settled or become partially or wholly submerged at the Premises.

(l) The Lessee 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.

(m) The Lessee shall not do or permit to be done any act or thing at the Facility which shall or may subject the Port Authority to any liability or responsibility for injury to any person or persons or damage to any property.

Section 13. Signs

(a) Except with the prior consent of the Port Authority, the Lessee shall not erect, maintain or display any advertising, signs, posters or similar devices at the Premises.

(b) Upon demand by the Port Authority, the Lessee shall remove, obliterate, or paint out any and all advertising, signs, posters, and similar devices placed by the Lessee 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 Lessee so to remove, obliterate or paint out each and every

such piece of advertising, sign, poster or device and so to restore the Premises, the Port Authority may perform the necessary work and the Lessee shall pay the costs thereof to the Port Authority on demand.

(c) Notwithstanding any provision to the contrary set forth in paragraphs (a) and (b) of this Section, and subject to the provisions of paragraph (a) of Section 12 hereof and to Section 19 hereof, the Lessee may without the consent of the Port Authority erect advertising signs directly related to its permitted operations under this Agreement, safety instruction signs, direction signs, and signs setting forth public service information issued by the City.

Section 14. Indemnity

(a) The Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, employees and representatives, from all claims and demands of third persons including but not limited to claims and demands for death, claims and demands for personal injuries, and claims and demands for property damages, arising out of the use or occupancy of the Premises by the Lessee or by its officers, agents, employees, or representatives, contractors, subcontractors or their employees, or by others at the Premises with the consent of any of the foregoing persons, or out of any other acts or omissions of the Lessee, its officers, agents or employees at the Premises, or out of the acts or omissions of others at the Premises with the consent of the Lessee, excepting only claims and demands which result solely from the negligent or willful acts of the Port Authority.

(b) If so directed by the Port Authority, the Lessee shall at its own expense defend any suit based upon any such claim or demand (even if such suit, claim or demand is groundless, false or fraudulent) in which event it shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or its provisions of any statutes respecting suits against the Port Authority

(c) The Lessee, in its own name as assured, shall maintain and pay the premiums on the following described policies of liability insurance:

(i) Commercial General Liability Insurance including but not limited to coverage for Premises-Operations, with a minimum combined single limit coverage for bodily injury and property damage of \$25 million. If the Lessee's operations entail the ownership, maintenance, operation, or use of any watercraft, whether owned, non-owned, or hired, the Lessee shall have any exclusion for such watercraft deleted or shall purchase equivalent coverage under a policy of Protection and Indemnity Insurance and shall provide the Port Authority with a certificate of insurance evidencing such coverage.

(ii) Commercial Automobile Liability Insurance covering all owned, non-owned or hired vehicles used in connection with its operations hereunder with a minimum combined single limit coverage for bodily injury and property damage of \$25 million.

(iii) Workers' Compensation and Employers' Liability Insurance in accordance with the requirements of law and in limits of not less than \$1 million per accident. The Workers' Compensation Policy shall be specially endorsed to include coverage afforded by (aa) the U.S. Longshoremen's and Harbor Workers' Compensation Act and Coverage B - "Jones Act", maritime (including coverage for Masters or Members of the Crew of Vessels) and (bb) Coverage - B under the Federal Employers' Liability Act.

(d) With the exception of the Workers' Compensation and Employers' Liability Insurance Policy, each policy of insurance described in paragraph (c) of this Section shall include the Port Authority as an additional insured in its coverages including, without limitation, premises-operations and completed-operations, and each such policy shall contain a provision that the insurer shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority. Each such policy shall contain a contractual liability endorsement covering the indemnity obligations of the Lessee under this Section and such policies shall not contain any care, custody or control exclusions. Such insurance shall also contain an endorsement providing that the protection afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third party shall pertain

and apply with like effect with respect to any claim or action against the Lessee by the Port Authority and against the Port Authority by the Lessee, but said endorsement shall not limit, vary, change or affect the protections afforded the Port Authority as an additional insured.

(e) As to insurance of any type whatsoever required or permitted by any provision of this Agreement, a certified copy of each of the policies or a certificate evidencing the existence thereof, or a binder, shall be delivered to the Port Authority within fifteen (15) days after the commencement date of the letting. In the event any binder is delivered it shall be replaced with due diligence by a certified copy of the policy or by a certificate. Each such copy or certificate shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified, without giving ten (10) days' written advance notice thereof to the Port Authority. A binder evidencing each renewal policy shall be delivered to the Port Authority at least fifteen (15) days prior to the expiration date of each expiring policy, except for any policy expiring after the date of expiration of the letting hereunder, as the letting may be from time to time extended, and a certificate or a certified copy of each such renewal policy shall be delivered to the Port Authority with due diligence. If at any time any policy shall be or become unsatisfactory to the Port Authority as to form or substance or minimum limits, or if any carrier issuing any one or more such policies shall be or become unsatisfactory to the Port Authority, the Lessee shall promptly obtain one or more new and satisfactory policies in replacement.

Section 15. Maintenance and Repair

(a) The Lessee shall at all times keep the Premises clean, and in an orderly condition and appearance, together with all the fixtures, equipment and personal property of the Lessee located in or at the Premises.

(b) The Lessee shall repair, replace, rebuild and paint all or any part of the Premises which may be damaged or destroyed by the acts or omissions of the Lessee or by those of its officers or employees, or of other persons at the Premises with the consent of the Lessee.

(c) Subject to the provisions of paragraphs (e) and (f) of this Section and Section 16 of this Agreement, throughout the term of the letting under this Agreement, the Lessee shall assume the entire responsibility for, and shall relieve the Port Authority from all responsibility from, all care, maintenance,

repair and rebuilding whatsoever at the Premises, whether such care, maintenance, repair, or rebuilding be ordinary or extraordinary, partial or entire, inside or outside, foreseen or unforeseen, structural or otherwise; and without limiting the generality of the foregoing the Lessee shall maintain and make repairs and replacements, structural or otherwise to all improvements located at the Premises and all other fixtures, machinery, or equipment now or hereafter belonging to or connected with said Premises or the Lessee's operations being conducted thereon, including without limitation thereto all maintenance, repair and replacement of: (1) the structure of the wharf (including the underdecking), fender systems (including backing logs or bumpers), and standard mooring systems; (2) buildings and other structures; (3) paving; and (4) dredging of the water area; and (4) utility systems. The Lessee shall maintain all such improvements, fixtures, machinery and equipment at all times in good condition, and shall perform all necessary preventive maintenance thereto so that at the expiration or termination of the letting and all times during the letting, the same (or a reconstruction of all or any part thereof) will be in as good condition as at the commencement thereof (or, in the case of improvements made during the letting hereunder, in as good condition as at the time of the installation or construction thereof), except for reasonable wear which does not adversely affect the watertight condition or structural integrity of the buildings or other structures at the Premises or adversely affect the efficient or the proper utilization of any part of the Premises. The Lessee shall make frequent periodic inspections of the Premises and subject to Sections 8, 16 and 19 of this Agreement shall make all repairs and replacements, and do all rebuilding, inside and outside, ordinary and extraordinary, partial and entire, foreseen and unforeseen, structural or otherwise, regardless of the cause of the condition requiring such repairs, rebuilding or replacements, which repairs, rebuilding and replacements by the Lessee shall be in quality and class not inferior to the original in materials and workmanship.

(d) Without limiting the obligations of the Lessee stated elsewhere in this Agreement, the Lessee shall be solely responsible to the Port Authority for loss or theft of or damage to any and all personal property, equipment and fixtures belonging to the Port Authority or for which it 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 Lessee shall commence to perform such repair within such twenty (20) day period and shall diligently proceed therewith without interruption); and the

Lessee shall yield and deliver the same or replacements thereof to the Port Authority at the expiration or earlier termination of the letting under this Agreement 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 Lessee's responsibilities under this paragraph shall extend solely to the Port Authority's property or property for which the Port Authority is responsible that shall be specifically described as such property in any move-in survey conducted by the Port Authority and the Lessee in connection with the commencement of the letting hereunder.

(e) (1) Except under circumstances as to which paragraph (b) of this Section applies, upon receipt of notice that repair or replacement of such of the following as are located at the Premises is required: (1) the water distribution system (i) up to the closer of twenty (20) feet from the exterior building walls of the building being serviced or the valve connection thereto and (ii) up to the closer of the ships' water pits or the single meter on the Premises or closest meter on the Premises servicing said water pit (but in no event the ships' water pits themselves); (2) the underground sanitary systems; and (3) the underground storm drainage systems; the Port Authority will make such repairs and replacements to the extent necessary to keep such part of the Premises in a reasonably good condition for the operations of the Lessee hereunder, but the Port Authority shall not be obligated to make any repairs or replacements to bring the Premises to a better condition than that existing at the commencement of the letting. The Port Authority's responsibilities under this paragraph shall be limited to bearing the expense of repair or replacement, and without limiting the foregoing the Port Authority shall have no responsibility with respect to any repairs or replacements which are the obligation of the Lessee under any other provision of this Agreement. The Port Authority shall have no responsibility with respect to any repairs or replacements which are required because of any casualty whether or not insured or insurable. If the Port Authority shall fail, after a reasonable period of time to perform its repair and replacement obligations under this paragraph, the Lessee, as its sole remedy, shall perform the work, and the Port Authority shall on demand pay the Lessee its actual certified cash expenditures to third parties therefor, or, at the option of the Port Authority, shall extend to the Lessee a credit against its rental obligations under this Agreement in an amount equal to such expenditures. Furthermore, prior to the commencement by the Port Authority of any work set forth in the Lessee's notice to the Port Authority, the Lessee shall take all

precautions necessary to protect persons or property at the Premises, including the immediate performance by the Lessee of any work required to correct conditions which involve danger to persons or property, and the Port Authority will reimburse the Lessee for such work as provided in this paragraph. The Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, employees, agents, and representatives, from and against all claims and demands, including but not limited to claims and demands for death, claims and demands for personal injuries, and claims and demands for property damages, of any third persons whatsoever, including, but not limited to, the Lessee's officers, employees, agents, and representatives which may arise from the condition of the Premises or any part thereof, or from the failure of the Lessee to notify the Port Authority of conditions requiring repair or replacement, or from the failure of the Lessee to make timely corrections of dangerous or potentially dangerous conditions at the Premises. Except as set forth above, the Lessee hereby releases and discharges the Port Authority, its Commissioners, officers, employees, agents, and representatives from any liability for damages to the Lessee, consequential, or otherwise, in connection with any of the provisions of this paragraph concerning repairs or replacements to any portion of the Premises, including without limitation thereto any failure on the part of the Port Authority for any reason whatsoever to make any repair or replacement, and including without limitation thereto any act or omission of the Port Authority, its officers, agents, employees, contractors or their employees, connected with the performance of such repairs or replacements.

(2) In the event that the Port Authority shall perform any repair or replacement work under the provisions of subparagraph (1) of this paragraph, and except in the case of an emergency as determined by the Port Authority, the Lessee shall have the right to review any plans or specifications of the Port Authority for the performance of the work and to consult with the Port Authority in the event that the Lessee determines that the work or the performance thereof as so planned would have a material adverse effect on the Lessee's operations under this Agreement, and the Port Authority agrees to incorporate into its planned work any proposals of the Lessee designed to alleviate any such adverse effect; provided, however, that the Port Authority shall have no obligation to so incorporate any proposals of the Lessee if such proposals are not reasonably practicable or would increase the cost of the planned work by more than five percent (5%).

(3) Notwithstanding the provisions set forth above in this paragraph, and without otherwise limiting the generality thereof, the Port Authority shall perform the work necessary on the sewer line located on the Pier 12 Premises to provide a functioning and legal sewer line and connection to the City's sewer system (hereinafter called "the Sewer Work") and shall complete the Sewer Work no later than June 1, 2005. The Lessee hereby grants to the Port Authority, its employees, agents, representatives, contractors, subcontractors and designees the right to enter the Premises at least ten (10) hours per business day for the purpose of performing the Sewer Work; provided, that, the Sewer Work shall be reasonably scheduled in such a way so as not to interfere with either the Lessee's Construction Work or the cruise ship operations. In the event that the Port Authority does not complete the Sewer Work by June 1, 2005, the Lessee shall have the right to perform the Sewer Work and the reasonable cost incurred by the Lessee in performing such work, as documented pursuant to invoices or other evidence of expenditure, shall be off-set against the Lessee's rental obligations next coming due until the Lessee has recovered the full cost expended by it for the Sewer Work; provided, however, that the Lessee shall perform only the Sewer Work that the Port Authority proposed or planned to perform, subject only to the condition that the Sewer Work be in conformity with law upon its completion.

(f) (1) Except under circumstances as to which paragraph (b) of this Section applies and subject to the provisions of subparagraph (2) of this paragraph, in the event that during any Lease Year during the term of the letting (including any Lease Year occurring during any extension thereof pursuant to Section 2(b) hereof) the Lessee shall make payments for the repair or replacement of the underdeck of Pier 12 pursuant to the provisions of paragraph (c) of this Section (hereinafter called "the Underdeck Work"), the Lessee shall be entitled to a credit on an annual basis against the rentals payable under this Agreement in an amount equal to the lesser of: (1) the reasonable cost of the Underdeck Work on account of which payments were made by the Lessee during the Lease Year, or (2) Two Hundred Thousand Dollars and No Cents (\$200,000.00) per Lease Year. Although the Underdeck Work shall not be deemed part of the Lessee's Construction Work for purposes of this Agreement, the Lessee shall perform the Underdeck Work in accordance with all of the provisions of Section 8 hereof. Without limiting the provisions of the immediately preceding sentence, the provisions of paragraphs (p) and (q) of said Section 8 shall apply to determine the reasonable cost of the Underdeck Work and the Lessee shall submit a certification in accordance with the

provisions of paragraph (q) of said Section 8 following the completion of the Lease Year certifying the matters required to be set forth therein with respect to the Underdeck Work. The Port Authority shall have the rights of audit set forth in Section 40 hereof with respect to the cost of the Underdeck Work.

Neither the whole nor any part of any rental credit granted under this paragraph shall be or become or shall constitute a debt due and owing from the Port Authority to the Lessee nor shall said amount be recoverable or applicable in any manner other than as specifically provided for in this paragraph and in subparagraph (2) of this paragraph, including but not limited to a set-off or counterclaim in any action by the Port Authority against the Lessee for rental or other claims.

(2) Notwithstanding any provision set forth in subparagraph (1) of this paragraph, the Port Authority shall grant to the Lessee the rental credit described in said subparagraph (1) for and during each Lease Year to occur during the term of the letting (including any Lease Year occurring during any extension thereof pursuant to Section 2(b) hereof) in the amount of Two Hundred Thousand Dollars and No Cents (\$200,000.00) regardless of the actual amount spent by the Lessee on the performance of the Underdeck Work during that Lease Year. Any rental credit to which the Lessee shall be entitled under the provisions of this paragraph shall be granted on a monthly basis against the monthly installments of basic rental payable under Section 3 hereof such that said installments of basic rental shall be payable in accordance with the schedule attached hereto, hereby made a part hereof and marked "Schedule D". In addition to all other rights of audit under this Agreement, the Port Authority shall have the right to audit the Lessee's payments on account of the Underdeck Work at any time (any such audit being hereinafter called "an Underdeck Audit"). In the event that an Underdeck Audit conducted following the expiration of the initial term of the letting, the First Extension Period or the Second Extension Period or any successive combination thereof, shall show that the reasonable cost of the Underdeck Work, calculated in accordance with the provisions of paragraphs (p) and (q) of Section 8 hereof, performed during the period or periods of such audit is less than the amount of the rental credits granted to the Lessee under this subparagraph for the respective period or periods, the Lessee shall pay the difference to the Port Authority upon thirty (30) days' notice by the Port Authority to the Lessee stating the amount thereof. In the event of any termination of the letting (even if stated to have the same effect as expiration), the Lessee shall within twenty (20) days after the effective date of termination submit to the Port Authority the certification described in paragraph (p) of Section

8 hereof and required under subparagraph (1) of this paragraph with respect to the Underdeck Work; and if either such certificate or an Underdeck Audit shall show that the reasonable cost of the Underdeck Work, calculated in accordance with the provisions of paragraphs (p) and (q) of Section 8 hereof, for the period during which rental credits provided for in this subparagraph were granted without reconciliation under the provisions of this subparagraph is less than the cumulative amounts of the rental credits so granted during such period without reconciliation, the Lessee shall pay the difference to the Port Authority upon thirty (30) days' notice by the Port Authority to the Lessee stating the amount thereof.

(g) The obligation of the Lessee as set forth in paragraphs (b) and (c) of this Section in the event of damage or destruction covered by any contract of insurance under which the Port Authority is the insured is hereby released to the extent that the loss is recouped by actual payment to the Port Authority of the proceeds of such insurance; provided, however, that if at any time because of this release the insurance carrier of any policy covering the Premises or any part thereof shall increase the premiums otherwise payable for fire, extended coverage or rental coverage applicable to the Premises the Lessee shall pay to the Port Authority an amount equivalent to such increase or increases on demand; and provided, further, that if at any time this release shall invalidate any such policy of insurance or reduce, limit, or void the rights of the Port Authority thereunder, or if because of this release, any such insurance carrier shall cancel such endorsement or refuse to renew the same or shall take any other action to alter, decrease or diminish the benefits of the Port Authority under the policy, then the release shall be void and of no effect.

Section 16. Casualty

(a) In the event that as a result of a casualty, whether or not insured or insurable, the Premises are damaged, the Lessee shall rebuild the damaged Premises with due diligence. The Lessee shall secure and maintain in its own name as assured and shall pay the premiums on the following policies of insurance in the limits set forth below, which policies shall be effective during the term of the letting under this Agreement as set forth below:

(1) All risk property damage insurance in the amount of Forty-five Million Dollars and No Cents (\$45,000,000.00) pursuant to an agreed-upon value endorsement, which insurance shall be maintained during the

period from the Commencement Date until such time as the policy of insurance required under subparagraph (2) of this paragraph (a) shall have been obtained and be in full effect. Such insurance shall cover and insure against such hazards and risks as at least would be insured against under the Standard Form of Fire Insurance policy in the State of New York, or any successor thereto, and the broadest form of extended coverage endorsement prescribed as of the effective date of said insurance by the rating organization having jurisdiction, including without limitation hazards and risks of flood, earthquake, windstorm, cyclone, tornado, hail, explosion, riot, civil commotion, aircraft, vehicles and smoke, and, if the Port Authority so requests, also covering nuclear property losses and contamination and boiler and machinery hazards and risks (if said coverage regarding nuclear property losses and contamination is or becomes available).

(2) All risk property damage insurance in the amount of Seventy-five Million Dollars and No Cents (\$75,000,000.00) pursuant to an agreed-upon value endorsement, which insurance shall be obtained and be in effect no later than the date that the Lessee shall receive from the Port Authority a certificate of substantial completion regarding all of the Lessee's Construction Work as set forth in paragraph (c) of Section 8 hereof, and which insurance shall thereafter be maintained for the remainder of the term of the letting. Such insurance shall cover and insure against such hazards and risks as at least would be insured against under the Standard Form of Fire Insurance policy in the State of New York, or any successor thereto, and the broadest form of extended coverage endorsement prescribed as of the effective date of said insurance by the rating organization having jurisdiction, including without limitation hazards and risks of flood, earthquake, windstorm, cyclone, tornado, hail, explosion, riot, civil commotion, aircraft, vehicles and smoke, and, if the Port Authority so requests, also covering nuclear property losses and contamination and boiler and machinery hazards and risks (if said coverage regarding nuclear property losses and contamination is or becomes available).

(3) Unless otherwise directed by the Port Authority, the property damage insurance policies required by this paragraph shall name the Port Authority, the City of New York, and the Lessee (with insurance clauses consistent with the provisions of this Agreement) as the insureds, as their respective interests may appear, and shall provide

that loss, if any, shall be adjusted with and payable to the Port Authority. As to any insurance required by subparagraph (1) of this paragraph (a), a certificate of insurance, or binders, shall be delivered by the Lessee to the Port Authority on or before the Commencement Date; and as to any insurance required by subparagraph (2) of this paragraph (a), a certificate of insurance, or binders, shall be delivered by the Lessee to the Port Authority on or before the date that the insurance required by subparagraph (1) of this paragraph (a) shall no longer be in effect. In the event any binder is delivered, it shall be replaced within thirty (30) days by a certificate of insurance. Each such policy shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified, without giving at least thirty (30) days' written advance notice thereto to the Port Authority and an endorsement to the effect that the insurance as to the interest of the Port Authority shall not be invalidated by any act or negligence of the Lessee or any other insured. Each policy of insurance shall have attached thereto an endorsement that the Port Authority will be given at least thirty (30) days' prior notice of any material change in the policy. A certificate of insurance with respect to a renewal policy shall be delivered to the Port Authority at least fifteen (15) days prior to the expiration date of each expiring policy, except for any policy expiring after the date of expiration of the effective period hereof. If at any time the policy required by this paragraph shall be or become unsatisfactory to the Port Authority as to form or substance, or if the carrier issuing such policy shall be or become unsatisfactory to the Port Authority, the Lessee shall promptly obtain a new and satisfactory policy in replacement.

The proceeds of insurance from coverages secured in accordance with this paragraph shall be made available to the Lessee against the cost of such rebuilding; provided, however, that the proceeds shall be applied first and to the full extent necessary to the rebuilding of the pier and wharf structure. The procedures for such rebuilding shall be the same as for the initial construction as set forth in Section 8 hereof, except that the Port Authority shall have no obligation to make any payments pursuant to Section 8(p) or 8(q) hereof. The Lessee shall not be entitled to any abatement of the rentals payable hereunder at any time by reason of such casualty. Notwithstanding the provisions set forth above in this paragraph, in the event that the Premises are totally or substantially damaged or destroyed within two (2) years of the expiration of the term of the letting (not including any

extension thereof under Section 2(b) hereof except to the extent that any such extension shall then be in effect), then the Port Authority and the Lessee shall each have the right to terminate the letting and this Agreement upon thirty (30) days' notice given to the other within ninety (90) days of the aforesaid casualty. 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 Agreement. In the event of the termination of the letting and this Agreement (i) by the Lessee under the provisions of this paragraph, the Port Authority shall be entitled to receive and retain the entirety of the insurance proceeds of the coverages secured in accordance with this paragraph, and (ii) by the Port Authority under the provisions of this paragraph, the Port Authority shall be entitled to receive and retain sixty percent (60%) and the Lessee shall be entitled to receive and retain forty percent (40%) of the insurance proceeds of the coverages secured in accordance with this paragraph, except that the entitlement of the Lessee to receive and retain insurance proceeds shall be reduced on a straight-line basis at the rate of six and two-thirds percent (6 2/3%) for every full year that shall have elapsed since the Cruise Operations Rental Payment Start Date through such termination of the letting and this Agreement.

(b) The Port Authority and the Lessee 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 Agreement.

(c) In the event of damage to or a partial or total destruction of the Premises, the Lessee shall within thirty (30) days after the occurrence commence to remove from the Premises or from the portion thereof destroyed, all damaged property (and all debris thereof) including damaged buildings and structures, and all damaged property belonging to the Lessee or to any third person whatsoever, and thereafter shall diligently continue such removal, and if the Lessee does not perform its obligation hereunder, the Port Authority may remove such debris and dispose of the same and may remove such property to a public warehouse for deposit or may retain the same in its own possession and sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage and sale, and second to any sums owed by the Lessee to the Port Authority, with any balance remaining to be paid to the Lessee; if the expenses of such removal, storage and sale shall exceed the proceeds of sale, the Lessee shall pay such excess to the Port Authority on demand. Without limiting any term or provision of this

Agreement, the Lessee shall indemnify and save harmless the Port Authority, its officers, agents, employees, contractors and subcontractors, from and against any and all claims of third persons arising out of the exercise by the Port Authority of its right to remove property as hereinabove provided including all claims for conversion, all claims for damage or destruction of property, all claims for injuries to persons (including death), and all other claims for damages, consequential or otherwise.

Section 17. Assignment and Sublease

(a) The Lessee covenants and agrees that it will not sell, convey, transfer, assign, mortgage or pledge this Agreement or any part thereof, or any rights created thereby or the letting thereunder or any part thereof, except that the Lessee may assign this Agreement and the letting thereunder to the City.

(b) The Lessee shall not sublet the Premises or any part thereof without the prior written consent of the Port Authority, except that the Lessee may without the consent of the Port Authority sublet the Premises to the City.

(c) If the Lessee assigns, sells, conveys, transfers, mortgages, pledges or sublets in violation of paragraphs (a) or (b) of this Section or if the Premises is occupied by any person, firm or corporation other than the Lessee, the Port Authority may collect rent from any assignee, sublessee, or anyone who claims a right to this Agreement or to the letting or who occupies the Premises, and shall apply the net amount collected to the rental herein reserved; and no such collection shall be deemed a waiver by the Port Authority of the covenants contained in paragraphs (a) and (b) of this Section, nor an acceptance by the Port Authority of any such assignee, sublessee, claimant or occupant as tenant, nor a release of the Lessee by the Port Authority from the further performance by the Lessee of the covenants contained in this Agreement.

(d) The Lessee further covenants and agrees that it will not use or permit any person whatsoever to use the Premises or any portion thereof for any purpose other than as provided in Section 7 of this Agreement.

Section 18. Condemnation

(a) Permanent Taking

(1) Taking of the whole etc. If during the term of the letting under this Agreement, there shall be a taking of the whole or substantially all of the Premises (other than a temporary taking), the following consequences shall result: this Agreement and the term of years remaining thereunder shall terminate and expire on the date of taking and all rentals payable by the Lessee hereunder shall be apportioned to the date of taking, and all such rentals shall be paid to the Port Authority on the date of taking; and the award payable in respect of said taking shall be paid to the Port Authority; and such award shall be disbursed by the Port Authority as follows: first, there shall be paid to the Port Authority an amount equal to the value of the land as of the date of taking considered as unencumbered by this Agreement; second, there shall be paid to the Port Authority an amount equal to its unamortized investment in all its improvements in, on or to the Premises as of the date of taking; third, if there shall be any amount remaining from the foregoing sums retained by the Port Authority after application of such sums as set forth above, the Port Authority shall remit to the Lessee so much of the balance of such award, if any, as shall be equal to the Lessee's unamortized investment in the Lessee's Improvements (as defined in Section 8A hereof) as of the date of taking, less any of the outstanding amounts due and payable under this Agreement by the Lessee to the Port Authority to the date of taking; and fourth, the Port Authority shall receive the balance of the award, if any; provided, however, that this subparagraph shall not be construed to prevent the Lessee from making a claim to an award for trade fixtures installed by the Lessee and/or an award for moving or relocation expenses if such award is made separate and apart from the award made or to be made to the Port Authority in such proceeding and any such award to the Lessee will not directly or indirectly reduce the amount of compensation payable to the Port Authority.

(2) 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: this Agreement and the term of years remaining thereunder shall continue without diminution of any of the Lessee's obligations hereunder, except that this Agreement shall terminate as to the portion of the Premises so taken, and from and after the date of taking, the basic rental payable under Section 3 hereof shall be abated in accordance with the provisions of Section 45 hereof for the remainder of the term of the letting; and the Lessee shall

proceed with diligence (subject to unavoidable delays) to effect a condemnation restoration of the remaining portion of the Premises not so taken, with the expense of such restoration to be shared equally by the Port Authority and the Lessee as set forth in paragraph (d) of this Section; and the award payable in respect of said taking shall be paid to the Port Authority; and such award shall be disbursed by the Port Authority as follows: first, there shall be paid to the Port Authority an amount equal to the value of the land that is the subject of the partial taking as of the date of taking considered as unencumbered by this Agreement; second, there shall be paid to the Port Authority an amount equal to its unamortized investment in all its improvements in, on or to the Premises that are the subject of the partial taking as of the date of taking; third, if there shall be any amount remaining from the foregoing sums retained by the Port Authority after application of such sums as set forth above, the Port Authority shall remit to the Lessee so much of the balance of such award, if any, as shall be equal to the Lessee's unamortized investment in the Lessee's Improvements (as defined in Section 8A hereof) that are the subject of the partial taking as of the date of taking, less any of the outstanding amounts due and payable under this Agreement by the Lessee to the Port Authority to the date of taking; and fourth, the Port Authority shall receive the balance of the award, if any; provided, however, that this subparagraph shall not be construed to prevent the Lessee from making a claim to an award for trade fixtures installed by the Lessee and/or an award for moving or relocation expenses if such award is made separate and apart from the award made or to be made to the Port Authority in such proceeding and any such award to the Lessee will not directly or indirectly reduce the amount of compensation payable to the Port Authority.

(b) Temporary Taking.

(1) Not Extending Beyond Term. If during the term of the letting under this Agreement, there shall be a taking of the temporary use of the whole or substantially all of the Premises or a lesser portion thereof for a period not extending beyond the expiration date of the term of the letting including any extension thereof under Section 2(b) hereof (a "Temporary Taking"), the following consequences shall result: this Agreement and the term of years remaining shall continue but without reduction or diminution of any of the Lessee's obligations hereunder, and the Lessee shall continue to pay in full the rentals payable by the Lessee hereunder without reduction or abatement; if such taking results in changes or alterations to the Premises or any part thereof, the Lessee shall effect a

condemnation restoration with respect thereto, with the expense of such restoration to be shared equally by the Port Authority and the Lessee as set forth in paragraph (d) of this Section; the award or payment payable with respect to such taking for such use of the Premises shall be paid to and held by the Port Authority and shall first be held by the Port Authority on account of the rentals payable by the Lessee as and when the same shall become due and payable hereunder calculated for the period of the Temporary Taking in accordance with the provisions of Section 27 hereof, and the balance shall be disbursed to the Lessee, subject to the rights of any third parties.

(2) Extending Beyond Lease Term. If during the term of the letting under this Agreement, there shall be a taking of the temporary use of the whole or substantially all of the Premises for a period extending beyond the term of the letting (not including any extension thereof under Section 2(b) hereof except to the extent that any such extension shall then be in effect), the consequences specified in subparagraph (1) of this paragraph (b) hereof shall result, except that the award or payment payable with respect to such taking shall be apportioned between the Port Authority and the Lessee as of the last day of the term of the letting. The amount of the award or payment attributable to the period up to and including the last day of the term of the letting payable with respect to such taking for such use of the Premises shall be paid and applied in accordance with the provisions of subparagraph (1) of paragraph (b) of this Section, and the portion of the award attributable to the period after the last day of the term of the letting shall belong to the Port Authority; 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 retained by the Port Authority if this Agreement shall terminate for any reason prior to completion of the condemnation restoration in accordance with the provisions of this Section.

(c) 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 Agreement 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 the Lessee shall effect a condemnation restoration with respect thereto, with the expense of such restoration to be shared equally by the Port Authority and the Lessee as set forth in paragraph (d) of this Section.

(d) Condemnation restoration procedure.

(1) Disbursement of award. If the Lessee shall be required by the terms of this Section to effect a condemnation restoration, the Port Authority shall make available to the Lessee as much of that portion of the award or payment payable in respect of a taking received and held by the Port Authority, if any (less all necessary and proper expenses, excluding legal fees, paid or incurred by the Port Authority and the Lessee in connection with the condemnation proceedings), as may be necessary to pay the cost of such condemnation restoration. Any balance of the award held by the Port Authority after completion of, and payment for, the condemnation restoration shall be paid in accordance with the requirements of this Agreement.

(2) Performance Of Condemnation Restoration. The construction work in connection with a condemnation restoration, submission of the estimated cost thereof by the Lessee and approval thereof by the Port Authority, and disbursement of the condemnation award by the Port Authority shall be done, determined, made and governed in accordance with the provisions of paragraphs (p) and (q) of Section 8 hereof. If the portion of the award paid to the Port Authority or the Lessee is insufficient for the purpose of paying for the cost of the construction work in connection with the condemnation restoration, then, subject to the provisions of paragraphs (p) and (q) of Section 8 hereof, the Lessee shall nevertheless be required to perform such construction work as required hereby and any additional sums required for such construction work shall be paid in equal amounts by the Port Authority and the Lessee.

(e) 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 Section and shall cooperate with each other to permit collection of the award.

(f) Port Authority's Right To Award On Termination. Notwithstanding anything to the contrary contained in this Section, the amount of any award or payment allowed or retained to effect a condemnation restoration which shall not have been previously applied to that purpose or otherwise in accordance with this Section shall become the property of and shall be retained by Port Authority if this Agreement shall terminate for any reason prior to completion of said condemnation restoration in accordance with the provisions of this Section.

(g) Lessee's Appearance At Condemnation Proceedings.

The Lessee shall have the right to appear in any condemnation proceedings and to participate in any and all hearings, trials, and appeals in connection therewith. The Lessee shall not file in any taking any claim on account of the leasehold estate created by this Agreement or the Lessee's leasehold interest in the Premises. If in connection with a taking the Lessee files any claim on account of trade fixtures, the Lessee shall not include in its claim any part of the Premises which constitutes the Lessee's Construction Work.

(h) Waiver of rights under statute. The existence of any present or future law or statute notwithstanding, except as otherwise provided in this Section, the Lessee waives all rights to quit or surrender the Premises or any part thereof by reason of any taking of less than substantially all of the Premises. It is the intention of the Port Authority and the Lessee that the provisions of this Section shall constitute an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York and shall govern and control in lieu thereof.

Section 19. Construction by the Lessee

Except as may be otherwise expressly provided in Section 8, the Lessee shall not erect any structures, make any improvements or do any other construction work at the Premises or alter, modify or make additions, improvements or repairs to or replacements of, any structure now existing or built at any time during the letting, or install any fixtures without the prior consent of the Port Authority. In the event any construction, improvement, alteration, modification, addition, repair or replacement is made, with or without the Port Authority's consent, and unless the consent of the Port Authority shall expressly provide otherwise, the same shall immediately become the property of the Port Authority, and the Lessee shall have no right to remove the same either during the letting or at the expiration thereof unless the Port Authority, at any time prior to the expiration of the term of the letting, or any extension or renewal thereof, shall give notice to the Lessee to remove the same, or to cause the same to be changed to the satisfaction of the Port Authority, in which case the Lessee agrees to remove the same, or change it in compliance with such notice. In case of any failure on the part of the Lessee to comply with such notice, the Port Authority may effect the removal or change, and the Lessee hereby agrees to pay the cost thereof to the Port Authority upon demand.

Section 20. Additional Rent and Charges

(a) If the Port Authority has paid any sum or sums or has incurred any obligations or expense which the Lessee has agreed to pay or reimburse the Port Authority for, or if the Port Authority is required or elects to pay any sum or sums or incurs any obligations or expense by reason of the failure, neglect or refusal of the Lessee to perform or fulfill any one or more of the conditions, covenants or agreements contained in this Agreement or as a result of an act or omission of the Lessee contrary to the said conditions, covenants and agreements, the Lessee shall pay to the Port Authority the sum or sums so paid or the expense so incurred, including all interest, costs, damages and penalties, and the same may be added to any installment of rent thereafter due hereunder, and each and every part of the same shall be and become additional rent, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of any of the rentals set forth in this Agreement. If practicable, and except in case of emergency, the Port Authority will provide the Lessee with notice prior to the Port Authority's making any such payment or incurring any such obligation or expense.

(b) For all purposes under this Section and in any suit, action or proceeding of any kind between the Port Authority and the Lessee, any receipt showing any payment of any sum or sums by the Port Authority for any work done or material furnished shall be prima facie evidence against the Lessee that the amount of such payment was necessary and reasonable. Should the Port Authority elect to use its operating and maintenance staff in performing any work and to charge the Lessee with the cost thereof, any time report of any employee of the Port Authority showing hours of work or labor allocated to such work, or any stock requisition of the Port Authority showing the issuance of materials for use in the performance thereof, shall likewise be prima facie evidence against the Lessee that the amount of such charge was necessary and reasonable.

(c) The term "cost" in this Agreement shall mean and include: (1) Payroll costs, including contributions to the Retirement System, or the cost of participation in other pension plans or systems, insurance costs, sick-leave pay, holiday, vacation and authorized-absence pays; (2) Cost of materials and supplies used; (3) Payments to contractors; (4) Any other direct costs; and (5) 30% of the sum of the foregoing.

Section 21. Rights of Entry Reserved

(a) The Port Authority, by its officers, employees, agents, representatives and contractors shall have the right at all reasonable times to enter upon the Premises for the purpose of inspecting the same, for observing the performance by the Lessee of its obligations under this Agreement, and for the doing of any act or thing which the Port Authority may be obligated or have the right to do under this Agreement or otherwise.

(b) Without limiting the generality of the foregoing, the Port Authority, by its 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 Lessee, or for the benefit of others than the Lessee at the Premises, to maintain existing and future utility, mechanical, electrical and other systems and to enter upon the Premises at all reasonable times to make such repairs, replacements or alterations as the Port Authority 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 the Port Authority shall not unreasonably interfere with the use and occupancy of the Premises by the Lessee.

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

(d) Nothing in this Section shall impose, or shall be construed to impose upon the Port Authority any obligations so to construct or maintain or to make repairs, replacements, alterations or additions, or shall create any liability for any failure so to do. The Lessee is and shall be in exclusive control and possession of the Premises and the Port Authority 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 Lessee or of any other person located therein or thereon (other than those occasioned by the acts of the Port Authority).

(e) At any time and from time to time during ordinary business hours within the three (3) months next preceding the expiration of the letting, the Port Authority, by its agents and employees, whether or not accompanied by prospective lessees, occupiers or users of the Premises, shall have the right to enter thereon for the purpose of exhibiting and viewing all parts of the same, and during such three-month period the Port Authority may place and maintain on the Premises, the usual "To Let" signs, which signs the Lessee shall permit to remain without molestation.

(f) If, during the last month of the letting, the Lessee shall have removed all or substantially all its property from the Premises, the Port Authority may immediately enter and alter, renovate and redecorate the Premises.

(g) The exercise of any or all of the foregoing rights by the Port Authority or others shall not be or be construed to be an eviction of the Lessee nor be made the grounds for any abatement of rental nor any claim or demand for damages, consequential or otherwise.

Section 22. Limitation of Rights and Privileges Granted

(a) The Premises is let to the Lessee and the Lessee takes the same subject to all the following: (i) easements, restrictions, reservations, covenants and agreements, if any, to which the Premises may be subject; rights of the public in and to any public street; (ii) rights, if any, of any enterprise, public or private, which is engaged in furnishing heating, lighting, power, telegraph, telephone, steam, or transportation services and of the municipality and State in which the Premises is located; (iii) 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.

