

LEASE AGREEMENT

between

HUDSON RIVER PARK TRUST

LANDLORD,

and

INTREPID MUSEUM FOUNDATION

TENANT

Dated as of \_\_\_\_\_, 2021

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THIS AGREEMENT OF LEASE is made as of the \_\_\_ day of \_\_\_\_\_, 2021 (the “**Commencement Date**”), between Hudson River Park Trust (“**Landlord**” or the “**Trust**”), a New York public benefit corporation, having an office at Pier 40, 353 West Street, New York, NY 10014, and Intrepid Museum Foundation (“**Tenant**”), a not-for-profit corporation organized and existing under the laws of the State of New York, having an office at 299 Park Avenue, New York, New York 10017.

W I T N E S S E T H

**WHEREAS**, pursuant to the Hudson River Park Act, Chapter 592 of the Laws of 1998 of the State of New York, as amended (the “**Act**”), Landlord is responsible for the planning, design, development, construction, operation and maintenance of the Hudson River Park and the improvements therein (collectively, the “**Park**”), which is located along West Street in the Borough of Manhattan, City and State of New York;

**WHEREAS**, Section 3(e) of the Act describes the full extent of the Park boundaries, which include the Premises as defined herein;

**WHEREAS**, Landlord, pursuant to the Act, is responsible for the development, operation and maintenance of the Park and its improvements therein;

**WHEREAS**, the City of New York a municipal corporation of the State of New York (the “**City**”), as landlord, and the Trust, as tenant, entered into a lease dated as of April 3, 1999 (the “**City Lease**”), demising and granting the Trust control over certain City-owned real property and improvements located in the Borough of Manhattan, City and County of New York, within the Park in fulfillment of Section 7.3(b) of the Act, including the property and improvements located at Pier 86, Borough of Manhattan, City and State of New York, including, but not limited to, the deck, under-deck and pilings (the “**Pier**”);

**WHEREAS**, the possessory interest conveyed under this Lease to the Trust is subject to existing leases and other encumbrances of such City-owned properties, including the lease granted to Tenant for use and occupancy of the Pier, dated as of January 1, 1982, and as subsequently amended (the “**Intrepid Lease**”);

**WHEREAS**, in accordance with the rights granted under the Intrepid Lease, Tenant operates the Intrepid Sea, Air & Space Museum at the Pier (the “**Museum**”);

**WHEREAS**, Tenant has secured and operates the Museum pursuant to the Intrepid Museum Foundation Absolute Charter granted on March 7, 2000 by the Board of Regents of The University of the State of New York, for an on behalf of the State Education Department;

**WHEREAS**, the Intrepid Lease expires on [\_\_\_\_\_, 2021];

**WHEREAS**, Landlord and Tenant desire to enter into a new lease for the Premises, as such are defined herein; and

**WHEREAS**, Landlord has agreed to demise to Tenant, and Tenant has agreed to let from Landlord, immediately upon the expiration of the Intrepid Lease, the property hereinafter described, pursuant to the terms and conditions hereinafter set forth.

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

## **ARTICLE 1**

### **CERTAIN DEFINITIONS**

Section 1.01. Definitions. As used herein, the following terms shall have the meanings set forth below. Any other capitalized terms used in this Lease but not set forth in this Section 1.01 shall be defined within the body of this Lease.

“Act” has the meaning provided in the Recitals hereof.

“Additional Insured” has the meaning provided in Section 10.01(a) hereof.

“Advance Demonstration Amount” means an amount equal to the estimated cost of the Structural Repair Work to be undertaken in the next ensuing one year period set forth in the Approved Structural Repair Plan, excluding amounts or contingent amounts added to cover cost overruns, multiplied by 125%.

“Advance Demonstration Date” has the meaning provided in Section 4.02(c) hereof.

“Affiliate” means any Person which controls, is controlled by or under common control with any other Person.

“Alterations” has the meaning provided in Section 15.02(b) hereof.

“Ancillary Uses” has the meaning provided in Section 8.01(a) hereof.

“Approved Available Repair Borrowings” means Available Repair Borrowings with respect to which Tenant has provided such certificates and other instruments as Landlord shall reasonably require and with respect to which Landlord in its reasonable discretion is satisfied will be available to Tenant in a timely fashion to pay for Pier Structural Repair Work.

“Approved Available Repair Pledges” means Available Repair Pledges with respect to which Tenant has provided such certificates and other instruments as Landlord shall reasonably require and with respect to which Landlord in its reasonable discretion is satisfied will be available to Tenant in a timely fashion to pay for Pier Structural Repair Work.

“Approved Engineer” means an independent, qualified, reputable and experienced New York State licensed marine professional engineer that (i) meets (A) the qualifications for same as set forth in the NYCEDC Guidelines Manual, a copy of which has been provided to Tenant and of which Tenant hereby acknowledges receipt, or (B) should the NYCEDC Guidelines Manual be

superseded by another manual issued by NYCEDC or other agency of the City of New York with similar scope and purpose, the qualifications set forth therein, or (C) should the Landlord determine in its reasonable judgment that the NYCEDC Guidelines Manual is no longer applicable and no successor manual is available, then such other standards of qualification for marine engineers as may be proposed by Tenant and approved by Landlord (such approval not to be unreasonably withheld, conditioned or delayed), (ii) is independent of contractor entities performing repair work in New York Harbor, and (iii) is approved by Landlord, such approval not to be unreasonably withheld, conditioned or delayed. As of the Commencement Date, CH2MHILL, P.A. is approved by Landlord as an Approved Engineer. Tenant may employ more than one Approved Engineer at any given time.

“Approved Plans and Specifications” has the meaning provided in Section 16.02 hereof.

“Approved Structural Repair Plan” means, subject to Section 14.11(c) hereof, for each Structural Repair Funding Period, a five (5) year plan prepared for Tenant by the Approved Engineer and approved by Landlord, in accordance with Section 14.11 hereof, for Tenant’s implementation (including time periods for performance) of the Pier Structural Repair Work to be completed in such Structural Repair Funding Period, as identified in a Comprehensive Inspection or an interim inspection performed by the Approved Engineer.

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

“Army Corps” has the meaning provided in the definition of Requirements hereof.

“Assignment of Construction Contract” has the meaning provided in Section 16.05(b) hereof.

“Available Repair Borrowings” means amounts then not yet advanced but which are available unconditionally (or subject only to conditions which are then satisfied) to be advanced to Tenant under any line of credit or other financing arrangement in all cases pursuant to a written enforceable agreement under which there are no material defaults (each, a “Repair Loan Agreement”) solely for the purpose of paying for Pier Structural Repair Work.

“Available Repair Funds” means the then Restricted Repair Funds, Approved Available Repair Borrowings and Approved Available Repair Pledges.

“Available Repair Pledges” means amounts not yet advanced which Tenant is entitled unconditionally (or subject only to conditions which are then satisfied) to receive pursuant to Donor Agreements solely for the purpose of paying for Pier Structural Repair Work.

“Bikeway” means that certain area set forth on Exhibit A.

“Buildings” means the Welcome Center and any other buildings now or hereafter existing on the Pier.

“Bulkhead” means the marine structure that acts as a retaining wall for the Premises set forth on Exhibit A.

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

“Casualty” has the meaning provided in Section 11.02(a) hereof.

“Casualty Restoration” has the meaning provided in Section 11.02(a) hereof.

“CB4” means Manhattan Community Board 4.

“CB4 Communication” has the meaning provided in Section 8.01 hereof.

“Charter” means the New York City Charter.

“Chiller Plant Platform” means an approximately 4,020 square foot portion of the Pier existing upon the Commencement Date that comprises the remaining portion of the originally constructed timber supported pier and platform that formerly housed a chiller plant which supplied the Intrepid with heat and air conditioning.

“Chiller Plant Platform Demolition Work” means work recommended by the Approved Engineer and performed by Tenant in conformity with the Requirements to maintain a safe dead load and thereby avoid a complete or partial collapse of the Chiller Plant Platform, or the release of any fluids or objects falling into the Hudson River including, but not limited to, the removal of dead load such as Equipment, the building located upon the Chiller Plant Platform, the removal of the pier decking, and the removal or cutting at the mudline of the deteriorated wooden piles. Chiller Plant Platform Demolition Work does not include Chiller Plant Platform Maintenance Work or Chiller Plant Platform Reconstruction Work.

“Chiller Plant Platform Maintenance Work” means work recommended by the Approved Engineer and performed by Tenant in conformity with the Requirements to maintain a safe dead load and thereby avoid a complete or partial collapse of the Chiller Plant Platform, or the release of any fluids or objects falling into the Hudson River including, but not be limited to, the draining of all fluids from Equipment or other stored materials on the Chiller Plant Platform, the removal of wood or other loose structural or non-structural components and the placement of a boon around the Chiller Plant Platform. Chiller Plant Platform Maintenance Work does not include Chiller Plant Platform Demolition Work or Chiller Plant Platform Reconstruction Work.

“Chiller Plant Platform Reconstruction Work” means a Structural Alteration that is Major Construction Work and comprises the replacement of the timber supported Chiller Plant Platform existing as of the Commencement Date with a new concrete or steel pile supported prestressed concrete platform matching the surrounding Pier with respect to Design Criteria and Loads and which includes both structural work and non-structural pier finish work (*i.e.*, pier finish work that is a cast in-place concrete finish suitable for pedestrian use and substantially similar to the concrete finish (which may include unit pavers) existing on the balance of the Pier as of the Commencement

Date). Chiller Plant Platform Reconstruction Work does not include Chiller Plant Platform Demolition Work or Chiller Plant Platform Maintenance Work.

“Chiller Plant Platform Work” means Chiller Plant Platform Demolition Work, Chiller Plant Platform Maintenance Work, and Chiller Plant Platform Reconstruction Work.

“City” has the meaning provided in the recitals hereof.

“City Lease” has the meaning provided in the recitals hereof.

“City Zoning Resolution” has the meaning provided in the definition of Requirements hereof.

“Commencement Date” has the meaning provided in the Preamble hereof.

“Community Benefit Report” means a written report prepared by Tenant that sets forth those free and low cost educational, cultural, and community programs and activities undertaken by Tenant during the prior calendar year including the approximate number of participants in such programs and activities.

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

“Comprehensive Inspection” means a comprehensive marine inspection report of all marine structure elements at the Premises, applying to such inspection: (A) the capacity and load bearing standards to which Tenant is required to adhere pursuant to the Design Criteria and Loads; and (B) the scope, activities and report format for “Baseline Inspections” and “Routine Inspections” set forth in the NYCEDC Guidelines Manual.

“Concorde” means the aircraft Concorde Alpha Delta G-BOAD.

“Condemnation Restoration” has the meaning provided in Section 12.01(e) hereof.

“Construction Contracts” has the meaning provided in Section 16.12(b) hereof.

“Construction Work” means any Structural Alteration, Major Construction Work, Restoration, or other construction, repair or capital improvement work performed on or to the Premises.

“Contractor” has the meaning provided in Section 16.04(b) hereof.

“Cost Index” means the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, New York, N.Y. – northern New Jersey – Long Island statistical area, All Items (1982-84 = 100), or any successor or substitute index thereto, appropriately adjusted, selected by Landlord in its reasonable discretion.

“Date of Taking” has the meaning provided in Section 12.01(d) hereof.

“DEC” has the meaning provided in the definition of Requirements hereof.

“Decorative Changes” has the meaning provided in Section 15.02(a) hereof.

“Default” means any condition or event, or failure of any condition or event to occur, which in accordance with the terms of this Lease after the giving of notice or the lapse of time, or both, would constitute an Event of Default.

“Depository” means a Qualified Bank selected by Tenant.

“Design Commission” means the Public Design Commission of the City of New York, or any successor commission or agency with similar authority.

“Design Criteria and Loads” means the load requirements for the Pier as set forth in the “As Built” General Plan G2001 dated December 10, 2008 and attached hereto as Exhibit H.

“DOB” means the City’s Department of Buildings.

“Donor Agreement” means an enforceable donor agreement or grant agreement pursuant to which a donor or other granting institution (including a governmental entity) donates or grants or unconditionally agrees to donate or grant funds to Tenant.

“Donor Restricted Funds” means restricted funds of Tenant which were donated or otherwise granted to Tenant pursuant a Donor Agreement which requires that such funds may be used only to pay for Pier Structural Repair Work so long as this Lease is in effect, while Tenant is in occupancy of the Premises or any part of the Final Pier Structural Repair Program is not fully complete and paid for.

“DSBS” means the New York City Department of Small Business Services.

“Enterprise” means the space shuttle Enterprise.

“Equipment” means all fixtures now or hereafter incorporated in or attached to and used or usable in the operation of the Premises, including, but not limited to, the co-generation plant and electrical substation equipment, all machinery, apparatus, devices, motors, engines, dynamos, compressors, pumps, boilers and burners, heating, lighting, plumbing, ventilating, air cooling and air conditioning equipment; chutes, ducts, pipes, tanks, fittings, conduits and wiring; incinerating equipment; elevators, escalators and hoists; partitions, doors, cabinets, hardware; floor, wall and ceiling coverings of the public areas only; washroom, toilet and lavatory equipment; lobby decorations; windows, window washing hoists and equipment; communication equipment; and all additions or replacements thereof. Notwithstanding the foregoing, the parties agree that Equipment shall not include (i) Trade Fixtures (such as Museum exhibits), (ii) the Excluded Utility Matters or the Vessels or (iii) any items enumerated or described in the definition of “Equipment” that are located on the Vessels.

“Esplanade” means that certain area set forth on Exhibit A.

“Event of Default” has the meaning provided in Section 27.01 hereof.

“Excluded Pier Areas” has the meaning provided in Section 8.01(c) hereof.



“Excluded Utility Matters” means (i) structures located on or under the Premises that are now or hereafter owned, maintained and/or leased by the New York City Department of Environmental Protection or any other Governmental Authority, including, without limitation, the combined sewage outfall under the Welcome Center and under the Pier, and (ii) structures located on or under the Premises that are now or hereafter owned, maintained and/or leased by any utility company, including, without limitation, the feeder breakers owned by the Consolidated Edison Company or its affiliates.

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

“Expiration Date” has the meaning provided in Section 2.02 hereof.

“Federal Courts” has the meaning provided in Section 29.02 hereof.

“Final Completion” has the meaning provided in Section 16.02 hereof.

“Final Pier Structural Repair Program” has the meaning provided in Section 14.11(h) hereof.

“Financial Statements” means financial statements of Tenant, including a consolidated statement of financial position, consolidated statement of activities, consolidated statement of cash flows, all notes related thereto, and all supporting and supplemental schedules prepared in accordance with pursuant to accounting principles generally accepted in the United States of America.

“First Notice Period” has the meaning provided in Section 27.01(a) hereof.

“Frontage” has the meaning provided in Section 14.02 hereof.

“Functions” means public, private, business, social and/or catered functions.

“Governmental Authority” or “Governmental Authorities” means the United States of America, the State of New York, New York City and any agency, department, legislative body, commission, board, bureau, instrumentality or political subdivision of any of the foregoing, now existing or hereafter created, having or claiming jurisdiction over the Premises, or any portion thereof, or any street, road, avenue, sidewalk or water comprising a part of, or immediately adjacent to, the Premises, or any vault in or under the Premises; for the avoidance of doubt, it being understood and agreed that Governmental Authority shall not include the named Landlord.

“Government/Emergency Docking” has the meaning provided in Section 8.02(a) hereof

“Growler” means the submarine U.S.S. Growler.

“Hazardous Materials” means (i) any “hazardous waste” as defined under the Resource Conservation and Recovery Act, 42 U.S.C. Section 9601 et seq., or (ii) “hazardous substance” as defined under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq., or (iii) “hazardous materials” as defined under the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101 et seq., or (iv) “hazardous waste” as defined

under New York Environmental Conservation Law Section 27-0901 et seq., or (v) “hazardous substance” as defined under the Clean Water Act, 33 U.S.C. Section 1321 et seq., or (vi) any gasoline, petroleum products, explosives, radioactive materials, polychlorinated biphenyls or similar materials, and (vii) any other substance or material defined as “hazardous” or “toxic” under any other federal, state or local laws, ordinances, rules or regulations applicable to the Premises or to the conduct of Tenant or any occupant thereon, but excluding substances of kinds and in amounts ordinarily and customarily used or stored in properties similar to the Premises for the purposes of cleaning or other maintenance or operations and otherwise in compliance with environmental laws applicable to the Premises.

“Immediate Level Actions” has the meaning provided in Section 14.11(a) hereof.

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

“Improvements” means the Pier, the Welcome Center and the Bulkhead, all as shown on Exhibit A, the Equipment and any and all other buildings, structures or other improvements and appurtenances of every kind and description now existing on the Pier or any other portion of the Premises, or hereafter erected, constructed or placed upon the Pier or any other portion of the Premises or any portion thereof, and any and all alterations, replacements and substitutions thereto, landscaping, and all Equipment incorporated in or attached to the Premises at any time during the Term (subject to Section 14.07 hereof). Improvements shall not include any Trade Fixtures, the Excluded Utility Matters or the Vessels.

“including” has the meaning provided in Section 40.09 hereof.

“Indemnified Losses” has the meaning provided in Section 21.02 hereof.

“Indemnitees” has the meaning provided in Section 21.02 hereof.

“Initial Approved Structural Repair Plan” means the work prescribed in the Routine Level Inspection Report (as such term is defined in the NYCEDC Guidelines Manual) prepared by CH2MHILL on behalf of Tenant dated as of June 2018 and approved by Landlord and attached hereto as Exhibit I(1), which report utilizes also information provided in the Baseline Inspection Report (as such term is defined in the NYCEDC Guidelines Manual) prepared by CH2MHILL on behalf of Tenant dated as of November 2014 and approved by Landlord and attached hereto as Exhibit I(2). The Initial Approved Structural Repair Plan shall be the Approved Structural Repair Plan for the Structural Repair Funding Period commencing upon the Commencement Date.

“Insurance Proceeds Threshold Amount” means the amount equal to the product of \$1,000,000 multiplied by (i) the sum of one (1) plus (ii) the percent of increase (but not decrease) in (A) the Cost Index for the month prior to the month in which the insurance proceeds referenced in Section 10.02 hereof are paid over (B) the Cost Index for the month prior to the month in which the Commencement Date occurs.

“Intrepid” means the aircraft carrier U.S.S. Intrepid.

“Intrepid Lease” has the meaning provided in the recitals hereof.

“Landlord” has the meaning provided in Preamble hereof.

“Landlord Delays” means (i) Landlord's delays in approving any drawings, plans or specifications, in supplying information or in advising Tenant as to the status of Substantial Completion or Final Completion of Construction Work beyond the periods for such approval, information or advice referred to in this Lease, as applicable; (ii) delays caused by Design Commission review of any drawings, plans or specifications; provided, however, that Tenant has timely submitted any such drawings, plans or specifications to, and cooperates with the Design Commission during their review (even though it is understood and agreed that such delays are outside of Landlord's control, they shall be deemed to be Landlord Delays for purposes of this definition); and/or (iii) delays caused by Landlord's or Design Commission's changes in drawings, plans or specifications submitted or prepared by Tenant; provided that Tenant diligently and in a timely manner undertakes to address all of Landlord's reasonable comments and/or the Design Commission's comments and requests with respect to the drawings, plans or specifications.

“Landlord Event” has the meaning provided in Section 40.16 hereof.

“Landlord Representative” has the meaning provided in Section 26.02(b) hereof.

“Landlord's Engineer” means an engineer selected by Landlord that meets the qualifications of an Approved Engineer.

“Late Charge Rate” means one and one-half percent (1½%) per month (computed on a 30-day month) on the sum so overdue.

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

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

“Letter Report” has the meaning provided in Section 14.11(h) hereof.

“Licensed Esplanade Area” means that portion of the Esplanade extending to the south of the Premises and three feet, six inches east of the Southern Bulkhead railing, as depicted in Exhibit A attached hereto.

“Licensed Water Area” means that certain in-water area adjacent and to the north and west of the Pier as depicted in Exhibit A attached hereto.

“Lien” means any lien (statutory or otherwise), including, but not limited to, mechanic's, laborer's, vendor's, materialman's and public improvement liens, security interest, mortgage, deed of trust, priority, pledge, charge, conditional sale, title retention agreement, financing lease or other encumbrance or similar right of others, or any other agreement to give any of the foregoing.

“Major Construction Work” has the meaning provided in Section 16.03(a) hereof.

“Memorandum” has the meaning provided in Article 33 hereof.

“Minimum Repair Fund Amount” shall mean the greater of (x) \$200,000 multiplied by the sum of (i) one (1) plus (ii) the percent of increase (but not decrease) in (A) the Cost Index as of the first day of the month which is prior to the month in which then most recent anniversary of the Commencement Date occurs over (B) the Cost Index for the month prior to the month in which the Commencement Date occurs, and (y) the estimated cost of Structural Repair Work set forth in the Approved Structural Repair Plan to address the Immediate Level Actions to be undertaken within the first year of each Structural Repair Funding Period, excluding such amounts or contingent amounts added to cover cost overruns, multiplied by 125%.

“Museum” has the meaning provided in the recitals hereof.

“New York State Courts” has the meaning provided in Section 29.02 hereof.

“Non-Structural Alterations” has the meaning provided in Section 15.02(b) hereof.

“NYCDOF” has the meaning provided in the definition of Requirements hereof.

“NYCEDC” means New York City Economic Development Corporation.

“NYCEDC Guidelines Manual” means the Inspection Guidelines Manual prepared by CH2MHILL, P.A. for NYCEDC, dated May 2016, as such manual may be revised from time to time by NYCEDC.

“NYSDOT” means the New York State Department of Transportation.

“Occupancy Agreement” has the meaning provided in Section 13.02 hereof.

“Park” has the meaning provided in the recitals hereof.

“Park Rules” means rules and regulations promulgated by Landlord from time to time that are applicable to the entire Park (such rules and regulations being posted on the website of Landlord, which is currently [www.hudsonriverpark.org](http://www.hudsonriverpark.org) (or the website of any successor organization to Landlord)).

“Partial Taking” has the meaning provided in Section 12.01(c) hereof.

“Paver Fundraising Work” has the meaning provided in Section 15.02(c) hereof.

“Pedestrian Bridge” means the pedestrian bridge over Route 9A at 46<sup>th</sup> Street and extending from the Welcome Center to the east side facilities (as such term is defined in the Pedestrian Bridge Agreement) as depicted in the Pedestrian Bridge Agreement.

“Pedestrian Bridge Agreement” means the agreement among Landlord, Tenant and the NYSDOT, dated October 29, 2002, and attached hereto as Exhibit G, that sets forth the

responsibilities of the parties to such agreement regarding the Pedestrian Bridge, the east side facility, the eastern terminus and the drop-off facility.

“PEP” has the meaning provided in Section 39.02 hereof.

“Permanent Signage” has the meaning provided in Section 37.01(a) hereof.

“Permitted Closure” means a closure of all or any portion of the Museum or the Premises to the extent caused by one or more of the following causes: (i) one or more causes of Unavoidable Delays, but only for the time period(s) arising as a direct result of such cause; (ii) Restoration, provided such Restoration shall be performed (A) in a diligent and continuous manner and (B) otherwise in accordance with the provisions of this Lease governing Restoration; (iii) Chiller Plant Platform Work, provided that such closure shall be limited to the portion of the Premises so affected); and (iv) Major Construction Work or other required repairs to the Premises, provided (A) such Major Construction Work or repairs shall be performed in a diligent and continuous manner, (B) such closure(s) shall not exceed one (1) year without Landlord’s prior written consent, and (C) Tenant shall provide not less than thirty (30) days’ written notice of all such closures to Landlord.

“Permitted Use” has the meaning provided in Section 8.01(a) hereof.

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

“Pier” has the meaning provided in the recitals hereof.

“Pier Non-Structural Repair Work” means repairs to the fenders, Buildings, utilities, lighting, surface paving, furniture, bollards, cleats, landscaping or any other component above the level of the Pier deck or which is east of the Bulkhead and which is not related to the structural integrity of the Pier or Bulkhead.

“Pier Open Space” has the meaning provided in Section 8.01(c) hereof.

“Pier Open Space Amenities” has the meaning provided in Section 8.01(c) hereof.

“Pier Open Space Signage” means signage at the entrance to the Premises notifying the general public of its right to access and use the Pier Open Space.

“Pier Structural Repair Work” means the repair of any marine structural element on the Premises, including, but not limited to, the Bulkhead, the pilings (whether timber, steel or concrete), pile caps, other sub-structural supports, under-deck, deck (but not surface paving or treatment), expansion joints and other Pier elements determined by the Approved Engineer to be structural or the repair of which is related to the structural integrity of the Pier or Bulkhead. For the avoidance of doubt, Pier Structural Repair Work shall not include Pier Non-Structural Repair Work, Chiller Plant Platform Work, Restoration or any portion of the foregoing.

“Planned Funding Application” means any funding application that Tenant plans to submit to City, State or Federal sources within the eighteen (18) month period following the applicable date of determination in order to fund a contemplated project and that is not intended to fund all or a portion of the Southern Bulkhead Repair Cost Excess.

“Preliminary Plans and Specifications” has the meaning provided in Section 16.03(b) hereof.

“Premises” means the adjacent upland area to the east of the Pier, the Improvements (including, without limitation, the Pier) and land-under-water associated waters and underwater lands, each within that certain area set forth in Exhibit A attached hereto. Premises shall not include any Trade Fixtures or the Vessels.

“Primary Tour Season” means the period (or portion thereof occurring during the Term) commencing on each April 15 and ending on each October 31 of the Term.

“Primary Uses” has the meaning provided in Section 8.01(a) hereof.

“Priority Level Actions” has the meaning provided in Section 14.11(a) hereof.

“Qualified Bank” means a New York City branch of a bank licensed by either the federal Comptroller of the Currency or the superintendent of Banking of the State of New York, which has net assets at the time in question in the amount of at least the Qualified Bank Asset Amount; it being acknowledged and agreed that each of First Republic Bank and Bank of America are deemed to be a “Qualified Bank” as of the Commencement Date.

“Qualified Bank Asset Amount” shall mean \$50,000,000,000 multiplied by the sum of (i) one (1) plus (ii) the percent of increase (but not decrease) in (A) the Cost Index as of the first day of the month prior to the month in which the then most recent anniversary of the Commencement Date occurs over (B) the Cost Index for the month prior to the month in which the Commencement Date occurs.

“Rapid Level Inspection” means an inspection of a limited duration undertaken by the Approved Engineer as a result of an emergency or in order to assess immediate issues that need to be addressed, or to provide a quick general assessment of a structure as part of a regular maintenance program, a report for which repair recommendations and estimated costs are prepared as set forth in the NYCEDC Guidelines Manual.

“Rent” has the meaning provided in Section 4.01 hereof.

“Rental” means all of the amounts payable by Tenant to Landlord pursuant to this Lease, including, without limitation, Rent, Impositions, Minimum Rental, Additional Rental, the amounts, if any, payable pursuant to Article 22 hereof and any other sums, costs, expenses or deposits which Tenant is obligated to pay to and/or deposit pursuant to the terms, covenants and conditions of this Lease.

“Repair Fund Resolution” has the meaning provided in the definition of Restricted Funds hereof.

“Repair Loan Agreement” has the meaning provided in the definition of Available Repair Borrowings hereof.

“Replacement Value” means the full costs of replacing the Improvements including, without limitation, the costs of post-Casualty debris removal and soft costs, to the extent that such costs can be covered by an “All Risk” insurance policy.

“Required Completion Date” means with respect to (i) Immediate Level Actions, the date that is one (1) year after the commencement of the applicable Structural Repair Funding Period; (ii) Priority Level Actions, the date that is three (3) years after the commencement of the applicable Structural Repair Funding Period; and (iii) Routine Level Actions, the date that is four (4) years after the commencement of the applicable Structural Repair Funding Period, or such other date for completion of an element of Pier Structural Repair Work set forth in the Approved Structural Repair Plan, as such plan may be modified to include the repair recommendations of a Rapid Level Inspection report.

“Requirements” means the following, as may be amended, modified or supplemented from time to time: (i) any and all laws, rules, regulations, orders, ordinances, statutes, codes, executive orders, resolutions and requirements of all Governmental Authorities applicable (now or at any time during the Term) to the Premises, or any street, road, avenue or sidewalk constituting a part of the Premises, or in front of or adjacent to the Premises to the extent the owner of the Premises would have legal responsibility therefor, or any vault in or under the Premises, including, without limitation, the requirements and restrictions contained in or established by the Park Rules, the New York City Noise Control Code (N.Y.C. Admin. Code Sections 24-201, et seq.), as amended and the regulations of the Department of Environmental Protection (N.Y.C. Admin. Code Sections 24-230, 24-242), the Building Code of New York City (Admin. Code Section 27-101 et seq.), the U.S. Army Corps of Engineers (the “**Army Corps**”), the New York State Department of Environmental Conservation (“**DEC**”), the New York State Historic Preservation Office (“**SHPO**”), the New York City Department of Finance (“**NYCDOF**”), the New York City Department of Transportation, and NYSDOT, (ii) the New York City Zoning Resolution (“**City Zoning Resolution**”) and the requirements of the New York City Department of City Planning, including but not limited to waterfront public access area maintenance and operations provisions, and the General Project Plan for the Park, as amended, and the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of any applicable Fire Rating Bureau or other body exercising similar functions, as the same may be amended from time to time); (iii) any and all provisions and requirements of any property, casualty or other insurance policy required to be carried by Tenant under this Lease; (iv) all final actions taken by the City, pursuant to Section 1301 of the Charter with respect to the Premises; (v) any certificate of completion issued for the Improvements as then in force; and (vi) the Act.

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

“Restoration Costs” has the meaning provided in Section 11.03(b) hereof.

“Restoration Funds” means (a) any moneys that may be received by Tenant pursuant to the provisions of Sections 10.02(a) or 11.03 hereof, as a result of property loss or condemnation, together with the interest, if any, earned thereon, and (b) the proceeds of any security held by

Tenant or deposited with a Depository, as applicable pursuant to Sections 11.03 and 11.05 hereof, together with the interest, if any, earned thereon.

“Restricted Funds” means restricted funds of Tenant that were previously unrestricted funds but that Tenant designated pursuant to a duly adopted binding resolution of its Board of Directors (each, a “Repair Fund Resolution”) as restricted funds to be used only to pay for Pier Structural Repair Work or Chiller Plant Platform Work so long as this Lease is in effect, while Tenant is in occupancy of the Premises or any part of the Final Pier Structural Repair Program is not fully complete and paid for.

“Restricted Repair Funds” means certain restricted funds of Tenant consisting of Restricted Funds and Donor Restricted Funds which may be used only to pay for Pier Structural Repair Work so long as this Lease is in effect, while Tenant is in occupancy of the Premises or any part of the Final Pier Structural Repair Program is not fully complete and paid for.

“Revenues” has the meaning provided in Section 8.01(i) hereof.

“Reviewing Party or Reviewing Parties” has the meaning provided in Section 24.02 hereof.

“Routine Level Actions” has the meaning provided in Section 14.11(a) hereof.

“Safe” has the meaning provided in Section 4.05(b) hereof.

“SHPO” has the meaning provided in the definition of Requirements hereof.

“Significant Project” has the meaning provided in Section 16.13 hereof.

“Southern Bulkhead” means that portion of the Bulkhead parallel with the Esplanade extending in a southerly direction from the southernmost edge of the Pier for a distance of 177.5 feet, which is depicted on Exhibit A attached hereto. For the avoidance of doubt, the Southern Bulkhead shall not include any structures, fixtures, personal property, equipment or other materials on top of such Bulkhead or attached thereto.

“Southern Bulkhead Grant Funds” means, with respect to any Structural Repair Funding Period, any grant funds actually received by Tenant from a City, State or Federal source for the purpose of funding all or a portion of the Southern Bulkhead Repair Cost Excess for such Structural Repair Funding Period.

“Southern Bulkhead Repair Cost Cap” means (1) for the initial Structural Repair Funding Period, \$150,000, and (2) for each subsequent Structural Repair Funding Period, \$150,000 multiplied by the sum of (i) one (1) plus (ii) the percent of increase (but not decrease) in (A) the Cost Index as of the first day of the month which is prior to the month in which the applicable the Structural Repair Funding Period occurs over (B) the Cost Index as of the first day of the month prior to the Commencement Date.

“Southern Bulkhead Repair Costs” means all costs associated with the Southern Bulkhead Repair Work, including, without limitation, costs in a general contractor’s bid for the Southern Bulkhead Repair Work, costs of third party construction management services, and any change



orders required or deemed reasonably necessary to complete the Southern Bulkhead Repair Work, but that excludes the costs of the Approved Engineer.

“Southern Bulkhead Repair Cost Excess” means, with respect to any Structural Repair Funding Period, the Southern Bulkhead Repair Costs that exceed the Southern Bulkhead Repair Cost Cap.

“Southern Bulkhead Repair Work” means Pier Structural Repair Work on the Southern Bulkhead (including third party construction management services, if required) that has been recommended by the Approved Engineer for inclusion in an Approved Structural Repair Plan the need for which is not caused directly by (a) a condition or defect particular to the bulkhead area located to the south of the Southern Bulkhead which is not within the Premises or to any other area not in the Premises, or (b) an act by Landlord or any contractor or other party acting by or through Landlord.

“State” means the State of New York.

“Structural Alterations” has the meaning provided in Section 15.01 hereof.

“Structural Repair Funding Period” means: (a) the initial period of two (2) years commencing on the Commencement Date, (b) each of five (5) successive five (5) year periods thereafter commencing upon the expiration of the prior Structural Repair Funding Period, and (c) a final three (3) year period commencing up the expiration of the fifth (5<sup>th</sup>) five (5) year Structural Repair Funding Period, such that the total number of Structural Repair Funding Periods is seven (7).

“Structural Repair Funding Requirement” means the total cost estimate for each identified repair item of each action level for the entire Approved Structural Repair Plan set forth therein.

“Substantial Completion” or “Substantially Completed” has the meaning provided in Section 16.02 hereof.

“Substantial Taking” has the meaning provided in Section 12.01(b) hereof.

“Taking” has the meaning provided in Section 12.01(a) hereof.

“Taxes” means real property taxes assessed and levied against the Premises or any part thereof (or, if the Premises or any part thereof or the fee owner thereof is exempt from such real property taxes then the real property taxes which would be so assessed and levied if not for such exemption) pursuant to the provisions of Chapter 58 of the Charter of the City, and Title 11, Chapter 2 of the Administrative Code of the City, as the same may now or hereafter be amended, or any statute or ordinance in lieu thereof in whole or in part.

“Temporary Exhibition Area” has the meaning provided in Section 8.01(e)(iv) hereof.

“Temporary Taking” has the meaning provided in Section 12.04 hereof.

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

“Tenant Parties” means Tenant, any affiliate of Tenant, any subtenant, licensee or concessionaire of the Premises or of Tenant or any other Tenant Party, and each of their respective direct or indirect partners, officers, shareholders, directors, members, trustees, beneficiaries, employees, managers, contractors, licensees, agents, visitors, patrons, vendors, invitees and representatives. Solely for purposes of Tenant’s obligations with respect to the Southern Bulkhead under Sections 8.06, 21.01, 38.01, 39.01 and 40.14, the definition of “Tenant Parties” shall exclude members of the general public other than Tenant’s invitees to the Southern Bulkhead.

“Tenant Proposal” has the meaning provided in Section 8.01(g) hereof.

“Tenant Remedies” has the meaning provided in Section 8.01(g) hereof.

“Tenant’s Mission” means promoting the awareness and understanding of history, science and service through Tenant’s collections (including, without limitation, the aircraft carrier U.S.S. Intrepid), exhibitions and programming in order to honor our heroes, educate the public and inspire our youth for purposes consistent with Tenant being exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code.

“Term” has the meaning provided in Section 2.02 hereof.

“Trade Fixtures” means moveable personal property of Tenant utilized by Tenant in its trade or business, or of any other Tenant Party utilized in its respective trade or business. For the purposes set forth herein, Trade Fixtures shall not include the Vessels.

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

“Unavoidable Delays” means delays attributable to any and all causes beyond Tenant’s reasonable control, including, without limitation, those caused by Landlord Delays or any other unreasonable delays in granting any approvals required hereunder by Landlord (to the extent such delays are not themselves attributable to the actions or inactions of Tenant), governmental restrictions, injunctions or orders of any court of competent jurisdiction, labor disputes (including strikes, slowdowns and similar labor problems), accidents, mechanical breakdown, shortages or inability to obtain labor, fuel, steam, water, electricity or materials (for which no substitute is readily available at a comparable price), acts of God, floods, remediation of previously unknown Hazardous Materials or of Hazardous Materials for which Tenant is not liable pursuant to the express provisions of Section 21.02(k) hereof, enemy action, national emergency, act(s) of terrorism and/or the resulting consequences of such act(s), acts of governmental agencies, including but not limited to the Department of Homeland Security in response to the prevention of or the taking of precautions against any act(s) of terrorism whether perceived or threatened, civil commotion, riots, fire or other casualty, of which Tenant has given Landlord notice within thirty (30) days after Tenant knows of same.

“Unsatisfactory Condition” has the meaning provided in Section 8.01(g) hereof.

“Upsize Event” has the meaning provided in Section 4.02(d) hereof.

“Vessels” means aircraft, spacecraft and marine vessels, which shall include the Intrepid, and those certain aircraft, spacecraft and marine vessels at the Premises or on the Intrepid as of the

Commencement Date, including, without limitation, the Growler, the Enterprise, and the Concorde, and which may include other aircraft, spacecraft or marine vessels, as the Parties may agree from time to time. All Vessels shall be deemed the personal property of Tenant for exhibition by Tenant as part of the Permitted Use. The Growler, the Concorde, and the Intrepid shall be as set forth and illustrated in Exhibit A.

“Welcome Center” means those certain improvements shown on the attached hereto as Exhibit A.

## ARTICLE 2

### DEMISE OF PREMISES AND TERM

Section 2.01. Demise of Premises. Landlord does demise the Premises unto Tenant, and Tenant lets the Premises from Landlord, together with all easements, appurtenances and other rights and privileges now or hereafter belonging or appertaining to the Premises, subject to the encumbrances, exceptions, reservations, conditions of title and other matters affecting Landlord’s interest in the Premises, set forth in this Lease and on Exhibit B-1 hereto (matters in Exhibit B-1 being the “**Existing Title Matters**”). Tenant shall use the Premises solely for the purposes set forth in Article 8 hereto. Notwithstanding anything herein to the contrary, the Premises leased to Tenant hereunder do not include any “air rights”, development rights and additional floor areas as defined under the City Zoning Resolution, all of which are hereby expressly reserved by Landlord.

Section 2.02. Term. The term of this Lease shall be for a term of thirty (30) years (the “**Term**”) commencing on the Commencement Date and expiring at 11:59 p.m. on [\_\_\_\_\_, 2051], or upon such earlier date upon which this Lease may be canceled or terminated as provided herein (the “**Expiration Date**”).

#### Section 2.03. Premises “AS IS”.

(a) Tenant hereby represents, warrants, acknowledges and agrees that Tenant (i) has been in possession of the Premises since January 1, 1982, pursuant to a prior lease agreement, and accordingly is fully familiar with the condition of the Premises, (ii) accepts the Premises in its “AS IS” condition (including, without limitation, with respect to the presence of Hazardous Materials (subject to Section 21.02(k) hereof), (iii) acknowledges that marine borers may be present, and rot may have occurred, in the timber Pier piles, timber fender piles, and other timber marine elements within the Premises, and the stress and load bearing capacity of such timber piles and other timber marine elements may be severely impaired and may deteriorate on account of such condition, and as a result thereof, partial Pier failure and partial Pier collapse is possible; (iv) will not make any claim that the Premises is not suitable for the uses contemplated and permitted by this Lease, and (v) will not at any time make any claim regarding the delivery condition of the Premises.

(b) Landlord has not made and does not make any representation or warranty as to the condition of the Premises or its suitability for any particular use or as to any other matter affecting this Lease or the Premises.

### ARTICLE 3

[INTENTIONALLY OMITTED]

### ARTICLE 4

#### RENTAL

Section 4.01. Rental Payments. Tenant shall pay to Landlord, in addition to any other Rental due under this Lease, annual rent (“**Rent**”) in the amount of One Dollar (\$1) per annum, payable in advance for all years of the Term on the date of the execution of this Lease at the office of Landlord set forth above or at such other place as Landlord shall direct by written notice to Tenant.

#### Section 4.02. Repair Funds.

(a) Tenant shall at all times during the Term maintain and identify within the consolidated statement of financial position of its Financial Statements one or more line items that accurately sets forth the amount of the Restricted Repair Funds, including, but not limited to, the Restricted Funds. The Restricted Repair Funds (and any other Available Repair Funds held by Tenant but not yet applied to Pier Structural Repair Work) shall, in the sole but reasonable discretion of Tenant, either be (i) held in Federal Deposit Insurance Corporation insured or fully collateralized savings or checking accounts in a Qualified Bank, and/or (ii) invested in United States Government issuances or bonds which are fully guaranteed or insured by the United States Government, or municipal bonds of the City of New York or State of New York.

(b) On the Commencement Date, Tenant shall cause the cash amount of Restricted Repair Funds to be not less than fifty thousand dollars (\$50,000).

(c) On the first day of each Structural Repair Funding Period after the initial Structural Repair Funding Period, Tenant shall cause the Available Repair Funds to be in an amount not less than the Minimum Repair Fund Amount. Other than in the case of Immediate Level Actions to be undertaken within the first (1st) year of each Structural Repair Funding Period (the costs for which, if any, shall be included in the Minimum Repair Fund Amount), no later than the date that is thirteen months (13) months prior to each Required Completion Date during each Structural Repair Funding Period (including the initial Structural Repair Funding Period) (the “**Advance Demonstration Date**”), Tenant shall provide to Landlord notice and supporting documentation (which shall include, without limitation, copies of materials set forth in Section 4.02(g) and such other evidence of funds held in one or more separate accounts) demonstrating that Tenant has Available Repair Funds (which funds, for the avoidance of doubt, shall be deemed to include any remaining balance of the Restricted Repair Funds and any remaining balance of the Minimum Repair Fund Amount from the prior Lease Year, as applicable) in an amount not less than the Advance Demonstration Amount, as such amount may be modified pursuant to Section 4.02(d); it being understood and agreed that such Advance Demonstration Amount is solely based on the costs estimated in the Approved Structural Repair Plan and a default or Event of Default shall not arise solely in the event that the actual costs of the Pier Structural Repair Work exceed the Advance Demonstration Amount.

(d) Notwithstanding anything to the contrary contained herein, for purposes of determining the Structural Repair Funding Requirement and the Advance Demonstration Amount (i) if Tenant enters into actual fixed or guaranteed maximum price contracts for all or any of the Pier Structural Repair Work set forth in the Approved Structural Repair Plan in form and substance reasonably satisfactory to Landlord, for a price (after adding a 10% contingency and sufficient allocation for construction management fees and taking into account all change orders to date) that is less than the Approved Engineer estimate for such Pier Structural Repair Work in such Approved Structural Repair Plan (and which estimate is already included in the calculation of the Structural Repair Funding Requirement and Advanced Demonstration Amount), then, after approval of such contracts by Landlord, at Tenant's sole election after advanced prior notice to Landlord, the Structural Repair Funding Requirement and the Advanced Demonstration Amount then applicable may be correspondingly reduced, and (ii) if Landlord in its reasonable discretion determines (based on cost estimates prepared by Landlord's Engineer and only after Landlord has first provided Tenant with the engineering, pricing, or contractual basis for such determination and afforded Tenant a reasonable opportunity to comment and discuss such findings) that the Approved Engineer estimates for the applicable Pier Structural Repair Work is too low as the result of (x) material escalations in construction material costs and labor costs from the date of estimation by the Approved Engineer, (y) completion of a Rapid Level Inspection of additional adverse conditions not previously revealed during the preparation of the applicable Approved Structural Repair Plan by the Approved Engineer, or (z) amounts by which actual contracts for Tenant's performance of the applicable Pier Structural Repair Work (together with approved change orders in connection therewith, including a 10% contingency and sufficient allocation for construction management fees) exceed the applicable Approved Engineer estimate for the Pier Structural Repair Work in question (any such event described in (x), (y) or (z) (or a combination thereof) being referred to herein as an "**Upsize Event**"), then, within sixty (60) days following Landlord's giving written notice thereof to Tenant (which notice shall be sent by email, with a copy also sent in accordance with Sections 30.01(i), (ii) or (iii) below), the Structural Repair Funding Requirement and the Advanced Demonstration Amount shall be increased accordingly by the amount of such underestimation, plus a factor of twenty-five percent (25%), except to the extent already included or not necessary because of fixed price or guaranteed maximum price contracts have been entered into. Notwithstanding anything to the contrary set forth in this Section 4.02(d), in no event shall Section 4.02(d)(ii) apply to, modify or increase the minimum Available Repair Funds Tenant is required to hold part of the applicable Advance Demonstration Amount on account of Pier Structural Repair Work (or such portion thereof) that has commenced prior to, or is actually commencing or scheduled to commence on, the date of the applicable Upsize Event; it being further understood and agreed that such Advance Demonstration Amount is solely based on the costs estimated in the Approved Structural Repair Plan and a default or Event of Default shall not arise solely in the event that the actual costs of the Pier Structural Repair Work exceed the Advance Demonstration Amount.