(b) No greater rights or privileges with respect to the use of the Premises or any part thereof are granted or intended to be granted to the Lessee by this Agreement, or by any provision thereof, than the rights and privileges expressly and specifically granted.

(c) Nothing in this Agreement contained shall grant to the Lessee any rights whatsoever in the air space above the roof of any building or buildings or portion of any building or

buildings, if any are included in the Premises, (except to the extent required in either case for the performance of any of the obligations of the Lessee hereunder), or more than twenty (20) feet above the present ground level of any open area included in the Premises (except to the extent required for the operations permitted hereunder). If any construction or installation is contemplated in this Agreement, the height thereof above ground shall be as determined solely by the Port Authority.

Section 23. Concessions and Subleases

(a) For purposes of this Section and for all other purposes of this Agreement, the term "Concession" shall mean any agreement (other than a sublease) between the Lessee and a third party (hereinafter called a "Concessionaire") for the use of the Premises on a license rather than leasehold basis for purposes permitted under Section 7 hereof. Except as set forth in the next sentence, the Lessee shall have the right to grant Concessions without the consent of the Port Authority (including subconcessions granted by a "Major Concessionaire" if such subconcession would not itself qualify as a "Major Concession", as such terms are defined in the next sentence). The Lessee shall be required to obtain the prior written consent of the Port Authority to grant the following Concessions (which Concessions are hereinafter called "Major Concessions" and the Concessionaires are hereinafter called "Major Concessionaires"):

(1) a parking facility operator; (2) a marina operator; and (3) any other third party who enters into a separate agreement with the Lessee of sixty (60) days' duration or more and under which it will manage, administer or occupy in excess of five thousand (5,000) square feet of space at the Premises. If the Lessee shall request the Port Authority's consent to any sublease (as required under Section 17(b) hereof) or any Major Concession under this Section, the Lessee shall submit to the Port Authority a copy of the proposed sublease agreement or the Major Concession executed on behalf of the Lessee and the proposed sublessee or Major Concessionaire and further, shall submit to the Port Authority the name of the proposed sublessee or Major Concessionaire and such information and data as the Port Authority may request regarding the nature and scope of the operations to be conducted by the proposed sublessee under the proposed sublease or the proposed Major Concessionaire under the proposed Major Concession and the financial and business background of the proposed sublessee or Major Concessionaire and the persons or entities owning or controlling the proposed sublessee or Major Concessionaire. The Port Authority shall review the proposed sublease and sublessee or Major Concession and Major Concessionaire, and the data and information submitted

by the Lessee and shall make a determination that the terms and provisions of the proposed sublease agreement or Major Concession are consistent with the terms and provisions of this Agreement and are otherwise acceptable to the Port Authority, and that the proposed sublessee or Major Concessionaire is acceptable to the Port Authority, or shall make a determination that they and/or it are not acceptable to the Port Authority; and following such determination, the Port Authority shall provide written notice to the Lessee of such determination. The Port Authority shall endeavor to provide the Lessee with the notice described in the preceding sentence within twenty (20) business days of the full submission by the Lessee of the information required to be provided by the Lessee to the Port Authority under this paragraph regarding the proposed sublease and sublessee or proposed Major Concession and Major Concessionaire. In the event of the approval of a proposed sublease, the Port Authority shall prepare and submit to the Lessee for execution by the Lessee and the sublessee a form of Consent Agreement substantially as set forth in Exhibit C hereto and containing such other and additional provisions as the Port Authority shall deem necessary under which the Port Authority will set forth the terms of its consent to the proposed sublease subject to and in accordance with the terms and conditions set forth therein.

(b) Without limiting the generality of any provision of paragraph (a) of this Section, the Lessee agrees that each sublease it enters into with a proposed sublessee and that the subletting thereunder:

(1) shall be subject to and subordinate to all of the terms, covenants, conditions and provisions of this Agreement and the rights of the Port Authority hereunder;

(2) shall terminate and expire, without notice to the sublessee, on the day preceding the date of expiration or earlier termination of this Agreement or on such earlier date as the Lessee and the sublessee may agree upon;

(3) shall provide that the sublessee shall be bound by and subject to all the applicable terms and provisions of this Agreement as to the sublessee's occupancy and use of the portion of the Premises under the proposed sublease and activities at the Premises, to the same extent and with like effect as to the Port Authority as if the sublessee were the lessee under this Agreement including, but not limited to the obligations of the Lessee under this Agreement dealing with indemnity, law compliance, rights of entry, non-construction and non-discrimination;

(4) shall provide that Port Authority's written approval and consent to such sublease shall be a condition precedent to its effectiveness; and

(5) shall provide that the sublessee shall not sub-sublease all or any portion of the subleased Premises.

(c) The Lessee shall require every Concessionaire to agree that (1) it shall be bound by and shall observe all of the applicable terms and conditions of Sections 10, 11, 12, 13(a), 14(a) and (b), and 15(a) of this Agreement as if it were the Lessee hereunder; and (2) in the case of a Concessionaire that is not a Major Concessionaire, the Concession and all of the rights thereunder shall be subject to termination on no less than ten (10) days' notice from the Lessee in the event the Concessionaire shall be in violation of any of the aforesaid terms and conditions of this Agreement; and in the case of a Major Concessionaire, the Major Concession and all of the rights thereunder shall be subject to termination by the Lessee in the event the Major Concessionaire shall be in violation of any of the aforesaid terms and conditions of this Agreement upon such period of notice as the Lessee shall deem appropriate (but in no event beyond the then term of this Agreement).

Section 24. Termination

(a) If any one or more of the following events shall occur, that is to say:

(1) The Lessee shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property; or

(2) By order or decree of a court the Lessee shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or, if the Lessee is a corporation, by any of its stockholders, seeking its

reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof; or

(3) A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Lessee and shall not be dismissed within thirty (30) days after the filing thereof; or

(4) Except as permitted in Section 17 hereof, the letting or the interest of the Lessee under this Agreement shall be transferred to, pass to or devolve upon, by operation of law or otherwise, any other person, firm or corporation; or

(5) Except for a merger or consolidation of the Lessee with any agency of the City, the Lessee shall, without the prior approval of the Port Authority, become a successor or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or

(6) If the Lessee is a partnership, the said partnership shall be dissolved as the result of any act or omission of its partners or any of them, or by operation of law or the order or decree of any court having jurisdiction, or for any other reason whatsoever; or

(7) By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of the Lessee, and such possession or control shall continue in effect for a period of fifteen (15) days; or

(8) (i) The Lessee shall voluntarily abandon, desert or vacate the Premises or discontinue its operations at the Premises 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, the Lessee shall be prevented for a period of one hundred eighty (180) 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 Lessee's acts or omissions; or

(9) Any lien shall be filed against the Premises or any part thereof because of any act or omission of the Lessee and shall not be discharged or bonded within sixty (60) days; or

(10) The Lessee shall fail duly and punctually to pay the rental or to make any other payment required under this Agreement when due to the Port Authority; or

(11) The Lessee shall fail to keep, perform and observe each and every other promise, covenant and agreement set forth in this Agreement, on its part to be kept, performed or observed, within ten (10) business days after its receipt of notice of default thereunder from the Port Authority (except where fulfillment of its obligation requires activity over a period of time, and the Lessee shall have commenced to perform whatever may be required for fulfillment within ten (10) business days after receipt of notice, and continues such performance without interruption except for causes beyond its control);

then upon the occurrence of any such event or at any time thereafter during the continuance thereof, the Port Authority may by five (5) days' written notice terminate the letting and the rights of the Lessee under this Agreement, such termination to be effective upon the date specified in such notice. Such right of termination and the exercise thereof shall be and operate as a conditional limitation.

(b) If any of the events enumerated in paragraph (a) of this Section shall occur prior to the commencement of the letting, the Lessee shall not be entitled to enter into possession of the Premises, and the Port Authority, upon the occurrence of any such event, or at any time thereafter during the continuance thereof may, by twenty-four (24) hours' notice,

cancel the interest of the Lessee under this Agreement, such cancellation to be effective upon the date specified in such notice.

(c) No acceptance by the Port Authority of rentals, fees, charges or other payments in whole or in part for any period or periods after a default of any of the terms, covenants and conditions hereof to be performed, kept or observed by the Lessee shall be deemed a waiver of any right on the part of the Port Authority to terminate the letting. No waiver by the Port Authority of any default on the part of the Lessee in performance of any of the terms, covenants or conditions hereof to be performed, kept or observed by the Lessee shall be or be construed to be a waiver by the Port Authority of any other or subsequent default in performance of any of the said terms, covenants and conditions.

(d) The rights of termination described above shall be in addition to any other rights of termination provided in this Agreement and in addition to any rights and remedies that the Port Authority would have at law or in equity consequent upon any breach of this Agreement by the Lessee, and the exercise by the Port Authority of any right of termination shall be without prejudice to any other such rights and remedies.

Section 25. Right of Re-entry

The Port Authority shall, as an additional remedy upon the giving of a notice of termination as provided in Section 24 of this Agreement, have the right to re-enter the Premises and every part thereof upon the effective date of termination without further notice of any kind, and may regain and resume possession either with or without the institution of summary or other legal proceedings, or otherwise. Such re-entry, or regaining or resumption of possession, however, shall not in any manner affect, alter or diminish any of the obligations of the Lessee under this Agreement, and shall in no event constitute an acceptance of surrender.

Section 26. Waiver of Redemption

The Lessee hereby waives any and all rights to recover or regain possession of the Premises and all rights of redemption, granted by or under any present or future law in the event it is evicted or dispossessed for any cause, or in the event the Port Authority obtains possession of the Premises in any lawful behavior.

Section 27. Survival of the Obligations of the Lessee

(a) In the event that the letting shall have been terminated in accordance with a notice of termination as provided in Section 24 of this Agreement, or the interest of the Lessee shall have been cancelled pursuant thereto, or in the event that the Port Authority has re-entered, regained or resumed possession of the Premises in accordance with the provisions of Section 25 of this Agreement, all of the obligations of the Lessee under this Agreement shall survive such termination or cancellation, re-entry, regaining or resumption of possession and shall remain in full force and effect for the full term of the letting, as originally fixed in Section 2 hereof, and the amount or amounts of damages or deficiency shall become due and payable to the Port Authority to the same extent, at the same time or times and in the same manner as if no termination, cancellation, re-entry, regaining or resumption of possession has taken place. The Port Authority may maintain separate actions each month to recover the damage or deficiency then due, or at its option and at any time may sue to recover the full deficiency (less the proper discount) for the entire unexpired term. For all purposes of this Agreement, the unexpired term of the letting for which the damages provided for in this Section are owed shall be the term of the letting without regard to any extension thereof under the provisions of Section 2(b) hereof, except that if any such extension is then in effect said damages shall be owed through the expiration date of said extension.

(b) The amount or amounts of damages for the period of time subsequent to termination or cancellation (or re-entry, regaining or resumption of possession) shall be:

(1) the amount of all unfulfilled monetary obligations of the Lessee under this Agreement, including, without limitation thereto, all sums constituting additional rental under Section 21 of this Agreement, and all sums constituting the rentals under Section 3, Section 4, Section 5 and Section 6 of this Agreement, accrued prior to the effective date of termination, and the cost to and expenses of the Port Authority for fulfilling all other obligations of the Lessee which would have accrued or matured during the balance of the term or on the expiration date originally fixed or within a stated time after expiration or termination; and

(2) an amount equal to the cost and the expenses of the Port Authority in connection with the

termination, cancellation, regaining, possession and restoring and reletting the Premises, the Port Authority's legal expenses and costs, and the Port Authority costs and expenses for the care and maintenance of the Premises during any period of vacancy, and any brokerage fees and commission in connection with any reletting; and

(3) on account of the Lessee's basic rental obligations, an amount equal to the then present value of all basic rental payable with respect to the Premises as provided for in this Agreement for the entire term following the effective date of termination, as originally fixed in this Agreement, less the amount thereof which may have been actually paid to the Port Authority by the Lessee; and

(4) on account of the Lessee's obligations under this Agreement with respect to the Passenger Throughput Rental, an amount equal to the amount of such rental which would have been paid by the Lessee during the balance of the term of the letting if there had been no termination or cancellation or re-entry, regaining or resumption of possession (any of the foregoing in this subparagraph being called a "Termination"). Such amount shall be calculated in accordance with the following: the Guaranteed Annual Passenger Throughput Rental Amount, and the respective rental rate applicable to the Tier 1 Number of Passengers, the Tier 2 Number of Passengers, and the Tier 3 Number of Passengers (as said amount and rates would have escalated in the Lease Years remaining in the term of letting at the time of the Termination) shall be applied respectively to the "annual number of the Tier 1 Number of Passengers", the "annual number of the Tier 2 Number of Passengers", and the "annual number of the Tier 3 Number of Passengers" as defined below, and the result so obtained shall be multiplied by the number of full Lease Years remaining in the term of the letting at the time of the Termination. The "annual number of the Tier 1 Number of Passengers", the "annual number of the Tier 2 Number of Passengers", and the "annual number of the Tier 3 Number of Passengers" shall be, respectively, the Tier 1 Number of Passengers, the Tier 2 Number of Passengers, and the Tier 3 Number of Passengers embarked to or disembarked from Passenger Ships during the last full Lease Year to occur prior to the Termination. In the event that the Termination

shall be on other than the last day of a Lease Year, for purposes of calculating the rental due hereunder for the period from the day after the Termination through the end of the Lease Year in which the Termination shall occur, the Tier 1 Number of Passengers, the Tier 2 Number of Passengers, the Tier 3 Number of Passengers, and the Guaranteed Annual Passenger Throughput Rental Amount shall each be prorated for the period from the day after the Termination through the end of the Lease Year in which the Termination shall occur; and

(5) on account of the Lessee's obligations under this Agreement with respect to the Parking Percentage Rental, an amount equal to the amount of such rental which would have been paid by the Lessee during the balance of the term of the letting if there had been no termination or cancellation or re-entry, regaining or resumption of possession (any of the foregoing in this subparagraph being called a "Termination"). Such amount shall be equal to the product obtained by multiplying (i) the applicable Parking Percentage Rental percentage rate for each Lease Year remaining in the term of the letting, and (ii) the Gross Parking Receipts that would have been received during the balance of the term of the letting if there had been no Termination; and for the purpose of calculation hereunder (aa) the said amount of Gross Parking Receipts shall be derived by multiplying the number of days in the balance of the term of the letting originally fixed by the daily average of the Gross Parking Receipts; and (bb) the daily average of the Gross Parking Receipts shall be the Lessee's total actual Gross Parking Receipts during the last full Lease Year to occur prior to the Termination during which the Premises were open and in operation divided by 365; and

(6) on account of the Lessee's obligations under this Agreement with respect to the Ancillary Percentage Rental, an amount equal to the amount of such rental which would have been paid by the Lessee during the balance of the term of the letting if there had been no termination or cancellation or re-entry, regaining or resumption of possession (any of the foregoing in this subparagraph being called a "Termination"). Such amount shall be equal to the product obtained by multiplying (i) the applicable

Ancillary Percentage Rental Parking Percentage Rental percentage rate for each Lease Year remaining in the term of the letting of the letting, and (ii) the Gross Revenues from Ancillary Operations that would have been received during the balance of the term of the letting if there had been no Termination; and for the purpose of calculation hereunder (aa) the said amount of Gross Revenues from Ancillary Operations shall be derived by multiplying the number of days in the balance of the term of the letting originally fixed by the daily average of the Gross Revenues from Ancillary Operations; and (bb) the daily average of the Gross Revenues from Ancillary Operations Parking Receipts shall be the Lessee's total actual Gross Revenues from Ancillary Operations during the during the last full Lease Year to occur prior to the Termination during which the Premises were open and in operation divided by 365.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this Section, the amount of the damages payable by the Lessee to the Port Authority pursuant to the provisions of said paragraphs (a) and (b) shall be reduced (or extinguished, as the case may be) by an amount equal to the adjusted reasonable cost of the Lessee's Improvements that shall have become the property of the Port Authority pursuant to the provisions of Section 8A hereof, with the adjusted reasonable cost thereof to be an amount equal to: (i) the reasonable cost of the Lessee's Improvements determined pursuant to the provisions of paragraphs (p) and (q) of Section 8 hereof reduced by (ii) the amount obtained by multiplying said reasonable cost by a fraction, the numerator of which shall be the number of Lease Years (including fractions thereof) that shall have then occurred and the denominator of which shall be twenty-five (25) (hereinafter called "the Cost of the Lessee's Improvements"). In the event that the amount of the damages payable by the Lessee to the Port Authority pursuant to the provisions of paragraphs (a) and (b) of this Section exceeds the Cost of the Lessee's Improvements, the Lessee shall pay to the Port Authority the amount of such excess upon thirty (30) days' notice by the Port Authority to the Lessee of such outstanding amount. The Port Authority shall have all rights of audit set forth in paragraph (q) of Section 8 hereof to determine the Cost of the Lessee's Improvements for purposes of the application thereof to the damages payable by the Lessee to the Port Authority pursuant to the provisions of paragraphs (a) and (b) of this Section. In the event that the Cost of the Lessee's Improvements exceeds the amount of the damages payable by the Lessee to the Port Authority pursuant to the provisions of

paragraphs (a) and (b) of this Section, the amount of such excess shall in no event be owed or payable by the Port Authority to the Lessee, and the existence of any such excess shall not create any obligation on the part of the Port Authority to the Lessee. Notwithstanding the provision set forth above in this paragraph, and without limiting any other term of this Agreement, upon notice given by the Port Authority within one hundred twenty (120) days after expiration or earlier termination of the letting under this Agreement, the Lessee at its cost and expense shall remove from the Premises any of the Lessee's Improvements as the Port Authority may specify in the notice, and shall repair any damage to the Premises caused by such removal. Except as set forth in paragraph (d) of this Section, and notwithstanding any provision set forth above in this paragraph, the cost of any item of the Lessee's Improvements that shall not have been substantially completed shall not be included in the Cost of the Lessee's Improvements for any purpose of this Agreement.

(d) Without limiting the generality of any other provision of this Section, in the event that the letting shall have been terminated in accordance with a notice of termination as provided in Section 25 of this Agreement, or the interest of the Lessee shall have been cancelled pursuant thereto, or in the event that the Port Authority has re-entered, regained or resumed possession of the premises in accordance with the provisions of Section 26 of this Agreement, the Port Authority shall have the right to require the Lessee to assign to the Port Authority any then outstanding contract or contracts entered into by the Lessee for the performance of the Lessee's Construction Work. The contract or contracts to be so assigned, if any, shall be determined by the Port Authority acting in its sole discretion and designated by written notice from the Port Authority to the Lessee. In the event that the Lessee shall assign any such contract to the Port Authority under the provisions of this paragraph, the Lessee shall be fully responsible and liable for the payment of any amounts accrued under such contract through the date that the letting shall have been terminated in accordance with a notice of termination as provided in Section 25 of this Agreement, or the interest of the Lessee shall have been cancelled pursuant thereto, or in the event that the Port Authority has re-entered, regained or resumed possession of the premises in accordance with the provisions of Section 26 of this Agreement. The Lessee agrees that it shall include in each contract entered into by it for the performance of the Lessee's Construction Work provisions allowing the assignment of said contract to the Port Authority. Nothing contained in this paragraph shall be or be deemed an agreement by the Port Authority to accept an assignment and/or to perform any contract

entered into by the Lessee for the performance of the Lessee's Construction Work or shall create or be deemed to create any rights against the Port Authority in any contractor or other third party with respect to any such contract. In the event that the Port Authority shall complete the construction of any item of the Lessee's Construction Work in accordance with the provisions of this paragraph and the Lessee shall have fully paid for the cost of the work performed prior to the Port Authority's completion of the work as set forth above in this paragraph, the cost to the Lessee of such work incurred prior to the Port Authority's completion of the work shall be included in the Cost of the Lessee's Improvements for purposes of paragraph (c) of this Section.

Section 28. Reletting by the Port Authority

The Port Authority, upon termination or cancellation pursuant to Section 24 of this Agreement, or upon any re-entry, regaining or resumption of possession pursuant to Section 25 of this Agreement, may occupy the Premises or may relet the Premises and shall have the right to permit any person, firm or corporation to enter upon the Premises and use the same. Such reletting may be of part only of the Premises or of the Premises, and for a period of time the same as or different from the balance of the term hereunder remaining, and on terms and conditions the same as or different from those set forth in this Agreement. The Port Authority shall also, upon termination or cancellation pursuant to Section 24 of this Agreement, or upon re-entry, regaining or resumption of possession pursuant to Section 25 of this Agreement, have the right to repair and to make structural or other changes at the Premises, including changes which alter the character of the Premises and the suitability thereof for the purposes of the Lessee under this Agreement, without affecting, altering or diminishing the obligations of the Lessee hereunder. In the event either of any reletting or of any actual use and occupancy by the Port Authority (the mere right to use and occupy not being sufficient however) there shall be credited to the account of the Lessee against its survived obligations hereunder any net amount remaining after deducting from the amount actually received from any lessee, licensee, permittee or other occupier in connection with the use of the Premises (or portion thereof) during the balance of the term of the letting as the same is originally stated in this Agreement, or from the market value of the occupancy of such portion of the Premises as the Port Authority may itself during such period actually use and occupy, all reasonable expenses, reasonable costs and reasonable disbursements incurred or paid by the Port Authority in

connection therewith. Neither any such letting nor any such other use or occupancy shall be or be construed to be an acceptance of a surrender. It is understood by the Port Authority and the Lessee that the Port Authority has no obligation to relet the Premises or any portion thereof or to use or occupy the Premises or any portion thereof itself, except to the extent as may be required by law.

Section 29. Remedies to Be Nonexclusive

All remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of or exclusive of each other or of any other remedy available to the Port Authority at law or in equity, and neither the exercise of any remedy, nor any provision in this Agreement for a remedy or an indemnity shall prevent the exercise of any other remedy.

Section 30. Surrender

(a) The Lessee covenants and agrees to yield and deliver peaceably to the Port Authority possession of the Premises on the date of the cessation of the letting, whether such cessation be by termination, expiration or otherwise, promptly and in the condition required by the provisions of Section 15(c) hereof regarding the condition of the Premises at the expiration or termination of the letting hereunder.

(b) Unless required for the performance by the Lessee of its obligations hereunder, the Lessee shall have the right at any time during the letting to remove from the Premises, all its equipment, removable fixtures and other personal property, and all property of third persons for which the Lessee 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 Lessee shall fail to remove such property on or before the termination or expiration of the letting, the Port Authority 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 Lessee to the Port Authority, with any balance remaining to be paid to the Lessee; if the expenses of such removal, repair, storage and sale shall exceed the proceeds of sale, the Lessee shall pay such excess to the Port Authority upon demand. Without limiting any other term or provision of this Agreement, the Lessee shall indemnify and hold harmless the Port

Authority, its Commissioners, officers, agents, employees and contractors from all claims of third persons arising out of the Port Authority's removal and disposition of property pursuant to this Section, including claims for conversion, claims for loss of or damage to property, claims for injury to persons (including death), and claims for any other damages, consequential or otherwise.

Section 31. Acceptance of Surrender of Lease

No agreement of surrender or to accept a surrender shall be valid unless and until the same shall have been reduced to writing and signed by the duly authorized representatives of the Port Authority and of the Lessee. Except as expressly provided in this Section, neither the doing of, nor any omission to do, any act or thing, shall be deemed an acceptance of a surrender of the letting or of this Agreement.

Section 32. Notices

(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, or (ii) or, if directed to the Lessee, delivered to the Premises during regular business hours, or (iii) forwarded to such party, officer or representative at the office address by registered mail. Until further notice, the Lessee hereby designates the President of the Lessee as its representative, the address of whom is set forth on the first page of this Agreement, and which is the office where notices and requests may be served. Until further notice, the Port Authority hereby designates its Executive Director as its representative, the address of whom is 225 Park Avenue South, New York, New York 10003, and which is the office 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 33. General

(a) Wherever in this Agreement the Lessee agrees or is required to do or has the right to do, any act or thing, its obligations shall be performed by it and its rights shall be exercised only by its officers and employees or by those of the

City to the extent that the City shall have succeeded to the rights and obligations of the Lessee under Section 17 hereof; except that the Lessee may use contractors in the performance of any of its obligations under this Agreement; provided, that at all times during the term of the letting if separate contractors are engaged by the lessee to perform any of such obligations, the Lessee shall be responsible for managing and supervising any such contractor and any such work by such contractor, and provided, further, that the Lessee shall be fully responsible to the Port Authority for the acts and omissions of such contractors and their officers, agents, representatives, employees and persons at the Premises with their consent to the same extent as if the same were the employees of the Lessee. None of the provisions of this paragraph (a) shall be taken to alter, amend or diminish any obligation of the Lessee assumed in relation to its invitees, business visitors, agents, representatives, contractors, customers, guests, or other persons, firms or corporations doing business with it or using or on or at the Premises with its consent.

(b) [Intentionally Omitted]

(c) [Intentionally Omitted]

(d) The Lessee's representative, hereinbefore specified in this Agreement, (or such substitute as the Lessee may hereafter designate in writing) shall have full authority to act for the Lessee in connection with this Agreement and any things done or to be done hereunder, and to execute on the Lessee's behalf any amendments or supplements to this Agreement or any extension thereof.

(e) The Section headings in this Agreement are inserted only as a matter of convenience and for reference, and they in no way define or limit or describe the scope or intent of any provision hereof.

(f) All payments required of the Lessee by this Agreement shall be made to The Port Authority of New York and New Jersey, P.O. Box 95000-1517, Philadelphia, Pennsylvania 19195-1517, or via the following Wire Transfer Instructions: Bank: Commerce Bank; Bank ABA Number: 026013673; Account No.

or to such other address as may be substituted therefor by notice by the Port Authority to the Lessee from time to time.

(g) This Agreement does not constitute the Lessee the agent or representative of the Port Authority for any purpose

whatsoever. Neither a partnership nor any joint venture is hereby created, notwithstanding the fact that all or a portion of the rental to be paid hereunder may be determined by gross receipts from the operations of the Lessee hereunder.

(h) As used in Section 21, the phrase "utility, mechanical, electrical and other systems" shall mean and include (without limitation thereto) the following: machinery, engines, dynamos, boilers, elevators, escalators, incinerators and incinerator flues, systems for the supply of fuel, electricity, water, gas and steam, plumbing, heating, sewerage, drainage, ventilating, air-conditioning, communications, fire-alarm, fire-protection, sprinkler, telephone, telegraph and other systems, fire hydrants and fire hoses, and their respective wires, mains, switches, conduits, lines, tubes, valves, pipes, motors, cables, fixtures and other equipment.

(i) All designations of time herein contained shall refer to the time-system then officially in effect in the municipality wherein the Premises is located.

(j) As used in this Agreement, "letting" shall include any extension of the letting under this Agreement, whether made by agreement or by operation of law, and "Manager of the Premises" or "Manager" shall mean the person or persons from time to time designated by the Port Authority to exercise the powers and functions vested in the said Manager or in the Superintendent of the Premises by this Agreement; but until further notice from the Port Authority to the Lessee, it shall mean the Manager (or the Acting Manager) Port Authority Marine Terminals-New York for the time being, or his duly designated representative or representatives.

(k) No designation in this Agreement of any area as a street, highway, roadway or other comparable characterization, whether or not by name, shall be or be deemed to be an admission, recognition or acknowledgement of public or private rights in the area so designated, or as a dedication for or a consent to any public or private use of the same. All use in this Agreement of names and designations in connection with such areas is merely for the purpose of fixing geographical locations.

(l)(1) "Brooklyn-Port Authority Marine Terminal" shall mean the real property, buildings, structures, fixtures, improvements and other property, including without limitations thereto leasehold interest in property, located in the Boroughs of Manhattan and Brooklyn, in the Counties of New York and Kings, in the City and State of New York, transferred or assigned to the

Port Authority under the provisions of any one or more of the following deeds and agreements:

(i) Deed dated March 1, 1956 from New York Dock Company to the Port Authority, recorded in the office New York County, on March 6 1956 in Liber 4956 of Conveyances, on pp. 356 et seq., and in the Office of the City Register, Kings County, on March 6, 1956 in Liber 8422 of Conveyances on pp. 458 et seq.;

(ii) Deed dated March 1, 1956 from The Trustees and Associates of the Brooklyn Benevolent Society to the Port Authority, recorded in the Office of The City Register, Kings County on March 7, 1956 in Liber 8423 of Conveyances on pp. 96 et seq.;

(iii) Agreement of lease dated June 2, 1916, made between the City of New York and New York Dock Company, referred to as "the Montague Street Lease", recorded in the Office of the City Register, Kings County, on March 7, 1956 in Liber 8423 of Conveyances on pp. 150 et seq.;

(iv) Agreement dated March 21, 1950, made between the City of New York and New York Dock Company renewing the lease described in paragraph (iii) above, recorded in the Office of the City Register, Kings County, on March 7, 1956 in Liber 8423 of Conveyances on pp. 118 et seq.;

(v) Agreement of lease dated June 2, 1916, made between the City of New York and New York Dock Company, referred to as "the Joralemon Street Lease", recorded in the Office of the City Register, Kings County, on March 7, 1956 in Liber 8423 of Conveyances on pp. 186 et seq.;

(vi) Agreement dated October 23, 1946, made between the City of New York and New York Dock Company, renewing the lease described in paragraph (v) above, recorded in the office of the City Register, Kings County, in Liber 8423 of Conveyances on pp 111 et seq.; and (vii) Assignment of leasehold interests mentioned in paragraphs (iii) (iv) (v) and (vi) as of March 1, 1956 by New York Dock Company to The Port of New York Authority, recorded in the Office of the City Register, Kings County, on March 7, 1956, in Liber 3423 of Conveyances, on pp. 130 et seq.;

(viii) Deed dated August 6, 1956 from California Wine Association to the Port Authority, recorded in the

Office of the City Register, Kings County, on September 7, 1956 in Liber 8473 of Conveyances on pp. 467 et seq.;

and such additional property adjacent thereto (not including any property to the south of Conover Street) as the Port Authority may have heretofore or may hereafter acquire for marine terminal purposes, and additional buildings, structures, fixtures, improvements and other property which may have been heretofore or may hereafter be installed or constructed for marine terminal purposes on any property or properties heretofore mentioned.

(2) The rights of the Port Authority in the Facility are those acquired by it pursuant to the deeds and agreements described in subparagraph (1) of this paragraph, and no greater rights are granted or intended to be granted to the Lessee hereunder than the Port Authority has power thereunder to grant. In the event the Premises or any portion thereof constitutes all or a portion of the premises as to which the Port Authority is the lessee under any one or more of the agreements described in subparagraphs (iii), (iv), (v), (vi) and (vii) of the said subparagraph (1), the term of the letting hereunder shall in any event terminate simultaneously with the termination or expiration of the letting under such agreement or agreements of lease, provided, however, that in the event only a portion of the Premises hereunder is included within the premises under such expiring agreement or agreements of lease, the term of the letting hereunder shall continue as to the balance of the Premises hereunder in accordance with the terms of this Agreement.

(m) "Red Hook Container Terminal" shall mean the respective properties of the City and the Port Authority constituting the "premises" and "the Port Authority Reality" as such terms are defined in the Marine Project Agreement.

(n) So long as the Port Authority shall remain the owner of the Premises, the Lessee, upon paying all of the rentals provided for in this Agreement and observing and performing all the terms, covenants and conditions on the Lessee's part to be observed and performed under this Agreement, may peaceably and quietly have, hold and enjoy the Premises during the term of the letting free of any act or acts of the Port Authority, except as expressly permitted in this Agreement.

(o) This Agreement 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 Section shall be deemed to be self-operating and effective for all purposes without any further instrument on the part of the Lessee, the Lessee shall execute on demand and without expense to the Port Authority such further instruments confirmatory of the provisions of this Section as the Port Authority may request.

(p) Without in any way limiting the obligations of the Lessee as elsewhere stated in this Agreement, the Lessee shall be liable to the Port Authority for any damage done to the Premises or to any part thereof, or to any property of the Port Authority thereon through any act or omission of those in charge of any one or more vessels, steamers, tugboats, barges, lighters, or other floating equipment, or highway or other vehicles, or other transportation equipment while the same are at, coming to or leaving the Premises.

Section 34. Premises

(a) Except as set forth in paragraph (d) of this Section, the Port Authority shall deliver the Premises to the Lessee in its presently existing "as is" condition, and the Lessee agrees to and shall take the Premises in its "as is" condition and the Port Authority shall have no obligations under this Agreement for finishing work or preparation of any portion of the Premises for the Lessee's use.

(b) The Lessee acknowledges that it has not relied upon any representation or statement of the Port Authority or its Commissioners, officers, employees or agents as to the condition of the Premises or the suitability thereof for the operations permitted on the Premises by this Agreement. The Lessee, prior to the execution of this Agreement, has thoroughly examined the Premises as existing and has found the same to be suitable and satisfactory for the operations of the Lessee contemplated and permitted under this Agreement. Without limiting any obligation of the Lessee to commence operations under this Agreement at the time and in the manner stated elsewhere in this Agreement, the Lessee agrees that no portion of the Premises will be used initially or at any time during the letting which is in a condition unsafe or improper for the conduct of the operations of the Lessee, so that there is possibility of injury or damage to life or property, and the Lessee further agrees that before any use it will immediately correct any such unsafe or improper condition.

(c) The Port Authority shall not be liable to the Lessee for injury or death to any person or persons whomsoever,

or for damage to any property whatsoever at any time in the Premises or elsewhere at the Premises, including but not limited to any such injury, death or damage from falling material, water, rain, hail, snow, gas, steam, or electricity, whether the same may leak into, or flow from any part of the Premises or from any other place or quarter.

(d) The Port Authority and the Lessee agree that the float bridge, its associated floating barge and its adjacent timber platform and piling above the mudline, all located in the Atlantic Basin at the south bulkhead of Pier 12 as shown on the sketch attached hereto, hereby made a part hereof and marked "Exhibit A-3" (which float bridge, associated floating barge and adjacent timber platform and piling above the mudline are hereinafter collectively called "the Float Bridge") shall not be part of the Premises and shall be removed from the Premises by the Port Authority no later than April 1, 2006 with the adjacent timber piling to be cut at the mudline and the timber above the mudline removed and the timber piling below the mudline left in place. Until such time as the Port Authority shall remove the Float Bridge, the Lessee shall have the obligations of indemnity set forth in Section 14(a) hereof with respect to the Float Bridge, except that any damage to property or injury to persons occasioned by (1) debris or residue deriving from the Float Bridge or (2) the Port Authority's work in removing the Float Bridge shall not be subject to the indemnification obligations of said Section 14(a). The Lessee hereby grants to the Port Authority, its employees, agents, representatives, contractors, subcontractors and designees the right to enter the Premises at least ten (10) hours per business day for the purpose of performing the work required to remove the Float Bridge; provided, that, the Float Bridge removal work shall be reasonably scheduled in such a way so as not to interfere with either the Lessee's Construction Work or the cruise ship operations. In applying for permits from the regulatory authorities to remove the Float Bridge, the Port Authority shall endeavor to retain rights from the regulatory authorities to construct a marine structure of the same size as the Float Bridge and to otherwise cooperate with the Lessee so as to enable the Lessee to procure such permits as shall be necessary to construct a ferry landing at the Float Bridge location or another location in the Atlantic Basin of the same size and footprint as the Float Bridge; and subject to all of the provisions of Section 8 hereof (except paragraphs (p) and (q)), the Lessee shall have the right hereunder to construct any such ferry landing. In the event that the Port Authority does not complete the removal of the Float Bridge by April 1, 2006, the Lessee shall have the right to perform the Float Bridge removal work and the reasonable cost

incurred by the Lessee in performing such work, as documented pursuant to invoices or other evidence of expenditure, shall be off-set against the Lessee's rental obligations next coming due until the Lessee has recovered the full cost expended by it for such work. The Port Authority shall perform the Float Bridge removal work in such a manner that upon its completion, the portion of the bulkhead to which the Float Bridge was attached shall be in a sufficiently stable condition so as not to present an immediate hazard to navigation.

Section 35. Postponement

If the Port Authority shall not give possession of the Premises on the date fixed or provided for in this Agreement for the commencement of the term, by reason of the fact that the Premises or any part thereof are in the course of construction, repair, alteration or improvement or by reason of the fact that the occupant thereof failed or refused to deliver possession to the Port Authority, or by reason of any cause or condition beyond the control of the Port Authority, the Port Authority shall not be subject to any liability for the failure to give possession on said date. No such failure to give possession on the date of commencement of the term shall in any wise affect the validity of this Agreement or the obligations of the Lessee hereunder, nor shall the same be construed in any wise to extend the term beyond the date stated in Section 2 for expiration. However, the rent shall not commence until possession of the Premises is tendered by the Port Authority to the Lessee; the tender shall be made by notice given at least five (5) days prior to the effective date of the tender and in the event that such notice of tender is not given for possession to commence on or before one hundred eighty-five (185) days after the date stated in Section 2 for commencement of the term then this Agreement shall be deemed cancelled, except that each party shall and does hereby release the other party of and from any and all claims or demands based on this Agreement, or a breach or alleged breach thereof. The Port Authority and the Lessee agree that they will consult and cooperate with each other in the event that the tenant now in possession of the Pier 11 Premises fails to timely vacate said space upon the expiration of its lease thereof.

Section 36. Force Majeure

(a) Neither the Port Authority nor the Lessee shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of material, acts of God, acts of the public enemy, acts of superior

governmental authority, weather conditions, tides, riots, rebellion, sabotage or any other circumstances for which it is not responsible and which are not within its control; provided, however, that this paragraph shall not apply to failures by the Lessee to pay the rentals specified hereunder, including additional rental, and shall not apply to any other charges or money payments payable by the Lessee.

(b) The Port Authority shall be under no obligation to supply any service or services if and to the extent and during any period that the supplying of any such service or services or the use of any component necessary therefor shall be prohibited or rationed by any federal, state or municipal law, rule, regulation, requirement, order or direction and if the Port Authority deems it in the public interest to comply therewith, even though such law, rule, regulation, requirement, order or direction may not be mandatory on the Port Authority as a public agency.