(e) The total Structural Repair Funding Requirement for the initial Structural Repair Funding Period, starting upon the Commencement Date, is \$224,271, which includes \$224,271 for Routine Level Actions. The parties acknowledge and agree that Tenant has demonstrated Available Repair Funds in the amount of \$224,271 which amount represents that portion of the Structural Repair Funding Requirement for each element of Pier Structural Repair Work scheduled to be undertaken in the next ensuing two-year period.

(f) Tenant agrees that all Available Repair Funds shall be applied solely to pay for: (1) amounts due for Structural Repair Funding Requirement in the then current Structural Repair Funding Period, and (2) services of the Approved Engineer in connection therewith, each as set forth in Section 14.11. Landlord agrees that, except as set forth in this Section 4.02, all Restricted Repair Funds are owned by and are in the control (subject to the provisions of this Section 4.02 and the rights of any third party lender, donor, or grantor under any applicable Repair Loan Agreement or Donor Agreement) of Tenant.

(g) Tenant shall: (i) annually within thirty (30) days after each anniversary of the Commencement Date, provide Landlord with, to the extent applicable to Tenant and not otherwise in Landlord's possession: (x) copies of contracts, records of invoices and payments on account of Pier Structural Repair Work, (y) copies certified by Tenant to be true of, as applicable and then in effect, the Donor Agreement(s), the Repair Fund Resolution(s), and the Repair Loan Agreement(s); and (z) a report listing the end of month balances of the Restricted Repair Funds, Approved Available Repair Borrowings and Approved Available Repair Pledges for each the preceding twelve (12) months; and (ii) annually within one hundred fifty (150) days after the end of each fiscal year of Tenant, Tenant Financial Statements audited by an independent certified public accountant prepared in accordance with accounting principles generally accepted in the United States of America including, among all other information customarily included in such Tenant Financial Statements, a listing of the amounts of the Restricted Repair Funds within the consolidated statement of financial position.

(h) Should an Event of Default have occurred as the result of Tenant's failure to undertake, complete and/or pay for Pier Structural Repair Work (including, without limitation, the Final Pier Structural Repair Program as required under this Lease), then, in addition to all other remedies available to Landlord under this Lease, Tenant shall pay over to Landlord all Restricted Funds and, as may be permissible subject to Donor Agreements and Repair Loan Agreements, other Available Repair Funds for application by Landlord or Landlord's designee to the incomplete or unpaid for Pier Structural Repair Work.

Section 4.03. Chiller Plant Platform Reconstruction Work Estimate. In addition, and without limitation to Tenant's obligations set forth in Sections 4.02(a)-(h), Tenant shall (i) make available through its annual operating budget, or by other means funds sufficient to make annual payment for the Chiller Plant Platform Maintenance Work and, until completion of the Chiller Plant Platform Demolition, the Chiller Plant Platform Demolition Work, and (ii) cause to be included within Available Repair Funds for the second Structural Repair Funding Period (and each other applicable Structural Repair Funding Period thereafter) an amount for the Chiller Plant Platform Reconstruction Work equal to the estimated cost (including allocations for contingency and construction management) for that portion of the Chiller Plant Platform Reconstruction Work as set forth in a budget previously approved by Landlord (which approval shall not be unreasonably withheld) scheduled to be undertaken in the next ensuing one (1) year period (such amount subject to modification pursuant to Section 4.02(d)). From and after the beginning of the second Structural Repair Funding Period, or upon such earlier date that the Chiller Plant Platform Reconstruction Work may commence, until such date that Tenant has secured Final Completion of the Chiller Plant Platform Reconstruction Work, such estimated cost (including allocations for contingency and construction management) of the Chiller Plant Platform Reconstruction Work shall be included within Structural Repair Funding Requirement.

Section 4.04. Time and Place of Payment.

(a) Tenant's obligation to make and pay for the Pier Structural Repair Work and the Chiller Plant Platform Work is unqualified and absolute. None of the terms contained in this Section 4.04, the unavailability or inadequacy of the Available Repair Funds, the inadequacy of all or any part of the Approved Structural Repair Plan, Landlord's approval of any of the foregoing, the amounts set forth in Tenant's annual operating budget or any other thing similar or dissimilar to any of the foregoing shall limit or restrict such obligation. For the purposes set forth herein, Tenant's payment of Pier Structural Repair Work, the Chiller Plant Platform Work and amounts required to pay for Pier Structural Repair Work and the Chiller Plant Platform Work as set forth herein shall be deemed Rental under this Lease; provided, however, that Landlord recognizes that Tenant may, for the purposes of preparing its Financial Statements, elect to amortize such payments in accordance with generally accepted accounting principles rather than treat them entirely as rental in the years paid.

(b) All Rental, other than Rental paid to contractors or other entities performing Pier Structural Repair Work and Chiller Plant Platform Work, shall be paid to Landlord (or, in the case of Impositions, to such other Person as required by the rules and regulations governing payment thereof), when the same shall become due and payable as provided herein, without notice or demand except as may be otherwise expressly provided in this Lease, by good checks drawn on an account at a bank that clears through the Clearing House Payments Company L.L.C. (or any successor body of similar function), payable to the order of Landlord at its address set forth in Section 30.01(a) hereof, or to the order of such other entity, or at such other address as Landlord may designate in writing delivered in accordance with Section 30.01 hereof. All payments hereunder by Tenant shall be denominated in United States Dollars, which shall be the currency of account for all purposes. Impositions shall be payable in the form and to the location provided by rules and regulations governing the payment thereof.

(c) Notwithstanding anything to the contrary contained in this Article 4, in no event shall this Article 4 apply to funds, work or other matters relating to Casualty, Taking or Restoration.

Section 4.05. Southern Bulkhead Repair Obligation.

(a) Notwithstanding anything to the contrary contained in this Lease, in no event shall Tenant have any obligation or liability with respect to the Southern Bulkhead Repair Work except as expressly set forth in this Section 4.05. Tenant shall be responsible for performing the Southern Bulkhead Repair Work during each Structural Repair Funding Period, subject to the cost limitation of the Southern Bulkhead Repair Cost Cap; provided that the Southern Bulkhead Repair Cost Cap shall not apply to any Southern Bulkhead Repair Work to the extent necessitated by an act of negligence or willful misconduct by Tenant or any other Tenant Party. In addition, if Tenant receives Southern Bulkhead Grant Funds, then Tenant shall also be responsible for performing the Southern Bulkhead Repair Work attributable to the Southern Bulkhead Repair Cost Excess to the extent of such Southern Bulkhead Grant Funds. For the avoidance of doubt, Landlord shall have no obligation to undertake, perform, or fund the Southern Bulkhead Repair Cost Excess, or Southern Bulkhead Repair Work or any portion thereof.

(b) If the estimated cost of Southern Bulkhead Repair Work set forth in the Approved Structural Repair Plan for an applicable Structural Repair Funding Period exceeds the Southern Bulkhead Repair Cost Cap, then (A) the Approved Engineer shall be directed by Tenant, with notice to Landlord, to modify that portion of the Approved Structural Repair Plan associated with the Southern Bulkhead Repair Work by prioritizing action items (i.e., first most urgent Immediate Level Actions, followed in sequence by most urgent Priority Level Actions and Routine Level Actions), and (B) Tenant's obligation to undertake and complete the Southern Bulkhead Repair Work shall be limited to such priority Construction Work designated by the Approved Engineer as can be performed (inclusive of any required contingency, which shall not exceed ten percent (10%)) and completed with an amount equal to the applicable Southern Bulkhead Repair Cost Cap. At any time, Tenant may in its reasonable discretion, with notice to Landlord, direct the Approved Engineer to modify the contract repair scope associated with the Southern Bulkhead Repair Work, and thereby reduce its cost to the extent reasonably required to ensure that the costs of the applicable Southern Bulkhead Repair Work do not exceed the applicable Southern Bulkhead Repair Cost Cap, should either (i) bid prices exceed estimates provided by Approved Engineer, or (ii) actual or reasonably anticipated cost overruns in excess of actual or anticipated contingencies be revealed; provided that Tenant's obligation to spend up to the Southern Bulkhead Repair Cost Cap in such circumstances shall not be diminished by such modification to the contract repair scope. For the avoidance of doubt, in the event Tenant commences the Southern Bulkhead Repair Work and the Southern Bulkhead Repair Costs actually exceed, or are reasonably anticipated to exceed, the sum of the Southern Bulkhead Repair Cost Cap and Southern Bulkhead Grant Funds received by Tenant during any Structural Repair Funding Period, Tenant shall have the right to suspend such Southern Bulkhead Repair Work (provided that the area of work is first made, and thereafter continues to be, Safe) and Tenant shall have no obligation to recommence or complete such Southern Bulkhead Repair Work unless (and only to the extent) one of the following events occurs: (x) Tenant actually receives Southern Bulkhead Grant Funds in an amount necessary to complete the Southern Bulkhead Repair Work; or (y) the scope for such work is further modified by the Approved Engineer in a manner that reduces cost to an amount that does not exceed the sum of the Southern Bulkhead Repair Cost Cap and the Southern Bulkhead Grant Funds received by Tenant; or (z) the commencement of the next Structural Repair Funding Period occurs (subject to the Southern Bulkhead Repair Cost Cap for such Structural Repair Funding Period and the other provisions herein). Notwithstanding anything to the contrary set forth in this Section 4.05(b), provided Tenant has first expended funds up to the Southern Bulkhead Repair Cost Cap (as the expenditure up to such amount may be required under the applicable portion of the Approved Structural Repair Plan associated with the Southern Bulkhead Repair Work), Tenant shall not be in Default or in an Event of Default merely for failing to commence, undertake, substantially complete or complete the original or any subsequently modified scope of work for the Southern Bulkhead Repair Work should the applicable Southern Bulkhead Repair Costs actually or be reasonably anticipated to exceed the Southern Bulkhead Repair Cost Cap. As used herein, "Safe" shall mean that (1) Tenant shall have acted in accordance with good construction practices and in compliance with all applicable Requirements and sound safety standards, and (2) with respect to any Southern Bulkhead Repair Work that has been suspended or halted (as permitted pursuant to this Section 4.05(b)), Tenant shall have taken all necessary precautions or measures to prevent any and all accidents or injuries and maintain the general safety of all persons on and around the areas where the work was being performed, including taking protective measures to prevent any construction materials or debris



from falling into the water (such measures may include, but are not limited to, erecting a barricade, fence or netting, as may be applicable).

(c) In the event that there exists a Southern Bulkhead Repair Cost Excess for an applicable Structural Repair Funding Period, Tenant shall undertake good faith efforts during the Term to apply for and secure Southern Bulkhead Grant Funds to fund such Southern Bulkhead Repair Cost Excess. Tenant shall be deemed to have undertaken good faith efforts to apply and secure such Southern Bulkhead Grant Funds and thereby satisfy the requirement of this Section 4.05(c) upon a showing (following a request by Landlord, such request to be not more frequent than three times per year) that it had (1) made due inquiry from potential City, State or Federal funding sources known to Tenant or proposed by Landlord to Tenant, as applicable, and (2) submitted applications or similar requests to particular City, State or Federal sources for such Southern Bulkhead Grant Funds under programs for which the applicable Southern Bulkhead Repair Work was an eligible activity and for which Tenant enjoyed a reasonable prospect for success; provided, however, Tenant may defer such applications for such Southern Bulkhead Grant Funds to particular City, State or Federal sources should Tenant determine in its reasonable judgment that the use of or application for Southern Bulkhead Grant Funds are otherwise reasonably expected to interfere with or adversely affect one or more of Tenant's current funding applications (whether actual or anticipated within the current Structural Repair Funding Period) from City, State or Federal sources, or any Planned Funding Application. Subject to the proviso in the immediately prior sentence, Tenant and, at Tenant's request, Landlord shall reasonably cooperate in good faith to identify and secure such Southern Bulkhead Grant Funds, which reasonable cooperation shall include, but not be limited to, Landlord issuing letter(s) of support, co-signing application(s) and undertaking other actions in furtherance of Tenant securing such funds. In no event shall Landlord be required to incur any out-of-pocket cost or other liability in connection with this Section 4.05(c). Should Tenant elect to defer making an application for any Southern Bulkhead Grant Funds for reasons cited in this Section 4.05(c) (e.g., interference with or creating an adverse effect on Tenant's current applications to particular City, State or Federal sources or Planned Funding Applications), Tenant shall, within thirty (30) days after request thereof from Landlord, provide Landlord with a certificate or other reasonably substantiating documentation from an officer of Tenant setting forth the basis for Tenant's determination to so defer making such application. In no event shall Tenant be required to incur any out-of-pocket costs in applying and securing Southern Bulkhead Grant Funds under this Section 4.05(c) other than those costs that are ordinarily and customarily incurred by Tenant in its fundraising activities.

(d) Except as expressly set forth herein with respect to Southern Bulkhead Grant Funds, failure by Tenant to actually submit an application and/or receive any grant funds or to undertake and complete Southern Bulkhead Repair Work costing in excess of the applicable Southern Bulkhead Repair Cost Cap shall not, in and of itself, be a Default or give rise to an Event of Default under this Lease.

(e) Notwithstanding the limitation on Tenant's obligations with respect to the Southern Bulkhead Repair Work set forth in this Section 4.05, if Tenant actually becomes aware of any condition at the Southern Bulkhead, whether or not related to Southern Bulkhead Repair Work, that would impair public safety, or cause damage to the Southern Bulkhead, or would otherwise constitute a violation of any Requirements relating to the Southern Bulkhead, then Tenant shall promptly provide notice (which may be by email) of the same to Landlord.

## ARTICLE 5

### IMPOSITIONS

Section 5.01. Obligation to Pay Impositions. Tenant shall pay, in the manner provided in Section 5.03 hereof and as applicable, all Impositions that at any time thereafter during the Term are (or, if the Premises or any part thereof, or Landlord, were not exempt therefrom would be) assessed, levied, confirmed, imposed upon, or would become due and payable out of, or with respect to, or would be charged with respect to, the ownership, leasing, operation, use, occupancy or possession of: (a) the Premises or any part thereof; (b) the sidewalks or streets in front of or adjoining the Premises or any part thereof; (c) any passageway or space in, over or under such sidewalk or street; (d) easements, licenses or any other appurtenances of the Premises or any part thereof; (e) any personal property of Tenant or other facility used in the operation of the Premises (including, but not limited to Trade Fixtures); (f) the Rental (or any portion thereof) or any other amount payable by Tenant hereunder; (g) any documents to which Tenant is a party creating or transferring an interest or estate in the Premises, or any portion thereof; (h) the use and occupancy of the Premises; (i) the transaction contemplated by this Lease; and (j) the Vessels. Tenant shall have the right upon prior notice to Landlord, and at its sole cost and expense, to contest Impositions assessed against the Premises as provided in Section 5.08 hereof.

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

- (a) Taxes (if any);
- (b) personal property taxes, if any;
- (c) occupancy and rent taxes;
- (d) water, water meter and sewer rents, rates and charges;
- (e) excises;
- (f) levies,
- (g) license and permit fees,
- (h) service charges with respect to police and fire protection, street and highway construction, maintenance and lighting, sanitation and water supply;
- (i) any other governmental levies, fees, rents, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind whatsoever now or hereafter enacted, except for municipal, state or federal taxes on Landlord’s income, gross receipts, franchise taxes, excise taxes, corporate taxes, any transfer or gains tax or any similar taxes imposed on Landlord, unless such taxes are levied, imposed or assessed in lieu of or as a substitute for the whole or any taxes that now constitute Taxes; and

(j) any fines, penalties and other similar governmental charges applicable to the foregoing, together with any interest or costs with respect to the foregoing.

Section 5.03. Payments of Impositions.

(a) Subject to the provisions of Section 5.02 and 5.08 hereof, Tenant shall pay each Imposition or installment thereof not later than the last date the same may be paid pursuant to applicable Requirements without incurring any interest or penalty. However, if pursuant to applicable Requirements, at the taxpayer's option, any Imposition may be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay such Imposition in installments over the maximum period allowed pursuant to applicable Requirements and shall be responsible for the payment of such installments with interest, if any, as may be required pursuant to applicable Requirements.

(b) If Tenant fails to make any payment of an Imposition (or installment thereof) within the time required in Section 5.03(a), Tenant shall, at Landlord's request, and notwithstanding Section 5.03(a) above, pay all Impositions or installments thereof payable by Tenant during the next twelve (12) months not later than ten (10) Business Days before the due date thereof and simultaneously provide evidence thereof to Landlord. Nothing in this paragraph shall be construed to limit any remedies available to Landlord under this Lease or otherwise upon Tenant's failure to timely pay any Imposition.

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

Section 5.04. Evidence of Payment. Tenant shall, upon Landlord's request, furnish to Landlord, within thirty (30) days after the later of the date when an Imposition is due and payable and the date upon which such request is made, canceled checks or official receipts of the appropriate taxing authority or other proof reasonably satisfactory to Landlord, evidencing the payment thereof.

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

Section 5.06. Apportionment of Impositions. Any Imposition relating to a fiscal period of the taxing authority, a part of which is included within the Term and a part of which is included in a period of time after the Expiration Date shall be apportioned pro rata between Landlord and Tenant as the Expiration Date, so that Tenant shall pay only that portion of such Imposition that would have been payable on a per diem basis, based on the fiscal year of the Imposition occurring before the Expiration Date.

Section 5.07. Survival. The provisions of this Article 5 shall survive the expiration or earlier termination of this Lease, provided that Section 5.06 shall survive the expiration or earlier termination of this Lease for a period of three (3) years.

Section 5.08. Imposition Contests. Tenant or its designees shall have the right to contest and review all Impositions, in whole or in part, assessed against the Premises by appropriate legal proceedings, or in such other manner as it may deem suitable (which, if instituted, Tenant or its designees shall conduct promptly at its own cost and expense, and free of any expense to Landlord, and, if necessary, in the name of and with the cooperation of Landlord, and Landlord shall execute all documents necessary to accomplish the foregoing). Notwithstanding the foregoing, Tenant shall promptly pay all Impositions if at any time the Premises or any part thereof shall then be immediately subject to forfeiture, or if Landlord shall be subject to any criminal liability, arising out of the nonpayment thereof. The legal proceedings referred to in this Section 5.08 shall include appropriate proceedings and appeals from orders therein and appeals from any judgments, decrees or orders. In the event of any reduction, cancellation or discharge of any Impositions, Tenant shall pay the amount finally levied or assessed against the Premises or adjudicated to be due and payable on any such contested Impositions.

Section 5.09. Exemption From Taxes. Notwithstanding anything to the contrary contained in this Article or elsewhere in this Lease to the contrary, to the extent that the Premises, or any part thereof, or Landlord are exempt from the payment of any Taxes, Tenant shall be entitled to the benefit of such exemption. However, if at any time during the Term any Taxes that were previously exempt become assessed, levied, confirmed or imposed upon the Premises or Landlord, then Tenant, in addition to its other obligations hereunder, shall be required to pay such Taxes that were previously exempt unless such Taxes become assessed, levied, confirmed or imposed upon the Premises due to a voluntary assignment by Landlord of its interest in this Lease.

Section 5.10. Refunds. If there is any refund, rebate or credit on account of any Imposition paid by Tenant, such refunds, rebate or credit shall belong to Tenant and such refund, rebate or credit which is allocable to the Term received by Landlord shall be paid to Tenant within 60 days of Landlord's receipt of such refund, rebate or credit.

## **ARTICLE 6**

### **UTILITIES**

Section 6.01. Utility Service to Premises. Tenant must obtain and pay all costs of utilities (including, without limitation, installation thereof, if applicable), including all sewer charges and charges for all water, gas, heat and electricity, consumed and used in, or with respect to, the Premises, and Tenant, at its sole cost and expense, shall install, maintain and repair all meters and procure all permits, approvals and licenses necessary to secure delivery and installation of such utility services and shall be responsible for the maintenance of such utility services to the point of connection to the utility provider. At the reasonable request of Tenant, Landlord shall cooperate with Tenant to the extent reasonably necessary or desirable, to enable Tenant to procure the foregoing (at Tenant's sole cost and expense). Tenant shall pay any utility charges directly to the companies supplying such utility services all charges therefor, as the same shall become due.

Section 6.02. No Obligation on the Part of Landlord. Landlord, in its proprietary capacity, shall have no obligation to provide any utility services to the Premises, or any part thereof, and Landlord shall not have any responsibility or liability to Tenant or any third party in the event any such utility services are not provided to the Premises, or any part thereof.

## ARTICLE 7

### COMMUNITY BENEFIT REPORT

Section 7.01.Submission of Report. Tenant shall by not later than March 31 of each calendar year during the Term, submit a current Community Benefit Report to the offices of CB4. A copy of each such Community Benefit Report shall be simultaneously provided to Landlord.

## ARTICLE 8

### USE OF PREMISES & CERTAIN OTHER AREAS

Section 8.01. Permitted Use of the Premises.