(c) Without limiting the generality of any other provision of this Agreement, including without limitation paragraph (a) of this Section, no abatement, diminution of reduction of the rent or other charges payable by the Lessee, shall be claimed by or allowed to the Lessee for any inconvenience, interruption, cessation or loss of business or other loss caused, directly or indirectly, by any present or future law, rule, requirement, order, direction, ordinance or regulation of the United States of America, or of the state, county or city government, or of any other municipal, governmental or lawful authority whatsoever, or by priorities, rationing or curtailment of labor or materials, or by war or any matter or thing resulting therefrom, or by any other cause or causes beyond the control of the Port Authority, nor shall this Agreement be affected by any such causes.

Section 37. Brokerage

The Lessee and the Port Authority each represent and warrant to the other that they dealt with no broker in connection with the negotiation of this Agreement and that there is no broker who is or may be entitled to be paid a commission in connection therewith. The Lessee and the Port Authority shall each indemnify and save harmless the other of and from any and every claim for commission or brokerage made by any and all persons, firms or corporations whatsoever for services in connection with the negotiation and execution of this Agreement if such claim arises out of its acts or omissions.

Section 38. Non-Liability of Individuals

Neither the Commissioners of the Port Authority nor any of them, nor any officer, agent or employee thereof shall be charged personally by the Lessee with any liability, or held liable to the Lessee under any term or provision of this Agreement, or because of its execution or attempted execution, or because of any breach or attempted or alleged breach, thereof.

Section 39. Services

(a) The Port Authority shall be under no obligation to supply the Lessee with any services provided by utility companies and other service providers, including but not limited to water, gas, electricity, sewer service, heat, steam, air-conditioning, telephone, telegraph, cable, or electrical guard or watch service. The Lessee shall be responsible, at its sole cost and expense, for the obtaining and providing of all utilities and other services necessary for the operation of the Brooklyn Cruise Terminal.

(b) The Lessee 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 this Agreement, the Port Authority may pay the same and any interest or penalties thereon, and the total payment or payments shall constitute an item of additional rental, payable to the Port Authority on demand.

(c) The Lessee 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.

(d) If 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 the Port Authority, for any service, system or utility now or in the future supplied to or available at the Premises or to the Lessee, the Lessee shall, at the option of the Port Authority exercised at any time and from time to time by notice to the Lessee, 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 the Port Authority, as such

notice may direct. All such payments shall constitute items of additional rental.

(e) No failure, delay or interruption in any service or services, whether such service or services shall be supplied by the Port Authority or by others, shall relieve or be construed to relieve the Lessee of any of its obligations hereunder, or shall be or be construed to be an eviction of the Lessee, or shall constitute grounds for any diminution or abatement of the rental or rentals payable under this Agreement, or grounds for any claim by the Lessee for damages, consequential, or otherwise.

(f) Without in any wise affecting the obligations of the Lessee elsewhere stated in this Agreement, the Lessee shall, subject to the provisions of Section 15 of this Agreement, provide, maintain and keep in good order, condition and repair any and all meters (to be located as designated by the Port Authority, other governmental authority or utility), ship-filling lines and other water-using equipment and facilities.

Section 40. Security

Without limiting the generality of any provision of this Agreement, the Lessee shall be responsible, at its sole cost and expense, to provide all necessary security for the protection and safeguarding of the Brooklyn Cruise Terminal and persons and property at or on the Premises.

Section 41. Records

(a) The Lessee shall maintain in accordance with accepted accounting practice during the term of the letting under this Agreement and for three years thereafter records and books of account (including, without limitation, bills of lading and manifests) recording all transactions in any way connected with or reflecting upon the payment of any rental by the Lessee pursuant to Sections 3, 4, 5 or 6 hereof or the granting of any rental credit pursuant to Section 15 hereof, and which records and books of account shall be kept at all times within the Port of New York District, as defined in the Port Compact of 1921 authorized by C. 154 Laws of N.Y. 1921 and C. 151 Laws of N.J. 1921, approved by Public Resolution No. 17 of the 67th Congress, First Session, and permit, in ordinary business hours during such time, the examination and audit by the officers, employees and representatives of the Port Authority of such records and books of account and also any of such records and books of account of any company which is owned or controlled by the Lessee, if said

company performs services, similar to those performed by the Lessee, anywhere in the Port of New York District.

(b) Nothing contained in this Agreement shall be deemed to render any records, or any statement, of the Lessee required to be maintained or supplied hereunder conclusive as to any of the matters set forth therein. The Port Authority may at its sole discretion, in lieu of any records or books of account or statements of the Lessee, employ its own records and books of account for the calculation of any amounts to be paid under this Agreement.

Section 42. Environmental Responsibilities

(a) As used in this Agreement, the following terms shall have the meanings set forth below:

(1) "Environmental Damage" and "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 occurred during the term of the letting under this Agreement or resulted from any act or omission of the Lessee or others during the term of the letting under this Agreement, and/or (ii) the disposal, release or threatened release of any Hazardous Substance from the Premises during the term of the letting under this Agreement or thereafter if the Hazardous Substance came to be present on, about or under the Premises during said term of the letting, and/or (iii) the presence of any Hazardous Substance on, about or under other property at the Facility or elsewhere as a result of the Lessee's use and occupancy of the Premises or a migration of a Hazardous Substance from the Premises during the term of the letting under this Agreement or thereafter if the Hazardous Substance came to be present on, about or under the Premises during said term of the letting, and/or (iv) any personal injury, including wrongful death, property damage and/or natural resource damage arising out of or related to any such Hazardous Substance, and/or (v) the violation of any Environmental Requirements pertaining to any such Hazardous Substance, the Premises and/or the activities thereon.

(2) "Environmental Requirement" and "Environmental Requirements" shall mean all applicable present and future laws, statutes, enactments, resolutions, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, requirements and similar items of all Governmental Authorities and all applicable judicial, administrative and regulatory decrees, judgments and

orders relating to the protection of human health or the environment, the foregoing to include, without limitation:

(i) All 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; and

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

(3) "Hazardous Substance" and "Hazardous Substances" shall mean and include, without limitation, any pollutant, contaminant, toxic or hazardous waste, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, flammable, explosive or radioactive material, urea formaldehyde foam insulation, asbestos, polychlorinated byphenyls ("PCBs"), chemicals known to cause cancer or reproductive toxicity, petroleum and petroleum products and other substances which have been or in the future shall be declared to be hazardous or toxic, 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.

(4) "Governmental Authority" and "Governmental Authorities" shall mean all governmental agencies, authorities, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof, except that it shall not be construed to include The Port Authority of New York and New Jersey, the lessor under this Agreement.

(b) Without limiting the generality of any of the other terms and provisions of this Agreement, the Lessee hereby expressly agrees to assume all responsibility for, and any and all risks of any kind whatsoever caused by, arising out of or in connection with, the conditions of the Premises from and after the date of the letting of the Premises under this Agreement, including without limitation all Environmental Requirements and all Environmental Damages and, except for Environmental Damages arising from the sole negligent acts of the Port Authority, the

Lessee shall indemnify, hold harmless and reimburse the Port Authority, its Commissioners, officers, agents and employees from and against all such risks and responsibilities and all Environmental Damages and Environmental Requirements (including, without limitation, all fines, penalties, payments in lieu of penalties, and legal expenses incurred by the Port Authority in connection therewith). If so directed, the Lessee shall at its own expense defend any suit based upon the foregoing, and in handling such it shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority.

(c) In addition to and without limiting the generality of the obligations of the Lessee set forth above and elsewhere in this Agreement, the Lessee shall at its sole cost and expense and in accordance with and subject to the provisions of Section 11 of the Terms and Conditions of this Agreement, upon notice from the Port Authority, promptly take all actions to completely remove and remediate: (1) any Hazardous Substance present on, about or under the Premises whose presence occurred during the term of the letting under this Agreement or resulted from any act or omission of the Lessee or others during the term of the letting under this Agreement, (2) any Hazardous Substance disposed of or released from the Premises during the term of the letting under this Agreement or thereafter if the Hazardous Substance came to be present on, about or under the Premises during said term of the letting, and (3) any Hazardous Substance present on, about or under other property at the Facility or elsewhere whose presence resulted from the Lessee's use and occupancy of the Premises or which migrated from the Premises to such other property during the term of the letting under this Agreement or thereafter if the Hazardous Substance came to be present on, about or under the Premises during said term of the letting, which any Governmental Authority or any Environmental Requirements or any violation thereof require to be removed and/or remediated, or which in the sole opinion of the Port Authority are necessary to mitigate Environmental Damages, including, but not limited to, 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 standard for any of the foregoing shall be that which requires the lowest level or presence of a particular Hazardous Substance under the laws of the United States or the

State of New York, with the strictest to be applied, and which does not require any restriction on the possible use of the Premises or such other property. The Lessee agrees that with respect to any of its obligations set forth above in this paragraph it will not make any claim against the Port Authority for contribution under any Environmental Requirement. 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. The Lessee shall promptly provide to the Port Authority all copies of test results and reports generated in connection with such actions. Promptly upon completion of such investigation and remediation, the Lessee shall seal or cap all monitoring wells and test holes, remove all associated equipment and restore the remediated property.

(d) Without limiting any other of the Lessee's obligations under this Agreement, the Lessee shall provide the Manager of the Facility at the cost and expense of the Lessee with such information, documentation, records, correspondence, notices, reports, test results, and certifications and any other information as the Port Authority shall request in connection with any Environmental Requirements or Environmental Damages, 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 and the Lessee shall promptly swear to, sign or otherwise fully execute the same. The Lessee agrees that any of the foregoing may be filed by the Port Authority with the appropriate Governmental Authority on behalf of the Lessee and at the Lessee's cost and expense. Further, the Lessee agrees unless directed otherwise by the Port Authority, to provide the Manager of the Facility with copies of all information, documentation, records, correspondence, notices, certifications, reports, test results and all other submissions provided by the Lessee to a Governmental Authority at the same time such are provided to a Governmental Authority and by a Governmental Authority to the Lessee at the time the same are provided to the Lessee with respect to any Environmental Requirements.

(e) Notwithstanding any other provision of this Section, all of the Lessee's obligations, undertakings and responsibilities under this Section shall apply to any Environmental Damage involving any Hazardous Substance whose presence on, about or under the Premises occurred prior to the commencement of the term of the letting under this Agreement if any clean-up, remediation or other response action, or indemnification or other action under this Section is required

with respect to such Environmental Damage as a result of (1) any violation by the Lessee or the Lessee's Representative, as hereinafter defined, of any Environmental Requirements pertaining to such Hazardous Substance, the Premises and/or the activities thereon, or any failure by the Lessee or the Lessee's Representative to observe and comply with any Port Authority requirements, directives and procedures regarding any Hazardous Substance on, about or under the Premises, including without limitation those set forth in any design guidelines, best management practices, agreements (including voluntary agreements) with Governmental Authorities, or construction guidelines which have been or may be established by the Port Authority for the Facility and submitted to the Lessee, and/or (2) any negligent act or omission by the Lessee or the Lessee's Representative with respect to such Hazardous Substance. For purposes of this Section, "Lessee's Representative" shall mean its officers, employees, agents, representatives, contractors, customers, guests, invitees, or other persons who are doing business with the Lessee or are on the Premises with the Lessee's consent.

(f) Without limiting the Port Authority's remedies that it may have under this Agreement or at law or in equity, the Port Authority shall have the right during the term of the letting under this Agreement 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 the Lessee with its environmental obligations under this Section. In the event the Lessee fails to comply with or perform any of its obligations hereunder, the Port Authority at any time during the term of the letting under this Agreement and subsequent to the termination or expiration thereof may elect (but shall not be required) to perform such obligations and the Lessee shall pay to the Port Authority upon demand its costs thereof, including all overhead costs as determined by the Port Authority.

(g) Effective upon the commencement of the Second Extension Period, the Lessee agrees that in any legal action or proceeding in which the Port Authority and the Lessee are opposing parties the Lessee shall have the burden of proof, as hereinafter defined, as to any and all issues of fact with respect to: (1) whether the presence of any Hazardous Substance on, about or under the Premises occurred prior or subsequent to the commencement of the term of the letting under this Agreement; (2) whether any Hazardous Substance disposed of or released from the Premises or which migrated from the Premises came to be present on, about or under the Premises prior or subsequent to the commencement of the term of the letting under this Agreement;

and (3) whether the Lessee exacerbated any pre-existing environmental condition so as to cause a Hazardous Substance to first become regulated during the term of the letting under this Agreement. For purposes of this Section, "burden of proof" shall mean both the legal burden of going forward with the evidence and the legal burden of establishing the truth of any fact by a preponderance of the evidence.

(h) Without limiting the generality of any other term or provision of this Agreement, the obligations of the Lessee under this Section shall survive the expiration or termination of this Agreement.

Section 43. Affirmative Action

(a) The Lessee shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and shall undertake or continue existing programs of affirmative action to ensure that minority group persons and women are afforded equal employment opportunity without discrimination. Such programs shall include, but not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selections for training or retraining, including apprenticeship and on-the-job training.

(b) In addition to and without limiting the foregoing and without limiting the provisions of paragraph (s) of Section 8 hereof, it is hereby agreed that the Lessee, in connection with its continuing operation, maintenance and repair of the Premises, or any portion thereof, and in connection with every award or agreement for concessions or consumer services at the Premises, shall throughout the term of the letting hereunder commit itself to and use good faith efforts to implement an extensive program of Affirmative Action, including specific affirmative action steps to be taken by the Lessee, to ensure maximum opportunities for employment and contracting by minorities and women. In meeting the said commitment the Lessee agrees to submit its said extensive Affirmative Action program, including the specific affirmative action steps to be taken by the Lessee to meet its aforesaid commitment, within sixty (60) days after the commencement of the term of the letting hereof to the Port Authority for its review and approval. The Lessee shall incorporate in its said program such revisions and changes as the Port Authority and the Lessee may agree upon from time to time. The Lessee throughout the term of the letting hereunder shall document its efforts in implementing the said program, shall keep

the Port Authority fully advised of the Lessee's progress in implementing the said program and shall supply to the Port Authority such information, data and documentation with respect thereto as the Port Authority may from time to time and at any time request, including but not limited to annual reports. The obligations imposed on the Lessee under this paragraph shall not be construed to impose any greater requirements on the Lessee than those which may be imposed on the Lessee under applicable law.

(c) "Minority" as used herein shall be as defined in paragraph (s) of Section 8 hereof.

(d) In the implementation of this Section the Port Authority may consider compliance by the Lessee with the provisions of any federal, state or local law concerning affirmative action equal employment opportunity which are at least equal to the requirements of this Section, as effectuating the provisions of this Section. If the Port Authority determines that by virtue of such compliance with the provisions of any such federal, state or local law that the provisions hereof duplicate or conflict with such law the Port Authority may waive the applicability of the provisions of this Section to the extent that such duplication or conflict exists.

(e) Nothing herein provided shall be construed as a limitation upon the application of any laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents.

Section 44. Late Charges

If the Lessee should fail to pay any amount required under this Agreement when due to the Port Authority, including without limitation any payment of rental or any payment of utility fees or charges, or other charges or fees, or if any such amount is found to be due as the result of an audit, then, in such event, the Port Authority may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount for each late charge period hereinbelow described during the entirety of which such amount remains unpaid, each such late charge not to exceed an amount equal to eight-tenths of one percent of such unpaid amount for each late charge period. There shall be twenty-four late charge periods during each calendar year; each late charge period shall be for a period of at least fifteen (15) calendar days except one late charge period each calendar year may be for a period of less than fifteen (but not less than thirteen) calendar days. Without limiting the

generality of the foregoing, late charge periods in the case of amounts found to have been owing to the Port Authority as the result of Port Authority audit findings shall consist of each late charge period following the date the unpaid amount should have been paid under this Agreement. Each late charge shall be payable immediately upon demand made at any time there for by the Port Authority. No acceptance by the Port Authority of payment of any unpaid amount or of any unpaid late charge amount shall be deemed a waiver of the right of the Port Authority to payment of any late charge or late charges payable under the provisions of this Section, with respect to such unpaid amount. Each late charge shall be and become additional rent, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the rentals as set forth in this Agreement. Nothing in this Section is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) any rights of the Port Authority under this Agreement, including without limitation the Port Authority's rights set forth in Section 24 of this Agreement entitled "Termination" or (ii) any obligations of the Lessee under this Agreement. In the event that any late charge imposed pursuant to this Section shall exceed a legal maximum applicable to such late charge, then, in such event, each such late charge payable under this Agreement shall be payable instead at such legal maximum.

Section 45. Abatement

(a) If at any time during the term of the letting under this Agreement the Lessee shall become entitled to an abatement of basic rental, whether pursuant to the terms of this Agreement, or otherwise, such abatement shall be computed as follows:

(1) for each square foot of the Pier 12 Shed constituting part of the Pier 12 Premises the use of which is denied the Lessee, at the annual rate of \$2.20 during the first Annual Period; the rate thereafter to increase in proportion to the increase in said basic rental during the remainder of term of the letting as set forth in paragraphs (b), (c), (d) and (e) of Section 3 hereof;

(2) for each square foot of the Pier 11 Shed Premises the use of which is denied the Lessee, at the annual rate of \$1.11 during the first Annual Period; the rate thereafter to increase in proportion to the increase in said basic rental during the remainder of term of the letting as set forth in paragraphs (f), (g), (h) and (i) of Section 3 hereof; and

(3) for each square foot of the Pier 11 Open Area Premises the use of which is denied the Lessee, at the annual rate of \$1.20 during the term of the letting through the fifth Annual Period; the rate thereafter to increase in proportion to the increase in said basic rental during the remainder of term of the letting as set forth in paragraphs (k), (l) and (m) of Section 3 hereof.

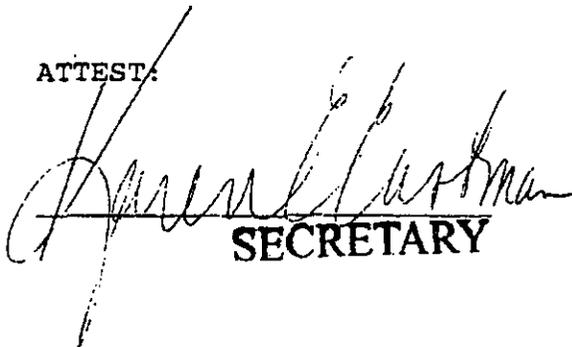
(b) Except as provided in this Section, no abatement of basic rental shall be claimed by or allowed to the Lessee.

Section 46. Entire Agreement

The within Agreement consists of pages number 1 through 105, together with Schedules A, B, C and D, Exhibits A, A-1, A-2 and A-3, Exhibit B, and Exhibit C. It constitutes the entire agreement between the Port Authority and the Lessee on the subject matter, and may not be changed, modified, discharged or extended, except by written instrument duly executed on behalf of both the Port Authority and the Lessee. The Lessee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in this Agreement.

IN WITNESS WHEREOF, the Port Authority and the Lessee have executed this Agreement as of the date first above written.

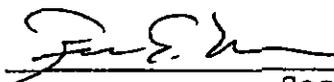
ATTEST:


SECRETARY

THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY

By 
(Title) Director Port Commerce
(Seal)

ATTEST:


Secretary

NEW YORK CITY ECONOMIC DEVELOPMENT
CORPORATION

By 
(Title) EVP President
(Corporate Seal)

SCHEDULE A

| <u>ANNUAL PERIOD</u> | <u>ANNUAL BASIC RENTAL RATE</u> | <u>MONTHLY INSTALLMENT</u> |
|-------------------------------|-------------------------------------|----------------------------|
| Fifth Annual Period | \$433,405.84 | \$36,117.15 |
| Sixth Annual Period* | \$442,073.95 | \$36,839.50 |
| Seventh Annual Period* | \$450,915.43 | \$37,576.29 |
| Eighth Annual Period* | \$459,933.74 | \$38,327.81 |
| Ninth Annual Period* | \$469,132.42 | \$39,094.37 |
| Tenth Annual Period* | \$478,515.06 | \$39,876.26 |
| Eleventh Annual Period** | \$488,085.37 | \$40,673.78 |
| Twelfth Annual Period** | \$497,847.07 | \$41,487.26 |
| Thirteenth Annual Period** | \$507,804.01 | \$42,317.00 |
| Fourteenth Annual Period** | \$517,960.09 | \$43,163.34 |
| Fifteenth Annual Period** | \$528,319.30 | \$44,026.61 |

* In the event of a First Extension Period.

** In the event of a Second Extension Period.

SCHEDULE B

| <u>ANNUAL PERIOD</u> | <u>ANNUAL BASIC RENTAL RATE</u> | <u>MONTHLY INSTALLMENT</u> |
|-------------------------------|-------------------------------------|----------------------------|
| Fifth Annual Period | \$325,606.42 | \$27,133.87 |
| Sixth Annual Period* | \$332,118.55 | \$27,676.55 |
| Seventh Annual Period* | \$338,760.92 | \$28,230.08 |
| Eighth Annual Period* | \$345,536.14 | \$28,794.68 |
| Ninth Annual Period* | \$352,446.86 | \$29,370.57 |
| Tenth Annual Period* | \$359,495.80 | \$29,957.98 |
| Eleventh Annual Period** | \$366,685.71 | \$30,557.14 |
| Twelfth Annual Period** | \$374,019.43 | \$31,168.29 |
| Thirteenth Annual Period** | \$381,499.81 | \$31,791.65 |
| Fourteenth Annual Period** | \$389,129.81 | \$32,427.48 |
| Fifteenth Annual Period** | \$396,912.41 | \$33,076.03 |

* In the event of a First Extension Period.

** In the event of a Second Extension Period.

SCHEDULE C

| <u>LEASE YEAR BEGINNING*</u> | <u>GUARANTEED ANNUAL PASSENGER THROUGHPUT RENTAL AMOUNT</u> |
|------------------------------|---|
| Prior to January 1, 2006 | \$43,750 |
| January 1, 2006 | \$43,750 |
| January 1, 2007 | \$87,500 |
| January 1, 2008 | \$131,250 |
| January 1, 2009 | \$250,000 |
| January 1, 2010** | \$325,000 |
| January 1, 2011** | \$400,000 |
| January 1, 2012** | \$475,000 |
| January 1, 2013** | \$475,000 |
| January 1, 2014** | \$475,000 |
| January 1, 2015*** | \$475,000 |
| January 1, 2016*** | \$475,000 |
| January 1, 2017*** | \$475,000 |
| January 1, 2018*** | \$475,000 |
| January 1, 2019*** | \$475,000 |

* The period from the Cruise Operations Rental Payment Start Date through the next following December 31st shall be a Lease Year.

** In the event of a First Extension Period.

*** In the event of a Second Extension Period.

SCHEDULE D

| ANNUAL PERIOD | ANNUAL BASIC RENTAL RATE | ANNUAL CREDIT | ANNUAL TOTAL | MONTHLY INSTALLMENT |
|----------------------------|-----------------------------|------------------|-----------------|------------------------|
| First Annual Period | \$ 400,400.00 | \$ 200,000.00 | \$ 200,400.00 | \$ 16,700.00 |
| Second Annual Period | \$ 408,408.00 | \$ 200,000.00 | \$ 208,408.00 | \$ 17,367.33 |
| Third Annual Period | \$ 416,576.16 | \$ 200,000.00 | \$ 216,576.16 | \$ 18,048.01 |
| Fourth Annual Period | \$ 424,907.68 | \$ 200,000.00 | \$ 224,907.68 | \$ 18,742.31 |
| Fifth Annual Period | \$ 470,407.68 | \$ 200,000.00 | \$ 270,407.68 | \$ 22,533.97 |
| Sixth Annual Period* | \$ 515,907.68 | \$ 200,000.00 | \$ 315,907.68 | \$ 26,325.64 |
| Seventh Annual Period* | \$ 526,225.84 | \$ 200,000.00 | \$ 326,225.84 | \$ 27,185.49 |
| Eighth Annual Period* | \$ 536,750.35 | \$ 200,000.00 | \$ 336,750.35 | \$ 28,062.53 |
| Ninth Annual Period* | \$ 547,485.36 | \$ 200,000.00 | \$ 347,485.36 | \$ 28,957.11 |
| Tenth Annual Period* | \$ 558,435.07 | \$ 200,000.00 | \$ 358,435.07 | \$ 29,869.59 |
| Eleventh Annual Period** | \$ 603,935.07 | \$ 200,000.00 | \$ 403,935.07 | \$ 33,661.26 |
| Twelfth Annual Period** | \$ 649,435.07 | \$ 200,000.00 | \$ 449,435.07 | \$ 37,452.92 |
| Thirteenth Annual Period** | \$ 662,423.77 | \$ 200,000.00 | \$ 462,423.77 | \$ 38,535.31 |
| Fourteenth Annual Period** | \$ 675,672.24 | \$ 200,000.00 | \$ 475,672.24 | \$ 39,639.35 |
| Fifteenth Annual Period** | \$ 689,185.69 | \$ 200,000.00 | \$ 489,185.69 | \$ 40,765.47 |

* In the event of a First Extension Period.

** In the event of a Second Extension Period.

FOUR (4) SECURITY DRAWINGS EXEMPT
UNDER EXEMPTION 4

EXHIBIT B

AGREEMENT (this "Agreement") dated as of December 23, 2004, between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY ("PORT AUTHORITY"), a body corporate and politic, created by compact between the States of New York and New Jersey with the consent of Congress, with an office at 225 Park Avenue South, New York, New York 10003 and 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, with an office at 110 William Street, New York, New York 10038.

WHEREAS, The City of New York (the "City") is the owner of the New York segments of that certain rail freight line commonly known as the Staten Island Railroad ("SIRR"), which includes, among other things, the Arthur Kill Lift Bridge ("AKLB"), Arlington Yard ("Arlington Yard"), the tracks leading from the AKLB to Arlington Yard and the Travis Branch Spur ("Travis Branch"), and the owner of that certain real property in Staten Island commonly known as Howland Hook Marine Terminal ("HHMT");

WHEREAS, NYCEDC administers and manages the SIRR and HHMT on behalf of the City pursuant to that certain Amended and Restated Maritime Contract between the City and NYCEDC dated as of June 30, 2003, as may hereafter be amended;

WHEREAS, Port Authority is the lessee of HHMT and Port Authority is the owner of the facility adjoining HHMT commonly known as the Port Ivory Intermodal Yard ("Port Ivory");

WHEREAS, the parties have determined that the reactivation of the SIRR is needed to accommodate the growth of HHMT and Port Ivory, and that improvements to the SIRR are needed to enable the SIRR to efficiently serve both parties and it is in their mutual best interests to coordinate the design and the construction of improvements to the SIRR (the "Improvements");

WHEREAS, the parties have entered into an agreement dated as of June 11, 2004 (the "Funding Agreement") pursuant to which they have agreed to share the costs of the Improvements all as more particularly set forth in that Agreement;

WHEREAS, Port Authority is the owner of that certain real property in the County of Kings commonly known as "Brooklyn Port Authority Marine Terminal" (B-PAMT) and the lessee of that certain real property in the County of Kings commonly known as the Red Hook Container Terminal ("RHCT");

WHEREAS, by lease dated as of December 23, 2004 the Port Authority, as lessee, entered into an agreement of lease with NYCEDC (the Lease") pursuant to which Port Authority agreed to lease to NYCEDC the portion of the B-PAMT referred to as "Pier 12" in the Lease and the portion of the RHCT, referred to as "Pier 11" in the Lease, for the operation by NYCDEC or its designee of a facility (the "Cruise Ship Terminal") for the uses set forth in the Lease;

WHEREAS, pursuant to the Lease, NYCEDC agreed to perform certain construction work required to construct and develop the Cruise Ship Terminal, and Port Authority agreed to pay NYCEDC an amount ("the Construction Work Reimbursement Amount") equal to the lesser of: (1) the reasonable cost, as defined in the Lease, of the construction work, or (2) Thirty-two Million Fifty Thousand Three Hundred Dollars and No Cents (\$32,050,300.00) in accordance with the terms of the Lease;

WHEREAS, in consideration of the Port Authority's agreement to pay to NYCEDC the Construction Work Reimbursement Amount in accordance with the terms of the Lease, and as a condition precedent to any such payment or portion thereof, NYCEDC agreed that it would enter into this agreement with Port Authority amending the Funding Agreement.

NOW, THEREFORE, Port Authority and NYCEDC (collectively, the "Parties") agree as follows:

1. NYCEDC agrees that without otherwise limiting the generality of the provisions of the Funding Agreement, NYCEDC shall be responsible for Port Authority's designated share of the costs for each Item of the Improvements as set forth in the Proposed Budget annexed to the Funding Agreement and NYCEDC agrees to fund Port Authority's designated share of costs as set forth in the Proposed Budget, all of such funding by NYCEDC to be in an aggregate amount equal to the Construction Work Reimbursement Amount paid to NYCEDC by Port Authority pursuant to the Lease. In the event that the cost of the Improvements exceeds the Construction Work Reimbursement Amount paid to NYCEDC by Port Authority pursuant to the Lease, Port Authority shall provide additional funds to cover such excess cost subject to the limitations set forth in Section I.B.3(b) and elsewhere in the Funding Agreement, i.e. in no event shall Port Authority be required to provide additional funds under the under the Funding Agreement for any Item if the provision of such funds when added to the Construction Reimbursement Amount paid to NYCEDC by the Port Authority pursuant to the Lease would exceed \$32,050,300.

2. Notwithstanding NYCEDC's funding of Port Authority's designated share of the costs for each Item of the Improvements as set forth in the Proposed Budget annexed to the Funding Agreement, Port Authority shall have title and ownership of each Item of the Improvements for which Port Authority would have been responsible to pay for in full but for the terms of this Supplemental Agreement, by which is meant the items referred to in the Funding Agreement as "Port Authority Funded Items"; i.e. Track and Overpass, Main Yard, Cut East) as set forth in the Proposed Budget for and during the useful life thereof.

3. As hereby amended all the terms, provisions, covenants, agreements and conditions of the Funding Agreement shall be and remain in full force and effect.

4. Neither the Commissioners of the Port Authority nor any of them, nor any officer, agent or employee thereof shall be charged personally by the Lessee with any liability, or held liable to the Lessee under any term or provision of this Supplemental Agreement, or because of its execution or attempted execution or because of any breach, or attempted or alleged breach thereof.

5. This Supplemental Agreement, together with the Funding Agreement (to which it is supplementary) constitutes the entire agreement between the Port Authority and NYCEDC on the subject matter, and may not be changed, modified, discharged or extended except by instrument in writing duly executed on behalf of both the Port Authority and NYCEDC. The parties each agree that no representations or warranties shall be binding upon either party unless expressed in writing in the Funding Agreement or in this Supplemental Agreement.

IN WITNESS WHEREOF, the Port Authority and NYCEDC have executed these presents as of the date first above written.

NEW YORK CITY ECONOMIC
DEVELOPMENT CORPORATION

THE PORT AUTHORITY OF NEW
YORK AND NEW JERSEY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT C

CONSENT TO SUBLEASE

Port Authority Lease No. BP-304
(said Lease being dated as of
)

Port Authority Facility - Brooklyn-Port
Authority Marine Terminal

THIS AGREEMENT, made as of _____, 20 _____ by and among THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called the "Port Authority"), a body corporate and politic created by Compact between the States of New Jersey and New York, with the consent of the Congress of the United States of America and having an office at 225 Park Avenue South, New York, New York 10003, in the Borough of Manhattan, City, County and State of New York, and NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION (hereinafter called "the Lessee"), a local development corporation formed pursuant to Section 1411 of the Not-for-Profit Corporation Law of the State of New York and having an office and place of business at 110 William Street, New York, New York 10038, and _____ (hereinafter called "the Sublessee"), a corporation organized and existing under the laws of the State of _____, and having offices at _____, and whose representative is _____

WITNESSETH, That:

WHEREAS, the Port Authority and the Lessee have entered into a lease identified above by Port Authority Lease Number and by date covering premises at the abovementioned Port Authority Facility (which lease, as the same may have been supplemented and amended, is hereinafter called the "Lease"); and

WHEREAS, the Lessee has requested the consent of the Port Authority to a proposed sublease, a copy of which is attached hereto and made a part hereof (hereinafter called "the Sublease");

NOW, THEREFORE, for and in consideration of the covenants and mutual agreements herein contained, the Port Authority, the Lessee and the Sublessee hereby agree as follows:

1. On the terms and conditions hereinafter set forth, the Port Authority consents to the Sublease.
2. The Sublease shall terminate, without notice to the Sublessee, on the day preceding the date of expiration or earlier

termination of the Lease, or on such earlier date as the Lessee and Sublessee may agree upon. The Sublessee shall quit the subleased premises and remove its property and property for which it is responsible therefrom on or before the termination of the Sublease.

3. If the Lessee shall at any time be in default under the Lease, the Sublessee shall on demand of the Port Authority pay directly to the Port Authority any rental, fee or other amount due to the Lessee. No such payment shall relieve the Lessee from any obligations under the Lease or under this Consent, but all such payments shall be credited against the obligations of the Lessee or of the Sublessee, as the Port Authority may determine for each payment or part thereof.

4. In any case of difference between the provisions of the Lease and those of the Sublease, the Lease shall be controlling, it being the intention of the Port Authority merely to permit the exercise of the Lessee's rights (to the extent permitted by the Sublease) by the Sublessee, and not to enlarge or otherwise change the rights granted by the Lease. All of the terms, provisions, covenants and conditions of the Lease shall be and remain in full force and effect.

5. The Sublessee, in its operations under or in connection with the Sublease and in its occupancy of the premises, agrees to assume, observe, be bound by and comply with all the terms, provisions, covenants and conditions of the Lease.

6. Without in any wise affecting the obligations of the Lessee under the Lease and under this Consent, the Sublessee agrees with respect to its acts and omissions to indemnify the Port Authority and to make repairs and replacements as if it were the Lessee under the Lease. However, all acts and omissions of the Sublessee shall be deemed to be acts and omissions of the Lessee under the Lease and the Lessee shall also be severally responsible therefor, including but not limited to the obligations of indemnification and repair.

7. In addition to all other remedies available to the Port Authority under the Lease or otherwise, this Consent may be revoked by the Port Authority by notice to the Lessee and the Sublessee in the event of any breach by the Sublessee of any term or provision of the Lease or of this Consent and no such revocation shall be deemed to affect the Lease or the continuance thereof. Any notice given to the Sublessee shall be sufficient if given in accordance with the Section of the Lease entitled "Notices", for the purpose of which the Sublessee hereby designates the person named as representative on the first page hereof as its officer or representative upon whom notices may be served and the Sublessee designates its office at the address

stated on the first page hereof as the office where such notices may be served.

8. The Lessee and Sublessee represent and warrant that the attached Sublease sets forth the full and entire rental or other consideration payable to the Lessee by the Sublessee for or in connection with the subletting hereunder or use or occupancy of the subleased space.

9. The granting of this Consent by the Port Authority shall not be or be deemed to operate as a waiver of the rights of the Port Authority, or as a consent to any subsequent subleasing (by the Lessee or by the Sublessee) or to any assignment of the Lease or the Sublease or of any rights under either of them, whether in whole or in part.

10. Reference herein to the Sublessee shall mean and include the Sublessee, its officers, agents, employees and also others on the premises or the Facility with the consent of the Sublessee.

11. Neither the Commissioners of the Port Authority nor any of them, nor any officer, agent or employee thereof shall be

held personally liable to the Lessee or to the Sublessee under any term or provision of this Consent or because of its execution or because of any breach or alleged breach thereof.

IN WITNESS WHEREOF, the Port Authority, the Lessee and the Sublessee have executed these presents.

ATTEST:

THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY

By _____

(Title) _____
(Seal)

ATTEST:

NEW YORK CITY ECONOMIC DEVELOPMENT
CORPORATION

Secretary

By _____

(Title) _____ President
(Corporate Seal)

ATTEST:

[SUBTENANT]

Secretary

By _____

(Title) _____ President
(Corporate Seal)

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

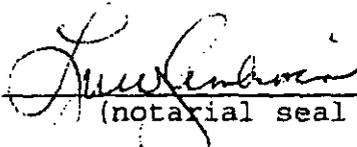
On the 27th day of December in the year 2004,
before me, the undersigned, a ~~Notary Public~~ ^{Commissioner of Deeds} in and for ~~said state,~~ ^{the City of New York}
personally appeared Kate Ascher, personally
known to me or proved to me on the basis of satisfactory evidence to be
the individual(s) whose name(s) is (are) subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in
his/her/their capacity(ies), and that by his/her/their signature(s) on
the instrument, the individual(s), or the person upon behalf of which
the individual(s) acted, executed the instrument.



(notarial seal and stamp)
MARTIN BREE
COMMISSIONER OF DEEDS
CITY OF NEW YORK NO. 4-5172
COMMISSION EXPIRES MAR. 01, 2005

STATE OF New York)
) ss.
COUNTY OF New York)

On the 7th day of January in the year 2004,
before me, the undersigned, a Notary Public in and for said state,
personally appeared Richard M. Harris, Director Port Commerce, personally
known to me or proved to me on the basis of satisfactory evidence to be
the individual(s) whose name(s) is (are) subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in
his/her/their capacity(ies), and that by his/her/their signature(s) on
the instrument, the individual(s), or the person upon behalf of which
the individual(s) acted, executed the instrument.



(notarial seal and stamp)

LUCY AMBROSINO
NOTARY PUBLIC, STATE OF NEW YORK
No. 01AM6101070
QUALIFIED IN NEW YORK COUNTY
MY COMMISSION EXPIRES NOV. 3, 2007

Lease No: BP- 311

AMENDMENT AND RESTATEMENT OF
AGREEMENT OF LEASE

BETWEEN

PORT AUTHORITY OF
NEW YORK AND NEW JERSEY

AND

NEW YORK CITY ECONOMIC
DEVELOPMENT CORPORATION

Dated as of January 1, 2009

CONFORMED COPY

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THIS AMENDMENT AND RESTATEMENT OF AGREEMENT OF LEASE (this "Agreement"), is made and entered into as of the 1st day of January, 2009, by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called "the Port Authority"), a body corporate and politic created by Compact between the States of New Jersey and New York, with the consent of the Congress of the United States of America, and having an office and place of business at 225 Park Avenue South, New York 10003; and NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION (hereinafter called "the Lessee"), a local development corporation formed pursuant to Section 1411 of the Not-for-Profit Corporation Law of the State of New York and having an office and place of business at 110 William Street, New York, New York 10038, whose representative is its President, or such other authorized person as may be designated by notice by the Lessee to the Port Authority.