(a) The Premises shall be used and occupied by Tenant exclusively as, and for the operation of, the Museum including the exhibition of the Vessels, and for uses incidental thereto and in support thereof, including management and administration, maintenance, provision of information to the general public, sale of tickets, fundraising, and security (the “**Primary Uses**”) and for no other purpose other than the Ancillary Uses as set forth herein. Ancillary Uses shall include and be limited to the following: (i) access to and from the Intrepid and other incidental use, in either case, in connection with Functions on the Intrepid or other Vessel (but only to the extent that such use does not derogate from, or materially interfere, with the Primary Uses, including the times of required operation thereof as prescribed in subsection 8.01(b) below), (ii) retail and vending machine sales of food, alcoholic and non-alcoholic drinks (provided that Tenant shall not sell alcoholic drinks on the Pier unless Tenant first secures Landlord’s approval for and signature as owner/authorizing entity on any application to the New York State Liquor Authority (it being acknowledged that Landlord hereby consents to such existing sales of alcohol as of the Commencement Date and agrees to reasonably cooperate with Tenant, at Tenant’s sole cost and expense, in connection with the administrative processing of new applications for the sale of alcohol that have been previously reviewed and approved by Landlord, including but not limited to signing such applications in its capacity as the owner/authorizing entity, and Tenant shall, on demand, reimburse Landlord for any out-of-pocket costs and expenses actually incurred by Landlord in connection with the foregoing), delivers to Landlord evidence that Tenant has all requisite permits for the sale thereof and subsequently, from time-to-time, at Landlord’s request delivers evidence that Tenant continues to have such licenses and permits), and the sale of gifts, films, photographs and souvenirs to any patrons and invitees of the Museum as is customary for museums in the City of New York, (iii) commercial filming and photography (but only to the extent that such use does not derogate from, or materially interfere with, the Primary Uses and the required times of operation prescribed in Section 8.01(b)), and (iv) the operation of simulators and rides, the nature of which are substantially related to subject matter(s) of the Museum, rather than for general amusement (and specifically excluding the operation of unrelated amusement park rides), and so long as such operation is substantially related to and does not derogate from the Primary Use (collectively, the “**Ancillary Uses**” and together with the Primary Uses, the “**Permitted Uses**”). Permitted Uses shall be subject to all applicable Requirements (including, without limitation, the City Zoning Resolution). Notwithstanding the foregoing, Ancillary Uses comprised of retail sales of food,

alcoholic and non-alcoholic drinks, gifts, films, photographs and souvenirs shall not, except as provided in Section 8.01(d), occupy more than fifty percent (50%) of the zoning floor area (as such term is defined in the City Zoning Resolution) of the Welcome Center. Notwithstanding the foregoing, subject to the Permitted Closures and the provisions of Sections 8.01(e) and 8.01(f) below, no Permitted Use (including, but not limited to, Functions) shall result in any closure, whether temporary or permanent or whether required by Tenant or any third party (including a Governmental Authority to the extent in connection with a visitation, at Tenant's invitation or request, by a person of significance or otherwise), of any portion of the Park (including without limitation the Esplanade and Bikeway), without the prior written consent of Landlord in Landlord's reasonable discretion; provided, however, in the event such closure is required pursuant to a Government Authority for visitation by a person of significance or otherwise without such advance notice as would normally be required, Landlord shall be notified within a reasonable time thereof, but in no event less than twenty-four (24) hours prior to such closure (unless shorter notice is required pursuant to a Government Authority).

(b) Continuous Operation. Tenant shall cause the Museum to be operated and open to the general public continuously throughout the Term on a regular full-time basis during such hours and to the extent that is customary for museums in the City of New York, except that Tenant may close portions or the entirety of the Museum: (i) in connection with an Ancillary Use, provided, however, that closures of the entire Museum in connection an Ancillary Use shall not exceed three (3) full days per year or three (3) consecutive partial days; and (ii) in connection with a Permitted Closure.

(c) Pier Open Space. In addition to the Permitted Uses, Tenant shall permit and facilitate general public access to and use of the Pier, without any charge, and subject only to the limitations expressly set forth in this Lease; it being the intention of the parties hereto that the general public shall have access to and may use the Pier (other than those areas occupied by the Welcome Center, the Equipment, directional signage, gangways and stair towers to the Intrepid, exhibition of the Vessels (including the Concorde (for so long as the Concorde is included among the Vessels) and gangways and access to the Growler (for so long as the Growler is included among the Vessels)), security screening to the extent not provided in the Welcome Center, the Chiller Plant Platform and such surrounding areas that are required for the performance of the Chiller Plant Platform Work (while such Chiller Plant Platform Work is ongoing) and maintenance facilities (collectively, the "**Excluded Pier Areas**") (such portion of the Pier, the "**Pier Open Space**"), subject in all events to the Permitted Closures and the provisions of Sections 8.01(e) and 8.01(f) below. As of the Commencement Date, the Pier Open Space and the Excluded Pier Areas are as depicted on Exhibit A. Upon completion of the Chiller Plant Platform Work, the surface area of the Pier so reconstructed shall be deemed incorporated within the Pier Open Space and accordingly subject to the provisions of this Lease affecting the Pier Open Space, including, without limitation, the Permitted Closures and the provisions of Sections 8.01(e) and 8.01(f). Except for the Permitted Closures and as provided in Sections 8.01(e) and 8.01(f), Tenant shall not materially reduce or reconfigure Pier Open Space without the express written approval of Landlord, such approval to be in Landlord's sole but reasonable judgment. Without limiting the generality of the foregoing, Tenant shall provide, or cause to be provided, in the Pier Open Space walkways with unobstructed views of the water (consistent with Tenant's reasonable placement of the Vessels and Trade Fixtures), adequate public seating areas, shade structures, water fountains, exterior lighting, and other amenities (together, the "**Pier Open Space Amenities**"). As of the Commencement Date, the Pier Open Space Amenities

are as depicted on Exhibit A. Except as provided in Sections 8.01(e) and 8.01(f), Tenant shall not materially reduce or reconfigure Pier Open Space Amenities without the express written approval of Landlord, such approval to be in Landlord's sole but reasonable judgment. Subject to the further requirements of Article 41, Landlord shall provide and Tenant shall install and maintain, the Pier Open Space Signage at the entrance of the Premises.

(d) Modification to Limitation on Retail Square Footage in Welcome Center.

(i) Under the terms of the approval by the City of New York for construction of the Welcome Center, (A) the portion of the Welcome Center to be occupied for Ancillary Uses comprised of retail sales of food, alcoholic and non-alcoholic drinks, gifts, films, photographs and souvenirs was limited to not more than fifty percent (50%) of the zoning floor area, (B) the primary purposes for construction of the Welcome Center are (x) centralizing and accommodating in an efficient manner the entry, processing, security screening, ticketing of, and payment by, patrons and invitees of the Museum for admission, both individually and in groups, to the Museum, and as a portal by the general public to the Pier Open Space following security screening, (y) providing certain important and desirable services to patrons and invitees of the Museum such as food, bathroom facilities and the opportunity to purchase Museum related gifts, and that such important and desirable services are ancillary and not intended to substitute, for or be destinations independent of, patron and invitee visits to the Museum, and (C) the Welcome Center advances Landlord's public mission of enhancing public access to open space proximate to the Hudson River by centralizing and accommodating Tenant's uses set forth above in clauses (x) and (y) within a single structure and in a manner that does not impede, restrict or otherwise derogate from the public use and enjoyment of the Pier Open Space.

(ii) Notwithstanding any provision hereof to the contrary, Tenant may submit to Landlord a request that the percentage of zoning floor area dedicated to Ancillary Uses in the Welcome Center be increased to be greater than fifty percent (50%) of the zoning floor area for reasons to be set forth in such Tenant request, and Landlord, in its sole but reasonable determination, shall approve, deny or approve with modifications such Tenant request within a reasonable period of time. Landlord shall not be deemed to be acting unreasonably in denying or modifying such Tenant request if it determines that, should such Tenant request be granted, or granted without modification, (x) such request shall adversely affect achievement of the designated purposes of the Welcome Center or Landlord's mission set forth above in Section 8.01(d)(i) clauses (B) and (C), (y) implementation of Tenant's request will be inconsistent with or violate the terms of this Lease, or (z) implementation of Tenant's request may adversely affect Landlord's development, operation and maintenance of the Park and the improvements therein as set forth in the Act.

(iii) Any Tenant request that the percentage of zoning floor area dedicated to Ancillary Uses in the Welcome Center be increased to be greater than fifty percent (50%) of the zoning floor area (notwithstanding the nature of the Construction Work, if any, performed in connection with such expansion, or whether such Construction Work, if any, impacts the façade of the Welcome Center facing 12<sup>th</sup> Avenue or the Pier Open Space) shall be deemed a request for a Structural Alteration and Tenant shall comply

with the conditions applicable to Structural Alternations as set forth in Article 15 and Article 16.

(e) Modifications to Pier Open Space and Pier Open Space Amenities.

Notwithstanding any provision hereof to the contrary, Tenant may, without Landlord's consent (except as expressly set forth herein):

(i) Intentionally Omitted.

(ii) Reduce or reconfigure the Pier Open Space and Pier Open Space Amenities on a short-term temporary basis not to exceed seven (7) consecutive days (including setup and breakdown time) in order to conduct public events directly related to Tenant's Mission that are free (without charge for such admission) and open (but for security screening in the Welcome Center) to the general public, provided that the foregoing requirements shall only apply to the portion of such events conducted on the Pier Open Space. Tenant shall provide Landlord with not less than seven (7) days' advance written notice (which notice may be by email) of any such public event directly related to Tenant's Mission that will cause a short-term temporary reduction or reconfiguration of the Pier Open Space and Pier Open Space Amenities pursuant to this Section 8.01(e)(ii);

(iii) Reduce or reconfigure the Pier Open Space and Pier Open Space Amenities on a short-term temporary basis not to exceed ten (10) consecutive days (including setup and breakdown time) in order to participate in the annual New York City celebration of Fleet Week (a celebration to honor the United States Navy, Marine and Coast Guard) by conducting public events free (without charge for such admission) and open (but for security screening in the Welcome Center) to the general public, provided that the foregoing requirements shall only apply to the portion of such celebration conducted on the Pier Open Space. Tenant shall provide Landlord with not less than thirty (30) days' advance written notice (which notice may be by email) informing Landlord of the date of Fleet Week for the respective Lease Year and briefly describing Tenant's plans related thereto; and

(iv) Reduce or reconfigure the Pier Open Space and Pier Open Space Amenities on a short-term temporary basis not to exceed six (6) consecutive months (including setup and breakdown time) in order to install and operate temporary Museum exhibitions, admission to which shall be available, with or without an additional charge, to patrons and invitees of the Museum provided that: (x) ticketing and security screening for patrons and invitees of the Museum admitted to such temporary Museum exhibition is conducted in the Welcome Center and not on the Pier Open Space, (y) entry is timed or otherwise controlled such that there is no queuing on the Pier Open Space for patrons and invitees of the Museum admitted to such temporary Museum exhibition, and (z) the temporary Museum exhibition is conducted in such a manner, and with such supervision by Tenant as is necessary, that the general public is not, in the sole but reasonable judgment of Landlord, inconvenienced, disturbed, or impeded in its use and enjoyment of the remaining portion of the Pier Open Space. Such temporary Museum exhibitions may, subject to the Requirements, be contained within a temporary tent structure. The location of the temporary Museum exhibition upon the Pier Open Space, whether contained within



a temporary tent structure or otherwise, shall be subject to the prior written approval of Landlord except that Tenant may place such temporary Museum exhibition at the location designated on **Exhibit F** as “**Temporary Exhibition Area**” without such prior written Landlord approval. Tenant shall provide Landlord with not less than sixty (60) days’ advance written notice (which notice may be by email) of any such temporary Museum exhibition that will cause such a short term temporary reduction or reconfiguration of Pier Open Space and Pier Open Space Amenities together with a written description of such temporary Museum exhibition setting forth in reasonable detail Tenant’s conformity to the terms and conditions of this Section 8.01(e).

(f) The parties acknowledge and agree that Tenant may reduce or reconfigure a portion of the Pier Open Space and/or Pier Open Space Amenities on a permanent basis (*i.e.*, a reduction or reconfiguration that exceeds six (6) consecutive months in length, including setup and breakdown time as more particularly set forth in Section 8.01(e)) in order to accommodate a Museum exhibition provided it first submits to Landlord a detailed request for such Museum exhibition and secures Landlord’s prior express written approval thereof, which approval may be denied, granted, or granted with modification(s) or conditions in Landlord’s sole but reasonable judgment. Landlord shall not be deemed to be acting unreasonably in denying or modifying, or imposing conditions upon, such Tenant request if Landlord determines that, should such Tenant request be granted, or granted without modification or the imposition of conditions, that (x) the general public’s use and enjoyment of the Pier Open Space is adversely affected, (y) implementation of Tenant’s request will be inconsistent with or violates any provision of this Lease, or (z) implementation of Tenant’s request may adversely affect Landlord’s development, operation and maintenance of the Park and the improvements therein as set forth in the Act.

(g) Security Screening and Standards for Pier Open Space. Notwithstanding Tenant’s obligation to permit and facilitate the general public access to the Pier Open Space in accordance with the provisions of this Lease, Tenant may subject the general public to the same security screening procedure and security standard as that imposed on patrons and invitees of the Museum, and may deny entry to members of the general public who refuse to undergo such screening or fail to satisfy such security standard.

(i) Following the completion of security screening, Tenant shall afford the general public access to the Pier Open Space through Tenant’s most expeditious line, which line may from time to time be shared with Museum patrons or invitees, provided that (x) such line is clearly labeled with prominent signage as being primarily for free public access to the Pier Open Space, and (y) the entrance area adequately staffed and managed by Tenant in such a manner as to avoid delay and prioritize access by non-paying members of the general public to the Pier Open Space who are not patrons or other visitors of the Museum.

(ii) Tenant shall establish and implement a procedure whereby members of the general public using Pier Open Space only (and who are not ticketed for Museum admission) are afforded the opportunity to exit the Premises without passing through Tenant’s gift shop or any other space in the Premises used for the sale or promotion of merchandise or services. Such procedure may include allowing members of the general

public using Pier Open Space to exit the Premises via a designated outdoor corridor located to the north of the Welcome Center building.

(iii) Should Landlord notify Tenant (which notice shall include a copy of the CB4 Communication) that it has received a written communication from CB4 (the “**CB4 Communication**”) that the measures undertaken by Tenant to afford the general public access to the Pier Open Space are unsatisfactory or require particular improvement (the “**Unsatisfactory Condition**”), then Tenant shall, within thirty (30) days after receipt of such notice, meet with Landlord and designated representatives of CB4 at a date and time that is mutually convenient to discuss (x) the reasons for and causes of the Unsatisfactory Condition, and (y) potential modifications by Tenant to the procedures noted in Sections 8.01(a)(i) and (a)(ii) above, and/or potential supplemental measures or substitute procedures by Tenant, that may, either individually or in combination, adequately remedy the Unsatisfactory Condition (the “**Tenant Remedies**”). Upon the conclusion of such discussions (the time for which may extend beyond such initial thirty (30) day period), Tenant shall propose to Landlord in reasonable detail from among the Tenant Remedies one or more commercially reasonable action to address the Unsatisfactory Condition (the “**Tenant Proposal**”). Landlord shall, with reasonable promptness following receipt of the Tenant Proposal, schedule a meeting with designated representatives of CB4 (at which meeting Tenant shall be afforded advance written notice and the opportunity to participate) and thereafter advise Tenant in writing as to whether the Tenant Proposal is approved by Landlord and CB4. Should the Tenant Proposal not be approved by Landlord and CB4, Tenant shall be so notified in writing by Landlord (which notice shall include the reason(s) for non-approval) and shall within thirty (30) days thereafter provide an alternative Tenant Proposal to Landlord, and the procedure described in this and the immediately preceding sentence shall be repeated a number of times so long as Landlord shall continue to act in good faith with respect to the approval of any Tenant Proposal, and until a final Tenant Proposal is approved by Landlord and CB4. Tenant shall thereafter and with reasonable promptness implement the approved Tenant Proposal.

(h) Hours of the Pier Open Space. Tenant shall, at a minimum, provide public access to the Pier Open Space upon the terms and conditions set forth herein during those days and hours that the Museum is open to the general public. The Pier Open Space shall not be closed to the general public, except (i) to the extent required due to Permitted Closures, (ii) for Ancillary Uses at such times that the entire Museum is closed pursuant to Section 8.01(b), and/or (iii) as and to the extent set forth in Section 8.01(e) or 8.01(f) or as otherwise provided in this Lease. Should the Museum be closed for a period of more than thirty (30) days for any reason whatsoever other than as set forth in the immediately preceding sentence, but the Pier is not then subject to repair and the Pier Open Space is otherwise suitable for use, Tenant shall ensure the general public access to, and use of, the Pier Open Space on the same basis as if the Museum were then open; provided, however, Tenant may, at its option, choose to forgo security screening.

(i) Application of Revenues. Notwithstanding any provision hereof to the contrary but subject to the provisions of this Section 8.01(i), any and all revenues derived by Tenant at or from or relating to the Premises through ticket sales, royalties, rentals, concessions, fees, charges, fundraising or through any other means (collectively, “**Revenues**”) shall, except as expressly provided herein, be used solely to pay or offset the costs of (x) operating the Museum at

the Premises during the Term as a not-for-profit corporation, (y) performing Tenant's obligations under this Lease, or (z) supporting the on-Premises operations of the Museum, including, but not limited to, promoting or advertising Museum content, exhibits, events and/or programming (so long as such promotion or advertising for Museum operations under this clause (z) is not in derogation of, and does not materially interfere with, the ongoing operation of the Museum on the Premises and Tenant's ability to comply in all material respects with its obligations under this Lease). In no event shall any Revenues be used for any other purposes whatsoever without Landlord's consent. Notwithstanding any provision of this Lease to the contrary, Tenant may, without prior notice to or the consent of Landlord, apply Revenues to: (i) short- or long-term rental and operation of facilities located off-Premises for the sole and exclusive purpose of supporting office use or other executive, administrative and managerial functions of Tenant, storage of Museum artifacts or other property and/or such other off-site facilities as are necessary or advisable to allow the Museum to maintain or expand its offerings at the Premises; (ii) the rental, licensing and/or operation of facilities located off-Premises for the sole and exclusive purpose(s) of promoting the Museum and/or for community educational and/or outreach purposes, provided that such rental, licensing or outreach (A) is on a short-term basis (one (1) year or less) or (B) causes Tenant to incur no more than de minimis costs; (iii) activities directly related to Tenant's Mission in connection with the creation, production, sale and/or licensing of media-based content; (iv) the conduct of digital and/or internet-based activities directly related to Tenant's Mission; (v) licensing of Tenant's intellectual property or brand and/or sale of branded products at independently operated off-Premises facilities (so long as Tenant incurs no more than de minimis costs or costs that are paid exclusively through licensing fees and/or sales proceeds collected by Tenant from the activities at such off-Premises facilities); (vi) the operation, maintenance, security and repair, as applicable, of the Frontage, the Licensed Esplanade Area, the Licensed Water Area, the Pedestrian Bridge, the east side facilities (as such term is defined in the Pedestrian Bridge Agreement) and certain other off-Premises areas as set forth in Article 14 or as otherwise required by this Lease; (vii) provided Tenant has secured all approvals from the State of New York, as owner, and satisfied all of the Requirements, as applicable, for the construction and/or operation of expanded Museum facilities for the purpose of placing Museum exhibitions or other Museum operations approximately on the east side facilities (as such term is defined in the Pedestrian Bridge Agreement) or in any building(s) that occupy all or a portion of same; (viii) the payment of debt service on any loans Tenant may obtain from time to time so in furtherance of Tenant's Mission; and (ix) rent payable towards any temporary premises occupied by Tenant as a result of a Casualty at the Premises. Tenant shall maintain separate records of off-Premises uses and associated expenditure of Revenues with respect to clauses (i), (ii) and (iii) in the immediately preceding sentence and shall make such records available to Landlord promptly following receipt of request from Landlord.

#### Section 8.02. Use of the Licensed Water Area.

(a) Tenant and Landlord each acknowledges and agrees that the Licensed Water Area is not within the Premises, but Landlord hereby grants Tenant an exclusive license to dock the Growler (or a similar historic naval replacement vessel) on the north side of the Pier and to use such Licensed Water Area for such other purposes as set forth in this Section 8.02, which license shall be deemed to be subject to all the provisions of this Lease, including the Term. In addition to the dockage of the Growler, Tenant may permit, subject to the same license hereby granted to Tenant, periodic, short-term dockage on the both north and west side of the Pier by visiting historic, military or other non-commercial vessels (including, without limitation, police, fire, military and emergency

or other governmental vessels but excluding dockage of private pleasure vessels) and any vessel utilized solely for the repair and maintenance of the Premises, provided that: (i) the dockage of such vessels shall be in furtherance of the Primary Uses (excluding police, fire, military and or other governmental or emergency vessels engaged for emergency or governmental purposes (“**Government/Emergency Docking**”), and Tenant may only charge the owners of such vessels Tenant’s reasonable cost related to such owners’ dockage; (ii) such dockage (excluding Government/Emergency Docking) does not materially interfere with public access to and use of the Pier Open Space; (iii) no such dockage shall be for any ferry or similar marine transportation service without the prior written approval of Landlord, which approval shall be in the sole discretion of Landlord and may be denied, delayed, or conditioned for any reason or no reason; (iv) such dockage is not for any vessel providing excursion or sightseeing services (provided, however, Tenant may host excursion/sightseeing events for its volunteers and donors not more frequently than three (3) times in any year provided that there is no fee charged to the participants for participating in such events); (v) such dockage (excluding Government/Emergency Docking) does not adversely affect the navigation of other vessels to or from Piers 84 or 88 or elsewhere in the navigable waterway; and (vi) Tenant shall have notified Landlord in writing not less than twenty (20) days in advance of each such dockage in the Licensed Water Area, except that in the case of Government/Emergency Docking, Tenant shall notify Landlord as soon as reasonably practicable. Tenant acknowledges that (1) Landlord has made no representations as to the adequacy of the north or west side of the Pier for dockage, or the fendering system attached thereto, (2) Tenant assumes all liability and responsibility for damage caused by such dockage (excluding dockage by Landlord and its agents and vessels), and (3) such dockage is subject to Tenant’s indemnification obligations set forth in Article 21.

(b) Landlord reserves for itself a dockage right at such location(s) in the Licensed Water Area not in use by Tenant for the temporary dockage of (i) public safety or security vessels operated by or on behalf of Landlord, (ii) vessels operated by or on behalf of Landlord used in connection with Landlord access pursuant to Section 9.01, (iii) vessels operated by or on behalf of Landlord for the purpose of Landlord undertaking inspection of the Premises pursuant to Section 14.01(d), and upon not less than twenty (20) days’ prior written notice to Tenant (except in the case of an emergency, in which case Landlord shall notify Tenant as soon as reasonably practicable), and (iv) vessels operated by or on behalf of Landlord used to perform Construction Work or otherwise perform Tenant’s obligations hereunder pursuant to Article 22. In the event Landlord exercises such reserved dockage right, each party shall provide reasonable cooperation to the other party so as to enable Landlord to undertake and complete such usage with minimal interference to Tenant as may be practicable under the circumstances. Landlord assumes all liability and responsibility for damage caused by Landlord’s exercise of its dockage rights pursuant to this Section 8.02(b).

Section 8.03. Use of the Licensed Esplanade Area. Tenant and Landlord each acknowledges and agrees that the Licensed Esplanade Area is not within the Premises, but Landlord hereby grants Tenant the non-exclusive right to use such area for the queuing of Tenant’s patrons and invitees subject to the maintenance and security provisions of Section 14.02 and Section 41.01 hereof.

Section 8.04. Prohibited Uses.

(a) Generally Prohibited Uses. Any use which is not expressly permitted or provided for under this Lease, or for which Landlord has not granted its written approval, such

approval to be in Landlord's sole and reasonable discretion except as may otherwise be set forth herein, shall be prohibited.

(b) Dockage and Mooring. Except in connection with the performance of Tenant's obligations under Section 4.05 above, mooring or docking of vessels along the Southern Bulkhead at any location, or in the water area south of the Intrepid, is prohibited.

(c) Parking. Other than short-term parking for service, delivery and security vehicles, Tenant shall establish and enforce rules such that vehicular parking on the Pier is prohibited.

Section 8.05. Requirements for Conduct of Business. This Lease does not grant any permit, license or authority for the performance or conduct of any business, operation or use which may require any permit or approval from any public or private party. Tenant shall obtain and maintain in full force and effect during the Term at its sole cost and expense any governmental license or permit imposed or mandated by any Governmental Authority in connection with Tenant's trade or business and the use of the Premises (for the avoidance of doubt, excluding the use of the Southern Bulkhead by any Person other than Tenant or any other Tenant Party), and shall comply with any other Requirement for the proper and lawful operation of the Premises by Tenant for the purposes authorized by this Lease. Upon reasonable request by Tenant, Landlord agrees to reasonably cooperate with Tenant in connection with the foregoing and to execute, as owner of the Premises, any required applications for permits and authorizations for Improvements or in connection with Tenant's operation of the Premises in accordance with the provisions of this Lease.

Section 8.06. Unlawful Use. Tenant shall not use or occupy the Premises, or permit or suffer the Premises (for the avoidance of doubt, excluding the use of the Southern Bulkhead by any Person other than Tenant or any other Tenant Party) or any part thereof to be used or occupied, for any unlawful, illegal, or hazardous use or purpose or in any way in violation of the provisions of Section 8.01 or Article 18 hereof, or in such manner as may make void or voidable any insurance then in force with respect to the Premises. Immediately, upon the discovery of any such unlawful, illegal business, use or purpose, or use or occupation in violation of Section 8.01 or Article 18, Tenant shall take all reasonably necessary steps, legal and equitable, to compel the discontinuance thereof, including if necessary, the commencement and continuance of eviction proceedings against any subtenant or licensee using any portion of the Premises for any such business, use or purpose.

Section 8.07. No Representations or Warranty by Landlord.

(a) Landlord has not made and does not make any representation or warranty as to the condition of the Premises or its suitability for any particular use or as to any other matter affecting this Lease or the Premises except as specifically set forth in this Lease.

(b) Landlord has not made and does not make any representation as to the legality of the use of the Premises for Tenant's intended purposes. If any use or proposed use is determined to be illegal by a court of competent jurisdiction, Tenant agrees that (i) neither Landlord, nor any of Landlord's directors, officers, employees or agents shall be liable for any damages incurred by

Tenant or any third party as a result of, or in connection with such determination, or illegal use or proposed use, and (ii) Tenant shall defend, indemnify and hold harmless Landlord and Landlord's directors, officers, employees and agents against any cost, liability or expense incurred in connection with such determination, or illegal use or proposed use in accordance with Article 21 hereof.

Section 8.08. Emergencies. Landlord reserves the right to close areas of the Park for emergencies and/or ensure public safety at any time. Notwithstanding anything to the contrary contained herein, employees of Tenant shall be allowed limited access to the Premises during such periods of closure to protect the Premises and/or allow emergency use provided that Tenant shall in each instance identify such employees to Landlord in advance of their entry onto the Premises.

## **ARTICLE 9**

### **RIGHT OF ENTRY**

Section 9.01. Landlord's Entry. Landlord and its respective designees shall have the right during regular business hours upon reasonable prior written notice but in no case less than one (1) Business Day's advance notice (which notice may be given by email), except in case of an emergency (in which case entry may be made at any time and no advance notice shall be required but such notice as reasonably practical under the exigent circumstances then existing shall be given), to enter upon the Premises with workers, materials and equipment to (a) construct, reconstruct, lay, relay, maintain, operate and inspect Landlord's facilities in or adjacent to the Premises, or (b) to access other facilities adjacent to the Premises. Except in the case of an emergency, Tenant shall have the right to accompany Landlord during such access.

Section 9.02. Non-Interference. Landlord and its designees shall use reasonable efforts to minimize interference with Tenant's (and any subtenant's or licensee's) business operations when entering upon or using the Premises as contemplated by this Article and shall promptly repair or cause to be repaired any damage to the Premises caused by Landlord, its officers, employees, agents, servants, representatives and invitees while on the Premises for the purposes contemplated by this Article 9.

## **ARTICLE 10**

### **INSURANCE**

Section 10.01. Insurance Requirements.

(a) At all times during the Term, or as otherwise required by this Lease, Tenant, at its sole cost and expense, shall obtain and maintain in full force and effect insurance coverage of the following types or insuring the described risks with limits not less than those described below and as required by terms of this Lease, or as required by applicable Requirements, whichever are greater (limits may be provided through a combination of primary and umbrella/excess policies) for all areas of the Premises as well as Tenant's Trade Fixtures and the Vessels:

(i) Marine General Liability insurance, including coverage for both premises operations and products / completed operations and for bodily injury and property

damage resulting from Tenant's hosting of transient vessels, with no modification to the contractual liability coverage provided therein, protecting against all liability with respect to the Premises and the operations related thereto, whether conducted on or off the Premises, for bodily injury, death, personal injury and property damage, in an amount not less than Thirty Million Dollars (\$30,000,000) per occurrence, and designating Tenant as the named insured thereunder and Landlord, the People of the State of New York, the New York State Executive Department, the New York State Office of Parks, Recreation and Historic Preservation, the New York City Region of State Parks, Recreation and Historic Preservation Commission, the Department of Environmental Conservation, the City of New York, New York City Department of Parks and Recreation, and each of their commissioners, officers, agents, employees, successors and assigns, and as additional insureds on a primary and non-contributory basis (any party required to be named as an additional insured hereunder, an "**Additional Insured**"). Each Additional Insured endorsement shall be on ISO form CG 20 10 11 85 or its equivalent, or may be obtained through a combination GC 20 10 07 04 and GC 20 37 07 01 04 or their equivalent. Additional Insured coverage (x) must apply to direct and vicarious liability to both on-going and completed operations and (y) shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal and advertising injury, cross liability coverage, blanket contractual liability (including tort liability of another assumed in a contract), extended bodily injury coverage, and fire legal liability coverage.

(ii) Tenant shall further require that any subtenants, concessionaires, licensees, contractors and subcontractors doing work on the Premises provide Commercial General Liability insurance, written on ISO Form GC 00 01 12 07 or its equivalent, including coverage for both premises operations and products / completed operations, with no modification to the contractual liability coverage provided therein, protecting against all liability with respect to the Premises and the operations related thereto, whether conducted on or off the Premises, for bodily injury, death, personal injury and property damage, in an amount not less than Five Million Dollars (\$5,000,000) per occurrence, and designating the applicable subtenants, concessionaires, licensees, contractors and subcontractors as the named insured thereunder and each Landlord, the People of the State of New York, the New York State Executive Department, the New York State Office of Parks, Recreation and Historic Preservation, the New York City Region of State Parks, Recreation and Historic Preservation Commission, the Department of Environmental Conservation, the City of New York, New York City Department of Parks and Recreation, and each of their commissioners, officers, agents, employees, successors and assigns as additional insureds on a primary and non-contributory basis. Each Additional Insured endorsement shall be on ISO form CG 20 10 11 85 or its equivalent, or may be obtained through a combination of GC 20 10 07 04 and GC 20 37 07 01 04. Additional Insured coverage (x) must apply to direct and vicarious liability to both on-going and completed operations and (y) shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal and advertising injury, cross liability coverage, blanket contractual liability (including tort liability of another assumed in a contract), extended bodily injury coverage, and fire legal liability coverage.

(iii) Should any subtenants, concessionaires, licensees sell or distribute alcoholic beverages then said subtenants, concessionaires, licensees must maintain Liquor Legal Liability coverage at a limit of not less than Three Million Dollars (\$3,000,000) each common cause. Such coverage must name Landlord, the People of the State of New York, the New York State Executive Department, the New York State Office of Parks, Recreation and Historic Preservation, the New York City Region of State Parks, Recreation and Historic Preservation Commission, the Department of Environmental Conservation, the City of New York, New York City Department of Parks and Recreation, and each of their commissioners, officers, agents, employees, successors and assigns as additional insureds on a primary and non-contributory basis;

(iv) Comprehensive Business Automobile Liability Insurance with a limit of not less than Three Million Dollars (\$3,000,000) per each accident. Such insurance shall cover liability arising out of any Automobile, Specialty Use vehicle or Mobile Equipment; including owned, leased, hired and non-owned automobiles; shall cover bodily injury, property damage, medical payments and uninsured motorists or operators;

(v) Commercial Property Insurance, including Equipment Breakdown protecting Tenant and Landlord, as their interests shall appear, against loss of or damage to the Premises and Improvements by fire and all other risks of physical loss or damage now or hereafter embraced by ISO Special Form or its equivalent in the broadest form available on commercially reasonable terms, in the amount of the full Replacement Value of the Premises and Improvements (without depreciation or obsolescence clause). Coverage shall apply to the Premises including the Pier, the Welcome Center, the Pedestrian Bridge and the Equipment. Such insurance shall designate Landlord as Loss Payee and Tenant as named insured, and shall include the following coverages and clauses:

(A) if not otherwise included within the coverage specified above, coverage against damage by earthquake at a limit not less than Fifteen Million Dollars (\$15,000,000);

(B) contingent liability from operation of building Requirements;

(C) demolition and removal costs for undamaged portion coverage;

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

(E) increased cost of construction coverage at a limit of not less than \$2,000,000;

(F) an agreed or stipulated amount endorsement negating any co-insurance requirements;



(G) Terrorism coverage applicable to both certified and non-certified acts of terrorism; and

(H) Business Interruption coverage on an Actual Loss Sustained Basis.

(vi) Flood coverage of not less than Two Million Five Hundred Thousand Dollars (\$2,500,000).

(vii) During the performance of any repair, restoration or renovation, Builder's Risk completed value insurance covering the perils insured under the ISO special causes of loss form, including collapse, building materials, water damage, and transit and theft, with a deductible reasonably approved by the Landlord, in non-reporting form, covering the total value of work performed and supplies and materials located at the job site as well as at any off-site storage location used with respect to the Premises, such policy coverage to include the cost of debris removal including demolition as may be legally necessary by the operation of any law, ordinance or regulation. Such coverage may be carried on a Commercial Property policy form if endorsed with builders risk coverage or property in the course of construction;

(viii) Statutory Workers' Compensation, Employer's Liability, U.S. Harbor Worker's Insurance and Long Shoremen's Compensation Insurance and New York Disability Benefits Insurance, in statutory amounts, as required by applicable Requirements, and any other insurance, in each case, only if and to the extent required by applicable Requirements covering all persons employed by Tenant, contractors, subcontractors, or any entity performing work on or for the Premises, proof of compliance by Tenant with New York State Workers Compensation Law section 57 and Disability Benefits requirements under New York State Workers Compensation Law section 220(8) to be provided as well, with coverage to be presented on the New York State Workers Compensation Board issued and approved forms, or equivalent forms as amended; and

(ix) Contractor's Pollution Liability insurance with limits of not less than Five Million Dollars (\$5,000,000) per occurrence; to the extent that in connection with the operation of the Premises, any work undertaken by Tenant may involve abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any hazardous material, waste or substance, such insurance to be maintained in full force and effect throughout the term hereof, with such insurance to provide coverage for bodily injury and property damage, including loss of use of damaged property, or of property not physically injured, together with coverage for actual, alleged or threatened emissions, discharges, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit, or proceedings against Landlord arising from Tenant's operation.

(b) If coverage is written on a claims-made policy, Tenant warrants that any applicable retroactive date precedes the Commencement Date; and that continuous coverage will be

maintained, or an extended discovery period exercised, for a period of not less than two (2) years from the time any work performed by Tenant is completed.

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

(d) As applicable, if Tenant is subcontracting for professional services, Tenant shall require the subcontractor to maintain Errors and Omissions (Professional) liability insurance with coverage of not less than One Million Dollars (\$1,000,000) per claim, as an aggregate annual limit. The subcontractors' insurance policy limits must be adequate to cover both the cost of defense and monetary damages arising out of any litigation, including legal fees and disbursements and court costs. Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by this Lease and may not exclude opinions, nonperformance, negligent oversell, fraud, breach of contract, allegations of copyright infringement and intellectual property infringement, advertising injury, vicarious liability and personal injury.

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

(f) All insurance required of Tenant by this Lease shall:

(i) Be obtained at the sole cost and expense of Tenant;

(ii) Be maintained with insurance carriers authorized by the New York State Department of Financial Services or licensed to do business in New York State, and reasonably acceptable to Landlord;

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

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

(v) Name Landlord, the People of the State of New York, the New York State Executive Department, the New York State Office of Parks, Recreation and Historic Preservation, the New York City Region of State Parks, Recreation and Historic Preservation Commission, the New York State Department of Environmental Conservation, the City of New York, the New York City Department of Parks and Recreation, and each of their respective commissioners, officers, agents, employees, successors and assigns as additional insureds thereunder, except on the required Workers' Compensation and Professional Liability and Commercial Property Insurance coverage.

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

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

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

#### Section 10.02. Treatment of Proceeds

(a) All insurance proceeds payable with respect to a property loss on account of the Improvements or any casualty (excluding insurance proceeds from "contents" insurance policies carried by Tenant for personal property separate and apart from the policies required under this Lease and excluding all proceeds of subtenants' policies), together with all interest earned thereon, if any, (i) if less than or equal to the Insurance Proceeds Threshold Amount, shall be paid to Tenant as a trust fund, to be deposited in a non-segregated bank account maintained by Tenant and used, disbursed and paid solely for the cost of the Restoration in accordance with Article 11, and (ii) if in excess of the Insurance Proceeds Threshold Amount, shall be paid to Depositary to be held for the purpose of paying for the cost of the Restoration, and such proceeds shall be used, disbursed and paid solely for the cost of such Restoration in accordance with Article 11, and any such funds remaining after the completion of a Casualty Restoration in accordance with the terms of this Lease shall be distributed as provided in Section 11.03. Depositary shall disburse any casualty insurance proceeds so received in accordance with the provisions of this Lease. Depositary shall have no liability with regard to any proceeds received by it and retained in good faith and in accordance with the provisions of this Lease. If Tenant believes that Depositary has not disbursed the insurance proceeds in accordance with this Lease, Tenant's sole remedy shall be to bring an action to have the proceeds disbursed in accordance with this Lease. Except as otherwise set forth in Article 11 and for losses payable as a result of Business Interruption, all proceeds of insurance payable with respect to Trade Fixtures or the Vessels shall be payable to Tenant solely for use in the restoration of same at the Premises. Proceeds payable with respect to Tenant in connection with Business Interruption shall be paid to Tenant for use in its discretion, subject to Section 8.01(i).

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

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

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

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

(f) Notices from the insurer or Tenant to Landlord shall be delivered in accordance with Article 30 hereof to the addresses set forth therein, with an additional copy to:

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

(g) All insurance policies required by this Article 10 shall provide that all adjustments for claims with the insurers shall be made by Tenant and Tenant's agents in coordination with Landlord, both of which shall act reasonably and Tenant shall direct loss proceeds to be paid to Landlord or Tenant as provided in Section 10.02 hereof based upon the actual amount of the loss, as such amount shall have been determined by adjustment with the insurer. To give effect to this provision, Landlord and Tenant, effective upon a casualty, hereby irrevocably appoint Landlord as attorney-in-fact with the power to endorse any instrument respecting loss proceeds to the order of Landlord for deposit and disposition in accordance with provisions of this Article 10. Upon demand of the other, Landlord and Tenant shall confirm in writing to each property insurer that all insurance proceeds shall be delivered to Landlord or Tenant, as their trustee, but failure to so confirm shall not vitiate the power-of-attorney granted pursuant to this Section 10.02(g).

(h) The liability coverages may not contain the following exclusions/limitations:

(i) Athletic or Sports Participation;

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

Section 10.03. Evidence of Insurance. Prior to the Commencement Date, Tenant shall deliver or cause to be delivered to Landlord certificates of insurance, insurance policy declarations, endorsement and exclusion under Tenant's active policy on an annual basis, in form reasonably satisfactory to Landlord. Tenant shall provide prompt notice to Landlord in the event of cancellation, non-renewal, replacement or renewal of any policies expiring or altered during the term. Upon written request from Landlord, Tenant shall provide full policy documents evidencing the insurance required hereunder.

Section 10.04. Compliance with Policy Requirements. Tenant shall not violate, or permit any Tenant Party to violate, any of the conditions, provisions or requirements of any insurance policy required by this Article. Tenant shall perform, satisfy and comply with or cause to be performed, satisfied and complied with all material conditions, provisions and requirements of all such insurance policies on Tenant's part to be performed, and, as appropriate, shall give and cause its contractors to give, the insurer and Landlord notice of all claims, accidents and losses promptly. Landlord shall be notified in writing no later than five (5) Business Days after Tenant, or any Tenant Party, provides notice of an occurrence on the Premises.

Section 10.05. Separate Insurance. Tenant shall not carry separate liability or property insurance concurrent in form or contributing in the event of loss with that required by this Lease to be furnished by Tenant.

Section 10.06. Increases in Coverage and Additional Insurance. Landlord shall have the right, no more than one (1) time in any two (2) year period, with a minimum of thirty (30) days' prior written notice to Tenant and given not less than thirty (30) days' prior to Tenant's annual policy renewals, to request available and commercially reasonable modifications, increases or supplements to the insurance coverages, limits, sublimits, minimums and standards required by this Article 10. Landlord may, no more than one (1) time in any two (2) year period, conduct a coverage evaluation at Landlord's discretion; upon completion of the coverage evaluation Landlord may request Tenant to increase or cause to be increased the amount of coverage provided under the policies of insurance required hereunder (or change the types of insurance required hereunder), provided that in any such event, Landlord reasonably demonstrates the need for such

increase of coverage and such coverage is commercially reasonable and available at commercially reasonable rates.

Section 10.07. No Representation as to Adequacy of Coverage. The requirements set forth herein with respect to the nature and amount of insurance coverage to be maintained or caused to be maintained by Tenant hereunder shall not constitute a representation or warranty by Landlord that such insurance is in any respect adequate.

Section 10.08. Blanket and/or Master Policies and Umbrella/Excess Policies. The insurance required by the provisions of this Article 10 may, at Tenant's option, be effected by blanket/master and/or umbrella/excess policies issued to Tenant covering the Premises and other properties owned or leased by Tenant, provided such policies otherwise comply with the provisions of this Lease and allocate to the Premises the specified coverage, including, without limitation, the specified coverage for all named insureds and Additional Insureds hereunder, without possibility of reduction or coinsurance by reason of, or because of damage to, any other properties named therein. If the insurance required by this Lease shall be effected by any such blanket or umbrella policies, Tenant shall furnish to Landlord certified copies of such policies together with schedules annexed thereto setting forth the amount of insurance applicable to the Premises and proof reasonably satisfactory to Landlord that the premiums for at least the first (1st) year of the term of each of such policies (or installment payments then required to have been paid on account of such premiums) shall have been paid.

Section 10.09. Annual Aggregates. If there is imposed under any liability insurance policy required hereunder an annual aggregate which is applicable to claims other than products liability and completed operations, such an annual aggregate shall not be less than Four Million Dollars (\$4,000,000) or two (2) times the per occurrence limit required for such insurance, whichever is greater.

Section 10.10. Other Insurance Not Required Under this Lease. Tenant may effect for its own account any insurance not required under the provisions of this Lease, provided same shall not directly or indirectly result in a diminution of the insurance coverage specified in this Article 10.

Section 10.11. Modification By Insurer. Without limiting any of Tenant's obligations or Landlord's rights under this Article 10, in the event that an insurer modifies, in any material respect, any insurance policy that Tenant is required to maintain in accordance with this Lease, Tenant shall give notice to Landlord of such modification within thirty (30) days after Tenant's receipt of notice thereof.

Section 10.12. Interpretation. All insurance terms used in this Article 10 shall have the meanings ascribed by the Insurance Services Offices Inc., which is an organization that collects statistical data, promulgates rating information, develops standard policy forms, and files information with state regulators on behalf of insurance companies that purchase its services, and which terms are available at: <https://www.irmi.com/online/insurance-glossary/terms/i/insurance-services-office-inc.-iso.aspx>.

## ARTICLE 11

### DAMAGE, DESTRUCTION AND RESTORATION

Section 11.01. Notice to Landlord. Tenant shall promptly notify Landlord upon its obtaining actual knowledge of any Improvement which is damaged or destroyed in whole or in part by fire or other casualty.

Section 11.02. Casualty Restoration.