WITNESSETH, THAT:

WHEREAS, on December 23, 2004, the Port Authority and the Lessee entered into that certain Agreement of Lease Number BP-304 (the "Original Lease"); and

WHEREAS, the Port Authority and the Lessee, for and in consideration of the covenants and agreements hereinafter contained, agree to amend and restate the Original Lease as follows:

Section 1. Letting

(a) The Port Authority hereby lets to the Lessee and the Lessee hires and takes from the Port Authority, at the Brooklyn-Port Authority Marine Terminal (sometimes hereinafter called "the Facility" or "the Brooklyn Cruise Terminal"), in the City of New York, the County of Kings and the State of New York, the open area and the enclosed space shown in diagonal crosshatching, and the water area shown in diagonal hatching, comprising 14.4 acres, all as so shown on a sketch hereto attached, hereby made a part hereof, and marked "Exhibit A", together with the buildings, structures, fixtures, improvements, and other property, if any, of the Port Authority located therein or thereon, the said open area, enclosed space and water area, and the said buildings, structures, fixtures, improvements and other property of the Port Authority being hereinafter collectively called "the Pier 12 Premises" and the said water area being sometimes hereinafter called "the Pier 12 Berthing Area"; and

(b) The Port Authority hereby lets to the Lessee and the Lessee hires and takes from the Port Authority, at the Red Hook Container Terminal (sometimes hereinafter called "the Facility" or "the Brooklyn Cruise Terminal"), in the City of New York, the County of Kings and the State of New York, the open area shown in stipple and the enclosed space shown in diagonal crosshatching, and the water areas shown respectively in horizontal hatching and vertical hatching, comprising 14.4 acres, all as so shown on a sketch hereto attached, hereby made a part hereof, and marked "Exhibit A-1", together with the buildings, structures, fixtures, improvements, and other property, if any, of the Port Authority located therein or thereon, the said open area, enclosed space and water areas, and the said buildings, structures, fixtures, improvements and other property of the Port Authority being hereinafter collectively called "the Pier 11 Premises", the said open area being sometimes hereinafter called "the Pier 11 Open Area Premises", the said enclosed space being sometimes hereinafter called "the Pier 11 Shed Premises", the said water area shown in horizontal hatching being sometimes hereinafter called "the Pier 11 Berthing Area."

(c) The Pier 12 Premises and the Pier 11 Premises shall hereinafter in this Agreement be collectively called "the Premises". In addition, the Pier 12 Berthing Area and the Pier 11 Berthing Area shall hereinafter in this Agreement be collectively called "the Berthing Area". The Port Authority and the Lessee hereby acknowledge that the Pier 12 Premises and the Pier 11 Premises constitute non-residential property.

Section 2. Term

(a) (1) The term of the letting under this Agreement of the Pier 12 Premises shall commence as of 12:01 A.M. on January 1, 2009 (hereinafter called "the Commencement Date") and, unless sooner terminated, shall expire at 11:59 P.M. on December 31, 2029.

(2) The term of the letting under this Agreement of the Pier 11 Premises shall commence as of 12:01 A.M. on January 1, 2009 (hereinafter called "the Commencement Date") and, unless sooner terminated, shall expire at 11:59 P.M. on December 31, 2029.

(b) (1) Subject to the conditions set forth below and in strict compliance therewith, the Lessee shall have the right in accordance with the provisions of this paragraph, to the extension of the term of this Agreement as follows: for a ten (10) year period (hereinafter called the "First Extension Period"), effective upon January 1, 2030 and expiring December 31, 2039; (2) and thereafter for a second ten (10) year period (hereinafter called

the "Second Extension Period"), effective upon January 1, 2040 and expiring December 31, 2049; and (3) thereafter for a third nine (9) year period (hereinafter called the "Third Extension Period"), effective upon January 1, 2050 and expiring December 31, 2058. The First Extension Period, the Second Extension Period and the Third Extension Period are each hereinafter called an "Extension Period." The expiration date of the First Extension Period is hereinafter called the "First Extended Expiration Date." The expiration date of the Second Extension Period is hereinafter called the "Second Extended Expiration Date." Not later than three hundred sixty-five (365) days before the Expiration Date of the First Extended Expiration Date or the Second Extended Expiration Date, as the case may be, the Lessee shall give the Port Authority irrevocable, unconditional written notice (hereinafter called the "Extension Notice") stating that the Lessee thereby exercises its right to extend this Agreement and the term of the letting hereunder; provided, however, that no Extension Notice pursuant to this subparagraph (b) shall be effective if (x) on the date of the giving of the Extension Notice or on the effective date thereof the Lessee has received a notice of default from the Port Authority under Section 24 of this Agreement and has not cured said default as permitted by this Agreement (or if such cure requires activity over a period of time, the Lessee has not commenced and continued to cure in accordance with the provisions of Section 24), or (y) on the date of the giving of the Extension Notice or on the effective date thereof the Lessee has been served by the Port Authority, pursuant to Section 24 of this Agreement, entitled "Termination", with a notice of termination of this Agreement or (z) on the date of the giving of the Extension Notice this Agreement is not then in full force and effect. Within thirty (30) days of its receipt of an effective Extension Notice, the Port Authority shall send a notice to the Lessee confirming that this Agreement and the term of the letting hereunder are extended as provided herein.

(2) In the event that this Agreement and the term of the letting hereunder have been extended as provided in subparagraph (b) of this paragraph, then the letting during each Extension Period shall be upon all of the same terms, covenants, conditions and provisions of this Agreement except as may be specifically set forth in this Agreement.

(c) Notwithstanding anything herein to the contrary, Lessee will not have the option to extend the term of the letting beyond December 31, 2029 if the Port Authority exercises its option to terminate the Howland Hook Marine Terminal Lease, entered into between the Port Authority and the Lessee on even date herewith (the "Howland Hook Lease"), upon its original expiration date of July 19, 2023.

(d) The initial term, from the Commencement Date through December 31, 2029, plus the First Extension Period, Second Extension Period and Third Extension Period shall collectively be referred to herein as the "Term".

Section 3. Basic Rental

(a) *Definitions.* As used in this Section:

(i) "Adjustment Period" shall mean, as the context requires, the calendar month constituting the Base Period and the same calendar month in each calendar year thereafter during the Term.

(ii) "Anniversary Date" shall mean, as the context requires, September 1, 2020 (the "First Anniversary Date") and each anniversary of such date occurring during the Term.

(iii) "Annual Index Increase" shall mean the percentage of increase in the Index on each Anniversary Date, equal to: (x) with respect to the First Anniversary Date, a fraction of which the numerator shall be the Index for the Adjustment Period immediately preceding such Anniversary Date less the Index for the Base Period, and the denominator shall be the Index for the Base Period, and (y) with respect to each Anniversary Date thereafter, a fraction of which the numerator shall be the Index for the Adjustment Period immediately preceding such Anniversary Date less the Index for the next preceding Adjustment Period, and the denominator shall be the Index for such next preceding Adjustment Period. For example, the Annual Index Increase for the Anniversary Date that is September 1, 2020 would be a fraction of which the numerator is the Index for November 2019 less the Index for November 2018 and the denominator is the Index for November 2018. As a further example, the Annual Index Increase for the Anniversary Date that is September 1, 2021 would be a fraction of which the numerator is the Index for November 2020 less the Index for November 2019 and the denominator is the Index for November 2019.

(iv) "Base Period" shall mean the calendar month immediately preceding the first full calendar month occurring before the tenth (10th) annual anniversary of the effective date of this Lease; said Base Period date being November 1, 2018.

(v) "Index" shall mean the Consumer Price Index for All Urban Consumers - New York-Northern New Jersey-Long Island, NY-NJ-CT (All Items, unadjusted 1982-84=100) published by the Bureau of Labor Statistics of the United States Department of Labor.

(vi) "Percentage Increase" shall mean, with respect to each Anniversary Date, a percentage equal to the Annual Index Increase for that Anniversary Date, unless (x) such Annual Index Increase is less than two percent (2%), in which case the Percentage Increase shall be two percent (2%) or (y) such Annual Index Increase is more than four percent (4%), in which case the Percentage Increase shall be four percent (4%).

(b) Pier 12 Premises

(i) *Basic Rental.* The Lessee shall pay basic rental to the Port Authority for the Pier 12 Premises during the term of the letting from January 1, 2009 through and including August 31, 2009, at the annual rate of Four Hundred Twenty-four Thousand Nine Hundred Seven Dollars and Sixty-eight Cents (\$424,907.68) payable in advance in equal monthly installments of Thirty-five Thousand Four Hundred Eight Dollars and Ninety-seven Cents (\$35,408.97) and on the first day of January and each calendar month occurring thereafter through and including the first day of August, 2009.

(ii) Effective September 1, 2009, through and including August 31, 2020, the basic rental for the Pier 12 Premises will increase in accordance with Schedule A of this Agreement.

(iii) *Annual Increases.* Commencing on the First Anniversary Date and for the period commencing with each Anniversary Date and continuing through to the day preceding the next Anniversary Date, for each year thereafter, including the First Extension Period, Second Extension Period and Third Extension Period, if so exercised, or through the expiration date, as the case may be, the Lessee shall pay a Basic Rental at a rate per annum equal to the sum of (x) the Basic Rental theretofore payable and (y) the product obtained by multiplying such theretofore payable Basic Rental by one hundred percent (100%) of the Percentage Increase for such Anniversary Date.

(c) Pier 11 Shed Premises

(i) *Basic Rental.* The Lessee shall pay basic rental to the Port Authority for the Pier 11 Shed Premises during the term of the letting from January 1, 2009 through and including August 31, 2009, at the annual rate of Three Hundred Nineteen Thousand Two Hundred Twenty-one Dollars and Ninety-eight Cents (\$319,221.98) payable in advance in equal monthly installments of Twenty-six Thousand Six Hundred One Dollars and Eighty-three Cents (\$26,601.83) and on the first day of January and each calendar month occurring thereafter through and including the first day of August, 2009.

(ii) Effective September 1, 2009, through and including August 31, 2020, the basic rental for the Pier 11 Shed Premises will increase in accordance with Schedule B of this Agreement.

(iii) *Annual Increases.* Commencing on the First Anniversary Date and for the period commencing with each Anniversary Date and continuing through to the day preceding the next Anniversary Date, for each year thereafter, including the First Extension Period, Second Extension Period and Third Extension Period, if so exercised, or through the expiration date, as the case may be, the Lessee shall pay a Basic Rental at a rate per annum equal to the sum of (x) the Basic Rental theretofore payable and (y) the product obtained by multiplying such theretofore payable Basic Rental by one hundred percent (100%) of the Percentage Increase for such Anniversary Date.

(d) *Pier 11 Open Premises*

(i) *Basic Rental.* The Lessee shall pay basic rental to the Port Authority for the Pier 11 Open Premises in accordance with Schedule B(1) of the Lease.

(ii) *Annual Increases.* Commencing on the First Anniversary Date and for the period commencing with each Anniversary Date and continuing through to the day preceding the next Anniversary Date, for each year thereafter, including the First Extension Period, Second Extension Period and Third Extension Period, if so exercised, or through the expiration date, as the case may be, the Lessee shall pay a Basic Rental at a rate per annum equal to the sum of (x) the Basic Rental theretofore payable and (y) the product obtained by multiplying such theretofore payable Basic Rental by one hundred percent (100%) of the Percentage Increase for such Anniversary Date.

(e) All Basic Rentals shall be paid in advance on the first day of each calendar month in equal monthly installments.

(f) *Adjustments*

(i) In the event the Index to be used in computing any adjustment referred to in this Section 3 is not available on the effective date of such adjustment, the Lessee shall continue to pay the Basic Rental at the annual rate then in effect, subject to retroactive adjustment at such time as the specified Index becomes available, provided, however, that the Port Authority may at its option substitute for such Index the Index for the latest preceding month then published to constitute the specified Index. In the event the United States Consumer Price Index for All Urban

Consumers - New York-Northern New Jersey-Long Island, NY-NJ-CT (All Items, unadjusted 1982-84=100) shall hereafter be converted to a different standard reference base or otherwise revised or the United States Department of Labor shall cease to publish the United States Consumer Price Index for All Urban Consumers - New York-Northern New Jersey-Long Island, NY-NJ-CT (All Items, unadjusted 1982-84=100), then for the purposes hereof there shall be substituted for the Index such other appropriate index or indices properly reflecting changes in the value of current United States money in a manner similar to that established in the Index used in the latest adjustment as the Port Authority may in its discretion determine.

(ii) If, after the Basic Rental amount shall have been fixed for any period, the Index used for computing such adjustment shall be changed or adjusted, then the rental adjustment for that period shall be recomputed, and from and after notification of the change or adjustment, the Lessee shall make payments based upon the recomputed rental and upon demand shall pay any excess in the Basic Rental due for such period as recomputed, over amounts theretofore actually paid on account of the Basic Rental for such period. If such change or adjustment results in a reduction in the Basic Rental due for any period prior to notification, the Port Authority will credit the Lessee with the difference between the Basic Rental as recomputed for that period and amounts of Basic Rental actually paid.

(iii) If any adjustment in Basic Rental referred to in this Section 3 is effective on a day other than the first day of a calendar month, there shall be payable in advance on the effective date of such rental adjustment an installment of Basic Rental equal to 1/12th of the increment of annual Basic Rental as adjusted, multiplied by a fraction of which the numerator shall be the number of days from the effective date of the rental adjustment to the end of the calendar month in which the rental adjustment was effective and the denominator shall be the number of days in that calendar month.

Section 4. Passenger Throughput Rental

(a) For purposes of this Section and for all other purposes under this Agreement the following terms shall have the respective meanings provided below:

(1) "Lease Year" shall mean each twelve-month period commencing on January 1st and ending on December 31st and continuing throughout the term of the letting under this Agreement.

(2) "Passenger" shall mean any person traveling on a Passenger Ship other than nonrevenue passengers, including, but not limited to, persons connected with the operation of such vessel, her navigation, ownership, or business, including, without limitation officers, crew and third party contractors.

(3) "Passenger Ship" shall mean a seagoing vessel, other than one in military or naval service, engaged primarily in carrying more than three hundred twenty (320) persons as Passengers, and loading or unloading not more than one thousand (1,000) long tons of cargo, on voyages extending for not less than twenty-four (24) hours, and actually operated on voyages of at least such duration, from or to the Port of New York, or other vessels, calls of which are recommended by the Lessee for handling at the Premises and approved in writing by the Port Authority.

(4) "Tier 1 Number of Passengers" shall mean, for each Lease Year, the number of Passengers from one (1) Passenger through one hundred thousand (100,000) Passengers.

(5) "Tier 2 Number of Passengers" shall mean, for each Lease Year, the number of Passengers from one hundred thousand one (100,001) Passengers through two hundred thousand (200,000) Passengers.

(6) "Tier 3 Number of Passengers" shall mean, for each Lease Year, the number of Passengers in excess of two hundred thousand (200,000) Passengers.

(b) In addition to all other rentals payable under this Agreement, the Lessee shall pay a Passenger throughput rental (hereinafter called the "Passenger Throughput Rental") for each Lease Year from January 1, 2009, through the expiration of the term of the letting under this Agreement as follows: (1) during each Lease Year to occur during the period commencing on January 1, 2009 and ending on December 31, 2019, in an amount equal to the combined product obtained by (i) multiplying Two Dollars and Fifty Cents (\$2.50) by the Tier 1 Number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during such Lease Year; (ii) multiplying Three Dollars and No Cents (\$3.00) by the Tier 2 Number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during such Lease Year; and (iii) multiplying Three Dollars and Fifty Cents (\$3.50) by the Tier 3 Number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during such Lease Year; and (2) during the Lease Year commencing on, January 1, 2020 and ending on December 31, 2029, in an amount equal

to the combined product obtained by (i) multiplying Three Dollars and Twenty Five Cents (\$3.25) by the Tier 1 Number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during such Lease Year; (ii) multiplying Three Dollars and Seventy Five Cents (\$3.75) by the Tier 2 Number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during such Lease Year; and (iii) multiplying Four Dollars and Twenty Five Cents (\$4.25) by the Tier 3 Number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during such Lease Year.

(c) In the event that the Lessee shall elect to extend the term of the letting for the First Extension Period under the provisions of Section 2(b) hereof, the Lessee shall pay the Passenger Throughput Rental for each Lease Year to occur effective January 1, 2030 and terminating December 31, 2034 in an amount equal to the combined product obtained by (1) multiplying Four Dollars and No Cents (\$4.00) by the Tier 1 Number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during such Lease Year; (2) multiplying Four Dollars and Fifty Cents (\$4.50) by the Tier 2 Number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during such Lease Year; and (3) multiplying Five Dollars and No Cents (\$5.00) by the Tier 3 Number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during such Lease Year. Effective January 1, 2035 and terminating December 31, 2039, the Lessee shall pay the Passenger Throughput Rental for each Lease Year in an amount equal to the combined product obtained by (1) multiplying Four Dollars and Seventy Five Cents (\$4.75) by the Tier 1 Number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during such Lease Year; (2) multiplying Five Dollars and Twenty Five Cents (\$5.25) by the Tier 2 Number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during such Lease Year; and (3) multiplying Five Dollars and Seventy Five Cents (\$5.75) by the Tier 3 Number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during such Lease Year.

(d) In the event that the Lessee shall elect to extend the term of the letting for the Second Extension Period under the provisions of Section 2(b) hereof, the Lessee shall pay the Passenger Throughput Rental for each Lease Year to occur commencing January 1, 2040 and terminating December 31, 2044 in an amount equal to the combined product obtained by (1) multiplying Five Dollars and Fifty Cents (\$5.50) by the Tier 1 Number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during such Lease Year; (2) multiplying Six Dollars and No

Cents (\$6.00) by the Tier 2 Number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during such Lease Year; and (3) multiplying Six Dollars and Fifty Cents (\$6.50) by the Tier 3 Number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during such Lease Year. Effective January 1, 2045 and terminating December 31, 2049, the Lessee shall pay the Passenger Throughput Rental for each Lease Year in an amount equal to the combined product obtained by (1) multiplying Six Dollars and Twenty Five Cents (\$6.25) by the Tier 1 Number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during such Lease Year; (2) multiplying Six Dollars and Seventy Five Cents (\$6.75) by the Tier 2 Number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during such Lease Year; and (3) multiplying Seven Dollars and Twenty Five Cents (\$7.25) by the Tier 3 Number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during such Lease Year.

(e) In the event that the Lessee shall elect to extend the term of the letting for the Third Extension Period under the provisions of Section 2(b) hereof, the Lessee shall pay the Passenger Throughput Rental for each Lease Year to occur commencing January 1, 2050 and terminating December 31, 2058 in an amount equal to the combined product obtained by (1) multiplying Seven Dollars and No Cents (\$7.00) by the Tier 1 Number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during such Lease Year; (2) multiplying Seven Dollars and Fifty Cents (\$7.50) by the Tier 2 Number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during such Lease Year; and (3) multiplying Eight Dollars and No Cents (\$8.00) by the Tier 3 Number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during such Lease Year.

(f) In connection with the Lessee's obligation to pay the Passenger Throughput Rental under this Section, the Lessee shall pay to the Port Authority a minimum Passenger Throughput Rental (hereinafter called "the Minimum Passenger Throughput Rental") as follows: if during any Lease Year the Port Authority shall not receive Passenger Throughput Rental in at least the "Guaranteed Annual Passenger Throughput Rental Amount", as hereinafter defined, with respect to Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during such Lease Year, the Lessee shall pay to the Port Authority a sum equal to the "Guaranteed Annual Passenger Throughput Rental Amount" for that Lease Year less the amount of the Passenger Throughput Rental received by the Port Authority for that Lease Year under the

provisions of paragraph (b), (c), (d) or (e) of this Section. The "Guaranteed Annual Passenger Throughput Rental Amount" for the respective Lease Year shall be the amount set forth opposite such Lease Year in the schedule attached hereto, hereby made a part hereof and marked "Schedule C".

(g) The Passenger Throughput Rental and the Minimum Passenger Throughput Rental shall be payable as set forth below in this paragraph, based on the number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises:

(1) On each April 30th, July 31st, October 31st, and January 31st, the Lessee shall render to the Port Authority a statement (hereinafter called "the Passenger Quarterly Report"), in a form acceptable to the Port Authority and certified by a responsible officer of the Lessee showing the total number of Passengers embarked to or disembarked from Passenger Ships berthing at the Premises during the preceding "Quarter" (as hereinafter defined) and the cumulative number of Passengers embarked to, disembarked from or in transit from Passenger Ships berthing at the Premises from the date of the commencement of the Lease Year for which the Passenger Quarterly Report is made through the last day of the preceding Quarter; each Passenger Quarterly Report shall be accompanied by monthly vessel activity reports to substantiate such report, showing the total number of Passengers embarked to, disembarked from or in transit from Passenger Ships berthing at the Premises during the Quarter for which such report is made. For purposes of this Agreement, "Quarter" shall mean calendar quarter as follows: "First Quarter" shall mean January 1st through March 31st; "Second Quarter" shall mean April 1st through June 30th; "Third Quarter" shall mean July 1st through September 30th; and "Fourth Quarter" shall mean October 1st through December 31st.

(2) For each Lease Year to occur during the term of the letting under this Agreement, the Lessee shall pay to the Port Authority in advance on the first day of each calendar month during that Lease Year an amount equal to one-twelfth (1/12th) of the Guaranteed Annual Passenger Throughput Rental Amount for that Lease Year as set forth opposite that Lease Year in Schedule C attached hereto. In addition, whenever any Passenger Monthly Report shall show that the amount of the Passenger Throughput Rental, calculated in accordance with the provisions of this Section for the period from the first day of that Lease Year, through the last day of the Quarter for which the report is made, exceeds the Guaranteed Annual Passenger Throughput Rental Amount for that Lease Year (which excess of the Passenger Throughput Rental owed over the Guaranteed Annual Passenger Throughput Rental Amount is hereinafter called "the Quarterly Excess Amount"), the Lessee shall pay to the Port

Authority within fifteen (15) days of rendering such Passenger Quarterly Report an amount equal to the Quarterly Excess Amount, and thereafter within fifteen (15) days of rendering each subsequent Passenger Quarterly Report for the Lease Year, and the month following the Lease Year, pay a sum equal to the appropriate Quarterly Excess Amount for each such Quarter for which such report is made.

(3) The Passenger Quarterly Report made on the last day of each January shall include a reconciliation of the amount of the Passenger Throughput Rental payable for the preceding Lease Year and the Lessee shall pay within fifteen (15) days of rendering such Passenger Quarterly Report any amount of the Passenger Throughput Rental then owed to the Port Authority. In the event that the aforesaid reconciliation shall show that the Lessee has paid in excess of the Passenger Throughput Rental owed for such Lease Year, the difference shall be credited against the rentals payable under this Agreement.

(h) The computation of the Passenger Throughput Rental for each Lease Year, or a portion of a Lease Year, shall be individual to such Lease Year, or such portion of a Lease Year, and without relation to any other Lease Year, or any other portion of any Lease Year. Whenever reference is made to any Tier Number of Passengers, it shall mean the Tier Number of Passengers reduced by operation of the proration provisions hereof.

(i) Upon any termination of the letting (even if stated to have the same effect as expiration), the Lessee shall within sixty (60) days after the effective date of termination render to the Port Authority a statement certified by a responsible officer of the Lessee setting forth the information and a final calculation of the Passenger Throughput Rental required to be set forth in the statement rendered by the Lessee on the last day of the month following the end of each Lease Year pursuant to the provisions of paragraph (g) of this Section, except that (i) the statement shall set forth the total number of Passengers embarked to, disembarked from or in transit from Passenger Ships berthing at the Premises during the Quarter or portion thereof through the effective date of termination and, if not already set forth therein, the cumulative number of Passengers embarked to, disembarked from or in transit from Passenger Ships berthing at the Premises during from the date of the commencement of the Lease Year in which the effective date of termination occurred through the effective date of termination, and (ii) the final calculation of the Passenger Throughput Rental shall be made for the period from the first day of the Lease Year in which the effective date of termination shall occur through the effective date of termination. Any amount of the Passenger

Throughput Rental determined to be owed to the Port Authority pursuant to such final calculation shall be paid by the Lessee, within fifteen (15) days of rendering the statement.

(j) In the event that the Lessee shall under any provision of this Agreement become entitled to an abatement of basic rental, then the respective Guaranteed Annual Passenger Throughput Rental Amount for each Lease Year, the Tier 1 Number of Passengers, the Tier 2 Number of Passengers, and the Tier 3 Number of Passengers shall each be reduced proportionately to the reduction of the basic rental.

(k) In the event that a Passenger shall both disembark from and re-embark to a Passenger Ship berthing at the Premises in the course of a stopover and as part of the same itinerary, such Passenger shall be counted as one Passenger (and not two Passengers) for purposes of the computation of the Passenger Throughput Rental. In addition, in the event that a Passenger shall disembark from a Passenger Ship berthing at the Premises and re-embark to a connecting Passenger Ship as part of the same itinerary for the Passenger; such Passenger shall be counted as one Passenger (and not two Passengers) for purposes of the computation of the Passenger Throughput Rental. In all other instances, any Passenger who embarks to, disembarks from or is in transit from (in whichever order) a Passenger Ship berthing at the Premises shall be counted as two Passengers (and not one Passenger) for purposes of such computation of the Passenger Throughput Rental.

Section 5. Parking Percentage Rental

(a) In addition to all other rentals payable under this Agreement, the Lessee shall pay to the Port Authority a percentage rental (hereinafter called "the Parking Percentage Rental") in the amount of; (i) fifteen percent (15%) of the "Gross Parking Receipts", as such term is hereinafter in this Section defined, during the period from January 1, 2009 through December 31, 2011; (ii) twenty percent (20%) of the Gross Parking Receipts during the period from January 1, 2012 through December 31, 2029. In the event that the Lessee shall elect to extend the term of the letting for the First Extension Period under the provisions of Section 2(b) hereof, the Lessee shall pay to the Port Authority the Parking Percentage Rental in the amount of twenty percent (20%) of the Gross Parking Receipts during the period from January 1, 2030 through December 31, 2039. In the event that the Lessee shall elect to extend the term of the letting for the Second Extension Period under the provisions of Section 2(b) hereof, the Lessee shall pay to the Port Authority the Parking Percentage Rental in the amount of twenty percent (20%) of the Gross Parking Receipts

during the period from January 1, 2040 through December 31, 2049. In the event that the Lessee shall elect to extend the term of the letting for the Third Extension Period under the provisions of Section 2(b) hereof, the Lessee shall pay to the Port Authority the Parking Percentage Rental in the amount of twenty percent (20%) of the Gross Parking Receipts during the period from January 1, 2050 through December 31, 2058.

(b) "Gross Parking Receipts" shall include all revenues, amounts, monies, income, and receipts of any kind paid or payable to the Lessee or otherwise derived by the Lessee (without deduction therefrom) from or in connection with the providing of space for the parking of motor vehicles at or outside the Premises for persons or entities making any use of the Premises (regardless of when the order therefor is received or whether received inside or outside the Premises), including but not limited to all such amounts paid or payable to the Lessee by any sublessee or other third party; provided, however, that any taxes imposed by law which are separately stated to and paid by a customer and directly payable to the taxing authority by the Lessee or others, shall be excluded therefrom.

(c) Commencing on April 1, 2010, the Parking Receipts Quarterly Report (as hereinafter defined) shall be due on a quarterly basis on April 30th, July 31st, October 31st, and January 31st of each Lease Year (each of which dates is hereinafter called the "Quarterly Reporting Date"). On each Quarterly Reporting Date to occur during the term of the letting, the Lessee shall render to the Port Authority a statement (hereinafter called "the Parking Receipts Quarterly Report") certified by a responsible officer of the Lessee showing the Gross Parking Receipts for the prior Quarter and the cumulative Gross Parking Receipts from the date of the commencement of the Lease Year for which the Parking Receipts Quarterly Report is made through the last day of the immediately preceding Quarter. The Lessee shall pay within fifteen (15) days of rendering the Parking Receipts Quarterly Report, the amount of the Parking Percentage Rental due for the Quarter for which the report is made pursuant to the provisions of paragraph (a) of this Section. The Parking Receipts Quarterly Report made on the last day of each January shall include a reconciliation of the amount of the Parking Percentage Rental payable for the preceding Lease Year and the Lessee shall pay, within fifteen (15) days of rendering the Parking Receipts Quarterly Report, any amount of the Parking Percentage Rental then owed to the Port Authority. In the event that the aforesaid reconciliation shall show that the Lessee has paid in excess of the Parking Percentage Rental owed for such Lease Year, the difference shall be credited against the rentals payable under this Agreement.

(d) Upon any termination of the letting (even if stated to have the same effect as expiration), the Lessee shall within sixty (60) days after the effective date of termination render to the Port Authority a statement certified by a responsible officer of the Lessee setting forth the information and a final calculation of the Parking Percentage Rental required to be set forth in the statement rendered by the Lessee on the last day of the month following the end of each Lease Year pursuant to the provisions of paragraph (c) of this Section, except that (i) the statement shall set forth the Gross Parking Receipts for the Quarter or portion thereof through the effective date of termination and, if not already set forth therein, the cumulative Gross Parking Receipts from the date of the commencement of the Lease Year in which the effective date of termination occurred through the effective date of termination, and (ii) the final calculation of the Parking Percentage Rental shall be made for the period from the first day of the Lease Year in which the effective date of termination shall occur through the effective date of termination. Any amount of the Parking Percentage Rental determined to be owed to the Port Authority pursuant to such final calculation shall be paid by the Lessee within fifteen (15) days of rendering the statement.

(e) Except as specifically set forth in this Agreement, the rentals payable under this Section shall not be subject to abatement or suspension or reduction for any reason whatsoever.

Section 6. Ancillary Percentage Rental

(a) In addition to all other rentals payable under this Agreement, the Lessee shall pay to the Port Authority a percentage rental (hereinafter called the "Ancillary Percentage Rental") as follows:

| <u>Period</u> | <u>Gross Revenues from Ancillary Operations</u> |
|---|---|
| Commencement Date through December 31, 2009 | Five Percent (5%) |
| January 1, 2010 to December 31, 2019 | Fifteen Percent (15%) |
| January 1, 2020 to December 31, 2029 | Twenty Percent (20%) |
| First Extension Period | Twenty Percent (20%) |
| Second Extension Period | Twenty Percent (20%) |
| Third Extension Period | Twenty Percent (20%) |

(b) "Gross Revenues from Ancillary Operations" shall include all revenues, amounts, monies, income, and receipts of every kind paid or payable to the Lessee or otherwise derived by the Lessee (without any deductions therefrom) from or in connection with the operations permitted under Section 7(b)(1), Section 7(b)(3), Section 7(b)(4), Section 7(b)(5), Section 7(b)(6) and Section 7(b)(7) of this Agreement (regardless of when the order therefor is received or whether received inside or outside the Premises), including but not limited to all such amounts paid or payable to the Lessee by any sublessee or other third party; 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 Lessee or others, shall be excluded therefrom.

(c) The Ancillary Percentage Rental shall be payable on each Quarterly Reporting Date to occur following the Commencement Date. On each such Quarterly Reporting Date, the Lessee shall render to the Port Authority a statement (hereinafter called "the Ancillary Revenue Quarterly Report") certified by a responsible officer of the Lessee showing the Gross Revenues from Ancillary Operations for the preceding Quarter (or the last Quarter of the preceding Lease Year in the case of the report made on the last day of January) and the cumulative Gross Revenues from Ancillary Operations from the date of the commencement of the Lease Year for which the Revenue Quarterly Report is made through the last day of the preceding month of said Lease Year. The Lessee shall pay at the time of rendering the Ancillary Revenue Quarterly Report the amount of the Ancillary Percentage Rental due for the Quarter for which the report is made pursuant to the provisions of paragraph (a) of this Section. The Ancillary Revenue Quarterly Report made on the last day of each January shall include a reconciliation of the amount of the Ancillary Percentage Rental payable for the preceding Lease Year and the Lessee shall pay, within fifteen (15) days of rendering such Ancillary Revenue Quarterly Report any amount of the Ancillary Percentage Rental then owed to the Port Authority. In the event that the aforesaid reconciliation shall show that the Lessee has paid in excess of the Ancillary Percentage Rental owed for such Lease Year, the difference shall be credited against the rentals payable under this Agreement.

(d) Upon any termination of the letting (even if stated to have the same effect as expiration), the Lessee shall within sixty (60) days after the effective date of termination render to the Port Authority a statement certified by a responsible officer of the Lessee setting forth the information and a final calculation of the Ancillary Percentage Rental required to be set forth in the statement rendered by the Lessee on the last day of the month

following the end of each Lease Year pursuant to the provisions of paragraph (c) of this Section, except that (i) the statement shall set forth the Gross Revenues from Ancillary Operations for the Quarter or portion thereof through the effective date of termination and, if not already set forth therein, the cumulative Gross Revenues from Ancillary Operations from the date of the commencement of the Lease Year in which the effective date of termination occurred through the effective date of termination, and (ii) the final calculation of the Ancillary Percentage Rental shall be made for the period from the first day of the Lease Year in which the effective date of termination shall occur through the effective date of termination. Any amount of the Ancillary Percentage Rental determined to be owed to the Port Authority pursuant to such final calculation shall be paid by the Lessee within fifteen (15) days of rendering the statement.

(e) Nothing set forth in this Section, nor any payment by the Lessee or acceptance thereof by the Port Authority of rental hereunder, shall be or be deemed a waiver by the Port Authority of its right of consent under the provisions of Section 17 entitled "Assignment and Sublease".

(f) Except as specifically set forth in this Agreement, the rentals payable under this paragraph shall not be subject to abatement or suspension or reduction for any reason whatsoever.

Section 7. Rights of User

The Lessee shall use the Premises for the following purposes only, and for no other purpose whatsoever: (a) the handling, accommodation and servicing of Passenger Ships, and the handling, accommodation and servicing of Passengers, mail, visitors and associated cargo, and other activity incidental to such operations; (b) (1) retail sales of goods and services at the Premises in connection with the activities set forth in paragraph (a) of this Section; (2) the operation of a parking facility to provide space for the parking of motor vehicles for persons or entities making use of the Premises; (3) the operation of a marina to provide mooring and services for nautical craft; (4) the operation of a ferry landing; (5) the production of trade shows for the display of commercial goods and services, and flower shows; (6) the holding of the fireman's examination, the police examination, the civil service examination, the transit worker examination, and the bar examination; and (7) the holding of such group or special events as shall have the prior and continuing consent of the Port Authority; provided, that, all uses and activities within subdivisions (5), (6) and (7) of this Section may take place at the Premises only during periods when the Premises are not being actively used by

Passenger Ship lines for the handling, accommodation and servicing of Passengers; and (c) solely with respect to the Pier 11 Premises, warehousing and distribution activities. Lessee has advised the Port Authority that it is contemplating a sublease with Phoenix Beverages MTO, LLC and/or an affiliate ("Phoenix") for space at the Pier 11 Premises for the purposes of (i) beverage and related food products distribution, warehousing and recycling operations, such recycling operations related to Phoenix's business operations and in compliance with all applicable regulations, including receiving, loading and unloading, storing, packaging, shipping, distributing, transporting, buying, selling and dealing beverages (including alcoholic beverages), related food products, and processing and/or crushing of glass bottles and other recyclable materials, (ii) parking, storing, and repairing trucks and other equipment which may be used for hauling or transporting the aforesaid, (iii) point-of-sale item storage, (iv) receiving and storing empty beverage containers and packaging (including bottles, cans and cardboard boxes and cases) for recycling, and post-processed materials for disposition and shipping, and bundling and preparing cardboard and paper materials for recycling, (v) conversion of Phoenix's trucks to compressed natural gas and maintenance of a compressed natural gas filling station, (vi) receiving, loading and unloading, storing, packaging, shipping, and distributing third party goods (collectively, "Third Party Storage Activities"), and (vii) uses incidental to the foregoing (i) through (vi) (collectively, the "Phoenix Operations").

The right to undertake any recycling under (i) through (vi) above is a contractual right solely granted to Phoenix under this Agreement and any such recycling right is neither assignable nor applicable to any subtenant, licensee, or other third party operating at or occupying any portion of the Premises. Said right to collect recycling under this Agreement shall be strictly in accordance with the Department of Environmental Conservation law, Chapter 59, Part 88, and subject to those further restrictions as set forth in the Phoenix Sublease, as more fully described in the Consent attached hereto as Exhibit C.

Notwithstanding the foregoing, the permissible uses hereunder shall be undertaken by the Lessee subject to the provisions of Section 17 and Section 23 hereof. The Lessee shall have the right to berth in the Berthing Area those Passenger Ships operated by persons, firms or corporations which shall have the prior and continuing consent of the Port Authority, to be granted, withheld, and withdrawn in the sole discretion of the Port Authority. The Lessee shall not use or permit the use of the Premises except as hereinabove provided.

Section 8. Lessee's Construction Work

(a) In the event Lessee performs any construction work ("Construction Work") during the Term of the letting, the Lessee shall indemnify and save harmless the Port Authority, and its Commissioners, officers, agents and employees against the following distinct and several risks, whether they arise from acts or omissions of the Lessee, any contractors of the Lessee, the Port Authority, third persons, or from acts of God or the public enemy, or otherwise, excepting only risks which result solely from affirmative willful acts done by the Port Authority subsequent to commencement of the work:

(b) Such Construction Work shall be subject to the terms of this Section 8.

(i) The risk of loss or damage to all such construction prior to the completion thereof. In the event of such loss or damage, the Lessee shall, forthwith repair, replace and make good the work without cost to the Port Authority;

(ii) The risk of death, injury or damage, direct or consequential, to the Port Authority, and its Commissioners, officers, agents and employees, and to its or their property, arising out of or in connection with the performance of the work. The Lessee shall indemnify the Port Authority, and its Commissioners, officers, agents and employees, for all such injuries and damages, and for all loss suffered by reason thereof;

(iii) The risk of claims and demands, just or unjust, by third persons against the Port Authority, and its Commissioners, officers, agents and employees, arising or alleged to arise out of the performance of the work. The Lessee shall indemnify the Port Authority, and its Commissioners, officers, agents and employees, against and from all such claims and demands, and for all losses and expenses incurred by it (including reasonable in-house attorney fees) and by them in the defense, settlement or satisfaction thereof including without limitation thereto, claims and demands for death, for personal injury or for property damage, direct or consequential.

(c) Prior to the commencement of any of the Lessee's Construction Work, the Lessee shall submit to the Port Authority for its approval a Construction Application in the form supplied by the Port Authority, and containing such terms and conditions as the Port Authority may include (the "Construction Application"), setting forth in detail by appropriate plans and specifications the work the Lessee 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 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 Lessee shall identify each of the items constituting the Lessee's Construction Work, and shall describe in detail the systems, improvements, fixtures and equipment to be installed by the Lessee. The Lessee shall be responsible at its sole expense for retaining all architectural, engineering and other technical consultants and services as may be required by the Port Authority and for developing, completing and submitting detailed plans and specifications for the work. The plans and specifications to be submitted by the Lessee 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 the Port Authority's requirements. In connection with review by the Port Authority of the Lessee's submissions under this Section, the Lessee shall submit to the Port Authority, at the Port Authority's reasonable request, such additional data, detail or information as the Port Authority may find reasonably necessary, including without limitation, the identity and background of any contractor or subcontractor proposed by the Lessee to perform any of the Lessee's Construction Work. Following the Port Authority's receipt of the Lessee's Construction Application and complete plans and specifications, the Port Authority shall give its written approval or rejection thereof, or shall request such revisions or modifications thereto as the Port Authority may find necessary. The Port Authority shall endeavor to complete its initial review of the Construction Application and plans and specifications within sixty (60) business days after the Port Authority's receipt of a Construction Application and plans and specifications deemed by the Port Authority to be complete, and shall endeavor to complete its review of each revision or modification thereof within twenty (20) business days of the Port Authority's receipt of a revision or modification deemed by the Port Authority to be complete; provided, that, each such Construction Application and plans and specifications and/or revision or modification thereof shall be prepared in accordance with the highest professional standards, of uniformly high quality and well coordinated with respect to all engineering and architectural disciplines. The Lessee shall not engage any contractor or permit the use of any subcontractor if the Port Authority has notified the Lessee that such contractor or subcontractor is unacceptable to the Port Authority. In the event that the Lessee 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, the Port

Authority shall within ten (10) business days notify the Lessee if any of the listed contractors or subcontractors are unacceptable to the Port Authority; if the Port Authority does not so notify the Lessee within said ten (10) day period, the Lessee's listed contractors and subcontractors will be deemed to have been accepted by the Port Authority for the performance of the work set forth in the Construction Application. The Lessee shall include in any such contract or subcontract such provisions as are required in accordance with the provisions of this Agreement and the Construction Application approved by the Port Authority. The Lessee shall obtain and maintain or cause each contractor to obtain and maintain in force such insurance coverage as is described in this Section 8 and such performance bonds as the Port Authority may specify. All of the Lessee's Construction Work shall be performed by the Lessee in accordance with the Construction Application and final plans and specifications approved by the Port Authority, shall be subject to inspection by the Port Authority during the progress of the work and after the completion thereof, and the Lessee shall redo or replace at its own expense any work not done in accordance therewith. Upon substantial completion of the Lessee's Construction Work, the Lessee shall deliver to the Port Authority a certification to such effect signed by a responsible officer of the Lessee and by the architect or engineer who sealed the Lessee's plans pursuant to the provisions of this paragraph or his or her replacement approved by the Port Authority (hereinafter called "the Sealing Professional") certifying that the Lessee's Construction Work is substantially complete and has been performed in accordance with the approved plans and specifications and the provisions of this Agreement, identifying the "punch list" items to be completed, and applying for a certificate of substantial completion from the Port Authority. Following its receipt of the Lessee's certification and application, the Port Authority shall inspect the work and, unless such certification is not correct, or the Port Authority determines that the Premises are unsuitable for occupancy and use by the Lessee, the Port Authority shall deliver a certificate of substantial completion to the Lessee permitting the Lessee to occupy and use the Premises for the purposes set forth in Section 7 hereof, subject to the Port Authority's later obtaining the Lessee's certification of final completion following satisfactory completion of all "punch work." Upon completion of all punch work in connection with the Lessee's Construction Work, the Lessee shall deliver to the Port Authority a certification of final completion signed by a responsible officer of the Lessee and the Sealing Design Professional certifying that all of the Lessee's Construction Work has been performed in accordance with the approved plans and specifications and the provisions of this Agreement and applying for a certificate of final completion from the Port Authority. In addition, the Lessee shall supply the Port

Authority with as-built drawings of the Lessee's Construction Work in such form and number requested by the Port Authority, and the Lessee shall keep said drawings current during the term of the letting under this Agreement. No changes or modifications to such work shall be made without prior Port Authority consent. Following its receipt of the Lessee's certification and application, the Port Authority shall inspect the work and, unless the certification is not correct, or the Port Authority determines that the Premises are unsuitable for occupancy and use by the Lessee, the Port Authority shall deliver a certificate of final completion to the Lessee.

(d) Except as set forth in paragraph (e) of this Section, the Lessee shall not commence any portion of the Lessee's Construction Work until the Construction Application and plans and specifications covering such work, referred to in paragraph (c) of this Section, have been finally approved by the Port Authority.

(e) If the Lessee desires to commence construction of portions of the Lessee's Construction Work prior to the approval by the Port Authority of the complete Construction Application and plans and specifications covering all of such work pursuant to paragraph (c) of this Section, the Lessee shall submit to the Port Authority a separate Construction Application for each portion of the Lessee's Construction Work the Lessee so desires to commence (each such portion of the Lessee's Construction Work being hereinafter designated as "Partial Approval Work") which shall be executed by an authorized officer of the Lessee and shall be accompanied by final and complete plans, specifications, drawings, and data with respect to such portion of the Lessee's Construction Work (the final and complete plans, specifications, drawings, and data covering each such portion of the Lessee's Construction Work are hereinafter referred to as "the Partial Approval Work Plans" with respect to such portion of the Lessee's Construction Work) setting forth in detail the work to be performed in connection with each such portion of the Lessee's Construction Work. The Port Authority shall have full and complete discretion as to whether to permit the Lessee to proceed with the performance of any Partial Approval Work. If the Port Authority consents to the performance of any Partial Approval Work, the Port Authority shall review the Construction Application covering such work and shall give its written approval or rejection of the Partial Approval Work Plans with respect thereto or shall request such revisions or modifications thereto as the Port Authority may find necessary. Upon the Port Authority's approval of the Construction Application covering an item of Partial Approval Work and its approval of the Partial Approval Work Plans with respect thereto, the Lessee may proceed to perform such item of Partial Approval Work subject to and in accordance with the following terms and conditions:

(1) The performance by the Lessee of any item of Partial Approval Work in accordance with the Port Authority's approval will be at its sole risk and if for any reason the plans and specifications for the balance of the Lessee's Construction Work or, any part thereof, are not approved by the Port Authority or if the approval thereof calls for modifications or changes in any item of Partial Approval Work undertaken by the Lessee under any approval granted by the Port Authority pursuant to this paragraph, the Lessee will, as directed by the Port Authority, and at the Lessee's sole cost and expense, either restore the area affected to the condition existing prior to the commencement of such item of Partial Approval Work or make such modifications and changes to such work as may be required by the Port Authority.

(2) Nothing contained in any approval given pursuant to this paragraph shall constitute a determination or indication by the Port Authority that the Lessee has complied with any laws, rules, orders, ordinances, enactments, resolutions, regulations, statutes, requirements, codes, directions, and executive orders, including but not limited to those of the City of New York, which may pertain to the Partial Approval Work to be performed and which the Lessee is required to comply with pursuant to this Agreement.

(3) Each item of Partial Approval Work shall be performed in accordance with and subject to the terms and provisions of this Agreement covering the Lessee's Construction Work and in accordance with the approved Construction Application covering such item of Partial Approval Work and in accordance with the approved Partial Approval Work Plans constituting a part of such Construction Application, and subject to any requirements, stipulations, and provisions which the Port Authority may impose in its approval of the performance of such item of Partial Approval Work.

(4) No Partial Approval Work performed by the Lessee pursuant to the provisions of this paragraph shall affect or limit the obligations of the Lessee under any prior approvals it may have obtained with respect to the Lessee's Construction Work.

(5) The fact that the Lessee has performed any item of Partial Approval Work and that the Port Authority has consented to the performance thereof shall not affect or limit the obligations of the Lessee under this Agreement with respect to the Lessee's Construction Work. The Lessee specifically understands that neither the Port Authority's approval of any Construction Application and Partial Approval Work Plans covering any item of Partial Approval Work nor the performance by the Lessee of any

item of Partial Approval Work pursuant to such approval shall obligate the Port Authority to approve the Construction Application and plans and specifications submitted by the Lessee for the balance of the Lessee's Construction Work or shall create or be deemed to create any obligation on the part of the Port Authority to permit subsequent Partial Approval Work to be performed. Without limiting the generality of the provisions of this paragraph, it is specifically understood that the Port Authority may withhold its approval of a Construction Application and Partial Approval if the Port Authority determines that review of subsequent items of Partial Approval Work is required before the Port Authority can approve, reject, or comment upon such Partial Approval Work Plans.

(6) In the event that in the opinion of the Port Authority the Lessee at any time during the performance of any portion of any item of Partial Approval Work under the approval granted by the Port Authority pursuant to this paragraph shall fail to comply with all of the provisions of this Agreement with respect to such work or shall fail to comply with the provisions of the Construction Application covering such work and the plans and specifications forming a part thereof, or shall fail to comply with any requirements, stipulations, or provisions imposed by the Port Authority in its approval of the performance of such item of Partial Approval Work, or if in the Port Authority's opinion the Lessee shall be in breach of any of the provisions of this Agreement covering such work or shall be in breach of any of the provisions of the Construction Application and plans and specifications covering the performance of such work, or shall be in breach of any requirements, stipulations, or provisions imposed by the Port Authority in its approval of the work, the Port Authority shall have the right to cause the Lessee to cease all or such part of such item of the Partial Approval Work as is being performed in violation of this Agreement, the Construction Application and plans and specifications, or the conditions of the Port Authority's approval. Upon written direction from the Port Authority, the Lessee shall promptly cease performance of the portion of the Partial Approval Work specified. The Lessee shall thereupon submit to the Port Authority for its written approval the Lessee's proposal for making modifications, corrections or changes in or to the item of Partial Approval Work that has been or is to be performed so that the same will comply with the provisions of this Agreement, the Construction Application and plans and specifications, or the conditions of the Port Authority's approval covering such work. The Lessee shall not commence construction of the portion of the Partial Approval Work that has been halted until it has received written approval of the proposed modifications, corrections or changes.

(7) It is hereby expressly understood and agreed that the Port Authority has no duty or obligation of any kind whatsoever to inspect or police the performance of any Partial Approval Work by the Lessee and the rights granted to the Port Authority hereunder shall not create or be deemed to create such a duty or obligation. Accordingly, the fact that the Port Authority has not exercised its right to require the Lessee to cease performance of all or any part of the Partial Approval Work shall not be or be deemed to be an agreement or acknowledgment on the part of the Port Authority that the Lessee has in fact performed such work in accordance with the terms of this Agreement, the Construction Application and plans and specifications covering such work, or the conditions of the Port Authority's approval of such work, nor shall such fact be or be deemed to be a waiver by the Port Authority of any of the requirements of this Agreement with respect to such work, or any of the requirements of the Construction Application and plans and specifications covering such work, or any of the conditions of the Port Authority's approval of such work.

(f) Without limiting the generality of any of the provisions of this Agreement, the Lessee shall use its best efforts to minimize, to the maximum extent practicable, in the performance of the Lessee's Construction Work (including any Partial Approval Work performed by the Lessee) any air pollution, water pollution or any other type of pollution, including noise and odors emanating from, arising out of, or resulting from construction. Subject to the provisions of this Agreement, the Lessee 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 the Port Authority's review and approval in accordance with the provisions of this Agreement.

(g) Without limiting the generality of paragraph (c) of this Section the Lessee shall be solely responsible for the plans and specifications used by it and for the adequacy or sufficiency of such plans, specifications and all the improvements, fixtures, and equipment depicted thereon or covered thereby, regardless of the consent thereto or approval thereof by the Port Authority or the incorporation therein of any Port Authority requirements or recommendations. The Port Authority shall have no obligation or liability in connection with the performance of any of the Lessee's Construction Work or for the contracts for the performance thereof entered into by the Lessee. Any warranties extended or available to the Lessee in connection with the

aforesaid work shall be for the benefit of the Port Authority as well as the Lessee. In the event of any inconsistency between the provisions of this Agreement and those of the Construction Application referred to in paragraph (b) of this Section the provisions of this Agreement shall control.

(h) Without limiting or affecting any other term or provision of this Agreement, the Lessee shall be solely responsible for the design, adequacy and operation of all utility, mechanical, electrical, communications and other systems installed in the Premises by the Lessee and all other improvements, additions, fixtures, finishes, decorations and equipment made or installed by the Lessee 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 which does not (i) adversely affect the watertight condition or structural integrity of the building subject to repair under this Section, (ii) adversely affect the efficient or proper utilization of any part of the Premises, or (iii) adversely affect the appearance of any part of the Premises.

(i) The Lessee 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 the Lessee from contesting claims in good faith.

(j) In addition to all policies of insurance otherwise required by this Agreement, the Lessee shall procure and maintain or cause to be procured and maintained in effect during the performance of the Lessee's Construction Work the following insurance with an AM Best (its successor and/or assigns or its industry equivalent) rating of A-:VII or better:

(i) Commercial General Liability Insurance including but not limited to coverage for Products Liability-Completed Operations and for Broad Form Property Damage and Independent Contractor coverage, with a contractual liability endorsement covering the obligations assumed by the Lessee under paragraph (b) of this Section, and which are customarily insured under such a policy,

with a minimum combined single limit coverage for bodily injury and property damage of \$25 million. Said insurance shall also include coverage for explosion, collapse and underground property damage hazards. If the Lessee's Construction Work entails the ownership, maintenance, operation, or use of any watercraft, whether owned, non-owned, or hired, the Lessee shall have any exclusion for such watercraft deleted or shall purchase equivalent coverage under a policy of Protection and Indemnity Insurance and shall provide the Port Authority with a certificate of insurance evidencing such coverage.

(ii) Commercial Automobile Liability Insurance covering all owned, non-owned or hired vehicles used in connection with said construction with a minimum combined single limit coverage for bodily injury and property damage of \$25 million.

(iii) Workers' Compensation and Employers' Liability Insurance in accordance with the requirements of law and in limits of not less than \$1 million per accident. The Workers' Compensation Policy shall be specially endorsed to include coverage afforded by the U.S. Longshoremen's and Harbor Workers' Compensation Act and Coverage B - "Jones Act", maritime (including coverage for Masters or Members of the Crew of Vessels).

(k) In addition to the insurance required pursuant to the provisions of paragraph (i) of this Section, the Lessee shall procure or cause to be procured prior to the commencement of any work Builder's Risk Insurance (All Risk) covering loss or damage (including any loss or damage resulting from flood or earthquake) to any structures, improvements, fixtures and equipment and furnishing and materials on the Premises during said construction, whether or not attached to the land, in the amount of Seventy-five Million Dollars and No Cents (\$75,000,000.00) pursuant to an agreed-upon value endorsement. Such insurance shall name the Port Authority as an additional insured and loss payee as its interest may appear and such policy shall provide that the loss shall be adjusted with the Port Authority, and that the proceeds thereof shall be paid to the Port Authority and shall be made available to the Lessee for and applied strictly and solely to the payment of the cost of the repair, replacement, rebuilding or other performance of the Lessee's Construction Work.

(l) With the exception of the Workers' Compensation, Automobile Liability and Employers' Liability Insurance policy each policy of insurance described in this Section shall include the Port Authority as an additional insured and/or loss payee, as applicable, in its coverages including, without limitation, coverage for premises-operations and completed-operations, and no

such policy shall contain any exclusion for bodily injury to or sickness, disease or death of any employee of the Lessee or of any of its contractors which would conflict with or in any way impair the coverages resulting from the Port Authority's status as an additional insured or the coverage under the contractual liability endorsement described in subdivision (i) of paragraph (i) of this Section. Such insurance shall also contain an endorsement providing that the protection afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third party shall pertain and apply with like effect with respect to any claim or action against the Lessee by the Port Authority and against the Port Authority by the Lessee, but said endorsement shall not limit, vary, change or affect the protections afforded the Port Authority as an additional insured. Such insurance shall contain a provision that the insurer shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority.

(m) Unless otherwise set forth herein, each policy of insurance described in paragraphs (i) and (j) of this Section shall be subject to the applicable provisions of Section 14 of this Agreement.

(n) Title to and ownership in all improvements, fixtures and equipment placed, constructed or installed in or on the Premises as part of the Lessee's Construction Work shall vest immediately in the Port Authority. Title to any personal property of the Lessee (including equipment and trade fixtures) removable without material damage to the Premises leased to the Lessee pursuant to this Agreement which are installed by the Lessee in or on the Premises leased to the Lessee pursuant to this Agreement and which are not part of the Lessee's Construction Work shall vest in the Lessee upon the installation thereof.

(o) In the performance of the Lessee's Construction Work the Lessee shall not permit any situation or condition to continue that may cause or be conducive to any labor troubles at the Premises which interferes with the progress of other construction work at the Premises. The determinations of the Port Authority shall be conclusive on the Lessee and, upon notice from the Port Authority, the Lessee shall or shall cause its contractor to immediately rectify any condition specified in the notice. In the event of failure by the Lessee 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 the Lessee's fault) the Port Authority by notice shall have the right to suspend the Port Authority's permission to the Lessee to proceed with any portion of the Lessee's Construction Work being performed by or on behalf of the Lessee, and the Lessee shall thereupon immediately cease the same. When labor troubles shall be so settled that such interference or the danger thereof no longer exists, the Port Authority by notice to the Lessee shall reinstate the permission to the Lessee 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, complaints, disputes, controversies or any other type of labor trouble, regardless of the employer of the person involved or their employment status, if any.

(p) The Lessee agrees to, with respect to any construction performed, during the Term of the letting, to require its contractor to use every good faith effort to provide for meaningful participation by Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) in the Lessee's Construction Work. The Lessee shall work with the New York 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, the Lessee shall make every responsible effort to increase M/WBEs awareness of their opportunities to participate as Contractors in the construction and shall work with them to improve their ability to bid successfully on construction contracts for the Lessee's Construction Work.

(q) In addition to and without limiting any terms and provisions hereof, the Lessee shall provide in all of its contracts and subcontracts covering the Lessee's Construction Work, or any portion thereof, that:

(1) The contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and shall undertake or continue existing programs of affirmative action to ensure that minority group persons are afforded equal employment opportunity without discrimination. Such programs shall include, but not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selections for training or retraining, including apprenticeships

and on-the-job training;

(2) At the request of either the Port Authority or the Lessee, the contractor shall request such employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding and which is involved in the performance of the contract with the Lessee to furnish a written statement that such employment agency, labor union or representative shall not discriminate because of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will cooperate in the implementation of the contractor's obligations hereunder;

(3) The contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor in the performance of the contract, that all qualified applicants will be afforded equal employment opportunity without discrimination because of race, creed, color, national origin, sex, age, disability or marital status;

The contractor will include the provisions of (1) through (3) of this paragraph in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to its work in connection with the contract;

(4) "Contractor" as used in paragraph(s) and in this paragraph shall include each contractor and subcontractor at any tier of construction.

Section 8A. Lessee's Improvements

Any improvements made under the Original Lease ("2004 Improvements") shall be deemed to vest in the Lessee until December 31, 2019, at which time ownership in such 2004 Improvements shall immediately vest in the Port Authority without the need for any further documentation. Any improvements made other than the 2004 Improvements ("2009 Improvements") shall be immediately owned and vested in the Port Authority without the need for the execution of any further documentation; provided, however, that neither the 2004 Improvements nor the 2009 Improvements shall include removable fixtures, removable equipment and similar removable personal property of the Lessee. Notwithstanding the foregoing, Lessee shall execute any and all documentation requested by the Port Authority to effectuate and document the vesting of title of the 2004 Improvements and the 2009 Improvements in the Port Authority.

Section 9. Ingress and Egress

Ingress to and egress from the Premises shall be by means of existing pedestrian or vehicular ways. The Port Authority shall preserve the extension of Pioneer Street shown in diagonal crosshatching on the sketch attached hereto, hereby made a part hereof and marked "Exhibit A-2" as a marine terminal highway during the term of the letting. The Port Authority may at any time temporarily or permanently close said extension of Pioneer Street if it determines that such closure is required by an emergency, or temporarily or permanently close, or consent to or request the closing of, any other way or any other area at, in or near the Premises presently or hereafter used for ingress to or egress from the Premises, so long as a reasonable means of ingress and egress remains available to the Lessee. The Lessee hereby covenants not to sue, releases and discharges the Port Authority, and all municipalities and other governmental authorities, and their respective successors and assigns, of and from any and all claims, demands, or causes of action which the Lessee may now or at any time hereafter have against any of the foregoing, arising or alleged to arise out of the closing of any such way or other area. The Lessee 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 10. Governmental and Other Requirements

(a) Prior to or contemporaneous with the commencement of its operations under this Agreement, at its sole cost and expense, the Lessee shall procure from all governmental authorities having jurisdiction over the operations of the Lessee hereunder, all licenses, certificates, permits and other authorization which may be necessary for the conduct of such operations and, upon the request of the Port Authority, shall provide copies of all such items to the Port Authority. Lessee covenants that it shall ensure that all such licenses, certificates, permits and other authorizations shall remain in full force and effect through the Term.

(b) The Lessee shall promptly observe, comply with and execute all laws and ordinances and governmental rules, regulations, requirements, orders and similar items now or at any time during the occupancy of the Premises by the Lessee which as a matter of law are applicable to or which affect (i) the Premises, (ii) the operations of the Lessee at the Premises or the Facility,

(iii) the use and occupancy of the Premises and/or (iv) any Hazardous Substance, as defined in Section 42 hereof, which has migrated from the Premises, pursuant to Section 42 hereof. The Lessee, at its sole cost and expense, shall make any and all structural and non-structural improvements, repairs or alterations of the Premises and perform all investigative remediation work and clean up of Hazardous Substances required in order to fully satisfy the compliance obligations set forth in this Agreement, subject to the provisions of Section 8 and Section 19 hereof.

(c) The Lessee shall, for the Port Authority's information, deliver to the Port Authority promptly after receipt any notice, warning, summons or other legal process for the enforcement of any enactment, ordinance, resolution or regulation of a governmental authority of competent jurisdiction (collectively, a "Notice").

(d) The obligation of the Lessee to comply with governmental requirements is provided herein for the purpose of assuring proper safeguards for the protection of persons and property in or near the Facility, and proper operation by the Lessee. Even though the Lessee is required to deliver a copy of the Notice to the Port Authority, the Port Authority shall have no liability or obligation with regard to such matters.

Section 11. Rules and Regulations

(a) The Lessee covenants and agrees to observe and obey (and to compel its officers, employees, guests, invitees, agents, representatives and others on the Premises with its consent to observe and obey) the Rules and Regulations of the Port Authority now or hereafter in effect, and such further reasonable rules and regulations (including amendments and supplements thereto) for the governance of the conduct and operations of the Lessee as may from time to time, during the letting, be promulgated by the Port Authority for reasons of safety, security, health, or preservation of property, or for the maintenance of the good and orderly appearance of the Premises, or for the safe and efficient operation of the Facility. The Port Authority agrees to provide reasonable notice to the Lessee, except in cases of emergency, of every such further rule or regulation at least ten (10) days before the Lessee shall be required to comply therewith.

(b) If a copy of the Rules and Regulations is not attached to this Agreement, then the Port Authority will notify the Lessee thereof either by delivery of a copy, or by publication in a newspaper published in the Port of New York District, or by making a copy available at the office of the Secretary of the Port Authority.

(c) No statement or provision in the Rules and Regulations shall be deemed a representation or promise by the Port Authority that the services or privileges described shall be or remain available, or that the charges, prices, rates or fees stated therein shall be or remain in effect throughout the letting, all of the same being subject to change by the Port Authority from time to time whenever it deems a change advisable.

Section 12. Method of Operation

(a) In the performance of its obligations hereunder and in the use of the Premises, the Lessee shall conduct its operations in an orderly, lawful and proper manner, so as not to annoy, disturb or be offensive to others near the Premises or at the Facility.

(b) The Lessee shall control the conduct, demeanor and appearance of its officers, members, employees, agents, representatives, contractors, customers, guests, invitees and those doing business with it. As soon as reasonably possible, the Lessee shall remove the cause of any objection made by the Port Authority relative to the demeanor, conduct or appearance of any of the employees of the Lessee or of any such others on the Premises with the consent of the Lessee.

(c) The Lessee shall not allow any garbage, debris or other waste materials (whether solid or liquid) to collect or accumulate on the Premises and the Lessee shall remove from the Premises and from the Facility all garbage, debris and other waste materials (whether solid or liquid) arising out of its operations hereunder. Any such material which may be temporarily stored shall be kept in suitable waste receptacles in a concealed location, 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 the Lessee therein. Said receptacles shall be provided and maintained by the Lessee and shall be kept covered except when being filled or emptied. The Lessee shall use extreme care when effecting removal of all such material, shall effect such removal at such times and by such means as are first approved by the Port Authority, and shall in no event make use of any facilities or equipment of the Port Authority for the removal of such material except with the prior consent of the Port Authority in its sole discretion; provided, however, that such garbage be collected and removed from the Premises a minimum of three (3) times weekly. Lessee shall comply with all recycling rules pursuant to the laws of the City.

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

(e) The Lessee shall permit the use of the Premises (not excluding the Berthing Area) at any time and from time to time for the installation, maintenance and operation of such navigation lights as may be required by the United States Coast Guard or other governmental authority having jurisdiction (at Lessee's sole cost and expense), and the Lessee shall furnish and pay for such electricity as may be required for use by the navigation lights which may be so installed.

(f) From time to time and as often as required by the Port Authority and upon prior notice the Port Authority, the Lessee shall conduct pressure, water-flow and other appropriate tests of the fire-extinguishing system and fire-fighting equipment on the Premises, whether furnished by the Port Authority or by the Lessee, without cost to the Port Authority. The Lessee shall keep all firefighting 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 the appropriate number of its employees in the use of all such equipment (with such employees to participate periodic training drills).

(g) The Lessee 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 the Lessee, or by a corporation, company or other organization or person associated, affiliated or connected with the Lessee or for which the Lessee acts as agent, stevedore or terminal operator, (or of others going to or from the Premises on business with the Lessee), which shall have sunk, settled or become partially or wholly submerged at the Facility. In addition, within thirty (30) days, the Lessee shall 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), which shall have sunk, settled or become partially or wholly submerged in the Berthing Area. The provisions of the immediately preceding sentence shall be applicable whether or not the aforesaid object is owned by the Lessee or is connected in any way with the Lessee or its occupancy of or operations at the Premises, and the Port Authority shall have no obligation to raise or remove any such object unless its presence in the Berthing Area is the result of the sole negligence or willful act of the Port Authority.

Section 13. Signs

(a) Except with the prior consent of the Port Authority, the Lessee shall not erect, maintain or display any advertising, signs, posters or similar devices at or on the Premises or elsewhere at the Facility.

(b) Upon demand by the Port Authority, the Lessee shall remove or paint out any and all advertising, signs, posters, and similar devices placed by the Lessee on the Premises or elsewhere at the Facility and in connection therewith at the expiration or earlier termination of the letting, shall restore the Premises and the Facility 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 Lessee so to remove or paint out each and every such piece of advertising, sign, poster or device and so to restore the Premises and the Facility after receipt of written notice from the Port Authority, the Port Authority may perform the necessary work and the Lessee shall pay the costs thereof to the Port Authority on demand.

(c) Notwithstanding any provision to the contrary set forth in paragraphs (a) and (b) of this Section, and subject to the provisions of paragraph (a) of Section 12 hereof and to Section 19 hereof, the Lessee may without the consent of the Port Authority erect advertising signs directly related to its permitted operations under this Agreement, safety instruction signs, direction signs, and signs setting forth public service information issued by the City as defined herein.

Section 14. Indemnity

(a) The Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, attorneys, agents, employees and representatives, from all claims and demands of third persons including but not limited to claims and demands for death, claims and demands for personal injuries, and claims and demands for property damages, arising out of the use or occupancy of the Premises by the Lessee or by its officers, agents, employees, customers, vendors or representatives, contractors, subcontractors or their employees, or by others on the Premises with the consent or invitation of any of the foregoing persons, or out of any other acts or omissions of the Lessee, its officers, agents or employees on the Premises or elsewhere at the Facility, excepting only claims and demands which result solely from the gross negligence or intentional tortious acts of the Port Authority.

(b) If so directed by the Port Authority, the Lessee shall at its own expense defend any suit based upon any such claim or demand (even if such suit, claim or demand is groundless, false or fraudulent) in which event it shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or its provisions of any statutes respecting suits against the Port Authority.

(c) The Lessee, in its own name as assured, shall maintain and pay the premiums on the following described policies of liability insurance:

(i) Commercial General Liability Insurance including but not limited to coverage for premises operations, with a minimum combined single limit coverage for bodily injury and property damage of \$25 million. If the Lessee's operations entail the ownership, maintenance, operation, or use of any watercraft, whether owned, non-owned, or hired, the Lessee shall have any exclusion for such watercraft deleted or shall purchase equivalent coverage under a policy of Protection and Indemnity Insurance and shall provide the Port Authority with a certificate of insurance evidencing such coverage.

(ii) Commercial Automobile Liability Insurance covering all owned, non-owned or hired vehicles used in connection with its operations hereunder with a minimum combined single limit coverage for bodily injury and property damage of \$25 million.

(iii) Workers' Compensation and Employers' Liability Insurance in accordance with the requirements of law and in limits of not less than \$1 million per accident. The Workers' Compensation Policy shall be specially endorsed to include coverage afforded by (aa) the U.S. Longshoremen's and Harbor Workers' Compensation Act and Coverage B - "Jones Act", maritime (including coverage for Masters or Members of the Crew of Vessels) and (bb) Coverage - B under the Federal Employers' Liability Act.

(d) With the exception of the Workers' Compensation, Automobile Liability and Employers' Liability Insurance Policy, each policy of insurance described in paragraph (c) of this Section shall include the Port Authority as an additional insured and loss payee (including, without limitation, for purposes of premises operations and completed-operations) and each such policy shall contain a provision that the insurer shall not, without obtaining express advance permission from the General Counsel of the Port

Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority. Each such policy shall contain a contractual liability endorsement covering the indemnity obligations of the Lessee under this Section and such policies shall not contain any care, custody or control exclusions. Such insurance shall also contain an endorsement providing that the protection afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third party shall pertain and apply with like effect with respect to any claim or action against the Lessee by the Port Authority and against the Port Authority by the Lessee, but said endorsement shall not limit, vary, change or affect the protections afforded the Port Authority as an additional insured.

(e) As to insurance of any type whatsoever required or permitted by any provision of this Agreement, a certified copy of each of the policies or a certificate evidencing the existence thereof, or a binder, shall be delivered to the Port Authority on or before the Commencement Date, and on each anniversary date thereafter. In the event any binder is delivered it shall be replaced with due diligence by a certified copy of the policy or by a certificate. Each such copy or certificate shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified, without giving thirty (30) days' written advance notice thereof to the Port Authority. A binder evidencing each renewal policy shall be delivered to the Port Authority at least thirty (30) days prior to the expiration date of each expiring policy, except for any policy expiring after the date of expiration of the letting hereunder, as the letting may be from time to time extended, and a certificate or a certified copy of each such renewal policy shall be delivered to the Port Authority with due diligence. If at any time any policy shall be or become unsatisfactory to the Port Authority as to form or substance or as to coverages or minimum limits, or if any carrier issuing any one or more such policies shall be or become unsatisfactory to the Port Authority in its sole and absolute discretion, the Lessee shall promptly obtain one or more new and satisfactory policies in replacement. If the Port Authority at any time so requests, a certified copy of each of the policies shall be delivered to the Port Authority.

Section 15. Maintenance and Repair

(a) The Lessee shall at all times keep the Premises clean, and in an orderly condition and appearance, together with all the

fixtures, equipment and personal property of the Lessee located in or on the Premises, and shall comply with all governmental statutes, rules and regulation (See Section 10 "Governmental and Other Requirements"). Without limiting the generality of the immediately preceding sentence or any obligations of the Lessee with respect to the Premises, the Lessee agrees that upon the commencement of the letting and during the Term it shall place and keep the Premises in good operating condition.

(b) The Lessee shall repair, replace, rebuild and paint all or any part of the Premises or of the Facility which may be damaged or destroyed by the acts or omissions of the Lessee or by those of its officers or employees, or of other persons on or at the Premises with the consent of the Lessee. Any repair, replacement or rebuilding required under this Section shall be conducted pursuant to the terms and conditions set forth in Section 8 and Section 19 hereof.

(c) Subject to the provisions of paragraphs (e) and (f) of this Section and Section 16 of this Agreement, throughout the term of the letting under this Agreement, the Lessee shall assume the entire responsibility for, and shall relieve the Port Authority from all responsibility from, all care, maintenance, repair and rebuilding whatsoever at the Premises, whether such care, maintenance, repair, or rebuilding be ordinary or extraordinary, partial or entire, inside or outside, foreseen or unforeseen, structural or otherwise; and without limiting the generality of the foregoing the Lessee shall maintain and make repairs and replacements, structural or otherwise to all improvements located at the Premises and all other fixtures, machinery, or equipment now or hereafter belonging to or connected with said Premises or the Lessee's operations being conducted thereon, including without limitation thereto all maintenance, repair and replacement of: (1) the structure of the wharf (including the underdecking), fender systems (including backing logs or bumpers), and standard mooring systems; (2) buildings and other structures; (3) paving; and (4) dredging of the water area; and (4) utility systems. The Lessee shall maintain all such improvements, fixtures, machinery and equipment at all times in good condition, and shall perform all necessary preventive maintenance thereto so that at the expiration or termination of the letting and all times during the letting, the same (or a reconstruction of all or any part thereof) will be in as good condition as at the commencement thereof (or, in the case of improvements made during the letting hereunder, in as good condition as at the time of the installation or construction thereof), except for reasonable wear which does not adversely affect the watertight condition or structural integrity of the buildings or other structures at the Premises or adversely affect

the efficient or the proper utilization of any part of the Premises. The Lessee shall make frequent periodic inspections of the Premises and subject to Sections 8, 16 and 19 of this Agreement shall make all repairs and replacements, and do all rebuilding, inside and outside, ordinary and extraordinary, partial and entire, foreseen and unforeseen, structural or otherwise, regardless of the cause of the condition requiring such repairs, rebuilding or replacements, which repairs, rebuilding and replacements by the Lessee shall be in quality and class not inferior to the original in materials and workmanship.

(d) Without limiting the obligations of the Lessee stated elsewhere in this Agreement, the Lessee shall be solely responsible to the Port Authority for loss or theft of or damage to any and all personal property, equipment and fixtures belonging to the Port Authority or for which it 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 Lessee shall commence to perform such repair within such twenty (20) day period and shall diligently proceed therewith without interruption); and the Lessee shall yield and deliver the same or replacements thereof to the Port Authority at the expiration or earlier termination of the letting under this Agreement 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 Lessee's responsibilities under this paragraph shall extend solely to the Port Authority's property or property for which the Port Authority is responsible that shall be specifically described as such property in any move in survey conducted by the Port Authority and the Lessee in connection with the commencement of the letting hereunder.

(e) (1) Except under circumstances as to which paragraph (b) of this Section applies, upon receipt of notice that repair or replacement of such of the following as are located at the Premises is required: (1) the water distribution system (i) up to the closer of twenty (20) feet from the exterior building walls of the building being serviced or the valve connection thereto and (ii) up to the closer of the ships' water pits or the single meter on the Premises or closest meter on the Premises servicing said water pit (but in no event the ships water pits themselves); (2) the underground sanitary systems; and (3) the underground storm drainage systems; the Port Authority will make such repairs and replacements to the extent necessary to keep such part of the Premises in a reasonably good condition for the operations of the Lessee hereunder, but the Port Authority shall not be obligated to

make any repairs or replacements to bring the Premises to a better condition than that existing at the commencement of the letting.

The Port Authority's responsibilities under this paragraph shall be limited to bearing the expense of repair or replacement, and without limiting the foregoing the Port Authority shall have no responsibility with respect to any repairs or replacements which are the obligation of the Lessee under any other provision of this Agreement. The Port Authority shall have no responsibility with respect to any repairs or replacements which are required because of any casualty whether or not insured or insurable. If the Port Authority shall fail, after having received notice and a reasonable period of time having passed to perform its repair and replacement obligations under this paragraph, the Lessee, as its sole remedy, shall perform the work, and the Port Authority shall on demand pay the Lessee its actual certified cash expenditures to third parties therefor, or, at the option of the Port Authority, shall extend to the Lessee a credit against its rental obligations under this Agreement in an amount equal to such expenditures. Furthermore, prior to the commencement by the Port Authority of any work set forth in the Lessee's notice to the Port Authority, the Lessee shall take all precautions necessary to protect persons or property at the Premises, including the immediate performance by the Lessee of any work required to correct conditions which involve danger to persons or property, and the Port Authority will reimburse the Lessee for such work as provided in this paragraph.

The Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, employees, agents, and representatives, from and against all claims and demands, including but not limited to claims and demands for death, claims and demands for personal injuries, and claims and demands for property damages, of any third persons whatsoever, including, but not limited to, the Lessee's officers, employees, agents, and representatives which may arise from the condition of the Premises or any part thereof, or from the failure of the Lessee to notify the Port Authority of conditions requiring repair or replacement, or from the failure of the Lessee to make timely corrections of dangerous or potentially dangerous conditions at the Premises. Except as set forth above, the Lessee hereby covenants not to sue, releases and discharges the Port Authority, its Commissioners, officers, employees, agents, and representatives from any liability for damages to the Lessee, consequential, or otherwise, in connection with any of the provisions of this paragraph concerning repairs or replacements to any portion of the Premises, including without limitation thereto any failure on the part of the Port Authority for any reason whatsoever to make any repair or replacement, and including without limitation thereto any act or omission of the Port Authority, its

officers, agents, employees, contractors or their employees, connected with the performance of such repairs or replacements.