(a) Tenant's Obligation to Restore. If all or any portion of the Premises or the Improvements (including, without limitation, the Bulkhead and the Pier infrastructure) are damaged or destroyed by fire or other casualty, ordinary or extraordinary, foreseen or unforeseen (a "Casualty"), Tenant, at its sole cost and expense, whether or not such damage or destruction shall have been insured, and whether or not such insurance proceeds, if any, shall be sufficient for repairs, alterations, restorations, replacements and rebuilding, shall restore the Premises and the Improvements (as applicable) as nearly as possible to the condition in which they existed immediately before such Casualty (a "Casualty Restoration") (but not with respect to any personalty or equipment belonging to any subtenant), provided the cost of such restoration either (x) is \$25,000 or less or (y) exceeds \$25,000 and the insurance proceeds is equal to at least ninety percent (90%) of the cost thereof. Notwithstanding the foregoing, if any Vessel is damaged, Tenant shall have no obligation to perform a Casualty Restoration with respect to such Vessel, unless (i) such Casualty shall cause to exist on such Vessel a dangerous condition or (ii) such Casualty results in a condition which, if left unremediated, would create a dangerous condition or impair Tenant's ability to operate the Museum; provided, however, that in each case, Tenant shall nonetheless be required, subject to Requirements, to remove any and all debris and otherwise restore the Premises to its condition as of the date prior to such Casualty subject to changes desired or required by Tenant and approved by Landlord to the extent set forth in, and in accordance with, this Lease. Notwithstanding the foregoing, if all or substantially all of the Intrepid is destroyed, and the cost of restoration does not exceed the proceeds of Tenant's insurance, then Tenant must restore the Intrepid or replace it with a reasonably similar historic naval vessel, so long as Tenant's museum operations at the Premises and Tenant's Mission are continued at substantially the same level and in the same manner as existed prior to such damage; provided, however, if the restoration costs of the Intrepid exceed the amount of the proceeds of Tenant's insurance, then Tenant shall have the option to restore the Intrepid, to replace it with a reasonably similar historic naval vessel, or to terminate this Lease, provided that, in each case, Tenant shall be required, subject to Requirements, to remove any and all debris and restore the Premises to its condition prior to the Casualty. If Tenant elects not to restore the Intrepid to a condition that permits it to be open to the public, then Landlord shall have the right to terminate this Lease upon thirty (30) days' written notice to Tenant.

(b) Estimate of Construction Work Cost. Before commencing any Construction Work in connection with a Casualty Restoration, and as soon as reasonably practicable and in any event within one hundred eighty (180) days after the damage or destruction, Tenant shall furnish Landlord: (i) plans and specifications for such Casualty Restoration and (ii) an estimate, prepared by the Architect, of the cost and duration of such Construction Work. Such estimate shall include, without limitation, Architect's and engineer's fees (and other construction-related soft costs), construction labor costs and the costs of materials, fixtures and equipment, and the schedule for

incurring these costs. Landlord shall approve, disapprove or approve with modifications or conditions Tenant's plans and specifications within thirty (30) days of receipt, which approval shall not be unreasonably withheld, conditioned or delayed; it being understood and agreed that Landlord shall have no approval rights (except as otherwise set forth herein) with respect to Casualty Restoration that are Non-Structural Alterations, Trade Fixtures, Paver Fundraising Work or Decorative Changes (and Tenant shall comply with Article 18 hereof with respect thereto). All plans and specifications with respect to the Premises shall be the property of Landlord in the event this Lease is terminated. The submission to Landlord of the cost estimate shall be for informational purposes only, subject to and in accordance with Section 16.03 hereof. During the course of any Casualty Restoration costing in excess of the Insurance Proceeds Threshold Amount, Tenant shall provide monthly summaries to Landlord of the progress of the Construction Work. Such summary shall include a breakdown of the applicable costs spent for the Construction Work for such month. Tenant further agrees that Landlord shall have the right, at all reasonable times and upon reasonable advance notice, to inspect the Premises and Improvements and the progress of the Construction Work during the course of any Casualty Restoration costing in excess of the Insurance Proceeds Threshold Amount. Tenant agrees that its failure to complete any Casualty Restoration (subject to the terms hereof, including, without limitation, the last sentence of Section 11.02(a) hereof) shall be a default under this Lease. Nothing herein shall relieve Tenant of its obligation to submit Payment Certificates as provided in Section 11.04(a) hereof.

(c) Commencement of Construction Work. Subject to Unavoidable Delays relating to the Construction Work in connection with a Casualty Restoration, Tenant shall commence the Construction Work in connection with a Casualty Restoration as soon as reasonably practicable after settlement of the insurance claim, if any, relating to the damages or destruction (which settlement will be diligently prosecuted), and shall perform the Casualty Restoration as continuously and diligently as possible. Prior to commencing the Construction Work in connection with a Casualty Restoration, Tenant shall proceed diligently and in good faith to take all actions required to be taken prior to the commencement of the Construction Work, including the preparation of any necessary plans and specifications and the obtaining of any necessary permits and approvals. During any period of Unavoidable Delay in commencing the Casualty Restoration, Tenant shall take all reasonable steps to insure that portions of the Premises accessible to the public shall be safe and free from conditions hazardous to life and property.

(d) Tenant's Right to Terminate. Notwithstanding the foregoing, if at any time during the last five (5) years of the Term there is a Casualty, and the insurance policies required to be maintained pursuant to Article 10 hereof are in full force and effect, then Tenant, (i) if it reasonably determines that it is not practicable to restore the Premises or (ii) if it reasonably determines that it cannot restore the Intrepid, may advise Landlord, not later than ninety (90) days from the date of said Casualty, that it elects to terminate this Lease. Such termination shall be made by (A) serving upon Landlord, at any time within said ninety (90) day period, a thirty (30) days' written notice of Tenant's election to so terminate, and (B) assigning over to Landlord all of Tenant's right, title and interest in and to all available insurance and other proceeds payable on account of the Pier and the other Improvements due to such damage or destruction, in an amount equal to the greater of (x) the proceeds applicable to the Pier and the other Improvements thereon (but excluding the Vessels) and (y) the proceeds required to restore the Pier and the other Improvements (but excluding the Vessels) thereon to the condition existing prior to such Casualty, but subject, nevertheless, to the continuing obligation of Tenant to reasonably assist (to the extent necessary) in the prosecution of



all insurance and other claims relating to the Casualty. Upon the service of such notice and the making of such assignment and payment within the period aforesaid, this Lease shall terminate on the date specified in such notice with the same force and effect as if such date were the Expiration Date, and Tenant shall comply with the termination and surrender requirements of Article 28 hereof, but only to the extent reasonably feasible. Any amounts due and owing to Landlord up to and including the date of termination shall survive termination and shall be payable in accordance with this Lease.

Section 11.03. Restoration Funds.

(a) Reimbursement of Expenses. Before paying the Restoration Funds to Tenant as provided in Section 11.03(c) below, Depositary shall reimburse itself, Landlord and Tenant therefrom (in no particular order) to the extent of documented necessary and proper out-of-pocket expenses (including, without limitation, court costs and reasonable attorneys' fees and disbursements) actually paid or incurred by Depositary, Landlord or Tenant in the collection of such Restoration Funds; provided that Landlord shall only be entitled to reimbursement to the extent that Landlord's cooperation is necessary in order for Tenant to collect Restoration Funds from the insurance company. If at a point in the distribution process it shall become manifest that the balance of the Restoration Funds is insufficient to pay Depositary, Landlord or Tenant the full amount due to each as set forth above, then the remaining Restoration Funds shall be distributed to Depositary, Landlord or Tenant in proportion to their respective out-of-pocket expenses, but in no event shall any party receive disbursement of more than its documented out-of-pocket expenses.

(b) Application for Disbursement of Restoration Funds. Landlord shall direct Depositary to pay Tenant the Restoration Funds in monthly installments, as the Casualty Restoration progresses, upon application to be submitted by Tenant to Depositary and Landlord, which applications shall show Restoration Costs (as hereinafter defined), including: Architect's and engineer's fees (and other construction-related soft costs), construction labor costs and the cost of materials, fixtures and equipment that either (i) have been incorporated into the Improvements since the last previous application and have been paid for by Tenant (or the payments are then due and owing), or (ii) have not been incorporated into the Improvements, but: (x) have been purchased since the last previous application and have been paid for by Tenant (or the payments are then due and owing), (y) have been insured by Tenant for one hundred percent (100%) of the cost thereof and (z) have been stored at a secure and safe location either on, or outside of, the Premises (such costs collectively referred to as "**Restoration Costs**"). Depositary shall not make any installment payment to Tenant for materials, fixtures and equipment purchased but not yet incorporated into the Improvements until Tenant shall have delivered to Landlord certificates of insurance evidencing that such materials, fixtures and equipment are insured for one hundred percent (100%) of the cost thereof, with Tenant and Landlord insured as their interests may appear.

(c) Disbursement of Remaining Restoration Funds. Any Restoration Funds remaining after the completion of a Casualty Restoration, in accordance with the provisions of Section 11.02, shall be paid to Tenant.

Section 11.04. Conditions Precedent to Disbursement of Restoration Funds.

The following are conditions precedent to each payment of Restoration Funds to be made to Tenant pursuant to Section 11.03(b) hereof:

(a) Payment Certificate. A certificate reasonably satisfactory to Landlord, issued by the Architect (or as to the matters set forth in subsections (i), (ii) and (iii) below a certificate issued by an officer of Tenant), shall be submitted to Depository and Landlord stating that:

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

(ii) no part of any such expenditures has been or is being made the basis, in any previous or then pending request, for the withdrawal of Restoration Funds, nor have any such expenditures been disbursed out of any of the Restoration Funds theretofore received by Tenant;

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

(iv) Construction Work, services and materials represented by the submitted invoices are substantially in accordance with any plans and specifications approved by Landlord for the Casualty Restoration;

(v) except in the case of the final request for payment by Tenant, the balance of the Restoration Funds held by Depository shall, in the reasonable judgment of the Architect, be sufficient, upon completion of the Construction Work in connection with the Casualty Restoration, to pay for the Construction Work in full, the certificate's also estimating, in reasonable detail, the total and remaining costs to complete such Construction Work; and

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

(b) Certificate of Title Insurance. There shall be furnished to Landlord a report or a certificate of a title insurance company reasonably satisfactory to Landlord, or other evidence reasonably satisfactory to Landlord, showing that there are (i) no Liens filed against the Premises or any part thereof, or (ii) Liens created or caused to be created by Tenant affecting Landlord or the assets of, or any funds appropriated to, Landlord, except, in either case, those as will be discharged upon payment of the amount then requested to be withdrawn, or the discharge of which is guaranteed

to the satisfaction of Landlord by a bond, letter of credit or similar security instrument reasonably satisfactory to Landlord.

Section 11.05. Restoration Fund Deficiency. If the estimated cost (determined as provided in Section 11.02(b) hereof) of any Construction Work intended to be performed in connection with a Casualty Restoration exceeds any unpaid insurance proceeds claimed under a proof of loss filed (and being pursued by Tenant with reasonable diligence) in connection with the damage or destruction in question, then, before the commencement of such Construction Work, or, at any time after commencement of such Construction Work, if it is reasonably determined by the Architect, as reflected in a Payment Certificate required by Section 11.04(a), that the cost to complete such Construction Work will exceed the unapplied portion of the Restoration Funds, then, as a condition to the disbursement of further Restoration Funds, Tenant shall, within ninety (90) days of Landlord's request, furnish to Landlord evidence reasonably satisfactory to Landlord of the financial ability of Tenant to pay the amount of such excess, which evidence may, at Tenant's election, consist of either: (x) a letter of credit, loan commitment, surety bond, completion guaranty (from a credit-worthy entity reasonably acceptable to Landlord), or (y) any combination of the foregoing, or (z) such other security as may be reasonably satisfactory to Landlord, in the amount of such excess.

Section 11.06. Assignment. To the extent that the Restoration Funds are payable to Landlord pursuant to the terms of this Article 11 due to the termination of this Lease, and the same are, therefore, not required to be applied by Tenant to the Restoration of the Premises, Tenant shall be deemed to have assigned to Landlord all of Tenant's right, title and interest, if any, in and to any Restoration Funds and the proceeds thereof.

Section 11.07. Waiver of Rights Under Statute. The existence of any present or future law or statute notwithstanding, Tenant waives all rights to quit or surrender the Premises or any part thereof by reason of any Casualty to the Premises, except as may otherwise be expressly provided in Section 11.02(d). It is the intention of Landlord and Tenant that the provisions of this Article 11 shall constitute an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York and shall govern and control in lieu thereof.

## **ARTICLE 12**

### **CONDEMNATION**

Section 12.01. Certain Definitions. For the purposes hereof the following terms shall have the following meanings:

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

(b) “Substantial Taking” shall mean either (i) a Taking of the entire Premises or (ii) a Taking where the portion of the Premises remaining after the Taking would not readily accommodate a facility to support the uses described in Section 8.01 hereof on a commercially reasonable basis due either to the area so taken or the location of the part so taken in relation to the part not so taken in light of economic conditions, the terms of this Lease, zoning laws, physical constraints, means of egress or ingress or building regulations then existing or prevailing and after performance and/or observance by Tenant of all covenants, agreements, terms and conditions contained herein or by law required to be performed or observed by Tenant.

(c) “Partial Taking” shall mean a Taking of a portion of the Premises which shall be less than a Substantial Taking of the Premises.

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

(e) “Condemnation Restoration” means a restoration of any portion of the Premises remaining after a Partial Taking, or as a result of any governmental action not constituting a Taking, but creating a right to compensation as provided in Section 12.05 hereof so that such portions shall contain complete structures, in good condition and repair, consisting of self-contained architectural units, and to the extent practicable, of a size and condition of, and having a character similar to, the character of the Premises existing immediately prior to the Date of Taking, or the date of such other governmental action.

#### Section 12.02. Substantial Taking.

(a) All compensation awarded for any taking of the fee and the leasehold, or any part thereof, shall belong to and be the property of Landlord. Tenant hereby assigns to Landlord all right, title and interest of Tenant in and to any award in condemnation made for leasehold damages and/or diminution in, or loss of, the value of Tenant's leasehold estate. Tenant shall have the right to claim such compensation as may be separately awarded to Tenant or allocated to the condemnation award by reason of any loss, cost, or damage suffered by Tenant as a result of and attributable to the removal or abandonment of the Equipment, the Vessels, merchandise, leasehold improvements and Trade Fixtures; provided, however, that such claim does not reduce Landlord's award. “**Compensation**” as used in this Section 12.02 shall mean any award given to Landlord for such taking in excess of, and free and clear of, all prior claims.

(b) Notwithstanding the foregoing, if the Premises are subject to a Substantial Taking:

(i) there shall be paid to Landlord (A) that portion of the entire amount awarded in any proceeding with respect to the taking attributable to the Improvements (other than the Vessels) and the Pier as of the Commencement Date and (B) Landlord's costs in excess of the award covered in item (A) for repair or replacement of Improvements effected by such taking; and

(ii) there shall be paid to Tenant that portion of the entire amount awarded in any proceeding with respect to the taking attributable to the loss of its Vessels and Trade Fixtures.

(c) Subject to the above subparagraphs of this Section 12.02, Landlord and Tenant (1) shall have the right to make claims in any condemnation proceeding, and (2) agree to execute any and all documents that may be required in order to facilitate collection by them of such awards.

Section 12.03. Partial Taking. In the event of a Partial Taking, this Lease and the Term shall continue, but only with respect to that portion of the Premises not so taken. Tenant, at its sole cost and expense, whether or not the award or awards, if any, shall be sufficient for the purpose, but provided that the award is equal to at least ninety percent (90%) of the cost of Restoration, shall proceed diligently to restore any remaining part of the Improvements not so taken. In the event of any taking or condemnation as provided in this Section 12.03 for a Partial Taking, the entire award (i.e., the aggregate of the separate awards to Landlord and Tenant, as the case may be) shall be paid to Landlord. Subject to the provisions and limitations in this Article, Landlord shall make available to Tenant as much of that portion of the award actually received and held by Landlord, if any, less necessary and proper expenses paid or incurred by Landlord in the condemnation proceedings, as may be necessary to pay the cost of Restoration of the part of the Improvements remaining. Such Restoration shall be done in accordance with and subject to the provisions of Articles 11 and 16 hereof. Payments to Tenant as aforesaid shall be disbursed in the manner set forth in Article 11 hereof. Any balance of the award thereafter remaining shall be paid first to Landlord in respect of its interest in the portion of the Premises (exclusive of Equipment and the Vessels) so taken, without deduction therefrom for any estate vested in Tenant by this Lease, and the remainder then shall be paid to Tenant. Landlord and Tenant agree to execute any and all documents that may be required in order to facilitate collection by them of their respective awards.

Section 12.04. Temporary Taking. If during the Term there shall be a Taking of the temporary use of the Premises or a portion thereof, whether a Substantial Taking or a Partial Taking, for a temporary period of less than one (1) year (a “**Temporary Taking**”), this Lease and the Term shall continue without reduction or diminution of any of Tenant’s obligations hereunder, and Tenant shall (except as hereinafter provided) continue to pay in full the Rental payable by Tenant hereunder without reduction or abatement, and Tenant shall be entitled to receive for itself any award or payments for such temporary use. Notwithstanding the foregoing, if the taking results in changes or alterations in the Buildings that would necessitate an expenditure to restore the Buildings to their former condition, then Tenant shall restore the Buildings in the same manner, and subject to the same terms and conditions, as if such restoration were a Condemnation Restoration.

Section 12.05. Governmental Action Not Resulting in a Taking. In case of any governmental action not resulting in a Taking but creating a right to compensation therefor, such as the changing of the grade of any street upon which the Premises abut, then this Lease shall continue in full force and effect; provided, however, that if such governmental action results in changes to or alterations of the Premises, then Tenant shall effect a Condemnation Restoration with respect thereto (up to the extent of the award received by Tenant). Any award payable in the

case of such governmental action shall be paid to Tenant for the purpose of paying for the cost of the Condemnation Restoration, and any balance of the award remaining after completion of the Condemnation Restoration shall be disbursed to Tenant and Landlord in amounts based upon the value of their respective interests in the Premises at that time.

Section 12.06. Condemnation Restoration Procedure. If Tenant shall be required by the terms hereof to effect a Condemnation Restoration, all condemnation awards shall be paid and applied in the same manner as is set forth in Article 11 as if such Taking were a Casualty, except that Section 11.05 shall not apply in the case of a Condemnation. Tenant shall commence the Condemnation Restoration within one hundred eighty (180) days after payment, by the Authority exercising the power of eminent domain, to Landlord of the condemnation award, subject to disbursement of the award pursuant to Article 11, Unavoidable Delays and, subject to the foregoing, Tenant shall perform the Condemnation Restoration as continuously and diligently as reasonably practical.

Section 12.07. Collection of Awards. Each of the parties hereto shall execute documents that are reasonably required to facilitate collection of any awards made in connection with any condemnation referred to in this Article 12 and shall cooperate with each other to permit collection of the award.

Section 12.08. Tenant's Appearance at Condemnation Proceedings. Tenant shall have the right to appear in any condemnation proceedings and to participate in any and all hearings, trials, and appeals in connection therewith. Tenant shall not file in any Taking any claim on account of the leasehold estate created by this Lease or Tenant's leasehold interest in the Premises, but Tenant may file a claim on account of (i) damage to its Vessels and Trade Fixtures and (ii) relocation expenses.

Section 12.09. Intention of the Parties. The existence of any present or future law or statute notwithstanding, Tenant waives all rights to quit or surrender the Premises or any part thereof by reason of any Partial Taking. It is the intention of Landlord and Tenant that the provisions of this Article 12 shall constitute an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York and shall govern and control in lieu thereof.

## **ARTICLE 13**

### **ASSIGNMENTS, SUBLEASES AND TRANSFERS**

Section 13.01. Landlord. Landlord may transfer or assign its interests in the Premises or its interest under this Lease to any other Person, in whole or in part, at any time, in its sole discretion. In such event, from and after the date of such assignment or transfer, the term Landlord shall mean the assignee or transferee, and the assignor or transferor shall be, and hereby is, entirely freed and relieved of all agreements, covenants and obligations of Landlord hereunder to be performed on or after the date of such transfer or assignment and it shall be deemed and construed without further agreement between the parties or their successors in interest that the transferee or assignee under such transfer or assignment has assumed and agreed to carry out any

and all agreements, covenants and obligations of Landlord hereunder occurring from and after the date of such assignment or transfer.

Section 13.02. Tenant.

(a) Tenant shall not pledge, mortgage, transfer or assign its interest, in whole or in part, in and to the Premises or the leasehold estate created hereby without the prior consent of Landlord.

(b) Without the prior consent of or notice to Landlord, Tenant may, subject to the provisions of Article 8 (including, without limitation, Section 8.01(e) thereof), sublease, grant, license or permit the use by any third party of any portion of the Welcome Center or the Pier Open Space for Ancillary Uses (an “**Occupancy Agreement**”), provided that (x) such Occupancy Agreement shall include an indemnification provision for the benefit of Landlord substantially in the form attached hereto as **Exhibit L**, subject to reasonable and customary changes thereto which do not materially and adversely reduce Landlord’s rights thereunder (it being understood that any Occupancy Agreement that does not satisfy these conditions shall not be permitted) and (y) subject to the provisions of Section 13.02(d) hereof, a copy of such Occupancy Agreement (sections of which may be designated by Tenant as “proprietary and confidential”) is provided to Landlord within thirty (30) days after the execution of such Occupancy Agreement, but in no event later than commencement date of such Occupancy Agreement.

(c) Notwithstanding anything to the contrary in Sections 13.02(a) or (b) above:

(i) In no event shall the daily admission of Museum patrons or invitees or the general public require the prior consent of or notice to Landlord; and

(ii) Without the prior consent of or notice to Landlord, Tenant may, subject to the provisions of Article 8 (as applicable), sublease, grant, license or permit the use by any third party of any portion of the Vessels for Permitted Uses.