(2) In the event that the Port Authority shall perform any repair or replacement work under the provisions of subparagraph (1) of this paragraph, and except in the case of an emergency as determined by the Port Authority, the Lessee shall have the right to review any plans or specifications of the Port Authority for the performance of the work and to consult with the Port Authority in the event that the Lessee determines that the Work or the performance thereof as so planned would have a material adverse effect on the Lessee's operations under this Agreement, and the Port Authority agrees to incorporate into its planned work any reasonable proposals of the Lessee designed to alleviate any such adverse effect; provided, however, that the Port Authority shall have no obligation to so incorporate any proposals of the Lessee if such proposals are not reasonably practicable or would increase the cost of the planned work by more than five percent (5%).

(f) (1) Except under circumstances as to which paragraph (b) of this Section applies and subject to the provisions of subparagraph (2) of this paragraph, in the event that during any Lease Year during the term of the letting (including any Lease Year occurring during any extension thereof pursuant to Section 2(b) hereof) the Lessee shall make payments for the repair or replacement of the underdeck of Pier 12 pursuant to the provisions of paragraph (c) of this Section (hereinafter called "the Underdeck Work"), the Lessee shall be entitled to a credit on an annual basis against the rentals payable under this Agreement in an amount equal to the lesser of: (1) the reasonable cost of the Underdeck Work on account of which payments were made by the Lessee during the Lease Year, or (2) Two Hundred Thousand Dollars and No Cents (\$200,000.00) per Lease Year. Although the Underdeck Work shall not be deemed part of the Lessee's Construction Work for purposes of this Agreement, the Lessee shall perform the Underdeck Work in accordance with all of the provisions of Section 8 hereof. Without limiting the provisions of the immediately preceding sentence, the provisions of said Section 8 shall apply to determine the reasonable cost of the Underdeck Work and the Lessee shall submit a certification in accordance with the provisions of said Section 8 following the completion of the Lease Year certifying the matters required to be set forth therein with respect to the Underdeck Work. The Port Authority shall have the rights of audit set forth in Section 41 hereof with respect to the cost of the Underdeck Work. Neither the whole nor any part of any rental credit granted under this paragraph shall be or become or shall constitute a debt due and owing from the Port Authority to the Lessee nor shall said amount be recoverable or applicable in any manner other than as

specifically provided for in this paragraph and in subparagraph (2) of this paragraph, including but not limited to a set off or counterclaim in any action by the Port Authority against the Lessee for rental or other claims.

(2) Notwithstanding any provision set forth in subparagraph (1) of this paragraph, the Port Authority shall grant to the Lessee the rental credit described in said subparagraph (1) for and during each Lease Year to occur during the term of the letting (including any Lease Year occurring during any extension thereof pursuant to Section 2(b) hereof) in the amount of Two Hundred Thousand Dollars and No Cents (\$200,000.00) regardless of the actual amount spent by the Lessee on the performance of the Underdeck Work during that Lease Year. Effective January 1, 2029 through any extension period, such allowable credit shall increase by three percent (3%) annually with the said amount not to exceed Two Hundred Fifty Thousand Dollars and No Cents (\$250,000.00). Any rental credit to which the Lessee shall be entitled under the provisions of this paragraph shall be granted on a monthly basis against the monthly installments of basic rental payable under Section 3 hereof. In addition to all other rights of audit under this Agreement, the Port Authority shall have the right to audit the Lessee's payments on account of the Underdeck Work at any time (any such audit being hereinafter called "an Underdeck Audit"). In the event that an Underdeck Audit conducted following the expiration of the initial term of the letting, the First Extension Period, the Second Extension Period, the Third Extension Period or any successive combination thereof, shall show that the reasonable cost of the Underdeck Work, calculated in accordance with the provisions of Section 8 hereof, performed during the period or periods of such audit is less than the amount of the rental credits granted to the Lessee under this subparagraph for the respective period or periods, the Lessee shall pay the difference to the Port Authority upon thirty (30) days' notice by the Port Authority to the Lessee stating the amount thereof. In the event of any termination of the letting (even if stated to have the same effect as expiration), the Lessee shall within twenty (20) days after the effective date of termination submit to the Port Authority the certification described in Section 8 hereof and required under subparagraph (1) of this paragraph with respect to the Underdeck Work; and if either such certificate or an Underdeck Audit shall show that the reasonable cost of the Underdeck Work, calculated in accordance with the provisions of Section 8 hereof, for the period during which rental credits provided for in this subparagraph were granted without reconciliation under the provisions of this subparagraph is less than the cumulative amounts of the rental credits so granted during such period without reconciliation, the Lessee shall pay the difference to the Port Authority upon thirty

(30) days' notice by the Port Authority to the Lessee stating the amount thereof.

(g) The obligation of the Lessee as set forth in paragraphs (b) and (c) of this Section in the event of damage or destruction covered by any contract of insurance under which the Port Authority is the insured is hereby released to the extent that the loss is recouped by actual payment to the Port Authority of the proceeds of such insurance; provided, however, that if at any time because of this release the insurance carrier of any policy covering the Premises or any part thereof shall increase the premiums otherwise payable for fire, extended coverage or rental coverage applicable to the Premises the Lessee shall pay to the Port Authority an amount equivalent to such increase or increases on demand; and provided, further, that if at any time this release shall invalidate any such policy of insurance or reduce, limit, or void the rights of the Port Authority thereunder, or if because of this release, any such insurance carrier shall cancel such endorsement or refuse to renew the same or shall take any other action to alter, decrease or diminish the benefits of the Port Authority under the policy, then the release shall be void and of no effect.

Section 16. Casualty

(a) In the event that as a result of a casualty, whether or not insured or insurable, the Premises are damaged, the Lessee shall rebuild the damaged Premises with due diligence. The Lessee shall secure and maintain in its own name as assured and shall pay the premiums on the following policies of insurance with an AM Best (its successor and/or assigns or its industry equivalent) rating of A:-VII or better, in the limits set forth below, which policies shall be effective during the term of the letting under this Agreement as set forth below:

(1) All risk property damage insurance in the amount of Seventy-five Million Dollars and No Cents (\$75,000,000.00) pursuant to an agreed upon value endorsement, which shall be maintained for the Term. Such insurance shall cover and insure against such hazards and risks as at least would be insured against under the standard Form of Fire Insurance policy in the State of New York, or any successor thereto, and the broadest form of extended coverage endorsement prescribed as of the effective date of said insurance by the rating organization having jurisdiction, including without limitation hazards and risks of flood, earthquake, windstorm, cyclone, tornado, hail, explosion, riot, civil commotion, aircraft, vehicles and smoke, and, if the Port Authority so requests, also covering nuclear property losses and contamination and boiler and machinery hazards and risks (if said coverage regarding nuclear

property losses and contamination is or becomes available).

(2) Unless otherwise directed by the Port Authority, the property damage insurance policies required by this paragraph shall name the Port Authority, the City of New York, and the Lessee (with insurance clauses consistent with the provisions of this Agreement) as the insureds and loss payee, as applicable, as their respective interests may appear, and shall provide that loss, if any, shall be adjusted with and payable to the Port Authority. As to any insurance required by subparagraph (1) of this paragraph (a), a certificate of insurance, or binders, shall be delivered by the Lessee to the Port Authority on or before the Commencement Date; and as to any insurance required by subparagraph (2) of this paragraph (a), a certificate of insurance, or binders, shall be delivered by the Lessee to the Port Authority on or before the date that the insurance required by subparagraph (1) of this paragraph (a) shall no longer be in effect. In the event any binder is delivered, it shall be replaced within thirty (30) days by a certificate of insurance. Each such policy shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified, without giving at least thirty (30) days' written advance notice thereto to the Port Authority and an endorsement to the effect that the insurance as to the interest of the Port Authority shall not be invalidated by any act or negligence of the Lessee or any other insured. Each policy of insurance shall have attached thereto an endorsement that the Port Authority will be given at least thirty (30) days' prior notice of any material change in the policy. A certificate of insurance with respect to a renewal policy shall be delivered to the Port Authority at least thirty (30) days prior to the expiration date of each expiring policy, except for any policy expiring after the date of expiration of the effective period hereof. If at any time the policy required by this paragraph shall be or become unsatisfactory to the Port Authority as to form or substance, or if the carrier issuing such policy shall be or become unsatisfactory to the Port Authority, the Lessee shall promptly obtain a new and satisfactory policy in replacement; however, a policy that meets all the terms and conditions of this Agreement, including having an AM Best (its successor and/or assigns or its industry equivalent) rating of A:VII or better, shall be deemed satisfactory to the Port Authority. The proceeds of insurance from coverages secured in accordance with this paragraph shall be made available to the Lessee against the cost of such rebuilding; provided, however, that the proceeds shall be applied first and to the full extent necessary to the rebuilding of the pier and wharf structure. Disbursement of the insurance proceeds in connection with a casualty restoration and procedures for such rebuilding shall be the same as for the construction as set forth in Section 8 hereof. The Lessee shall not be entitled to

any abatement of the rentals payable hereunder at any time by reason of such casualty. Notwithstanding the provisions set forth above in this paragraph, in the event that the Premises are totally or substantially damaged or destroyed within two (2) years of the expiration of the term of the letting (not including any extension thereof under Section 2(b) hereof except to the extent that any such extension shall then be in effect), then the Port Authority and the Lessee shall each have the right to terminate the letting and this Agreement upon thirty (30) days' notice given to the other within ninety (90) days of the aforesaid casualty. 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 Agreement. In the event of the termination of the letting and this Agreement (i) by the Lessee under the provisions of this paragraph, the Port Authority shall be entitled to receive and retain the entirety of the insurance proceeds of the coverages secured in accordance with this paragraph, (ii) by the Port Authority under the provisions of this paragraph: (a) with respect to the 2004 Improvements, the Port Authority shall be entitled to receive and retain sixty percent (60%) and the Lessee shall be entitled to receive and retain forty percent (40%) of the insurance proceeds of the coverages secured in accordance with this paragraph, except that the entitlement of the Lessee to receive and retain such insurance proceeds shall be reduced on a straight-line basis at the rate of six and two-thirds percent (6 2/3%) for every full year that shall have elapsed since January 1, 2005 until December 31, 2019. Thereafter, the Port Authority shall be entitled to receive and retain the entirety of the insurance proceeds of the coverages secured in accordance with this paragraph, and (b) with respect to the 2009 Improvements, the Port Authority shall be entitled to receive and retain the entirety of the insurance proceeds of the coverages secured in accordance with this paragraph.

(b) The Port Authority and the Lessee 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 Agreement.

(c) In the event of damage to or a partial or total destruction of the Premises, the Lessee shall within thirty (30) days after the occurrence commence to remove from the Premises or from the portion thereof destroyed, all damaged property (and all debris thereof) including damaged buildings and structures, and all damaged property belonging to the Lessee or to any third person whatsoever, and thereafter shall diligently continue such removal, and if the Lessee does not perform its obligation hereunder, the Port Authority may remove such debris and dispose of the same and

may remove such property to a public warehouse for deposit or may retain the same in its own possession and sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage and sale, and second to any sums owed by the Lessee to the Port Authority, with any balance remaining to be paid to the Lessee; if the expenses of such removal, storage and sale shall exceed the proceeds of sale, the Lessee shall pay such excess to the Port Authority on demand. Without limiting any term or provision of this Agreement, the Lessee shall indemnify and save harmless the Port Authority, its officers, agents, employees, contractors and subcontractors, from and against any and all claims of third persons arising out of the exercise by the Port Authority of its right to remove property as hereinabove provided including all claims for conversion, all claims for damage or destruction of property, all claims for injuries to persons (including death), and all other claims for damages, consequential or otherwise.

(d) In the event of a casualty damaging that certain portion of the Pier 11 Premises to be subleased by Lessee to Phoenix pursuant to the Phoenix Sublease (as hereinafter defined in paragraph (b) of Section 17 of this Agreement)), Phoenix shall be entitled to the property insurance proceeds, to the extent such proceeds are made available pursuant to Phoenix's insurance polic(ies) covering the Pier 11 Premises, in an amount that is at least equal to the value of Phoenix's unamortized improvements to the Pier 11 Premises as of the date such insurance proceeds are received from the insurer. At the sole discretion of the Port Authority, such insurance proceeds may be paid to Phoenix to be used solely for the rebuilding of Phoenix's damaged improvements resulting from the casualty or may be paid outright to Phoenix (with no obligation on the part of Lessee and/or Phoenix to rebuild Phoenix's improvements at the Pier 11 Premises). In no event shall the foregoing provision limit the aggregate requirement of the all risk property damage insurance set forth in Section 16 (a)(1) hereof.

Section 17. Assignment and Sublease

(a) The Lessee covenants and agrees that it will not sell, convey, transfer, assign, mortgage or pledge this Agreement or any part thereof, or any rights created thereby or the letting thereunder or any part thereof, except that the Lessee may assign this Agreement and the letting thereunder to the City of New York (the "City") or any New York State ("State") or City agency currently in existence as of the date of execution of this Agreement. Any assignment of this Agreement and the letting thereunder to any State or City agency that is not in existence as of the date of execution of this Agreement requires the consent of

the Port Authority, which consent shall be in its sole discretion. The transfer of the issued and outstanding capital stock of any corporate Lessee, the transfer of any membership interests of any limited liability company Lessee or the transfer of a controlling interest in any partnership Lessee, however accomplished, whether in a single transaction or in a series of related transactions which aggregate fifty percent (50%) or more of the outstanding shares of the capital stock and voting rights, membership interests or partnership interest in, the Lessee shall be deemed an assignment of this Agreement.

(b) The Lessee shall not sublet the Premises or any part thereof, with the exception of a sublease to Phoenix and/or an affiliate (the "Phoenix Sublease"), for the use of space at the Pier 11 Premises and only upon the Port Authority's, in its sole discretion, review and approval of the sublease. Any such approval shall be evidenced by a consent to sublease, which shall contain conditions, and be in a form, satisfactory to the Port Authority, in its sole discretion. All requested changes to the sublease shall be made by Lessee.

(c) If the Lessee assigns, sells, conveys, transfers, mortgages, pledges or sublets in violation of paragraphs (a) or (b) of this Section or if the Premises are occupied by any person, firm or entity other than the Lessee, the Port Authority may collect rent from any assignee, sublessee, or anyone who claims a right to this Agreement or to the letting or who occupies the Premises, and shall apply the net amount collected to the Rental herein reserved; and no such collection shall be deemed a waiver by the Port Authority of the covenants contained in paragraphs (a) and (b) of this Section, nor an acceptance by the Port Authority of any such assignee, sublessee, claimant or occupant as tenant, nor a release of the Lessee by the Port Authority from the further performance by the Lessee of the covenants contained in this Agreement.

Any other requests for sublease, assignment, conveyance, transfer, mortgage or pledge are subject to the prior approval of the Port Authority in its sole discretion.

(d) The Lessee further covenants and agrees that it will not use or permit any person whatsoever to use the Premises or any portion thereof for any purpose other than as provided in Section 7 of this Agreement.

(e) The provisions of this Section shall not be construed so as to prohibit the Lessee from permitting its subsidiaries to operate at the Premises on its behalf, in performing the operations expressly permitted under this Agreement and, in this connection,

the Lessee represents and warrants to the Port Authority that (i) any and all usage of the Premises by any of the Lessee's subsidiaries at the Premises shall be strictly for the purpose as provided in Section 7 of this Agreement; (ii) no use of the Premises or any part thereof by any of the Lessee's subsidiaries shall entitle any of the same to any rights as a third party beneficiary of this Agreement; and (iii) that all such operations shall be conducted strictly in accordance with the terms and conditions of this Agreement.

(f) The Lessee further covenants and agrees not to enter into any management agreement, services agreement or any other similar type of agreement for the Premises without the prior written consent of the Port Authority, such consent not to be unreasonably withheld.

Section 18. Condemnation

(a) Permanent Taking

(1) Taking of the whole, etc. If during the term of the letting under this Agreement, there shall be a taking of the whole or substantially all of the Premises (other than a temporary taking), the following consequences shall result: this Agreement and the remaining Term shall terminate and expire on the date of taking and all rentals payable by the Lessee hereunder shall be apportioned to the date of taking, and all such rentals shall be paid to the Port Authority on the date of taking. The award payable in respect of said taking shall be paid to the Port Authority and disbursed as follows: first, there shall be paid to the Port Authority an amount equal to the value of the land as of the date of taking considered as unencumbered by this Agreement; second, there shall be paid to the Port Authority an amount equal to improvements in, on or to the Premises as of the date of taking.

Notwithstanding the foregoing, nothing set forth in this subparagraph shall be construed to prevent the Lessee from making a claim to an award for trade fixtures installed by the Lessee and/or an award for moving or relocation expenses if such award is made separate and apart from the award made or to be made to the Port Authority in such proceeding and any such award to the Lessee will not directly or indirectly reduce the amount of compensation payable to the Port Authority.

Notwithstanding the foregoing, any proceeds from a taking of Lessee's 2004 Improvements shall be apportioned pursuant to Section 16(a)(2) until December 31, 2019, at which time the Port Authority would be entitled to all the proceeds from the taking for such

Prior Improvements, without apportionment to Lessee. In the event there is a taking of the 2009 Improvements, the Port Authority is entitled to all the proceeds from the taking for such 2009 Improvements, without apportionment.

(2) 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: this Agreement and the remaining Term thereunder shall continue without diminution of any of the Lessee's obligations hereunder, except that this Agreement shall terminate as to the portion of the Premises so taken, and from and after the date of taking, the basic rental payable under Section 3 hereof shall be abated in accordance with the provisions of Section 45 hereof for the remainder of the term of the letting; and the Lessee shall proceed with diligence (subject to unavoidable delays) to effect a condemnation restoration of the remaining portion of the Premises not so taken, with the expense of such restoration to be shared equally by the Port Authority and the Lessee as set forth in paragraph (d) of this Section; and the award payable in respect of said taking shall be paid to the Port Authority; and such award shall be disbursed by the Port Authority as follows: first, there shall be paid to the Port Authority an amount equal to the value of the land that is the subject of the partial taking as of the date of taking considered as unencumbered by this Agreement; second, there shall be paid to the Port Authority an amount equal to all improvements in, on or to the Premises that are the subject of the partial taking as of the date of taking. Notwithstanding the foregoing, this subparagraph shall not be construed to prevent the Lessee from making a claim to an award for trade fixtures installed by the Lessee and/or an award for moving or relocation expenses if such award is made separate and apart from the award made or to be made to the Port Authority in such proceeding and any such award to the Lessee will not directly or indirectly reduce the amount of compensation payable to the Port Authority.

Notwithstanding the foregoing, any proceeds from a partial taking of Lessee's 2004 Improvements shall be apportioned pursuant to Section 16(a)(2) until December 31, 2019, at which time the Port Authority would be entitled to all the proceeds from the partial taking for such Prior Improvements, without apportionment to Lessee. In the event there is a partial taking of the 2009 Improvements, the Port Authority is entitled to all the proceeds from the partial taking for such 2009 Improvements, without apportionment.

(b) Temporary Taking.

(1) Not Extending Beyond Term. If during the Term there shall be a taking of the temporary use of the whole or substantially all of the Premises or a lesser portion thereof for a period not extending beyond the expiration date of the Term including any extension thereof under Section 2(b) hereof (a "Temporary Taking"), the following consequences shall result: this Agreement and the term of years remaining shall continue but without reduction or diminution of any of the Lessee's obligations hereunder, and the Lessee shall continue to pay in full the rentals payable by the Lessee hereunder without reduction or abatement. If such taking results in changes or alterations to the Premises or any part thereof, the Lessee shall effect a condemnation restoration with respect thereto, with the expense of such restoration to be shared equally by the Port Authority and the Lessee as set forth in paragraph (d) of this Section; the award or payment payable with respect to such taking for such use of the Premises shall be paid to and held by the Port Authority and shall first be held by the Port Authority on account of the rentals payable by the Lessee as and when the same shall become due and payable hereunder calculated for the period of the Temporary Taking in accordance with the provisions of Section 27 hereof, and the balance shall be disbursed to the Lessee, subject to the rights of any third parties.

(2) Extending Beyond Lease Term. If during the Term there shall be a taking of the temporary use of the whole or substantially all of the Premises for a period extending beyond the term of the letting (not including any extension thereof under Section 2(b) hereof except to the extent that any such extension shall then be in effect), the consequences specified in subparagraph (1) of this paragraph (b) hereof shall result, except that the award or payment payable with respect to such taking shall be apportioned between the Port Authority and the Lessee as of the last day of the term of the letting. The amount of the award or payment attributable to the period up to and including the last day of the term of the letting payable with respect to such taking for such use of the Premises shall be paid and applied in accordance with the provisions of subparagraph (1) of paragraph (b) of this Section, and the portion of the award attributable to the period after the last day of the term of the letting shall belong to the Port Authority; 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 retained by the Port Authority if this Agreement shall terminate for any reason prior to completion of the condemnation restoration in accordance with the

provisions of this Section.

(c) 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 Agreement 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 the Lessee shall effect a condemnation restoration with respect thereto, with the expense of such restoration to be shared equally by the Port Authority and the Lessee as set forth in paragraph (d) of this Section.

(d) Condemnation restoration procedure.

(1) Disbursement of award. If the Lessee shall be required by the terms of this Section to effect a condemnation restoration, the Port Authority shall make available to the Lessee as much of that portion of the award or payment payable in respect of a taking received and held by the Port Authority, if any (less all necessary and proper expenses, excluding legal fees (inclusive of in-house counsel), paid or incurred by the Port Authority and the Lessee in connection with the condemnation proceedings), as may be necessary to pay the cost of such condemnation restoration. Any balance of the award held by the Port Authority after completion of, and payment for, the condemnation restoration shall be paid in accordance with the requirements of this Agreement.

(2) Performance Of Condemnation Restoration. The construction work in connection with a condemnation restoration, submission of the estimated cost thereof by the Lessee and approval thereof by the Port Authority, and disbursement of the condemnation award by the Port Authority shall be done, determined, made and governed in accordance with the provisions of Section 8 hereof. If the portion of the award paid to the Port Authority or the Lessee is insufficient for the purpose of paying for the cost of the construction work in connection with the condemnation restoration, then, subject to the provisions of Section 8 hereof, the Lessee shall nevertheless be required to perform such construction work as required hereby and any additional sums required for such construction work shall be paid in equal amounts by the Port Authority and the Lessee.

(e) 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 Section and shall cooperate with each other to permit

collection of the award.

(f) Port Authority's Right To Award On Termination. Notwithstanding anything to the contrary, contained in this Section, the amount of any award or payment allowed or retained to effect a condemnation restoration which shall not have been previously applied to that purpose or otherwise in accordance with this Section shall become the property of and shall be retained by Port Authority if this Agreement shall terminate for any reason prior to completion of said condemnation restoration in accordance with the provisions of this Section.

(g) Lessee's Appearance At Condemnation Proceedings. The Lessee shall have the right to appear in any condemnation proceedings and to participate in any and all hearings, trials, and appeals in connection therewith. The Lessee shall not file any claim on account of the leasehold estate created by this Agreement or the Lessee's leasehold interest in the Premises. If in connection with a taking the Lessee files any claim on account of trade fixtures, the Lessee shall not include in its claim any part of the Premises which constitutes the 2004 Improvements.

(h) Waiver of rights under statute. The existence of any present or future law or statute notwithstanding, except as otherwise provided in this Section, the Lessee waives all rights to quit or surrender the Premises or any part thereof by reason of any taking of less than substantially all of the Premises. It is the intention of the Port Authority and the Lessee that the provisions of this Section shall constitute an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York and shall govern and control in lieu thereof.

Section 19. Construction by the Lessee

Except as may be otherwise expressly provided in Section 8, the Lessee shall not erect any structures, make any improvements or do any other construction work at the Premises or alter, modify or make additions, improvements or repairs to or replacements of, any structure now existing or built at any time during the letting, or install any fixtures without the prior written consent of the Port Authority. In the event any construction, improvement, alteration, modification, addition, repair or replacement is made, with or without the Port Authority's consent, and unless the consent of the Port Authority shall expressly provide otherwise, the same shall immediately become the property of the Port Authority, and the Lessee shall have no right to remove the same either during the letting or at the expiration thereof unless the Port Authority, at any time prior to the expiration of the term of the letting, or any

extension or renewal thereof, shall give notice to the Lessee to remove the same, or to cause the same to be changed to the satisfaction of the Port Authority, in which case the Lessee agrees to remove the same, or change it in compliance with such notice. In case of any failure on the part of the Lessee to comply with such notice, the Port Authority may effect the removal or change, and the Lessee hereby agrees to pay the cost thereof to the Port Authority upon demand.

Section 20. Additional Rent and Charges

(a) If the Port Authority has paid any sum or sums or has incurred any obligations or expense which the Lessee has agreed to pay or reimburse the Port Authority for, or if the Port Authority is required or elects to pay any sum or sums or incurs any obligations or expense by reason of the failure, neglect or refusal of the Lessee to perform or fulfill any one or more of the conditions, covenants or agreements contained in this Agreement or as a result of an act or omission of the Lessee contrary to the said conditions, covenants and agreements, the Lessee shall pay to the Port Authority the sum or sums so paid or the expense so incurred, including all interest, costs, damages and penalties, and the same may be added to any installment of rent thereafter due hereunder, and each and every part of the same shall be and become additional rent, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of any of the rentals set forth in this Agreement the ("Additional Rental," and, when taken together with the Basic Rental, contemplated in this Agreement the "Rental"). No payment made by the Lessee to the Port Authority under this Section shall be or be deemed a waiver by the Lessee of any right to contest its making of such payment.

(b) Should the Port Authority elect to use its operating and maintenance staff in performing any work and to charge the Lessee with the cost thereof, any time report of any employee of the Port Authority showing hours of work or labor allocated to such work, or any stock requisition of the Port Authority showing the issuance of materials for use in the performance thereof, shall be prima facie evidence against the Lessee that the amount of such charge was necessary.

(c) The term "cost" or "costs" in this Section shall mean and include: (1) Payroll costs, including contributions to the retirement system, or the cost of participation in other pension plans or systems, insurance costs, sick leave pay, holiday, vacation and authorized-absence pays; (2) cost of materials and supplies used; (3) payments to contractors; (4) any other direct

costs; and (5) 30% of the sum of the foregoing.

Section 21. Rights of Entry Reserved

(a) The Port Authority, by its officers, employees, agents, representatives and contractors shall have the right at all reasonable times to enter upon the Premises for the purpose of inspecting the same, for observing the performance by the Lessee of its obligations under this Agreement, and for the doing of any act or thing which the Port Authority may be obligated or have the right to do under this Agreement or otherwise.

(b) Without limiting the generality of the foregoing, the Port Authority, by its 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 Lessee, or for the benefit of others than the Lessee at the Premises, to maintain existing and future utility, mechanical, electrical and other systems and to enter upon the Premises at all reasonable times to make such repairs, replacements or alterations as the Port Authority 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 the Port Authority shall not unreasonably interfere with the use and occupancy of the Premises by the Lessee.

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

(d) Nothing in this Section shall impose, or shall be construed to impose upon the Port Authority any obligations so to construct or maintain or to make repairs, replacements, alterations or additions, or shall create any liability for any failure so to do. The Lessee is and shall be in exclusive control and possession of the Premises and the Port Authority 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 Lessee or of any other person located therein or thereon (other than those occasioned by the grossly negligent or intentionally tortious acts of the Port Authority).

(e) At any time and from time to time during ordinary business hours within the three (3) months next preceding the expiration of the letting, the Port Authority, by its agents and employees, whether or not accompanied by prospective lessees, occupiers or users of the Premises, shall have the right to enter thereon for the purpose of exhibiting and viewing all parts of the same, and during such three-month period the Port Authority may place and maintain on the Premises, the usual "To Let" signs, which signs the Lessee shall permit to remain without molestation.

(f) If, during the last month of the letting, the Lessee shall have removed all or substantially all its property from the Premises, the Port Authority may immediately enter and alter, renovate and redecorate the Premises.

(g) The exercise of any or all of the foregoing rights by the Port Authority or others shall not be or be construed to be an eviction of the Lessee nor be made the grounds for any abatement of rental nor any claim or demand for damages, consequential or otherwise.

Section 22. Limitation of Rights and Privileges Granted

(a) The Premises is let to the Lessee and the Lessee takes the same subject to all the following: (i) easements, restrictions, reservations, covenants and agreements, if any, to which the Premises may be subject; rights of the public in and to any public street; (ii) rights, if any, of any enterprise, public or private, which is engaged in furnishing heating, lighting, power, telegraph, telephone, steam, or transportation services and of the municipality and State in which the Premises is located; (iii) 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.

(b) No greater rights or privileges with respect to the use of the Premises or any part thereof are granted or intended to be granted to the Lessee by this Agreement, or by any provision thereof, than the rights and privileges expressly and specifically granted.

(c) Nothing in this Agreement shall grant to the Lessee any rights whatsoever in the air space above the roof of any building or buildings or portion of any building or buildings, if any are included in the Premises, (except to the extent required in either case for the performance of any of the obligations of the Lessee hereunder), or more than twenty (20) feet above the present ground level of any open area included in the Premises (except to the extent required for the operations permitted hereunder). If any construction or installation is contemplated in this Agreement, the height thereof above ground shall be as determined solely by the Port Authority.

Section 23. Concessions and Subleases

(a) For purposes of this Section and for all other purposes of this Agreement, the term "Concession" shall mean any agreement (other than a sublease) between the Lessee and a third party (hereinafter called a "Concessionaire") for the use of the Premises on a license rather than leasehold basis for purposes permitted under Section 7 hereof. Except as set forth in the next sentence, the Lessee shall have the right to grant Concessions without the consent of the Port Authority (including subconcessions granted by a "Major Concessionaire" if such subconcession would not itself qualify as a "Major Concession", as such terms are defined in the next sentence). The Lessee shall be required to obtain the prior written consent of the Port Authority to grant the following Concessions (which Concessions are hereinafter called "Major Concessions" and the Concessionaires are hereinafter called "Major Concessionaires"): (1) a parking facility operator; (2) a marina operator; and (3) any other third party who enters into a separate agreement with the Lessee of sixty (60) days' duration or more and under which it will manage, administer or occupy in excess of five thousand (5,000) square feet of space at the Premises (an agreement of less than sixty (60) days which contains renewals at Concessionaire's option is considered an agreement in excess of sixty (60) days' duration). If the Lessee shall request the Port Authority's consent to any sublease (as required under Section 17 hereof) or any Major Concession under this Section, the Lessee shall submit to the Port Authority a copy of the proposed sublease agreement or the Major Concession executed on behalf of the Lessee and the proposed sublessee or Major Concessionaire, which must be contingent on the written approval of the Port Authority. Further, Lessee shall submit to the Port Authority the name of the proposed sublessee or Major Concessionaire and such information and data as the Port Authority may request regarding the nature and scope of the operations to be conducted by the proposed sublessee under the proposed sublease or the proposed Major Concessionaire and the financial and business background of the proposed sublessee or

Major Concessionaire and the persons or entities owning or controlling the proposed sublessee or Major Concessionaire. The Port Authority shall review the proposed sublease and sublessee or Major Concession and Major Concessionaire, and the data and information submitted by the Lessee and shall make a determination that the terms and provisions of the proposed sublease agreement or Major Concession are consistent with the terms and provisions of this Agreement and are otherwise acceptable to the Port Authority, in its sole and absolute discretion, and that the proposed sublessee or Major Concessionaire is acceptable to the Port Authority, or shall make a determination that they and/or it are not acceptable to the Port Authority. Following such determination, the Port Authority shall provide written notice to the Lessee of such determination. The Port Authority shall endeavor to provide the Lessee with the notice described in the preceding sentence within twenty (20) business days of the full submission by the Lessee of the information required to be provided by the Lessee to the Port Authority under this paragraph regarding the proposed sublease and sublessee or proposed Major Concession and Major Concessionaire but shall have no liability to Lessee if it fails to issue such determination within the twenty (20) day period. In the event of the approval of a proposed sublease, the Port Authority shall prepare and submit to the Lessee for execution by the Lessee and the sublessee a form of Consent Agreement substantially as set forth in Exhibit C hereto and containing such other and additional provisions as the Port Authority shall deem necessary under which the Port Authority will set forth the terms of its consent to the proposed sublease subject to and in accordance with the terms and conditions set forth therein.

(b) Without limiting the generality of any provision of paragraph (a) of this Section, the Lessee agrees that each sublease it enters into with a proposed sublessee and that the subletting thereunder:

(1) shall be subject to and subordinate to all of the terms, covenants, conditions and provisions of this Agreement and the rights of the Port Authority hereunder;

(2) shall terminate and expire, without notice to the sublessee, on the day preceding the date of expiration or earlier termination of this Agreement or on such earlier date as the Lessee and the sublessee may agree upon;

(3) shall provide that the sublessee shall be bound by and subject to all the applicable terms and provisions of this Agreement as to the sublessee's occupancy and use of the portion of the Premises under the proposed sublease and activities at the

Premises, to the same extent and with like effect as to the Port Authority as if the sublessee were the lessee under this Agreement including, but not limited to the obligations of the Lessee under this Agreement dealing with indemnity, law compliance, rights of entry, non-construction and non-discrimination;

(4) shall provide that Port Authority's written approval and consent to such sublease shall be a condition precedent to its effectiveness; and

(5) shall provide that the sublessee shall not sub-lease all or any portion of the subleased Premises.

(c) The Lessee shall require every Concessionaire to agree that (1) it shall be bound by and shall observe all of the applicable terms and conditions of Sections 10, 11, 12, 13(a), 14(a) and (b), and 15(a) of this Agreement as if it were the Lessee hereunder; and (2) in the case of a Concessionaire that is not a Major Concessionaire, the Concession and all of the rights thereunder shall be subject to termination on no less than ten (10) days' notice from the Lessee in the event the Concessionaire shall be in violation of any of the aforesaid terms and conditions of this Agreement; and in the case of a Major Concessionaire, the Major Concession and all of the rights thereunder shall be subject to termination by the Lessee in the event the Major Concessionaire shall be in violation of any of the aforesaid terms and conditions of this Agreement upon such period of notice as the Lessee shall deem appropriate (but in no event beyond the then term of this Agreement).

Section 24. Termination

(a) Each of the following events shall be deemed an "event of default" or "default" hereunder:

(1) The Lessee shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property; or

(2) By order or decree of a court the Lessee shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or, if the Lessee is a corporation or

limited liability company, by any of its stockholders, or members respectfully, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof; or

(3) A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Lessee and shall not be dismissed within thirty (30) days after the filing thereof; or

(4) The letting or the interest of the Lessee under this Agreement shall be transferred to, pass to or devolve upon, by operation of law or otherwise, any other person, firm or corporation, except as provided herein; or

(5) The Lessee shall not, without the prior approval of the Port Authority, merge, consolidate or dissolve, except that the Lessee may merge or consolidate with the City or any State or City agency currently in existence as of the date of execution of this Agreement without the prior approval of the Port Authority. If the Lessee merges or consolidates with any State or City agency that is not in existence as of the date of execution of this Agreement, prior to such merger or consolidation, Lessee must first obtain the consent of the Port Authority, which consent shall be in its sole discretion; or

(6) By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of the Lessee, and such possession or control shall continue in effect for a period of fifteen (15) days; or

(7) The Lessee shall voluntarily abandon, desert or vacate the Premises or discontinue its operations at the Premises or at the Facility for over thirty (30) days (except in connection with a casualty, in accordance with Section 16 hereof) or, after exhausting or abandoning any right of further appeal, the Lessee shall be prevented for a period of thirty (30) days by action of any governmental agency from conducting its operations on the Premises, regardless of the fault of the Lessee; or

(8) Any lien shall be filed against the Premises because of any act or omission of the Lessee and shall not be discharged or bonded within thirty (30) days; or

(9) The Lessee shall fail duly and punctually to pay the Rental or to make any other payment required under this Agreement when due to the Port Authority; or

(10) The Lessee shall fail to keep, perform and observe each and every other promise, covenant and agreement set forth in this Agreement, on its part to be kept, performed or observed, within ten (10) days after its receipt of notice of default thereunder from the Port Authority (except where fulfillment of its obligation requires activity over a period of time, and the Lessee shall have commenced to perform whatever may be required for fulfillment within ten (10) days after receipt of notice, and continues such performance to completion without interruption except for causes beyond its control).

Upon the occurrence of any such event of default or at any time thereafter during the continuance thereof, the Port Authority may by five (5) days written notice terminate the letting and the rights of the Lessee under this Agreement, such termination to be effective upon the date specified in such notice.

(b) No acceptance by the Port Authority of rentals, fees, charges or other payments in whole or in part for any period or periods after a default of any of the terms, covenants and conditions hereof to be performed, kept or observed by the Lessee shall be deemed a waiver of any right on the part of the Port Authority to terminate the letting. No waiver by the Port Authority of any default on the part of the Lessee in performance of any of the terms, covenants or conditions hereof to be performed, kept or observed by the Lessee shall be or be construed to be a waiver by the Port Authority of any other or subsequent default in performance of any of the said terms, covenants and conditions.

(c) The rights of termination described above shall be in addition to any other rights of termination provided in this Agreement and in addition to any rights and remedies that the Port Authority would have at law or in equity as a consequence of any breach of this Agreement by the Lessee, and the exercise by the Port Authority of any right of termination shall be without prejudice to any other such rights and remedies.

Section 25. Right of Re-entry

The Port Authority shall, as an additional remedy upon the giving of a notice of termination as provided in Section 24 of this Agreement, have the right to re-enter the Premises and every part thereof upon the effective date of termination without further

notice of any kind, and may regain and resume possession either with or without the institution of summary or other legal proceedings, or otherwise. Such re-entry, or regaining or resumption of possession, however, shall not in any manner affect, alter or diminish any of the obligations of the Lessee under this Agreement, and shall in no event constitute an acceptance of surrender.

Section 26. Waiver of Redemption

The Lessee hereby waives any and all rights to recover or regain possession of the Premises and all rights of redemption, granted by or under any present or future law in the event it is evicted or dispossessed for any cause, or in the event the Port Authority obtains possession of the Premises in any lawful manner.

Section 27. Survival of the Obligations of the Lessee

(a) In the event that the letting shall have been terminated in accordance with a notice of termination as provided in Section 24 of this Agreement, or the interest of the Lessee shall have been cancelled pursuant thereto, or in the event that the Port Authority has re-entered, regained or resumed possession of the Premises in accordance with the provisions of Section 25 of this Agreement, all of the obligations of the Lessee under this Agreement shall survive such termination or cancellation, re-entry, regaining or resumption of possession and shall remain in full force and effect for the full term of the letting, as originally fixed in Section 2 hereof, and the amount or amounts of damages or deficiency shall become due and payable to the Port Authority to the same extent, at the same time or times and in the same manner as if no termination, cancellation, re-entry, regaining or resumption of possession has taken place. The Port Authority may maintain separate actions each month to recover the damage or deficiency then due, or at its option and at any time may sue to recover the full deficiency (less the proper discount) for the entire unexpired term. For all purposes of this Agreement, the unexpired term of the letting for which the damages provided for in this Section are owed shall be the term of the letting without regard to any extension thereof under the provisions of Section 2(b) hereof, except that if any such extension is then in effect said damages shall be owed through the expiration date of said extension.

(c) The amount or amounts of damages for the period of time subsequent to termination or cancellation (or re-entry, regaining or resumption of possession) shall be:

(1) the amount of all unfulfilled monetary obligations of the Lessee under this Agreement, including, without limitation thereto, all sums constituting additional rental under Section 20 of this Agreement, and all sums constituting the rentals under Section 3, Section 4, Section 5 and Section 6 of this Agreement, accrued prior to the effective date of termination, and the cost to and expenses of the Port Authority for fulfilling all other obligations of the Lessee which would have accrued or matured during the balance of the term or on the expiration date originally fixed or within a stated time after expiration or termination; and

(2) an amount equal to the cost and the expenses of the Port Authority in connection with the termination, cancellation, regaining, possession and restoring and reletting the Premises, the Port Authority's legal expenses and costs, and the Port Authority costs and expenses for the care and maintenance of the Premises during any period of vacancy, and any brokerage fees and commission in connection with any reletting; and

(3) on account of the Lessee's basic rental obligations, an amount equal to the then present value of all basic rental payable with respect to the Premises as provided for in this Agreement for the entire term following the effective date of termination, as originally fixed in this Agreement, less the amount thereof which may have been actually paid to the Port Authority by the Lessee; and

(4) on account of the Lessee's obligations under this Agreement with respect to the Passenger Throughput Rental, an amount equal to the amount of such rental which would have been paid by the Lessee during the balance of the term of the letting if there had been no termination or cancellation or re-entry, regaining or resumption of possession (any of the foregoing in this subparagraph being called a "Termination"). Such amount shall be calculated in accordance with the following: the Guaranteed Annual Passenger Throughput Rental Amount, and the respective rental rate applicable to the Tier 1 Number of Passengers, the Tier 2 Number of Passengers, and the Tier 3 Number of Passengers (as said amount and rates would have escalated in the Lease Years remaining in the term of letting at the time of the Termination) shall be applied respectively to the "annual number of the Tier 1 Number of Passengers", the "annual number of the Tier 2 Number of Passengers", and the "annual number of the Tier 3 Number of Passengers" as defined below, and the result so obtained shall be multiplied by the number of full Lease Years remaining in the term of the letting at the time of the Termination. The "annual number of the Tier 1 Number of Passengers", the "annual number of the Tier 2 Number of Passengers", and the "annual number of the Tier 3

Number of Passengers" shall be, respectively, the Tier 1 Number of Passengers, the Tier 2 Number of Passengers, and the Tier 3 Number of Passengers embarked to or disembarked from Passenger Ships during the last full Lease Year to occur prior to the Termination. In the event that the Termination shall be on other than the last day of a Lease Year, for purposes of calculating the rental due hereunder for the period from the day after the Termination through the end of the Lease Year in which the Termination shall occur, the Tier 1 Number of Passengers, the Tier 2 Number of Passengers, the Tier 3 Number of Passengers, and the Guaranteed Annual Passenger Throughput Rental Amount shall each be prorated for the period from the day after the Termination through the end of the Lease Year in which the Termination shall occur; and

(5) on account of the Lessee's obligations under this Agreement with respect to the Parking Percentage Rental, an amount equal to the amount of such rental which would have been paid by the Lessee during the balance of the term of the letting if there had been no termination or cancellation or re-entry, regaining or resumption of possession (any of the foregoing in this subparagraph being called a "Termination"). Such amount shall be equal to the product obtained by multiplying (i) the applicable Parking Percentage Rental percentage rate for each Lease Year remaining in the term of the letting, and (ii) the Gross Parking Receipts that would have been received during the balance of the term of the letting if there had been no Termination; and for the purpose of calculation hereunder (aa) the said amount of Gross Parking Receipts shall be derived by multiplying the number of days in the balance of the term of the letting originally fixed by the daily average of the Gross Parking Receipts; and (bb) the daily average of the Gross Parking Receipts shall be the Lessee's total actual Gross Parking Receipts during the last full Lease Year to occur prior to the Termination during which the Premises were open and in operation divided by 365; and

(6) on account of the Lessee's obligations under this Agreement with respect to the Ancillary Percentage Rental, an amount equal to the amount of such rental which would have been paid by the Lessee during the balance of the term of the letting if there had been no termination or cancellation or re-entry, regaining or resumption of possession (any of the foregoing in this subparagraph being called a "Termination"). Such amount shall be equal to the product obtained by multiplying (i) the applicable Ancillary Percentage Rental Parking Percentage Rental percentage rate for each Lease Year remaining in the term of the letting, and (ii) the Gross Revenues from Ancillary Operations that would have been received during the balance of the term of the letting if there had been no Termination; and for the purpose of calculation

hereunder (aa) the said amount of Gross Revenues from Ancillary Operations shall be derived by multiplying the number of days in the balance of the term of the letting originally fixed by the daily average of the Gross Revenues from Ancillary Operations; and (bb) the daily average of the Gross Revenues from Ancillary Operations Parking Receipts shall be the Lessee's total actual Gross Revenues from Ancillary Operations during the last full Lease Year to occur prior to the Termination during which the Premises were open and in operation divided by 365.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this Section, the amount of the damages payable by the Lessee to the Port Authority pursuant to the provisions of said paragraphs (a) and (b) shall be reduced (or extinguished, as the case may be) by an amount equal to the adjusted reasonable cost of the Lessee's Improvements that shall have become the property of the Port Authority pursuant to the provisions of Section 8A hereof, with the adjusted reasonable cost thereof to be an amount equal to: (i) the reasonable cost of the Lessee's Improvements determined pursuant to the provisions of Section 8 hereof reduced by (ii) the amount obtained by multiplying said reasonable cost by a fraction, the numerator of which shall be the number of Lease Years (including fractions thereof) that shall have then occurred and the denominator of which shall be twenty-five (25) (hereinafter called "the Cost of the Lessee's Improvements"). In the event that the amount of the damages payable by the Lessee to the Port Authority pursuant to the provisions of paragraphs (a) and (b) of this Section exceeds the Cost of the Lessee's Improvements, the Lessee shall pay to the Port Authority the amount of such excess upon thirty (30) days' notice by the Port Authority to the Lessee of such outstanding amount. The Port Authority shall have all rights of audit set forth in Section 8 hereof to determine the Cost of the Lessee's Improvements for purposes of the application thereof to the damages payable by the Lessee to the Port Authority pursuant to the provisions of paragraphs (a) and (b) of this Section. In the event that the Cost of the Lessee's Improvements exceeds the amount of the damages payable by the Lessee to the Port Authority pursuant to the provisions of paragraphs (a) and (b) of this Section, the amount of such excess shall in no event be owed or payable by the Port Authority to the Lessee, and the existence of any such excess shall not create any obligation on the part of the Port Authority to the Lessee. Notwithstanding the provision set forth above in this paragraph, and without limiting any other term of this Agreement, upon notice given by the Port Authority within one hundred twenty (120) days after expiration or earlier termination of the letting under this Agreement, the Lessee at its cost and expense shall remove from the Premises any of the Lessee's Improvements as the Port Authority may specify in the notice, and

shall repair any damage to the Premises caused by such removal.

Section 28. Reletting by the Port Authority

The Port Authority, upon termination or cancellation pursuant to Section 24 of this Agreement, or upon any re-entry, regaining or resumption of possession pursuant to Section 25 of this Agreement, may occupy the Premises or may relet the Premises and shall have the right to permit any person, firm or corporation to enter upon the Premises and use the same. Such reletting may be of part only of the Premises or of the Premises, and for a period of time the same as or different from the balance of the term hereunder remaining, and on terms and conditions the same as or different from those set forth in this Agreement. The Port Authority shall also, upon termination or cancellation pursuant to Section 24 of this Agreement, or upon re-entry, regaining or resumption of possession pursuant to Section 25 of this Agreement, have the right to repair and to make structural or other changes at the Premises, including changes which alter the character of the Premises and the suitability thereof for the purposes of the Lessee under this Agreement, without affecting, altering or diminishing the obligations of the Lessee hereunder. In the event either of any reletting or of any actual use and occupancy by the Port Authority (the mere right to use and occupy not being sufficient however) there shall be credited to the account of the Lessee against its survived obligations hereunder any net amount remaining after deducting from the amount actually received from any lessee, licensee, permittee or other occupier in connection with the use of the Premises (or portion thereof) during the balance of the term of the letting as the same is originally stated in this Agreement, or from the market value of the occupancy of such portion of the Premises as the Port Authority may itself during such period actually use and occupy, all reasonable expenses, reasonable costs and reasonable disbursements incurred or paid by the Port Authority in connection therewith. Neither any such letting nor any such other use or occupancy shall be or be construed to be an acceptance or a surrender. It is understood by the Port Authority and the Lessee that the Port Authority has no obligation to relet the Premises or any portion thereof or to use or occupy the Premises or any portion thereof itself, except to the extent as may be required by law.

Section 28 A. Remedies Under Bankruptcy and Insolvency Codes

If an order for relief is entered or if any stay of proceeding or other act becomes effective in favor of Lessee the Port Authority's interest in this Lease in any proceeding commenced by or against Lessee under the present or any future United States

Bankruptcy Code or in a proceeding which is commenced by or against Lessee 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, the Port Authority shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy or insolvency code, statute or law of this Agreement including such rights and remedies as may be necessary to adequately protect the Port Authority's right, title and interest in and to the Premises or any part thereof and adequately assure the complete and continuous future performance of Lessee's obligations under this Agreement. Adequate protection of the Port Authority's right, title and interest in and to the Premises, and adequate assurance of the complete and continuous future performance of Lessee's obligations under this Agreement, shall include all of the following requirements:

(a) that Lessee shall comply with all of its obligations under this Agreement;

(b) that Lessee shall continue to use the Premises only in the manner permitted by this Agreement; and

(c) that if Lessee's trustee, Lessee or Lessee as debtor-in-possession assumes this Agreement and proposes to assign it (pursuant to Title 11 U.S.C. Section 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) the adequate assurance to be provided the Port Authority to assure such person's future performance under this Agreement, including the assurances referred to in Title 11 U.S.C. Section 365, as it may be amended, and such other assurances as the Port Authority may reasonably require, shall be given to the Port Authority by the trustee, Lessee or Lessee as debtor-in-possession of such offer, not later than twenty (20) days before the date that the trustee, Lessee or Lessee as debtor-in-possession shall make application to a court of competent jurisdiction for authority and approval to enter into such assignment, and Port Authority shall thereupon have the prior right and option, to be exercised by notice to the trustee, Lessee and Lessee as debtor-in-possession, given at any time before the effective date of such proposed assignment, to accept an assignment of this Agreement 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 Agreement ("Brokerage Commissions"). The Port Authority shall have no obligation to pay such Brokerage Commissions. If Lessee attempts to arrange such an assignment of this Lease, then as an element of the required adequate assurance to the Port Authority, and as a further condition to Lessee's right to make such an assignment, Lessee's agreement(s) with brokers shall, to the Port Authority's reasonable satisfaction, provide that the Port Authority shall have no obligation to pay such Brokerage Commissions if the Port Authority exercises the Port Authority's rights under this Section 28 A.

Section 29. Remedies to Be Nonexclusive

All remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of or exclusive of each other or of any other remedy available to the Port Authority at law or in equity, and neither the exercise of any remedy, nor any provision in this Agreement for a remedy or an indemnity shall prevent the exercise of any other remedy.

Section 30. Surrender

(a) The Lessee covenants and agrees to yield and deliver peaceably to the Port Authority possession of the Premises on the date of the cessation of the letting, whether such cessation be by termination, expiration or otherwise, promptly and in the condition required by the provisions of Section 15(c) hereof regarding the condition of the Premises at the expiration or termination of the letting hereunder.

(b) Unless required for the performance by the Lessee of its obligations hereunder, the Lessee shall have the right at any time during the letting to remove from the Premises, all its equipment, removable fixtures and other personal property, and all property of third persons for which the Lessee 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 Lessee shall fail to remove such property on or before the termination or expiration of the letting, the Port Authority 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 Lessee to the Port Authority, with any balance remaining to be paid to the Lessee; if the expenses of such removal, repair, storage and sale shall exceed the proceeds of

sale, the Lessee shall pay such excess to the Port Authority upon demand. Without limiting any other term or provision of this Agreement, the Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, agents, employees and contractors from all claims of third persons arising out of the Port Authority's removal and disposition of property pursuant to this Section, including claims for conversion, claims for loss of or damage to property, claims for injury to persons (including death), and claims for any other damages, consequential or otherwise.

Section 31. Acceptance of Surrender of Lease

No agreement of surrender or to accept a surrender shall be valid unless and until the same shall have been reduced to writing and signed by the duly authorized representatives of the Port Authority and of the Lessee. Except as expressly provided in this Section, neither the doing of, nor any omission to do, any act or thing, shall be deemed an acceptance of a surrender of the letting or of this Agreement.

Section 32. Notices

(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, or (ii) or, if directed to the Lessee, 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, the Lessee hereby designates the President of the Lessee as its representative, the address of whom is set forth on the first page of this Agreement, and which is the office where notices and requests may be served. Until further notice, the Port Authority hereby designates its Executive Director as its representative, the address of whom is 225 Park Avenue South, New York, New York 10003, and which is the office 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 33. General

(a) Wherever in this Agreement the Lessee agrees or is required to do or has the right to do, any act or thing, its obligations shall be performed by it and its rights shall be exercised only by its officers and employees or by those of the City to the extent that the City shall have succeeded to the rights and obligations of the Lessee in accordance with Section 17 hereof; except that the Lessee may use contractors in the performance of any of its obligations under this Agreement; provided, that at all times during the term of the letting if separate contractors are engaged by the lessee to perform any of such obligations, the Lessee shall be responsible for managing and supervising any such contractor and any such work by such contractor, and provided, further, that the Lessee shall be fully responsible to the Port Authority for the acts and omissions of such contractors and their officers, agents, representatives, employees and persons at the Premises with their consent to the same extent as if the same were the employees of the Lessee. None of the provisions of this paragraph (a) shall be taken to alter, amend or diminish any obligation of the Lessee assumed in relation to its invitees, business visitors, agents, representatives, contractors, customers, guests, or other persons, firms or corporations doing business with it or using or on or at the Premises with its consent.

(b) Wherever in this Agreement the Lessee agrees or is required to do or has the right to do, any act or thing, the following shall apply:

(1) If the Lessee is a corporation, its obligations shall be performed by it and its rights shall be exercised only by its officers and employees; or

(2) If the Lessee is a partnership, its obligations shall be performed and its rights shall be exercised by its partners and employees only; or

(3) If the Lessee is an individual, his/her obligations shall be performed and his/her rights shall be exercised by himself/herself and his/her employees only; or

(4) If the Lessee is a limited liability company, its obligations shall be performed and its rights shall be exercised only by its members, managers and employees;

(5) None of the provisions of this paragraph (b) shall be taken to alter, amend or diminish any obligation of the Lessee assumed in relation to its invitees, business visitors, agents,

representatives, contractors, customers, guests, or other persons, firms or corporations doing business with it or using or on or at the Premises with its consent.

(c) If more than one individual or other legal entity is the Lessee under this Agreement, each and every obligation hereof shall be the joint and several obligation of each such individual or other legal entity.

(d) Unless otherwise stated in this Agreement, in its use of the Premises the Lessee shall act only for its own account and, without limiting the generality of the foregoing, shall not act as agent, representative, factor, broker, forwarder, bailee, or consignee without legal title to the subject matter of the consignment, except to the extent necessary for exercise of the rights of user granted by this Agreement.

(e) The Lessee's representative, hereinbefore specified in this Agreement; (or such substitute as the Lessee may hereafter designate in writing) shall have full authority to act for the Lessee in connection with this Agreement and any things done or to be done hereunder, and to execute on the Lessee's behalf any amendments or supplements to this Agreement or any extension thereof.

(f) The Section headings in this Agreement are inserted only as a matter of convenience and for reference, and they in no way define or limit or describe the scope or intent of any provision hereof.

(g) All payments required of the Lessee by this Agreement shall be made by mail to The Port Authority at P.O. Box 95000, Philadelphia, Pennsylvania 19195-1517, or via wire transfer to: TD Bank, Bank ABA Number: 031201360, Account Number: or to such other address as may be substituted therefor.

(h) This Agreement does not constitute the Lessee as the agent or representative of the Port Authority for any purpose whatsoever. Neither a partnership nor any joint venture is hereby created, notwithstanding the fact that all or a portion of the rental to be paid hereunder may be determined by gross receipts from the operations of the Lessee hereunder.

(i) As used in Section 21, the phrase "utility, mechanical, electrical and other systems" shall mean and include (without limitation thereto) the following: machinery, engines, dynamos, boilers, elevators, escalators, incinerators and incinerator flues, systems for the supply of fuel, electricity, water, gas and steam,

plumbing, heating, sewerage, drainage, ventilating, air-conditioning, communications, fire-alarm, fire-protection, sprinkler, telephone, telegraph and other systems, fire hydrants and fire hoses, and their respective wires, mains, switches, conduits, lines, tubes, valves, pipes, motors, cables, fixtures and other equipment.

(j) All designations of time herein contained shall refer to the time-system then officially in effect in the municipality wherein the Premises is located.

(k) As used in this Agreement, "letting" shall include any extension of the letting under this Agreement, whether made by agreement or by operation of law, and "Manager of the Premises" or "Manager" shall mean the person or persons from time to time designated by the Port Authority to exercise the powers and functions vested in the said Manager or in the Superintendent of the Premises by this Agreement; but until further notice from the Port Authority to the Lessee, it shall mean the Manager (or the Acting Manager) Port Authority Marine Terminals-New York for the time being, or his/her duly designated representative or representatives.

(l) No designation in this Agreement of any area as a street, highway, roadway or other comparable characterization, whether or not by name, shall be or be deemed to be an admission, recognition or acknowledgement of public or private rights in the area so designated, or as a dedication for or a consent to any public or private use of the same. All use in this Agreement of names and designations in connection with such areas is merely for the purpose of fixing geographical locations.

(m) "Brooklyn-Port Authority Marine Terminal" shall mean the real property, buildings, structures, fixtures, improvements and other property, including without limitations thereto leasehold interest in property, located in the Boroughs of Manhattan and Brooklyn, in the Counties of New York and Kings, in the City and State of New York, transferred or assigned to the Port Authority under the provisions of any one or more of the following deeds and agreements:

(i) Deed dated March 1, 1956 from New York Dock Company to the Port Authority, recorded in the office New York County, on March 6 1956 in Liber 4956 of Conveyances, on pp. 356 et seq., and in the Office of the City Register, Kings County, on March 6, 1956 in Liber 8422 of Conveyances on pp. 458 et seq.;

(ii) Deed dated March 1, 1956 from The Trustees and Associates of the Brooklyn Benevolent Society to the Port Authority, recorded in the Office of The City Register, Kings County on March 7, 1956 in Liber 8423 of Conveyances on pp. 96 et seq.;

(iii) Agreement of lease dated June 2, 1916, made between the City of New York and New York Dock Company, referred to as "the Montague Street Lease", recorded in the Office of the City Register, Kings County, on March 7, 1956 in Liber 8423 of Conveyances on pp. 150 et seq.;

(iv) Agreement dated March 21, 1950, made between the City of New York and New York Dock Company renewing the lease described in paragraph (iii) above, recorded in the Office of the City Register, Kings County, on March 7, 1956 in Liber 8423 of Conveyances on pp. 118 et seq.;

(v) Agreement of lease dated June 2, 1916, made between the City of New York and New York Dock Company, referred to as "the Joralemon Street Lease", recorded in the Office of the City Register, Kings County, on March 7, 1956 in Liber 8423 of Conveyances on pp. 186 et seq.;

(vi) Agreement dated October 23, 1946, made between the City of New York and New York Dock Company, renewing the lease described in paragraph (v) above, recorded in the office of the City Register, Kings County, in Liber 8423 of Conveyances on pp 111 et seq.; and (vii) Assignment of leasehold interests mentioned in paragraphs (iii) (iv) (v) and (vi) as of March 1, 1956 by New York Dock Company to The Port of New York Authority, recorded in the Office of the City Register, Kings County, on March 7, 1956, in Liber 3423 of Conveyances, on pp. 130 et seq.;

(vii) Deed dated August 6, 1956 from California Wine Association to the Port Authority, recorded in the Office of the City Register, Kings County, on September 7, 1956 in Liber 8473 of Conveyances on pp. 467 et seq.;

and such additional property adjacent thereto (not including any property to the south of Conover Street) as the Port Authority may have heretofore or may hereafter acquire for marine terminal purposes, and additional buildings, structures, fixtures, improvements and other property which may have been heretofore or may hereafter be installed or constructed for marine terminal purposes on any property or properties heretofore mentioned.

(2) The rights of the Port Authority in the Facility are those acquired by it pursuant to the deeds and agreements described in this paragraph, and no greater rights are granted or intended to be granted to the Lessee hereunder than the Port Authority has power thereunder to grant. In the event the Premises or any portion thereof constitutes all or a portion of the premises as to which the Port Authority is the lessee under any one or more of the agreements described in subparagraphs (iii), (iv), (v), (vi) and (vii) of the said subparagraph (m), the term of the letting hereunder shall in any event terminate simultaneously with the termination or expiration of the letting under such agreement or agreements of lease, provided, however, that in the event only a portion of the Premises hereunder is included within the Premises under such expiring agreement or agreements of lease, the term of the letting hereunder shall continue as to the balance of the Premises hereunder in accordance with the terms of this Agreement.

(n) "Red Hook Container Terminal" shall mean the respective properties of the City and the Port Authority constituting the "premises" and "the Port Authority Reality" as such terms are defined in the Marine Project Agreement.

(o) So long as the Port Authority shall remain the, owner of the Premises, the Lessee, upon paying all of the rentals provided for in this Agreement and observing and performing all the terms, covenants and conditions on the Lessee's part to be observed and performed under this Agreement, may peaceably and quietly have, hold and enjoy the Premises during the term of the letting free of any act or acts of the Port Authority, except as expressly permitted in this Agreement.

(p) This Agreement 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 sub-section shall be deemed to be self-operating and effective for all purposes without any further instrument on the part of the Lessee, the Lessee shall execute on demand and without expense to the Port Authority such further instruments confirmatory of the provisions of this sub-section as the Port Authority may request.

(q) Without in any way limiting the obligations of the Lessee as elsewhere stated in this Agreement, the Lessee shall be liable to the Port Authority for any damage done to the Premises or to any part thereof, or to any property of the Port Authority thereon through any act or omission of those in charge of any one or more vessels, steamers, tugboats, barges, lighters, or other floating

equipment, or highway or other vehicles, or other transportation equipment while the same are at, coming to or leaving the Premises.

(r) The Lessee and the Port Authority have agreed that no Security Deposit is required, as it specifically relates to the Lessee.

(s) For purposes of the provisions set forth in this Agreement, the Lessee hereby certifies that its I.R.S. Employer Identification No. is

(t) The Lessee is not acquiring an ownership interest in the Premises under this Agreement. Capital expenditures in connection with the Premises have been, or are expected to be made, in whole or in part by the Port Authority from "exempt facility bonds" (within the meaning of Section 142(a) of the Internal Revenue Code of 1986, as amended) issued by the Port Authority from time to time (such capital expenditures are hereinafter called "the Property"). The Lessee hereby irrevocably elects not to claim for purposes of federal, state or local taxation of income any depreciation or investment credits, for which it may be eligible with respect to the Property. The Lessee further agrees that this irrevocable election shall be binding upon its successors in interest, if any, under this Agreement, and as a condition of any permitted sale or assignment of the interest of the Lessee under this Agreement, every successor in interest shall furnish an executed irrevocable election in the form of the immediately preceding sentence to the Port Authority. The foregoing shall not grant or be deemed to grant to the Lessee the right to sell or assign, in any manner, its interest under this Agreement.

(u) Neither this Agreement nor a Memorandum of Lease may be recorded of record.

(v) It is understood that the election set forth in paragraph (t) of this Agreement shall not apply to any personal property of the Lessee (including equipment and trade fixtures) removable without material damage to the Premises leased to the Lessee pursuant to this Agreement which are installed by the Lessee in or on the Premises leased to the Lessee pursuant to this Agreement and which shall be deemed to be and remain the property of the Lessee.

(w) Whenever in this Agreement the consent of the Port Authority is required to be obtained, the giving of the consent shall be in the sole discretion of the Port Authority.

(x) This Agreement and any and all claims or controversies arising out of or relating to this Agreement shall be

governed by, and construed in accordance with, the laws of the State of New York without regard to conflict of law principles. The parties irrevocably and unconditionally consent and submit to the exclusive jurisdiction and venue of the state and federal courts in the State of New York (in the District in which the Facility is located).

(y) No later than eighteen (18) months prior to the expiration of the Red Hook Marine Project Operating Agreement in 2036, Lessee will work in good faith with the City of New York ("City") and the Port Authority, in an effort to facilitate an agreement between the City and the Port Authority (and, as applicable, Lessee) pursuant to which certain portions of the City property at the Red Hook Marine Terminal shall be used in a manner consistent with the uses of Port Authority property at the Red Hook Marine Terminal, such consistent uses to be mutually determined by the Port Authority and the City, in consultation with Lessee.

(z) The parties have participated jointly in the negotiation and drafting of this Agreement. Consequently, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement. The deletion of language from this Agreement prior to its mutual execution shall not be construed to have any particular meaning or to raise any presumption, canon of construction or implication, including, without limitation, any implication that the parties intended thereby to state the converse or opposite of the deleted language.

Section 34. Premises

(a) The Port Authority has delivered the Premises to the Lessee in an "as is" condition, and the Lessee agreed to and has accepted the Premises in its "as is" condition and the Port Authority shall have no obligations under this Agreement for finishing work or preparation of any portion of the Premises for the Lessee's use. The Lessee acknowledges that pursuant to the Original Lease, it has been in continuous occupancy of the Premises prior to the commencement of this Agreement and is fully familiar with the Premises.

(b) The Lessee acknowledges that it has not relied upon any representation or statement of the Port Authority or its Commissioners, officers, employees or agents as to the condition of the Premises or the suitability thereof for the operations permitted on the Premises by this Agreement. The Lessee, prior to

the execution of this Agreement, has thoroughly examined the Premises as existing and has found the same to be suitable and satisfactory for the operations of the Lessee contemplated and permitted under this Agreement. Without limiting any obligation of the Lessee to commence operations under this Agreement at the time and in the manner stated elsewhere in this Agreement, the Lessee agrees that no portion of the Premises will be used initially or at any time during the letting which is in a condition unsafe or improper for the conduct of the operations of the Lessee, so that there is possibility of injury or damage to life or property, and the Lessee further agrees that before any use it will immediately correct any such unsafe or improper condition.

(c) The Port Authority shall not be liable to the Lessee for injury or death to any person or persons whomsoever, or for damage to any property whatsoever at any time in the Premises or elsewhere at the Premises, including but not limited to any such injury, death or damage from falling material, water, rain, hail, snow, gas, steam, or electricity, whether the same may leak into, or flow from any part of the Premises or from any other place or quarter.

Section 35. Intentionally Deleted.

Section 36. Force Majeure

(a) The Port Authority shall not be liable for any failure, delay or interruption in performing its obligations hereunder due to causes or conditions beyond its control, including, without limitation thereto, strikes, boycotts, picketing, slow-downs, work stoppages or labor troubles of any other type (whether affecting the Port Authority, its contractors, or subcontractors), embargoes, shortages of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, tides, riots, rebellion, sabotage or any other circumstances for which it is not responsible and which are not within its control. Further, the Port Authority shall not be liable unless the failure, delay or interruption shall result from failure on the part of the Port Authority to use reasonable care to prevent or reasonable efforts to cure such failure, delay or interruption.

(b) The Port Authority shall be under no obligation to supply any service or services if and to the extent and during any period that the supplying of any such service or services or the use of any component necessary therefor shall be prohibited or rationed by any federal, state or municipal law, rule, regulation, requirement, order or direction and if the Port Authority deems it in the public interest to comply therewith, even though such law, rule, regulation, requirement, order or direction may not be mandatory on

the Port Authority as a public agency.

(c) Without limiting the generality of any other provision of this Agreement, including without limitation paragraph (a) of this Section, no abatement, diminution or reduction of the rent or other charges payable by the Lessee, shall be claimed by or allowed to the Lessee for any inconvenience, interruption, cessation or loss of business or other loss caused, directly or indirectly, by any present or future law, rule, requirement, order, direction, ordinance or regulation of the United States of America, or of the state, county or city government, or of any other municipal, governmental or lawful authority whatsoever, or by priorities, rationing or curtailment of labor or materials, or by war or any matter or thing resulting therefrom, or by any other cause or causes beyond the control of the Port Authority, nor shall this Agreement be affected by any such causes.

Section 37. Brokerage

The Lessee represents and warrants that no broker has been engaged, hired or contracted in the negotiation of this Agreement and that there is no broker who is or may be entitled to be paid a commission in connection therewith. The Lessee shall indemnify and save harmless the Port Authority of and from any and every claim for commission or brokerage made by any and all persons, firms or corporations whatsoever for services in connection with the negotiation and execution of this Agreement.

Section 38. Non-Liability of Individuals

No Commissioner, director, officer, agent or employee of any party thereof shall be held personally liable to the other party under any term or provision of this Agreement or because of its execution or attempted execution or because of any breach or alleged breach thereof.

Section 39. Services

(a) The Port Authority shall be under no obligation to supply the Lessee with any services provided by utility companies and other service providers, including but not limited to water, gas, electricity, sewer service, heat, steam, air conditioning, telephone, telegraph, cable, or electrical guard or watch service. The Lessee shall be responsible, at its sole cost and expense, for the obtaining and providing of all utilities and other services necessary for the operation of the Brooklyn Cruise Terminal.

(b) The Lessee 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 this Agreement, the Port Authority may pay the same and any interest or penalties thereon, and the total payment or payments shall constitute an item of additional rental, payable to the Port Authority immediately on demand.

(c) The Lessee 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.

(d) If 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 the Port Authority, for any service, system or utility now or in the future supplied to or available at the Premises or to the Lessee, the Lessee shall, at the option of the Port Authority exercised at any time and from time to time by notice to the Lessee, 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 the Port Authority, as such notice may direct. All such payments shall constitute items of additional rental.

(e) No failure, delay or interruption in any service or services, whether such service or services shall be supplied by the Port Authority or by others, shall relieve or be construed to relieve the Lessee of any of its obligations hereunder, or shall be or be construed to be an eviction of the Lessee, or shall constitute grounds for any diminution or abatement of the rental or rentals payable under this Agreement, or grounds for any claim by the Lessee for damages, consequential, or otherwise.

(f) Without in any wise affecting the obligations of the Lessee elsewhere stated in this Agreement, the Lessee shall, subject to the provisions of Section 15 of this Agreement, provide, maintain and keep in good order, condition and repair any and all meters (to be located as designated by the Port Authority, other governmental authority or utility), ship-filling lines and other water-using equipment and facilities.

Section 40. Security

Without limiting the generality of any provision of this Agreement, the Lessee shall be responsible, at its sole cost and expense, to provide all necessary security for the protection and safeguarding of the Brooklyn Cruise Terminal and persons and property at or on the Premises.

Section 41. Records

(a) The Lessee shall maintain in accordance with generally accepted accounting principles ("GAAP") during the term of the letting under this Agreement and for three years thereafter records and books of account (including, without limitation, bills of lading and manifests) recording all transactions in any way connected with or reflecting upon the payment of any rental by the Lessee pursuant to Sections 3, 4, 5 or 6 hereof or the granting of any rental credit pursuant to Section 15 hereof. Lessee represents that it is not privy to bills of lading and/or manifests with respect to the Passenger Ship operations occurring at the Pier 12 Premises. Notwithstanding such representation, in the event such bills of lading and/or manifests become available to Lessee, Lessee shall produce such bills of lading and/or manifests in accordance with this Section 41. Said records and books of account shall be kept at all times within the Port of New York District, as defined in the Port Compact of 1921 authorized by C. 154 Laws of N.Y. 1921 and C. 151 Laws of N.J. 1921, approved by Public Resolution No. 17 of the 67th Congress, First Session, and permit, during ordinary business hours, the examination and audit by the officers, employees and representatives of the Port Authority of such records and books of account and also any of such records and books of account of any company which is owned or controlled by the Lessee, if said company performs services, similar to those performed by the Lessee, anywhere in the Port of New York District.

(b) Nothing contained in this Agreement shall be deemed to render any records, or any statement, of the Lessee required to be maintained or supplied hereunder conclusive as to any of the matters set forth therein. The Port Authority may at its sole discretion, in lieu of any records or books of account or statements of the Lessee, employ its own records and books of account for the calculation of any amounts to be paid under this Agreement.

Section 42. Environmental Responsibilities

(a) As used in this Agreement, the following terms shall have the meanings set forth below:

(1) "Environmental Damage" and "Environmental Damages" shall mean any one or more of the following: (i) the presence on, about, under or migrating from the Premises of any Hazardous Substance (a) whose presence occurred during the "Term" (as such term is defined in Section 2) and which "Term" shall for purposes of this Section 42 include the period commencing from December 23, 2004, or (b) resulting from any act or omission of the Lessee or others during the Term, and/or (ii) the disposal, release or threatened release of any Hazardous Substance on, about, under or migrating from the Premises during the Term or thereafter if the Hazardous Substance came to be present on, about or under the Premises during the Term, and/or (iii) the presence of any Hazardous Substance on, about or under other property at the Facility or elsewhere as a result of the Lessee's use and occupancy of the Premises or a migration of a Hazardous Substance from the Premises during the Term or thereafter if the Hazardous Substance came to be present on, about or under the Premises during the Term, and/or (iv) any personal injury, including wrongful death, property damage and/or natural resource damage arising out of or related to any such Hazardous Substance, and/or (v) the violation of any Environmental Requirements pertaining to any such Hazardous Substance, the Premises and/or the activities thereon.

(2) "Environmental Requirement" and "Environmental Requirements" shall mean all applicable present and future laws, statutes, enactments, resolutions, regulations, rules, treaties, ordinances, codes, licenses, guidance documents, permits, orders, approvals, plans, authorizations, concessions, franchises, requirements, and similar items of all Governmental Authorities, as defined below, and all applicable judicial, administrative and regulatory decrees, common law standards, judgments and orders relating to the protection of human health or the environment, the foregoing to include, without limitation:

(i) All 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 surface or subsurface strata, the sewer or septic system, or relating to the manufacture, processing, distribution, generation, 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.

(3) "Hazardous Substance" and "Hazardous Substances" shall mean and include, without limitation, 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, any 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, urea formaldehyde foam insulation, polychlorinated biphenyls ("PCBs"), 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 declared to be hazardous or toxic, 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.

(4) "Governmental Authority" and "Governmental Authorities" shall mean all governmental agencies, authorities, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof, except that it shall not be construed to include The Port Authority of New York and New Jersey, the lessor under this Agreement.

(b) Without limiting the generality of any of the other terms and provisions of this Agreement, the Lessee hereby expressly agrees to assume all responsibility for, any and all risks of any kind whatsoever caused by, arising out of or in connection with, the conditions of the Premises from and after the commencement of the Term, including without limitation all Environmental

Requirements and all Environmental Damages. Except for Environmental Damages arising from the sole gross negligence of the Port Authority, the Lessee shall indemnify, hold harmless and reimburse the Port Authority, its Commissioners, officers, agents and employees from and against all such risks and responsibilities and all Environmental Damages and Environmental Requirements (including, without limitation, all losses, damages, judgments, fines, penalties, payments in lieu of penalties, settlements, and legal expenses incurred by the Port Authority in connection therewith). If so directed, the Lessee shall at its own expense defend any suit based upon the foregoing, and in handling such suit it shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority.

(c) In addition to and without limiting the generality of the obligations of the Lessee set forth above and elsewhere in this Agreement, the Lessee shall at its sole cost and expense, upon notice from the Port Authority, promptly take all actions to completely remove and remediate: (1) any Hazardous Substance present on, about, under or migrating from the Premises whose presence occurred during the Term, or resulted from any act or omission of the Lessee or others during the Term, (2) any Hazardous Substance disposed of or released on the Premises during the Term, or thereafter if the Hazardous Substance came to be present on, about or under the Premises during the Term, and (3) any Hazardous Substance present on, about or under other property at the Facility or elsewhere whose presence resulted from the Lessee's use and occupancy of the Premises or which migrated from the Premises to such other property during the Term, or thereafter if the Hazardous Substance came to be present on, about or under the Premises during the Term, which any Governmental Authority or any Environmental Requirements or any violation thereof require to be removed and/or remediated, or which in the sole opinion of the Port Authority are necessary to mitigate Environmental Damages. Such removal and remediation shall include, but not be limited to, 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 in order to completely remediate the environmental condition. The standard for any of the remediation work shall be that which requires the most stringent presence of a particular Hazardous Substance under the laws of the United States or the State of New

York, with the strictest laws or standards to be applied, and which does not require any restriction on the possible use of the Premises or such other property, and does not require the use of any institutional or engineering controls. The Lessee agrees that with respect to any of its obligations set forth above in this paragraph it will not make any claim against the Port Authority and/or the City of New York and/or the State of New York for contribution under any Environmental Requirement. 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. All wells shall be flush mounted. The Lessee shall promptly provide to the Port Authority all copies of test results and reports generated in connection with such actions. Promptly upon completion of such investigation and remediation, the Lessee shall seal or cap all monitoring wells and test holes, remove all associated equipment and restore the remediated property.