(d) Landlord acknowledges that Tenant may be hereafter providing Occupancy Agreements to Landlord that contain confidential information, including trade secrets and proprietary or confidential information, the disclosure of which may be harmful to Tenant’s competitive position. Accordingly, Landlord agrees that it shall maintain the confidentiality of such information that are clearly marked and identified as “proprietary and confidential”; provided that if disclosure requests are received by Landlord pursuant to the Freedom of Information Law or any judicial or legislative subpoena, requesting any such proprietary or confidential information provided to Landlord by Tenant, Landlord shall give Tenant prior notice and the opportunity to object to such Freedom of Information Law request or subpoena (it being understood and agreed that Landlord shall have the right to make disclosures believed in good faith to be required under the Freedom of Information Law or other applicable law notwithstanding any objection of Tenant). Tenant understands and acknowledges that Landlord is a public authority of the State of New York and is subject to review and oversight by legislative and other regulatory bodies, and that Landlord is required by law and may be compelled or requested by such oversight bodies to make public disclosure of information regarding this Lease and any Occupancy Agreement, and shall be fully

entitled to do so without objection from Tenant, except in the limited circumstances described in this Section 13.02(d).

## ARTICLE 14

### REPAIRS & MAINTENANCE

#### Section 14.01. Maintenance

(a) Tenant shall, at its sole cost and expense, at all times during the Term, maintain in good and sufficient repair and condition, the Vessels and the Premises, including, without limitation, the Pier (together with supporting piles, the fender system, cleats, bollards, railing, paving, and all structures erected thereon), stair towers, the Bulkhead (together with foundations, all supporting piles and subsurface structures), all piles and foundations in addition to those supporting the Pier and Bulkhead, the Buildings (including every element thereof, the Equipment and utilities serving the same, and appurtenances thereto), paved walkways and plazas, gangways and ramps, grounds and landscaped areas, outdoor furniture (including public seating and benches), water fountains, bicycle racks, shade structures, quays, portals, exterior lighting fixtures (including replacement of defective or spent bulbs which shall be disposed of in accordance with all applicable Requirements), exterior directional and information signage, electric, water, sewer and gas connections, pipes and mains serving the Premises (including, without limitation, any such connections, pipes and mains located adjacent to or serving the Premises the repair and maintenance of which is not the responsibility of a private or public utility), any alleys, sidewalks, sidewalk hoists, walkways/bikeways, vaults, gutters and curbs that are part of the Premises and all other Improvements, and Tenant agrees to maintain and make all repairs therein and thereon, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary or desirable, and whether or not necessitated by normal wear, tear, obsolescence or defects, latent or otherwise, to put, keep and maintain all of the foregoing in good, safe and sound order and condition, however the necessity or desirability therefor may occur, unless the need for such repairs results from the negligence or willful misconduct of Landlord or any of Landlord's respective employees, contractors, subcontractors, licensees, agents and/or invitees. Tenant shall neither commit nor suffer, and shall use all reasonable precaution to prevent, waste, damage or injury to the Premises.

(b) All repairs and maintenance shall be made at no cost or expense to Landlord, except that Landlord hereby acknowledges that to the extent any repairs under this Section 14.01 are necessitated as a result of the negligence or willful misconduct of Landlord or any of Landlord's agents, invitees, contractors or licensees, Landlord shall, at its sole option, either perform the repair work itself or allow Tenant to perform such work and shall reimburse or cause to be reimbursed to Tenant for Tenant's reasonable, actual, third-party out-of-pocket costs of such repairs paid for by Tenant within ninety (90) days after Tenant's submission of an invoice therefor.

(c) As used in this Article 14, the term "**repairs**" shall include all necessary replacements, removals, renewals, alterations, and additions and shall be made in compliance with the Requirements, and all materials therefor shall be at least equal in functionality, quality and class to the original materials. Without limiting the generality of the foregoing, the repair standard



applicable to Pier Structural Repair Work and the Chiller Platform Work shall also include the Design Criteria and Loads (as defined below), and the maintenance and repair standard applicable to the exterior and public areas of Vessels shall be that of a first class museum.

(d) Tenant acknowledges and agrees that Landlord shall have the right at any time upon reasonable notice to inspect the Premises (including, but not limited to, the Vessels, the Equipment and Improvements, and those areas temporarily occupied by Tenant), including for the purpose of inspecting repair and maintenance work being performed by Tenant and that if Landlord, in its reasonable judgment determines that repair and maintenance work is not being or has not been properly performed as required by this Lease, Landlord shall notify Tenant, and Tenant shall promptly perform additional required work to fulfill its repair and maintenance obligations hereunder. Landlord's inspection shall not unreasonably interfere with Tenant's use and enjoyment of the Premises. For the avoidance of doubt, this Section 14.01(d) does not permit Landlord the right to undertake any repair or maintenance work on or to the Vessels.

(e) Notwithstanding anything to the contrary set forth in this Section 14.01, Tenant's obligations under this Section 14.01 shall be subject to the provisions of Section 4.05 above.

Section 14.02. Maintenance of Certain Off-Premises Areas. Without limiting Tenant's obligation to maintain and repair the Premises as set forth in Section 14.01, Tenant agrees that it shall, at its sole cost and expense: (1) sweep and remove all litter, debris and obstructions from such portion of the Licensed Esplanade Area then in use or anticipated to be in use by Tenant immediately prior, during and immediately following Tenant's use thereof so as to keep clean and unobstructed; (2) power wash such portion(s) of the Licensed Esplanade Area as reasonably determined by Tenant to be in need of such cleaning in accordance with a scheduled maintenance program to be provided to Landlord, which scheduled maintenance program shall subject to Landlord's approval not to be unreasonably denied, conditioned or delayed; (3) sweep and remove all litter, debris, and obstructions not less than once daily, or more often as necessary, and power wash as reasonably determined by Tenant to be needed in connection with its use so as to keep clean and unobstructed the entrance driveway and that portion of the Esplanade extending south from the southern boundary of the entrance driveway to a line extending to the east from the southern boundary of the Pier and from the eastern boundary of the Premises fronting on the Pier to the western boundary of the Bikeway (the "**Frontage**"), which Frontage shall not be used for the queuing of Tenant's patrons and invitees but may be used for vehicular access to the Premises in the case of the driveway, and, together with the Pedestrian Bridge, for pedestrian access to the Premises; (4) remove snow and ice from the Frontage and such portion of the Licensed Esplanade Area then in use or anticipated to be in use by Tenant for queuing; (5) undertake all routine and ordinary cleaning and maintenance obligations of Landlord for the Pedestrian Bridge as required of Landlord pursuant to the Pedestrian Bridge Agreement (unless such responsibilities are assumed by New York State Department of Transportation), and of Tenant for the Pedestrian Bridge pursuant to the Pedestrian Bridge Agreement (unless such responsibilities are assumed by New York State Department of Transportation); (6) promptly clean and remove any spill or obstruction in that portion of the Esplanade not included within the Licensed Esplanade Area, or the Bikeway, caused by Tenant, or any patron, visitor, invitee, or contractor of Tenant; (7) subject to the Requirements, should such Licensed Water Area become obstructed in whole or in part by the

sinking of any waterborne craft or otherwise, promptly remove such obstruction, or cause the same to be removed, without cost or expense to Landlord; (8) subject to the Requirements, keep the waters in Premises at a depth sufficient to float the Intrepid or, in the alternative, undertake such measures as may be reasonably necessary to maintain the Intrepid in a stable orientation for public Museum use; and (9) subject to the Requirements and Section 4.05 above and with the approval of Landlord not to be unreasonably denied, conditioned or delayed, install and maintain dolphins or other protective structures to fend vessels away from and thereby protect the Premises and the Vessels.

Section 14.03. Maintenance Contracts. Tenant shall, at the request of Landlord, provide a copy of any and all maintenance contracts relating to the Premises (which shall (i) include, but not be limited to, contracts related to Tenant's maintenance of the Licensed Esplanade Area and the Frontage, and (ii) exclude contracts related to Tenant's maintenance of the Vessels) and the appropriate insurance certificates associated with each such contract to Landlord.

Section 14.04. Landlord Maintenance and Repairs. Except as may otherwise be expressly set forth herein, Landlord shall have no obligation to maintain or repair any part of the Premises, including, without limitation, the Improvements.

Section 14.05. No Obligation of Landlord to Repair or to Supply Utilities or Services; Net Lease. Landlord shall not be required to supply any facilities, services or utilities whatsoever to the Premises and, except as otherwise set forth in this Lease, shall not have any duty or obligation to make any alteration, change, improvement, replacement, Restoration or repair to the Improvements, and, except as otherwise expressly provided herein. Tenant assumes the full and sole responsibility for the condition, operation, alteration, change, improvement, replacement, Restoration, repair, maintenance and management of the Premises. This Lease shall be absolutely "net" to Landlord.

Section 14.06. Window Cleaning. Tenant shall neither clean nor require, permit, suffer or allow any window in the Improvements to be cleaned from the outside in violation of Section 202 of the New York State Labor Law or of the rules of the New York State Industrial Board or any other Governmental Authority.

Section 14.07. Maintenance and Removal of Equipment. Tenant shall keep all Equipment in good order and repair and shall replace the same when necessary with items of similar utility and value. Tenant shall not have the right, power or authority to, and will not, remove any Equipment, including but not limited to the electrical substation from the Premises, except for repairs, cleaning or other servicing, without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed, unless the same is promptly replaced by Equipment of like kind and quality. Notwithstanding anything to contrary in this Section 14.07, Tenant may remove any and all Equipment located upon the Chiller Plant Platform at the Commencement Date in connection with the Chiller Plant Platform Work.

Section 14.08. Free of Dirt, Snow, Etc. Tenant shall keep clean and free from dirt, snow, ice, rubbish, obstructions and encumbrances the sidewalks and grounds, and any parking facilities, common areas, vaults, chutes, sidewalk hoists, railings, gutters, alleys, curbs, if any, or any other space located on the Premises, and the area located in front of, or adjacent to, the

Premises, including on the Vessels and the Licensed Esplanade Area, for which Tenant would be responsible by law if it were the fee owner of the Premises. Tenant shall use reasonable efforts not to perform dirt, rubbish, snow removal and ice clearing in a manner that interferes with, or adds to, dirt, rubbish, snow removal and ice clearing operations of Landlord or any governmental department or agency.

Section 14.09. Green Cleaning. Tenant shall employ an environmentally protective “Green Cleaning Program” utilizing environmentally friendly cleaning agents. In the event such environmentally friendly cleaning agents are not commercially available, Tenant may utilize non-green cleaning products so long as Tenant’s use of same is in accordance with, and such products are of a type and in quantities as permitted under, all applicable environmental laws and regulations. In no event shall Tenant allow any type of fluid, including waste water, to leak into the ground or into the Hudson River. Tenant shall, upon request, provide to Landlord a copy of Tenant’s Green Cleaning Program which lists approved cleaning agents and cleaning methods (including equipment utilized). In accordance with the provisions of Article 21 hereof, Tenant shall indemnify and hold each Indemnitee harmless from and against any Indemnified Losses (including, without limitation, reasonable attorneys’ fees and disbursements) that such Indemnitee, except to the extent resulting from the negligence or intentional acts of such Indemnitee, may at any time suffer by reason of any type of fluid leaking into/onto the ground, Pier or into the Hudson River.

Section 14.10. Waste, Offensive Odor, Pest Control. Subject to the provisions of Section 4.05 above, Tenant shall assume full responsibility to keep and maintain the Premises neat, clean, in proper repair and decor, and free from adverse waste and offensive odors, smoke, and fumes detectable in or outside of the Premises, and in an orderly and sanitary condition, free of vermin, rodents, insects and other pests. Tenant shall take reasonable precautions and steps that Landlord deems reasonably necessary to prevent any such vermin, rodents, insects and other pests from existing in the Premises or migrating into any other parts of the Park. Tenant shall retain a licensed professional exterminating company reasonably satisfactory to Landlord which will service the Premises on a monthly basis to keep the Premises free of vermin, rodents and insects. Tenant shall furnish Landlord with a copy of such written contract, if any, within five (5) days after Landlord’s request therefor. Use of pesticides must be consistent with Integrated Pest Management (IPM) practices used by Landlord. Application of pesticides must be performed by a properly certified applicator and must comport with all laws and regulations.

Section 14.11. Pier Structural Repair Work.

(a) Unless dates for undertaking and completing designated Pier Structural Repair Work are specified by the Approved Engineer pursuant to an approved Rapid Level Inspection report or otherwise, the Approved Structure Repair Plan shall prioritize the Pier Structural Repair Work on three action levels: (A) items identified by the Approved Engineer that are generally required to be commenced within one (1) year after the commencement of such Structural Repair Funding Period to prevent unsafe conditions (“**Immediate Level Actions**”); (B) items (other than Immediate Level Actions) that are generally required to be commenced within three (3) years after the commencement of such Structural Repair Funding Period to maintain the structure in a safe operating condition and/or prevent a discovered condition from continuing to a point where the future repairs will be significantly more costly (“**Priority Level Actions**”); and (C) items (other

than Immediate Level Actions and Priority Level Actions) that should generally be undertaken and completed within four (4) years after the commencement of such Structural Repair Funding Period as part of a scheduled maintenance program or another scheduled project (“**Routine Level Actions**”). The parties acknowledge and agree that although Routine Level Actions should generally be completed four (4) years after the commencement of such Structural Repair Funding Period, no default or Event of Default shall be deemed to exist due to Tenant’s failure to complete such Routine Level Actions so long as the same is completed prior to the end of the applicable Structural Repair Funding Period. The Approved Structural Repair Plan for each Structural Repair Funding Period shall include cost estimates for each identified repair items, subtotals for repair items identified for each action level (i.e., one subtotal for each of Immediate Level Actions, Priority Level Actions, and Routine Level Actions), and the Structural Repair Funding Requirement.

(b) If Tenant fails to cause to be delivered to Landlord on or before the date that is one hundred fifty (150) days’ prior to the commencement of a Structural Repair Funding Period an Approved Structural Repair Plan for such Structural Repair Funding Period, then, in addition to Landlord’s other rights and remedies, Landlord shall have the right, at Tenant’s sole cost and expense to cause an Approved Engineer to conduct a Comprehensive Inspection and prepare a five-year plan for Pier Structural Repair Work based thereon, which plan shall be the Approved Structural Repair Plan for such Structural Repair Funding Period and Tenant shall be obligated to perform the Pier Structural Repair Work thereunder; provided, however, if Tenant (i) has engaged an Approved Engineer or (ii) a Comprehensive Inspection has occurred or is in progress and, in each case, Tenant is otherwise diligently proceeding to prepare or obtain an Approved Structural Repair Plan, then Tenant shall have a reasonable period to complete such Comprehensive Inspection and prepare and deliver an Approved Structural Repair Plan to Landlord (but in no event shall such period exceed ninety (90) days), during which period no default or Event of Default shall be deemed to exist as long as Tenant shall continue to diligently and continuously prosecute same to full completion within such reasonable period.

(c) Commencing on or about the date that is twelve (12) months prior to each Structural Repair Funding Period after the initial Structural Repair Funding Period, Tenant shall cause the Approved Engineer to inspect, prepare and submit a Comprehensive Inspection. The applicable Comprehensive Inspection report shall inform and guide the nature, extent and prioritization of the Pier repair plan to be prepared by the Approved Engineer and the Pier Structural Repair Work performed in accordance therewith that is required for Tenant to comply with the requirements of Section 14.11 and Article 16 of this Lease. In addition to the required Comprehensive Inspections, Tenant shall engage the Approved Engineer to perform, on an as-needed basis (including but not limited to, for emergency or immediate issues), taking into account all relevant factors, Rapid Level Inspections in order to properly identify potentially accelerated deterioration or apparent non-compliance with the requirements of Article 14 of this Lease or other conditions that may have arisen since the date of the last Comprehensive Inspection and to recommend repairs in accordance with standards set forth in the Design Criteria and Loads. The frequency and extent of such Rapid Level Inspections shall be determined by Tenant following consultation with the Approved Engineer as to the necessity therefor. The rationale for either undertaking Rapid Level Inspections or determining that such inspections are not necessary shall be provided to Landlord annually. Tenant shall provide Landlord with a copy of each Rapid Level Inspections report promptly after receipt by Tenant, and the repair recommendations and cost estimates generated by such report, if any, shall, following review and approval by Landlord and

Tenant pursuant to Section 14.11(d), be incorporated into the Approved Structural Repair Plan and the Structural Repair Funding Requirement for the then current Structural Repair Funding Period as set forth in Section 4.02(d).

(d) Tenant shall provide Landlord with a copy of each Comprehensive Inspection or Rapid Level Inspection report promptly after receipt and approval by Tenant. Based on the Design Criteria and Loads, Landlord shall issue comments, if any, to Tenant within thirty (30) Business Days of receipt of a Comprehensive Inspection or Rapid Level Inspection report unless Landlord notifies Tenant that, at Landlord's expense, Landlord's Engineer shall be undertaking an inspection, in which case comments shall be provided by Landlord to Tenant within fifteen (15) Business Days of completion of such inspection by Landlord's Engineer. Tenant shall (i) forward Landlord's comments, if any, to the Approved Engineer within five (5) Business Days after receipt thereof by Tenant, (ii) cause the Approved Engineer to consider such comments, and (iii) should the Approved Engineer (x) concur, incorporate such comments as to which the Approved Engineer agrees into the Comprehensive Inspection or Rapid Level Inspection report, or (y) disagree, respond in writing to Landlord regarding each comment to which Approved Engineer does not agree, with reasons for not incorporating such comments, after which the Approved Engineer and Landlord's Engineer shall be directed by Tenant and Landlord to meet to resolve any remaining differences with respect to the Comprehensive Inspection or Rapid Level Inspection report. It is understood and agreed that, in the event of any unresolvable differences between the Approved Engineer and Landlord's Engineer, then, and in such case, such unresolvable difference shall be determined in accordance with Section 14.11(e) below. Notwithstanding Landlord's submission of comments or anything contained therein, Tenant assumes full responsibility for the Comprehensive Inspection or Rapid Level Inspection report and the conclusions, assessments, and recommended course of action therein and for compliance with the repair and maintenance obligations under this Lease and the Requirements, and hereby forever releases Landlord from any liability, and indemnifies and holds Landlord harmless from any and all third party claims in connection therewith that may arise or accrue during the Term of this Lease, except to the extent proximately caused by the negligence or willful misconduct of Landlord.

(e) Concurrent with submission of each Comprehensive Inspection report, but in all events prior to the earlier of (i) thirty (30) days after the date of completion of such report and (ii) one-hundred and fifty (150) days' prior to the commencement of the applicable Structural Repair Funding Period, Tenant shall cause the Approved Engineer to submit a recommended structural repair plan identifying all proposed Pier Structural Repair Work, if any. Such recommended structural repair plan shall meet the requirements of this Section 14.11 and be subject to Landlord's review and approval in accordance with the procedures and standards of Section 14.11(d) above, including review by Landlord's Engineer, and, upon approval by Landlord, such plan shall be deemed an "**Approved Structural Repair Plan**" hereunder. It is understood and agreed that, in the event of an unresolvable difference between the Approved Engineer and Landlord's Engineer, Tenant may request that the Approved Engineer and the Landlord's Engineer mutually agree upon a third licensed marine professional engineer that meets the qualifications criteria set forth in the definition of "Approved Engineer", and that such third engineer shall, at the sole cost and expense of Tenant, be retained by Landlord to review the respective positions of the Approved Engineer and Landlord's Engineer with respect to the recommended structural repair plan and make a separate recommendation to Landlord and Tenant in connection thereto. Landlord agrees to reasonably consider in good faith the recommendation of such third licensed marine professional engineer and

thereafter make a final reasonable determination, provided that it is based on the standards set forth in the Design Criteria and Loads. The obligations of the parties hereto and limitations on liability with respect to Landlord's comments, if any, shall be the same as those set forth in this Section 14. To the extent that the Pier Structural Repair Work undertaken pursuant to such Approved Structural Repair Plan constitutes Construction Work, Landlord's approval under this Section 14 shall be deemed to satisfy the consent requirements of Article 16.

(f) Upon Landlord's approval of an Approved Structural Repair Plan, Tenant shall commence, and continuously and diligently, subject to the Requirements and all related permit and approval conditions, and subject to Unavoidable Delays, perform the Pier Structural Repair Work identified in such Approved Structural Repair Plan, as same may be modified by Tenant from time to time for good cause provided that any modification by Tenant which are more than *de minimis* shall require the approval of Landlord (which approval shall not be unreasonably withheld, conditioned or delayed). Tenant shall provide to Landlord copies of the following documentation as same become available:

(i) Copies of all approvals and permits relating to the Pier Structural Repair Work;

(ii) Copies of bid document(s) and/or work contract(s), the scopes of work and and/or purchase orders for construction services, together with all material amendments, significant change orders or material modifications to such agreements and contractor invoices;

(iii) Advance notice of not less than fifteen (15) days of the commencement date of work under each new Pier Structural Repair Work contract;

(iv) Notification of the date of completion of any portion of the Pier Structural Repair Work;

(v) Plans and specifications and, upon completion, "As-Built" drawings for completed Pier Structural Repair Work;

(vi) Copies of (1) interim inspection supplements performed by the Approved Engineer, if any, to the last completed Comprehensive Inspection report, (2) approved material modifications to the Approved Structural Repair Plan for the current Structural Repair Funding Period, and (3) revisions to the Structural Repair Funding Requirement for the current Structural Repair Funding Period reflecting (A) approved material modifications to the Approved Structural Repair Plan, and (B) Tenant's actual contracts and approved change orders for Pier Structural Repair Work performed in accordance with the Approved Structural Repair Plan;

(vii) Copies of work-in-progress inspection reports together with Certification of the Approved Engineer that the Pier Structural Repair Work or any portion thereof was performed in a good and workmanlike manner and in accordance with the plans and specifications, and that all materials and Equipment as part of such Pier Structural Repair Work is new (unless otherwise indicated in such plans and specifications), in good

condition, fully operational, without defects, and substantially in accordance with such plans and specifications;

(viii) Annual Certification by Tenant that, to the best of its knowledge, the Pier Structural Repair Work completed as of the date of such Certificate was performed in accordance with the Requirements;

(ix) Certification by Tenant at a date prior to each successive fifth (5<sup>th</sup>) year anniversary of the Commencement Date that, to the best of its knowledge, the Pier Structural Repair Work set forth in the Approved Structural Repair Plan for the then current Structural Repair Funding Period was completed as of the date of such Certificate and performed in accordance with the Requirements;

(x) Copies of all guarantees and warranties (if any) on labor, materials and equipment in accordance with the applicable plans and specifications to the extent generally available within the relevant industry for similar work (to the extent that any such guarantees or warranties exist and are deemed assigned to Landlord, Landlord confirms that Tenant shall have the right to enforce the same at Tenant's cost);and

(xi) Such other documentation that Landlord may reasonably request confirming that the completed Pier Structural Repair Work, or portion thereof, was undertaken and paid for in accordance with the requirements of this Section 14.11.