(d) Without limiting any other of the Lessee's obligations under this Agreement, the Lessee shall provide the Manager of the Facility at the cost and expense of the Lessee with such information, documentation, records, correspondence, notices, reports, test results, and certifications and any other information as the Port Authority shall request in connection with any Environmental Requirements or Environmental Damages, 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. Lessee shall promptly swear to, sign or otherwise fully execute the same. The Lessee agrees that any of the foregoing may be filed by the Port Authority with the appropriate Governmental Authority on behalf of the Lessee and at the Lessee's cost and expense. Further, the Lessee agrees unless directed otherwise by the Port Authority, to provide the Manager of the Facility with copies of all information, documentation, records, correspondence, notices, certifications, reports, test results and all other submissions provided by the Lessee to a Governmental Authority at the same time such are provided to a Governmental Authority and by a Governmental Authority to the Lessee at the time the same are provided to the Lessee with respect to any Environmental Requirements.

(e) Notwithstanding any other provision of this Section 42, Lessee shall be responsible for all Environmental Damage involving any Hazardous Substance whose presence on, about, under or migrating from the Premises occurred prior to the commencement of the Term as a result of (1) any violation by the Lessee or the

Lessee's Representative, as hereinafter defined, of any Environmental Requirements pertaining to such Hazardous Substance, the Premises and/or the activities thereon, or any failure by the Lessee or the Lessee's Representative to observe and comply with any Port Authority requirements, directives and procedures regarding any Hazardous Substance on, about or under the Premises, including without limitation those set forth in any design guidelines, best management practices, agreements (including voluntary agreements) with Governmental Authorities (which agreements have been provided by the Port Authority to the Lessee or are subsequently provided to Lessee in the future), or construction guidelines, all of the foregoing which have been or may be established by the Port Authority for the Facility and submitted to the Lessee, (2) negligence by the Lessee or the Lessee's Representative with respect to such Hazardous Substance, and/or (3) any occupancy of the Premises by Lessee. For purposes of this paragraph, "Lessee's Representative" shall mean its officers, employees, agents, representatives, contractors, customers, guests, invitees, or other persons who are doing business with the Lessee, are on the Premises with the Lessee's consent or with Lessee's knowledge or are on the Premises without Lessee's consent but due to Lessee's failure to undertake adequate security measures. The parties agree and acknowledge that the Port Authority currently has an existing policy that tenants at the Facility will comply with the regulations, rules, and other Environmental Requirements promulgated by the New York Department of Environmental Conservation, the federal Environmental Protection Agency, and such other applicable governmental agencies as applicable to the Premises.

(f) Without limiting the Port Authority's remedies that it may have under this Agreement or at law or in equity, the Port Authority shall have the right during the Term, or any prior period during which Lessee was in occupancy of the Premises, 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 the Lessee with its environmental obligations under this Section. In the event the Lessee fails to comply with or perform any of its obligations hereunder, the Port Authority at any time during the Term of this Agreement and subsequent to the termination or expiration thereof may elect (but shall not be required) to perform such obligations and the Lessee shall pay immediately to the Port Authority upon demand all of its costs thereof, including all overhead costs as determined by the Port Authority.

(g) Notwithstanding any other provision of this Section 42, and without limiting the generality of subparagraph (e) of this

Section, the Lessee's obligations, undertakings and responsibilities under this paragraph shall not apply to any Environmental Damage involving any Hazardous Substance which migrated or shall migrate onto the Premises during the Term (hereinafter called the "Migrated Hazardous Substance"), except that Lessee shall be responsible if any clean-up, remediation or other response action, or indemnification or other action under this Section is required as a result of (1) any violation by the Lessee or the Lessee's Representative of any Environmental Requirements pertaining to such Migrated Hazardous Substance, the Premises and/or the activities thereon; (2) the failure by the Lessee or the Lessee's Representative to observe and comply with any Port Authority requirements, directives and procedures regarding any Hazardous Substance on, about or under the Premises, including without limitation those set forth in any design guidelines, best management practices, agreements (including voluntary agreements) with Governmental Authorities (which agreements have been provided by the Port Authority to the Lessee or are subsequently provided to Lessee in the future), or construction guidelines, all of the foregoing which have been or may be established by the Port Authority for the Facility and submitted to the Lessee; (3) any act or omission of the Lessee or the Lessee's Representative with respect to such Migrated Hazardous Substance; provided, however, that the Lessee's obligation to perform any such clean-up, remediation or other response action shall apply only to the extent that any such violation, failure to comply or negligence has caused or exacerbated any condition requiring such clean-up, remediation or other response action; or (4) any Environmental Requirements obligating Lessee to undertake such cleanup of a Migrated Hazardous Substance.

(h) The Lessee agrees that in any legal action or proceeding in which the Port Authority and the Lessee are opposing parties the Lessee shall have the burden of proof, as hereinafter defined, as to any and all issues of fact with respect to: (1) whether the presence of any Hazardous Substance on, about, under or migrating from the Premises occurred prior or subsequent to the commencement of the Term; (2) whether any Hazardous Substance disposed of or released from the Premises or which migrated from the Premises came to be present on, about or under the Premises prior or subsequent to the commencement of the Term; and (3) whether the Lessee exacerbated any pre-existing environmental condition so as to cause a Hazardous Substance to first become regulated during the Term. For purposes of this Section, "burden of proof" shall mean both the legal burden of going forward with the evidence and the legal burden of establishing the truth of any fact by a preponderance of the evidence.

(i) Without limiting the generality of any other term or provision of this Agreement, the obligations of the Lessee under this paragraph shall survive the expiration or termination of this Agreement.

Section 43. Affirmative Action

(a) The Lessee shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and shall undertake or continue existing programs of affirmative action to ensure that minority group persons and women are afforded equal employment opportunity without discrimination. Such programs shall include, but not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selections for training or retraining, including apprenticeship and on-the-job training.

(b) In addition to and without limiting the foregoing, it is hereby agreed that the Lessee, in connection with its continuing operation, maintenance and repair of the Premises, or any portion thereof, and in connection with every award or agreement for concessions or consumer services at the Premises, shall throughout the term of the letting hereunder commit itself to and use good faith efforts to implement an extensive program of Affirmative Action, including specific affirmative action steps to be taken by the Lessee, to ensure maximum opportunities for employment and contracting by minorities and women. In meeting the said commitment the Lessee agrees to submit its said extensive Affirmative Action program, including the specific affirmative action steps to be taken by the Lessee to meet its aforesaid commitment, within sixty (60) days after the commencement of the term of the letting hereof to the Port Authority for its review and approval. The Lessee shall incorporate in its said program such revisions and changes as the Port Authority and the Lessee may agree upon from time to time. The Lessee throughout the term of the letting hereunder shall document its efforts in implementing the said program, shall keep the Port Authority fully advised of the Lessee's progress in implementing the said program and shall supply to the Port Authority such information, data and documentation with respect thereto as the Port Authority may from time to time and at any time request, including but not limited to annual reports. The obligations imposed on the Lessee under this paragraph shall not be construed to impose any greater requirements on the Lessee than those which may be imposed on the Lessee under applicable law.

(c) "Minority" as used herein shall be as defined in Section 8 hereof.

(d) In the implementation of this Section the Port Authority may consider compliance by the Lessee with the provisions of any federal, state or local law concerning affirmative action equal employment opportunity which are at least equal to the requirements of this Section, as effectuating the provisions of this Section. If the Port Authority determines that by virtue of such compliance with the provisions of any such federal, state or local law that the provisions hereof duplicate or conflict with such law the Port Authority may waive the applicability of the provisions of this Section to the extent that such duplication or conflict exists.

(e) Nothing herein provided shall be construed as a limitation upon the application of any laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents.

Section 44. Late Charges

If the Lessee should fail to pay any amount required under this Agreement when due to the Port Authority, including without limitation any payment of rental or any payment of utility fees or charges, or other charges or fees, or if any such amount is found to be due as the result of an audit, then, in such event, the Port Authority may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount for each late charge period hereinbelow described during the entirety of which such amount remains unpaid, each such late charge not to exceed an amount equal to eight-tenths of one percent of such unpaid amount for each late charge period. There shall be twenty-four late charge periods during each calendar year; each late charge period shall be for a period of at least fifteen (15) calendar days except one late charge period each calendar year may be for a period of less than fifteen (but not less than thirteen) calendar days. Without limiting the generality of the foregoing, late charge periods in the case of amounts found to have been owing to the Port Authority as the result of Port Authority audit findings shall consist of each late charge period following the date the unpaid amount should have been paid under this Agreement. Each late charge shall be payable immediately upon demand made at any time by the Port Authority. No acceptance by the Port Authority of payment of any unpaid amount or of any unpaid late charge amount shall be deemed a waiver of the right of the Port Authority to payment of any late charge or late charges payable under the provisions of this Section, with respect to such unpaid amount. Each late charge shall be and become additional rent, recoverable by the Port Authority in

the same manner and with like remedies as if it were originally a part of the rentals as set forth in this Agreement. Nothing in this Section is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) any rights of the Port Authority under this Agreement, including without limitation the Port Authority's rights set forth in Section 24 of this Agreement entitled "Termination" or (ii) any obligations of the Lessee under this Agreement. In the event that any late charge imposed pursuant to this Section shall exceed a legal maximum applicable to such late charge, then, in such event, each such late charge payable under this Agreement shall be payable instead at such legal maximum.

Section 45. Abatement

(a) If at any time during the Term under this Agreement the Lessee shall become entitled to an abatement of Basic Rental, whether pursuant to the terms of this Agreement, or otherwise, such abatement shall be computed as follows:

(1) for each square foot of the Pier 12 Shed Premises, the use of which is denied the Lessee, at the annual rate of \$2.34 from January 1, 2009 through August 31, 2009, the rate thereafter to increase in proportion to the increase in said Basic Rental during the remainder of Term as set forth in paragraph (b) of Section 3 hereof;

(2) for each square foot of the Pier 11 Shed Premises, the use of which is denied the Lessee, at the annual rate of \$1.66 from January 1, 2009 through August 31, 2009, the rate thereafter to increase in proportion to the increase in said Basic Rental during the remainder of Term as set forth in paragraph (c) of Section 3 hereof; and

(3) for each square foot of the Pier 11 Open Area Premises, the use of which is denied the Lessee, at the annual rate of \$0.99 from January 1, 2009 through August 31, 2009, the rate thereafter to increase in proportion to the increase in said Basic Rental during the remainder of Term as set forth in paragraph (d) of Section 3 hereof.

(b) Except as provided in this Section, no abatement of Basic Rental shall be claimed by or allowed to the Lessee.

Section 46. Prohibited Acts

(a) The Lessee shall not do or permit to be done anything which may interfere with the effectiveness or accessibility of the

drainage and sewerage system, water system, communications system, electrical system, fire-protection system, sprinkler system, alarm system, fire hydrants and hoses and other systems, if any, installed or located on, under, or in the Premises.

(b) The Lessee shall not do or permit to be done anything which may interfere with the effectiveness or accessibility of existing and future utilities systems or portions thereof on the Premises or elsewhere at the Facility, including without limitation, systems for the supply of heat, hot and cold water, gas, electricity and fuel, and for the furnishing of air-conditioning, telephone, telegraph, teleregister, internet, fiber optic cable, and intercommunications services including any lines, pipes, mains, wire, conduits and equipment connected with or appurtenant to all such systems.

(c) The Lessee 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 in or near the Facility.

(d) The Lessee shall not cause or permit to be caused, created or produced upon the Premises, to permeate the same or to emanate therefrom, any unusual, noxious or objectionable smokes, gases, vapors or odors.

(e) The Lessee shall not dispose of nor permit any one to dispose of any waste material (whether liquid or solid) by means of the toilets, manholes, sanitary sewers or storm sewers in the Premises or on the Facility except after treatment in installations or equipment included in plans and specifications submitted to and approved by the Port Authority and any applicable Governmental Authority.

(f) The Lessee shall not operate any engine or any item of automotive equipment in any enclosed space on the Premises unless such space is adequately ventilated and unless such engine or item of automotive equipment is equipped with a proper spark arresting device which has been approved by the Port Authority.

(g) Except as set forth in paragraphs (g)(1)-(2) of this Section, and in Section 7 of this Agreement, the Lessee shall not install, maintain or operate, or permit the installation, maintenance or operation on the Premises of any vending-machine or device designed to dispense or sell food, beverages, tobacco, tobacco products or merchandise of any kind whether or not included in the above categories, or of any restaurant, cafeteria, kitchen, stand or other establishment of any type for the preparation or

dispensing of food, beverages, tobacco, tobacco products, or merchandise of any kind whether or not included in the above categories, or of any equipment or devices for the furnishing to the public of service of any kind including therein, without limitation thereto, telephone pay stations.

(g) (1) The Port Authority, by itself or by contractors, lessees or permittees, shall have the exclusive right to install, maintain and receive the revenues from all coin-operated or other vending machines or devices installed by it and operated on the Premises for the sale of merchandise of all types or for the rendering of services, provided, however, that no such machine or device shall be installed except upon the request of the Lessee. If the Port Authority does not install and maintain any such machine that the Lessee may reasonably request, the Lessee shall have the right to do so, provided, however, (1) that the Lessee shall pay or cause to be paid to the Port Authority each month for each machine upon the same basis for the preceding month as any concessionaire, permittee or licensee of the Port Authority then operating machines at the Facility for the sale of similar merchandise or the rendering of similar services, and (2) that in the event the Lessee exercises such right the Port Authority, at any time thereafter, may substitute for the Lessee's machines other machines selling similar merchandise or services operated by the Port Authority or by its licensee, permittee or concessionaire, and thereupon the Lessee shall remove its machines.

(g) (2) The Lessee shall not place a load upon any floor of the Premises that exceeds five hundred (500) pounds per square foot, and shall repair any floor, including supporting members, and any paved area damaged by overloading. Nothing in this paragraph (g) or elsewhere in this Agreement shall be or be construed to be a representation by the Port Authority of the weight any floor will bear. The Lessee shall also not overload any roof, land surface, bulkhead, pavement, landing, pier or wharf at the Facility and shall repair, replace or rebuild any such, including but not limited to supporting members, damaged by overloading. Any repair, replacement or rebuilding required under this Section shall be conducted in accordance with the provisions of Section 8 and Section 19 hereof.

(h) Intentionally omitted.

(i) The Lessee shall not fuel or defuel its automotive vehicles or other equipment in the enclosed portions of the Premises without the prior approval of the Manager of the Facility.

(j) The Lessee shall not keep or store in the Premises, explosives, flammable liquids or solids or oxidized materials in such quantities or use any cleaning materials having a harmful corrosive effect on any part of the Premises, except for those materials normally used in the operations permitted at the Premises pursuant to Section 7 of this Agreement and stored in structures customarily used for the storage of such materials and made safe for the storage thereof in accordance with all applicable laws.

(k) The Lessee shall not use or permit the use of any truss or structural supporting member of a building or roof or any part thereof at the Facility for the storage of any material or equipment, or to hoist, lift, move or support any material or equipment or other weight or load, by means of said trusses or structural supporting members.

(l) The Lessee shall not throw, discharge or deposit or permit to be thrown, discharged or deposited any cargo, refuse, ashes or any material whatsoever, into or upon the waters of or about the Facility.

(m) The Lessee shall not do or permit to be done any act or thing on the Premises or at the Facility which (i) will invalidate or conflict with any fire insurance policies covering the Premises or any part thereof, or the Facility, or any part thereof, or (ii) which, in the reasonable opinion of the Port Authority, may constitute an extra-hazardous condition, so as to materially increase the risks normally attendant upon the marine terminal operations permitted by this Agreement, or (iii) which will increase the rate of any fire insurance, extended coverage or rental insurance on the Facility or any part thereof or upon the contents of any building thereon. The Lessee 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 New York Board of Fire Underwriters, the New York Fire Insurance Exchange, the Fire Rating Organization 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 the Lessee on the Premises, and the Lessee shall, subject to and in accordance with the provisions of this Agreement relating to construction by the Lessee, 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 the Lessee to comply with the provisions of this paragraph or by reason of any act by Lessee, any rate for fire insurance, extended coverage or rental insurance on the Premises or any part thereof, or on the Facility or any part thereof, shall at

any time be higher than it otherwise would be, then the Lessee shall pay to the Port Authority that part of all premiums paid by the Port Authority which shall have been charged because of such act, violation or failure by the Lessee.

(n) The Lessee shall not do or permit to be done any act or thing at the Facility which shall or may subject the Port Authority to any liability or responsibility for injury to any person or persons or damage to any property.

(o) The Lessee may store wooden pallets in the open area of the Premises strictly in accordance with the requirements and restrictions of the Port Authority which are disclosed to Lessee. These requirements and restrictions include, but are not limited to: (i) pallets shall be stacked no greater than eight (8) feet in height; (ii) pallets shall be sheltered from public view; and (iii) pallets shall be removed from the Premises not less than on a weekly basis.

Section 47. Sustainable Design

The Lessee agrees that in the performance of any work that is subject to Section 19 of this Agreement entitled "Construction by the Lessee", it will comply with the Port Authority's policy on sustainable design as set forth in the sustainable design guidelines promulgated by the Port Authority Engineering Department from time to time, a copy of such currently-existing design guidelines having been provided to Lessee prior to the commencement of this Agreement.

Section 48. Port Authority Costs Following Termination

Without limiting the generality of any provision of this Agreement, in the event the Port Authority exercises its right of termination under the provisions of Section 24 of this Agreement entitled "Termination", the Lessee shall be obligated to pay to the Port Authority an amount equal to all costs and expenses reasonably incurred by the Port Authority in connection with such termination, including without limitation any re-entry, regaining or resumption of possession, the collection of all amounts due to the Port Authority, the restoration of the Premises (on failure of the Lessee to have it restored), the preparation of the Premises for use and occupancy by a succeeding lessee, the care and maintenance of the Premises during any period of non-use of the Premises; the foregoing shall include, without limitation, personnel costs and legal expenses (including but not limited to the cost to the Port Authority of in-house legal services), repairing and altering the Premises and putting the Premises in order.

Section 49. Holdover Rent

In the event the Lessee remains in possession of the Premises after the expiration or termination of the term of the letting under this Agreement, as it may be extended from time to time, in addition to any damages to which the Port Authority may be entitled to under this Agreement or other remedies the Port Authority may have by law or otherwise, at the option of the Port Authority, the Lessee shall pay to the Port Authority a rental for the period commencing on the day immediately following the date of such expiration or the effective date of such termination (the "Expiration Date") and ending on the date that the Lessee shall surrender and completely vacate the Premises at an annual rate of up to a maximum of 150% the sum of (i) the annual rate of rental in effect on the Expiration Date, plus (ii) all items of additional rent and other periodic charges payable with respect to the Premises by the Lessee at the annual rate in effect during the 365 day period immediately preceding the Expiration Date. Nothing herein contained shall give, or be deemed to give, the Lessee any right to remain in possession of the Premises after the expiration or termination of the letting under this Agreement. The Lessee acknowledges that the failure of the Lessee to surrender, vacate and yield up the Premises to the Port Authority on the Expiration Date, or after the termination of the letting under this Agreement, will or may cause the Port Authority injury, damage or loss. The Lessee hereby assumes the risk of such injury, damage or loss and hereby agrees that it shall be responsible for the same and shall pay the Port Authority for the same whether such are foreseen or unforeseen, special, direct, consequential or otherwise and the Lessee hereby expressly agrees to indemnify and hold the Port Authority harmless against any such injury, damage or loss.

Section 50. Audit Fee

In the event that upon conducting an examination and audit under the provisions of this Agreement (and as it may be hereinafter amended), the Port Authority determines that unpaid amounts are due to the Port Authority by the Lessee (the "Audit Findings"), the Lessee shall be obligated, and hereby agrees, to pay to the Port Authority a service charge in the amount equal to five percent (5%) of the Audit Findings. Each such service charge shall be payable immediately upon demand (by notice, bill or otherwise) made at any time therefor by the Port Authority. Such service charge(s) shall be exclusive of, and in addition to, any and all other moneys or amounts due to the Port Authority by the Lessee under this Agreement or otherwise. No acceptance by the Port Authority of payment of any unpaid amount or of any unpaid service charge shall be deemed a waiver of the right of the Port

Authority of payment of any late charge(s) or other service charge(s) payable under the provisions of this Agreement with respect to such unpaid amount. Each such service charge shall be and become fees, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the Rental to be paid. Nothing in this Section is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) any rights of the Port Authority under this Agreement, including, without limitation, the Port Authority's rights to terminate this Agreement or (ii) any obligations of the Lessee under this Agreement.

Section 51. Intentionally Deleted.

Section 52. Waiver of Jury Trial

The Lessee hereby waives its right to trial by jury in any action that may hereafter be instituted by the Port Authority against the Lessee in respect of the letting and/or in any action that may be brought by the Port Authority to recover fees, damages, or other sums due and owing under this Agreement. The Lessee specifically agrees that it shall not interpose any claims as counterclaims in any action for non-payment of rent or other amounts which may be brought by the Port Authority unless such claims would be deemed waived if not so interposed.

Section 53. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute the agreement of the parties.

Section 54. Quiet Enjoyment

The Port Authority covenants and agrees that as long as it remains the owner of the Terminal, the Lessee, upon paying all rentals hereunder and performing all the covenants, conditions and provisions of this Agreement on its part to be performed, shall and may peaceably and quietly have, hold and enjoy the Premises free of any act or acts of the Port Authority except as expressly permitted in this Agreement.

Section 55. Entire Agreement

The within Agreement consists of page numbers 1 through 102, together with Schedules A, B, B-1, and C, Exhibits A, A-1 and A-2 (also marked as "Am2") and Exhibit C. It constitutes the entire agreement between the Port Authority and the Lessee on the subject matter, and may not be changed, modified, discharged or extended,

except by written instrument duly executed on behalf of both the Port Authority and the Lessee. The Lessee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in this Agreement.

Section 56. OFAC Representations.

Lessee hereby represents and warrants to the Port Authority that Lessee is not, and shall not become, a person or entity with whom the Port Authority is restricted from doing business under the regulations of the Office of Foreign Asset Control ("OFAC") of the United States Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including, but not limited to, the September 24, 2001 Executive Order on Terrorist Financing Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit or Support Terrorism), or other governmental action and is not engaging, and shall not engage, in any dealings or transactions or be otherwise associated with such persons or entities. Lessee acknowledges that the Port Authority is entering into this Agreement in reliance on the foregoing representations and warranties and that such representations and warranties are a material element of the consideration inducing the Port Authority to enter into and execute this Agreement. In the event of any breach of the foregoing representations and warranties by Lessee, the Port Authority shall have the right, in addition to any and all other remedies provided under this Agreement or at law or in equity, to immediately terminate this Agreement upon written notice to Lessee. In the event of any such termination by the Port Authority, Lessee shall, immediately on receipt of the said termination notice, have no further right to access to the Premises and shall turn over to Landlord all books and records in Lessee's possession or control with respect to the Premises and its services under this Agreement. Termination on the aforescribed basis shall be deemed a termination for cause.

Section 57. Survival of Obligations under Original Lease.

Except in the event of conflict between this Agreement and the Original Lease, any Original Lease obligations of Lessee shall advance and survive from the date hereof unless otherwise noted and shall be deemed incorporated herein. Except as may be provided in this Agreement, the entry into this Agreement shall not constitute a waiver or release of any obligations or liabilities of Lessee under the Original Lease.

Signatures on following page

IN WITNESS WHEREOF, the Port Authority and the Lessee have executed this Agreement as of the date first above written.

ATTEST:

[Handwritten Signature]
Deputy Secretary

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By *[Handwritten Signature]*
(Title) RICHARD M. LARRABEE
(Seal) **DIRECTOR, PORT COMMERCE DEPT.**

ATTEST:

[Handwritten Signature]
Assistant Secretary

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

By *[Handwritten Signature]*
(Title) Exec. N.P.
(Seal)

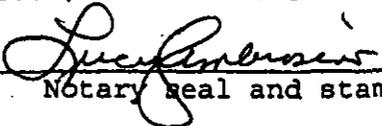
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FORM | **TERMS**
[Handwritten Initials] | *[Handwritten Initials]*

FOR PORT AUTHORITY OF NEW YORK AND NEW JERSEY

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On the 27th day of August, in the year 2009, before me, the undersigned, a Notary Public in and for said state, personally appeared Richard M. Larrabee, 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/they executed the same in his/her/their capacity as Director, Port Commerce for the Port Authority of New York and New Jersey, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

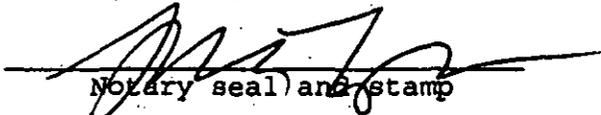
LUCY AMBROSINO
NOTARY PUBLIC, STATE OF NEW YORK
No. 01AMB101070
QUALIFIED IN NEW YORK COUNTY
MY COMMISSION EXPIRES NOV. 3, 2011


Notary seal and stamp

FOR NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On the 18th day of August, in the year 2009, before me, the undersigned, a Notary Public in and for said state, personally appeared Madelyn Wils, and 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/they executed the same in his/her/their capacity as Executive Vice President for the New York City Economic Development Corporation, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary seal and stamp

Shawn T. Gallagher
Notary Public - State of New York
No. 01GA6121987
Qualified in New York County Kings County
My Commission Expires February 7, 2013

SCHEDULE A

| <u>ANNUAL PERIOD</u> | <u>ANNUAL BASIC RENTAL</u> | <u>MONTHLY INSTALLMENT</u> |
|----------------------|----------------------------|----------------------------|
| September 1, 2009 | \$433,405.84 | \$36,117.15 |
| September 1, 2010 | \$442,073.95 | \$36,839.50 |
| September 1, 2011 | \$450,915.43 | \$37,576.29 |
| September 1, 2012 | \$459,933.74 | \$38,327.81 |
| September 1, 2013 | \$469,132.42 | \$39,094.37 |
| September 1, 2014 | \$478,515.06 | \$40,673.78 |
| September 1, 2015 | \$488,085.37 | \$41,487.26 |
| September 1, 2016 | \$497,847.07 | \$42,317.00 |
| September 1, 2017 | \$507,804.01 | \$42,317.00 |
| September 1, 2018 | \$517,960.09 | \$43,163.34 |
| September 1, 2019 | \$528,319.30 | \$44,026.61 |

Effective September 1, 2020, the rent will escalate in accordance with Section 3, Paragraph (b)(iii) and will be subject to rental credits in accordance with Section 15, Paragraph (f)(1) and (2)

SCHEDULE B

| <u>ANNUAL PERIOD</u> | <u>ANNUAL BASIC RENTAL</u> | <u>MONTHLY INSTALLMENT</u> |
|----------------------|----------------------------|----------------------------|
| September 1, 2009 | \$325,606.42 | \$27,133.87 |
| September 1, 2010 | \$332,118.55 | \$27,676.55 |
| September 1, 2011 | \$338,760.92 | \$28,230.08 |
| September 1, 2012 | \$345,536.14 | \$28,794.68 |
| September 1, 2013 | \$352,446.86 | \$29,370.57 |
| September 1, 2014 | \$359,495.80 | \$29,957.98 |
| September 1, 2015 | \$366,685.71 | \$30,557.14 |
| September 1, 2016 | \$374,019.43 | \$31,168.29 |
| September 1, 2017 | \$381,499.81 | \$31,791.65 |
| September 1, 2018 | \$389,129.81 | \$32,427.48 |
| September 1, 2019 | \$396,912.41 | \$33,076.03 |

Effective September 1, 2020, the rent will escalate in accordance with Section 3, Paragraph (c)(iii)

SCHEDULE B-1

| <u>ANNUAL PERIOD</u> | <u>ANNUAL BASIC RENTAL</u> | <u>MONTHLY INSTALLMENT</u> |
|----------------------|----------------------------|----------------------------|
| September 1, 2009 | \$429,166.11 | \$35,763.84 |
| September 1, 2010 | \$437,749.43 | \$36,479.12 |
| September 1, 2011 | \$446,504.42 | \$37,208.70 |
| September 1, 2012 | \$455,434.51 | \$37,952.88 |
| September 1, 2013 | \$464,543.20 | \$38,711.93 |
| September 1, 2014 | \$473,834.06 | \$39,486.17 |
| September 1, 2015 | \$483,310.74 | \$40,275.90 |
| September 1, 2016 | \$492,976.96 | \$41,081.41 |
| September 1, 2017 | \$502,836.50 | \$41,903.04 |
| September 1, 2018 | \$512,893.23 | \$42,741.10 |
| September 1, 2019 | \$523,151.09 | \$43,595.92 |

Effective September 1, 2020, the rent will escalate in accordance with Section 3, Paragraph (d)(ii)

SCHEDULE C (page 1)

| <u>LEASE YEAR BEGINNING</u> | <u>GUARANTEED ANNUAL PASSENGER THROUGHPUT RENTAL AMOUNT</u> |
|-----------------------------|---|
| January 1, 2009 | \$ 250,000 |
| January 1, 2010 | \$ 325,000 |
| January 1, 2011 | \$ 400,000 |
| January 1, 2012 | \$ 475,000 |
| January 1, 2013 | \$ 475,000 |
| January 1, 2014 | \$ 475,000 |
| January 1, 2015 | \$ 475,000 |
| January 1, 2016 | \$ 475,000 |
| January 1, 2017 | \$ 475,000 |
| January 1, 2018 | \$ 475,000 |
| January 1, 2019 | \$ 475,000 |
| January 1, 2020 | \$ 625,000 |
| January 1, 2021 | \$ 625,000 |
| January 1, 2022 | \$ 625,000 |
| January 1, 2023 | \$ 625,000 |
| January 1, 2024 | \$ 625,000 |
| January 1, 2025 | \$ 625,000 |
| January 1, 2026 | \$ 625,000 |
| January 1, 2027 | \$ 625,000 |
| January 1, 2028 | \$ 625,000 |
| January 1, 2029 | \$ 625,000 |
| January 1, 2030* | \$ 975,000 |
| January 1, 2031* | \$ 975,000 |
| January 1, 2032* | \$ 975,000 |
| January 1, 2033* | \$ 975,000 |
| January 1, 2034* | \$ 975,000 |
| January 1, 2035* | \$1,143,750 |
| January 1, 2036* | \$1,143,750 |
| January 1, 2037* | \$1,143,750 |
| January 1, 2038* | \$1,143,750 |
| January 1, 2039* | \$1,143,750 |
| January 1, 2040** | \$1,475,000 |
| January 1, 2041** | \$1,475,000 |
| January 1, 2042** | \$1,475,000 |
| January 1, 2043** | \$1,475,000 |
| January 1, 2044** | \$1,475,000 |
| January 1, 2045** | \$1,662,500 |
| January 1, 2046** | \$1,662,500 |
| January 1, 2047** | \$1,662,500 |
| January 1, 2048** | \$1,662,500 |
| January 1, 2049** | \$1,662,500 |

SCHEDULE C (page 2)

| <u>LEASE YEAR BEGINNING</u> | <u>GUARANTEED ANNUAL PASSENGER THROUGHPUT RENTAL AMOUNT</u> |
|-----------------------------|---|
| January 1, 2050*** | \$2,050,000 |
| January 1, 2051*** | \$2,050,000 |
| January 1, 2052*** | \$2,050,000 |
| January 1, 2053*** | \$2,050,000 |
| January 1, 2054*** | \$2,050,000 |
| January 1, 2055*** | \$2,050,000 |
| January 1, 2056*** | \$2,050,000 |
| January 1, 2057*** | \$2,050,000 |
| January 1, 2058*** | \$2,050,000 |

- * First Extension Period
- ** Second Extension Period
- *** Third Extension Period

EXHIBIT A
PIER 12 PREMISES

SECURITY DRAWING EXEMPT
UNDER EXEMPTION 4

EXHIBIT A-1
PIER 11 PREMISES

SECURITY DRAWING EXEMPT
UNDER EXEMPTION 4

EXHIBIT A-2

EXTENSION OF PIONEER STREET

SECURITY DRAWING EXEMPT
UNDER EXEMPTION 4

EXHIBIT B

Intentionally Deleted.

Exhibit C

THIS AGREEMENT SHALL NOT BE BINDING UPON THE PORT AUTHORITY UNTIL DULY EXECUTED BY AN EXECUTIVE OFFICER THEREOF AND DELIVERED TO THE LESSEE AND SUBLESSEE BY AN AUTHORIZED REPRESENTATIVE OF THE PORT AUTHORITY

Port Authority Facility: Brooklyn-Port Authority Marine Terminal

Lease No. BP-311

Consent Agreement No. BP-_____

CONSENT TO SUBLEASE

THIS AGREEMENT, made as of _____, _____ by and among THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called the "Port Authority"), a body corporate and politic created by Compact between the States of New Jersey and New York, with the consent of the Congress of the United States of America and having an office at 225 Park Avenue South, New York, New York 10003, in the Borough of Manhattan, City, County and State of New York, and NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION (hereinafter called "the Lessee"), a local development corporation formed pursuant to Article 1411 of the Not-for-Profit Corporation Law of the State of New York and having an office and place of business at 110 William Street, New York, New York 10038, and _____ (hereinafter called "the Sublessee"), a

_____ and having offices at _____, and whose representative is _____.

WITNESSETH, That:

WHEREAS, the Port Authority and the Lessee have entered into a lease identified above by Port Authority as Lease Number BP-311 (which lease, as the same may have been supplemented and amended, is hereinafter called the "Lease") covering certain premises (the "Premises") at the abovementioned Port Authority facility (the "Facility"); and

WHEREAS, the Lessee has requested the consent of the Port Authority to a proposed sublease with _____ ("_____"), a copy of which is attached hereto and made a part hereof as "Exhibit A" (hereinafter called "the Sublease"); and

WHEREAS, the Port Authority has been requested, and is willing, to provide the requisite consent to the Sublease, subject to and in full compliance with this Consent to Sublease.

Capitalized terms not defined in this Consent shall have the definitions ascribed to them in the Sublease, as applicable.

NOW, THEREFORE, for and in consideration of the covenants and mutual agreements herein contained, the Port Authority, the Lessee and the Sublessee hereby agree as follows:

1. On the terms and conditions hereinafter set forth, the Port Authority consents to the Sublease; provided, however, (i) that the Sublease shall be amended, superseded or modified as set forth below to reflect the provisions of the Lease; (ii) to the extent there are any inconsistencies between this Consent to Sublease and the Sublease, the terms of this Consent to Sublease shall control; (iii) to the extent there are any inconsistencies between the Lease and/or this Consent to Sublease and the Sublease, the Lease and/or this Consent to Sublease shall control, to the extent applicable; provided, however, to the extent there are any inconsistencies, the document imposing the more stringent standards on the Sublessee shall control.

2. Notwithstanding the _____ () year term set forth in Article _____ of the Sublease ("_____"), the Sublease shall terminate, without notice to the Sublessee, on the day preceding the date of expiration or earlier termination of the Lease, or on such earlier date as the Lessee and Sublessee may agree upon. The Sublessee shall quit the Subleased Premises (as hereinafter defined) and remove its property and property for which it is responsible therefrom

on or before the termination of the Sublease, as more particularly set forth herein.

3. If the Lessee shall at any time be in default under the Lease, the Sublessee shall on demand of the Port Authority pay directly to the Port Authority any rental, fee or other amount due to the Lessee under the Sublease. No such payment shall relieve the Lessee from any obligations under the Lease or under this Consent, but all such payments shall be credited against the obligations of the Lessee or of the Sublessee, as the Port Authority may determine for each payment or part thereof in its discretion. The payment of such rental, fee or other amount due to the Lessee under the Sublease directly to the Port Authority shall not be implied to relieve Lessee of its rental obligations under the Lease.

4. The Sublessee, in its operations under or in connection with the Sublease and in its occupancy of the subleased premises, pursuant to the Sublease ("Subleased Premises"), agrees to assume, observe, be bound by and comply with all the terms, provisions, covenants and conditions of the Lease applicable to the Lessee.

5. Without in any way affecting the obligations of the Lessee under the Lease and under this Consent, the Sublessee agrees with respect to its acts and omissions to indemnify and hold harmless the Port Authority and its Commissioners, officers, agents, employees or representatives, and to make repairs and replacements as if it were the Lessee under the Lease. However, all acts and omissions of the Sublessee shall be deemed to be acts and omissions of the Lessee under the Lease and the Lessee shall also be severally responsible therefor, including but not limited to the obligations of indemnification and repair.

6. In addition to all other remedies available to the Port Authority under the Lease or otherwise, this Consent may be revoked by the Port Authority by notice to the Lessee and the Sublessee in the event of any breach by the Sublessee of any term or provision of the Sublease or of this Consent, and no such revocation shall be deemed to affect the Lease or the continuance thereof. Any notice given to the Sublessee shall be sufficient if given in accordance with Article ___ of the Sublease (entitled "_____"), to the person designated in Section ___ as

Sublessee's officer or representative upon whom notices may be served, and to the address designated in Article __ as the office where such notices may be served.

7. The Lessee and Sublessee represent and warrant that the attached Sublease sets forth the full and entire rental or other consideration payable to the Lessee by the Sublessee for or in connection with the subletting hereunder, and there are no other agreements between the Lessee and the Sublessee with respect to such Sublease.

8. The granting of this Consent by the Port Authority shall not be or be deemed to operate as a waiver of the rights of the Port Authority, or as a consent to any subsequent subleasing (by the Lessee or by the Sublessee) or to any assignment of the Lease or the Sublease or of any rights under either of them, whether in whole or in part.

9. Reference herein to the Sublessee shall mean and include the Sublessee, its officers, agents, employees, representatives and also others on the Subleased Premises, the Premises or the Facility.

10. Neither the Commissioners of the Port Authority nor any of them, nor any of its officers, agents, employees or representatives thereof shall be held personally liable to the Lessee or to the Sublessee under any term or provision of this Consent or because of its execution or because of any breach or alleged breach thereof.

IN WITNESS WHEREOF, the Port Authority, the Lessee and the Sublessee have executed these documents.

ATTEST:

THE PORT AUTHORITY OF NEW
YORK AND NEW JERSEY

By: _____

(Title) _____

NEW YORK CITY ECONOMIC
DEVELOPMENT CORPORATION

Secretary

By: _____
(Title) _____

Sublessee

By: _____

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

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

Notary seal and stamp

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

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

Notary seal and stamp

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

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

Notary seal and stamp