(g) The last Comprehensive Inspection report and the associated plan for Pier Structural Repair Plan shall be prepared such that the plan may be approved by Landlord not later than ninety (90) days' prior to the twenty-seventh (27<sup>th</sup>) anniversary of the Commencement Date as an Approved Structural Repair Plan, and shall specify all Pier Structural Repair Work that must be completed prior to the end of the Term based on Tenant's Use of the Premises (the "**Final Pier Structural Repair Program**"). The Final Pier Structural Repair Program shall be prepared such that, upon completion, marine substructure elements deemed necessary by the Approved Engineer to support uses identified in the Design Criteria and Loads then in effect are reasonably expected to be rated under the NYCEDC Guidelines Manual as "Minor", and thereby meet the good and sufficient repair and condition standard set forth in Section 14.01(a) based on the Design Criteria and Loads. Tenant shall prior to the end of the Term complete at its own costs and expense the Final Pier Structural Repair Program and provide work-in-progress and Certification of Completion of such Structural Pier Repair Work to Landlord prior to Lease expiration. Upon acceptance and approval by Landlord (such approval not to be unreasonably withheld, conditioned or delayed), the Structural Pier Repair Work completed pursuant to the Final Structural Pier Repair Program shall be deemed to satisfy the requirement of Section 14.01(a) with regard to marine substructure portion of the Premises.

(h) In addition, and without limitation to the obligations of Tenant under clauses (a) through (g) of this Section 14.11, Tenant shall secure the services of the Approved Engineer to make an annual inspection of the Chiller Plant Platform at or about the beginning of each year from the Commencement Date that precedes completion of the Chiller Plant Platform Demolition Work, or more frequently if recommended by the Approved Engineer, and to issue an industry standard letter report (the "**Letter Report**") to Tenant, with copy to Landlord no later than April 1 of each

year. Each issued Letter Report shall set forth the Approved Engineer's recommendations for Chiller Plant Platform Maintenance Work and, as applicable Chiller Plant Platform Demolition Work, in the next ensuing twelve (12) month period, or such shorter period as recommended by the Approved Engineer.

(i) It is understood and agreed by Tenant and Landlord that the purpose of the Letter Report shall be to provide annual inspection results and recommended Chiller Plant Platform Maintenance Work and Chiller Plant Platform Demolition Work as may be necessary to maintain a safe dead load and otherwise comply with the Requirements. The timing and extent of the Chiller Plant Platform Maintenance Work and Chiller Plant Platform Demolition Work may be accelerated by Tenant, but shall be completed by not later than the dates recommended in the then most recently issued Letter Report. Notwithstanding anything to the contrary set forth in this Lease, Tenant shall, subject to Unavoidable Delays (but in no event failing to comply with all applicable Requirements), complete the Chiller Plant Platform Demolition Work such that the entire Chiller Plant Platform has been removed and deteriorated wooden piles removed or cut at the mudline, by not later than the fifth (5<sup>th</sup>) anniversary of the Commencement Date.

(j) By not later than the fifth (5<sup>th</sup>) anniversary of the Commencement Date, Tenant shall submit to Landlord (i) Preliminary Plans and Specifications for the Chiller Plant Platform Reconstruction Work and (ii) the Chiller Plant Reconstruction Cost Estimate in connection therewith. The Chiller Plant Platform Reconstruction Work shall be deemed a Structural Alteration under Section 15.01, and review, approval and conduct of the Chiller Plant Platform Reconstruction Work shall thereafter proceed in accordance with provisions of Article 16 applicable to Major Construction Work and all other applicable requirements expressly set forth hereunder. All Structural Alterations affecting the Chiller Plant Platform after Tenant's Chiller Plant Platform Reconstruction Work has been completed shall be subject to Section 15.01 and Landlord's review and approval in accordance therewith.

(k) Tenant shall, subject to Unavoidable Delays, undertake such as actions as are necessary to cause the Chiller Plant Platform Reconstruction Work to: (i) commence on or before the date that is five (5) years and six (6) months after the Commencement Date, (ii) achieve Substantial Completion of the Chiller Plant Platform Reconstruction Work on or before date that is seven (7) years after the Commencement Date, and (iii) achieve Final Completion on or before date that is eight (8) years after the Commencement Date.

(l) At all times, Tenant shall adhere to good engineering practices and the industry standards set forth in the NYCEDC Guidelines Manual with respect to the marine inspections (both Comprehensive Inspections and Rapid Level Inspections) and the preparation of engineering plans for Pier Structural Repair Work. The NYCEDC Guidelines Manual (as the generally applicable provisions of such manual may be updated by New York City Economic Development Corporation (or successor entity)) shall be the controlling reference document with regard to such inspections unless Tenant and Landlord agree in a signed writing upon a successor or replacement reference document, or, with respect to a specific item or interpretation, both the Approved Engineer and Landlord's Engineer, are in agreement.

(m) Tenant may employ the Approved Engineer to inspect and prepare plans and specifications for Pier Non-Structural Repair Work. Tenant shall continue to have the unqualified



sole and exclusive obligation during the Term to cause the performance of, and pay the associated costs of, Pier Non-Structural Repair Work.

Section 14.12. No Dredging; Sunken Craft.

(a) Tenant shall not dredge in the slips, or water adjacent to, or included within, the Premises without Landlord's prior written approval, which approval may be granted or withheld in its sole discretion; provided, however, such approval shall not be unreasonably withheld, conditioned or delayed if Tenant is required to perform same in order to continue to operate in substantially the same manner as Tenant operated as of the Commencement Date. If Landlord approves dredging in the slips, or water adjacent to, or included within, the Premises, Tenant shall conduct such dredging in accordance with all Requirements and all other applicable laws, rules, regulations and ordinances.

(b) If during the Term, water included within the Premises shall become obstructed in whole or in part by (i) the sinking of any waterborne craft (including, without limitation, the Vessels), other than a waterborne craft owned or operated by Landlord, or (ii) any other obstruction within the Premises, other than an obstruction caused by Landlord, Tenant, at its sole cost and expense, after receiving notice, shall promptly eliminate such obstruction, or cause the same to be eliminated. If, after said notice, Tenant fails to eliminate such obstructions, Landlord may, in its discretion, undertake same, and, in such event, Tenant shall reimburse Landlord for the reasonable expenses so incurred.

Section 14.13. Polystyrene packaging prohibited. Tenant shall not use, and shall take commercially reasonable actions to cause all other Tenant Parties not to use, polystyrene packaging or food containers on the Premises.

Section 14.14. Graffiti. Graffiti, including, but not limited to, markings and stickers, flyers, postings or other printed material affixed by any means to any surface of any structure, improvement, fixture, furnishing or equipment located on or at the Premises, shall be promptly removed, or if not removable, painted over or surfaces otherwise refinished. Tenant shall use commercially reasonable efforts to remove all such graffiti within forty-eight (48) hours after its appearance.

## ARTICLE 15

### CHANGES AND ALTERATIONS

Section 15.01. Structural Alterations. Except as otherwise provided in Section 8.01(c) or Section 15.02 hereof, Tenant shall make no changes, alterations, improvements, installations or additions which (a) impact the facade of the Welcome Center facing 12<sup>th</sup> Avenue, (b) impact the Pier Open Space, (c) impact the structural integrity of any part of the Pier (including, without limitation, the Pier Structural Repair Work and the Chiller Plant Platform Reconstruction Work, but, for the avoidance of doubt, excluding the Pier Non-Structural Repair Work and the Paver Fundraising Work) or (d) require a building permit or similar permit or license from any Governmental Authority for any new or replacement building or similar improvement or the expansion of a then existing building or similar improvement (collectively "**Structural**

**Alterations**”) in, on, or to the Premises without Landlord’s prior written consent, the granting of which consent shall not be unreasonably withheld, conditioned or delayed. Tenant further agrees that if Tenant performs a Structural Alteration without prior approval from Landlord, Tenant promptly remove any such Structural Alteration upon notice from Landlord. If Tenant fails to so promptly remove any such Structural Alterations installed without consent, then, in addition to any other remedies Landlord may have under this Lease, Landlord shall also have the right to remove such Alteration upon at least three (3) Business Days’ prior written notice to, and at the sole cost and expense of, Tenant, which costs shall include storage costs of any materials. For purposes of this Lease, the term “Structural Alterations” does not include ordinary maintenance and repair, Decorative Changes, Trade Fixtures or Non-Structural Alterations including the placement of non-structural interior demising walls and installation of equipment (other than any Equipment, the installation of which would be structural in nature or would increase the live load so that it exceeds the maximum allowable pounds per square foot as contained in the Plans attached hereto in **Exhibit I(3)**).

Section 15.02. Conditions Applicable to Alterations.

(a) Decorative Changes. Tenant shall be permitted to perform ordinary repairs, maintenance and decorative changes to the interior of Buildings on the Premises without the prior consent of Landlord and without prior notice to Landlord, so long as such repairs, maintenance and/or changes are performed in accordance with the Requirements and do not require review by the Design Commission (collectively “**Decorative Changes**”). For purposes of this Lease, “Decorative Changes” shall include, without limitation, painting the Premises and the installation or removal of Trade Fixtures, items of furniture, furnishings, decorations, temporary wall partitions, wall and floor coverings, window treatment, and other non-structural finish work. Such Decorative Changes shall not be considered Construction Work for purposes of this Lease, so long as such Decorative Changes do not require review by the Design Commission or a building permit.

(b) Nonstructural Alterations. Tenant, without the prior written consent of Landlord, but upon prior notice (which may be sent via email) to Landlord, may perform Alterations or other Construction Work:

(i) to the interior of Buildings on the Premises which do not require review by the Design Commission (“**Non-Structural Alterations**”), at its sole cost and expense, provided that: (A) Tenant shall have observed and performed all of the covenants of this Lease on Tenant’s part to be observed and performed, including compliance with the Requirements, and no Event of Default shall have occurred and be continuing; (B) Tenant and its contractors shall have furnished Landlord with evidence of the insurance required by Section 10.01, and (C) Tenant shall furnish Landlord with plans and specifications for the Non-Structural Alterations upon completion thereof (Non-Structural Alterations, together with Structural Alterations, “**Alterations**”).

(ii) solely in connection with a reduction or reconfiguration of the Pier Open Space or Pier Open Space Amenities under Section 8.01(e) that does not impact or is related to the structural integrity of any part of the Pier provided that: (A) Tenant shall observe and perform all of the covenants of this Lease on Tenant’s part to be observed and performed with respect thereto, including compliance with the Requirements, and no Event

of Default shall have occurred and be continuing; (B) Tenant and its contractors shall have furnished Landlord with evidence of the insurance required by Section 10.01; (C) Tenant's prior notice to Landlord set forth in the first sentence of this Section 15.02(b) shall include a description that, in reasonable detail, depicts the contemplated Alteration or Construction Work; and (D) Tenant, promptly after the event necessitating such reduction or reconfiguration concludes, restores the Pier Open Space and/or Pier Open Space Amenities to the condition existing immediately prior such event.

(c) Fundraising Pavers. In addition to the forgoing, Tenant shall be permitted to participate in paver-style fundraising programs (including the sale of pavers or plaques to name portions of the Pier) without the prior consent of Landlord and without prior notice to Landlord, so long as the presence of such pavers, plaques or other alterations undertaken in furtherance of such fundraising program (1) do not impede or interfere with general public access to the Pier or use thereof (excluding the area immediately surrounding the paver for purposes of installation, replacement and maintenance work, so long as alternative access points and walkways exist to access other portions of the Pier Open Space and such work is limited to a commercially reasonable duration of time and area) and (2) are performed in accordance with the Requirements (including, without limitation, obtaining the review and/or approval of the Design Commission to the extent applicable) (the "**Paver Fundraising Work**"). In no event shall Tenant enter into any agreement in furtherance of such fundraising program or undertake any obligation to any donor that extends past the Term or the term of any subsequent lease entered into between Landlord and Tenant. All pavers, plaques or other alterations undertaken in furtherance of such fundraising program shall be removed by Tenant at Tenant's sole cost and expense at the expiration or earlier termination of this Lease.

(d) Compliance with Requirements Governing Alterations. Tenant shall, at its sole cost and expense, comply with all Requirements applicable to any Alteration undertaken by it, including, without limitation, obtaining, prior to commencement of any such Alteration, permits and licenses that may be required in connection with such Alteration, and, upon completion thereof, obtaining any requisite certificates, including, without limitation, certificates of completion or certificates of occupancy. Landlord shall reasonably cooperate with Tenant (including, without limitation, by executing permit applications following Landlord's reasonable review to confirm compliance with the Requirements and this Lease) but shall not be required to pay for or contribute to the costs of any such Alteration. Within thirty (30) days after demand therefor (which demand shall include reasonable backup therefor), Tenant shall reimburse Landlord for any out-of-pocket costs and expenses actually incurred by Landlord, including (i) the actual reasonable direct cost of Landlord's employees, but expressly excluding overtime pay and other overtime expenses unless specifically authorized in writing by Tenant in connection with reviewing any Structural Alterations or acting as permit applicant on Tenant's behalf relating to Major Construction Work, (ii) reasonable out-of-pocket third-party costs related to Design Commission applications, (iii) reasonable out-of-pocket fees of architects and engineers engaged by Landlord to review Tenant's plans and specifications and verifying conformance therewith during or following the completion of any Structural Alteration, and (iv) out-of-pocket third-party expenses actually incurred on account of any failure of Tenant to comply with any Requirements or this Lease pertaining to the making of such Structural Alteration, but, in all events, excluding any of Landlord's overhead costs. Such amounts payable to Landlord shall constitute Rental hereunder. Landlord's approval of Tenant's plans and specifications for any such proposed Structural Alterations, or any revisions thereto, or

Landlord's inspection of such Structural Alterations to verify conformance with Tenant's plans and specifications therefor, shall not constitute an opinion or agreement by Landlord that the same are adequate or sufficient or that the same are in compliance with applicable Requirements nor shall such approval or inspection impose any liability on Landlord, waive any of Landlord's rights or release Tenant from any of its obligations hereunder. The provisions of Section 16.03(c) shall apply with respect to Landlord's review and approval of Tenant's plans and specifications for any Structural Alteration requiring Landlord's approval.

(e) Landlord's Right to Inspect Structural Alterations. At all reasonable times (upon reasonable written notice to Tenant) during the progress of Structural Alterations and until final certificates of approval therefor shall have been delivered to Landlord, Landlord shall have the right to have its representatives inspect the work being performed in the Premises and to verify compliance (in all material respects) with the Approved Plans and Specifications therefor, provided, that, except in the case of an emergency, Landlord shall give Tenant reasonable notice of Landlord's intention to inspect the Premises, and employees of Tenant are present at the Premises. Landlord shall take all reasonable steps to minimize interference with Tenant's operations when conducting such inspection.

Section 15.03. No Allowances. Tenant shall not be entitled to any abatement, allowance, reduction or suspension of the Rental or any other charge, cost or expense payable by Tenant under this Lease, nor shall Tenant be released of or from any other obligations imposed upon Tenant under this Lease, because of the construction of any Alteration.

Section 15.04. Removal of Trade Fixtures and Equipment. Nothing in this Article shall be construed to give Landlord title to or to prevent Tenant's removal of Trade Fixtures, but upon removal of any such property from the Premises, Tenant shall immediately and at its expense, repair and restore the Premises to the condition existing prior to installation of such Trade Fixtures and repair any damage to the Premises or the Improvements due to such removal. All Trade Fixtures permitted or required to be removed by Tenant at the end of the Term pursuant to this Lease remaining in the Premises after the expiration or earlier termination of this Lease shall be deemed abandoned and at the election of Landlord, either be retained as Landlord's property or removed from the Premises by Landlord, at Tenant's expense. Notwithstanding the foregoing, Landlord shall provide Tenant with written notice of its intent to discard Trade Fixtures at least five (5) Business Days prior to discarding any such property. Within three (3) Business Days of Tenant's receipt of such notice Tenant shall notify Landlord, in writing, if it desires Landlord to place such property in storage. If Tenant so elects, Landlord shall place such Trade Fixtures in storage, at Tenant's sole cost and expense, for up to ninety (90) days. If Tenant fails to timely provide such required written notice, then such Trade Fixtures shall be deemed abandoned. If Tenant fails to claim such Trade Fixtures within such ninety (90) day period or fails to pay the cost of storage, then such Trade Fixtures shall be deemed abandoned and Landlord has the remedies provided above. Tenant agrees that it shall have no claim against Landlord if any of Trade Fixtures is damaged or destroyed while in storage except if the same is due to Landlord or Landlord's negligence or willful misconduct.

Section 15.05. Sprinklers. Anything elsewhere in this Lease to the contrary notwithstanding, if any bureau, department or official of the federal, state or city government requires, due to any Requirements, the installation of a sprinkler system anywhere within the

Premises, including on the Vessels, other than the sprinkler system currently installed in the Premises, or that require any changes, modifications, alterations, or additional sprinkler heads or other equipment be made or supplied in an existing sprinkler system by reason of Tenant's business, or the location of partitions, Trade Fixtures, or other contents of the Premises, or for any other reason, Tenant shall, at Tenant's expense, promptly make such sprinkler system installations, changes, modifications, alterations, and supply additional sprinkler heads or other equipment as required whether the work involved shall be structural or non-structural in nature and in accordance with this Article 15.

## **ARTICLE 16**

### **CONSTRUCTION WORK**

Section 16.01. Construction Work. Tenant shall undertake all Construction Work in accordance with the requirements of this Article 16. Tenant hereby acknowledges that Landlord shall be required to sign as "Owner" on all permit applications filed with DOB, DSBS other Government Authorities in connection with any Major Construction Work (as hereinafter defined) on the Premises.

Section 16.02. Definitions. As used in this Lease, the following terms shall have the meanings set forth below:

"Approved Plans and Specifications" means the Preliminary Plans and Specifications prepared by an Architect in connection with any Major Construction Work which have been approved by Landlord in accordance with the provisions of Section 16.03 hereof.

"Final Completion" means, with respect to all Major Construction Work constructed by Tenant in accordance with this Lease, that Landlord has determined that the following conditions have been satisfied: (a) all work, including all punch list items, remaining after Substantial Completion, have been completed substantially in accordance with the Approved Plans and Specifications and have been accepted by Landlord; and (b) to the extent applicable, all Governmental Authorities having jurisdiction have unconditionally authorized occupancy and use of the entire Premises (as evidenced by issuance of a permanent certificate of occupancy or certificate of completion, as applicable, and any other permits or licenses required for occupancy and the intended use and purpose). Tenant shall provide written notice to Landlord that, in its opinion, the above-listed conditions have been satisfied, together with supporting documentation therefor. Within fifteen (15) Business Days after Landlord's receipt of Tenant's notice, Landlord shall advise Tenant whether or not, in Landlord's reasonable discretion, such conditions have been satisfied, or whether Tenant has failed to submit adequate and sufficient evidence to permit Landlord to issue its determination. If, in the reasonable discretion of Landlord, the conditions for Final Completion have not been satisfied, Landlord shall give Tenant a written notice setting forth in reasonable detail the reasons for Landlord's determination within such fifteen (15) Business Day period.

"Substantial Completion" or "Substantially Completed" means, with respect to all Major Construction Work constructed by Tenant in accordance with this Lease, that the following conditions have been satisfied: (a) to the extent applicable, the Governmental Authority having

jurisdiction over the Premises has issued a temporary certificate (or certificates) of occupancy or completion, as the case may be, for the Premises; (b) to the extent applicable, all utilities are connected; (c) to the extent applicable, Tenant may use and occupy any new or renovated Improvements for the use and purpose authorized by this Lease; and (d) the Architect has certified that all work has been completed substantially in accordance with the Approved Plans and Specifications, except for minor repairs, corrections, and adjustments of a “punch list” nature identified by the Architect which can be completed promptly and with minimal interference to the occupancy and use of the Premises by Tenant. Tenant shall provide written notice to Landlord that, in its reasonable opinion, the above-listed conditions have been satisfied together with supporting documentation therefor. Within fifteen (15) Business Days after Landlord’s receipt of Tenant’s notice, Landlord shall advise Tenant whether or not, in Landlord’s reasonable discretion, such conditions have been satisfied, or whether Tenant has failed to submit adequate and sufficient evidence to permit Landlord to issue its determination. If, in the reasonable discretion of Landlord, the conditions for Substantial Completion have not been satisfied, Landlord shall give Tenant a written notice setting forth in reasonable detail the reasons for Landlord’s determination within such fifteen (15) Business Day period.

#### Section 16.03. Plans and Specifications.

(a) Satisfactory to Landlord. Plans and specifications for all Construction Work in connection with Structural Alterations of the Pier or any part thereof, including Pier Structural Repair Work, Casualty or Condemnation Restorations respecting same (but excluding interior construction work, Non-Structural Repair Work and Paver Fundraising Work) (“**Major Construction Work**”) shall be satisfactory to Landlord, in its reasonable discretion.

(b) Submission of Preliminary Plans and Specifications. Within a reasonable period of time after determining the need for any Major Construction Work, Tenant shall submit to Landlord, for Landlord’s prior review and approval (not to be unreasonably withheld, conditioned or delayed), preliminary plans and specifications for the proposed Major Construction Work (“**Preliminary Plans and Specifications**”).

(c) Review and Approval of Preliminary Plans and Specifications. Landlord shall notify Tenant of Landlord’s approval or disapproval (and the reasons for such disapproval) of the Preliminary Plans and Specifications within twenty (20) Business Days after receipt thereof. If Landlord shall fail to so approve or disapprove (along with the written reasons for any disapproval in reasonable detail) Tenant’s Preliminary Plans and Specifications (or any part thereof) within such twenty (20) Business Day period, Tenant may give to Landlord a notice of such failure stating that if Landlord fails within five (5) Business Days after the giving of such notice to approve or disapprove (along with the reasons for any disapproval) such Tenant’s Preliminary Plans and Specifications, Landlord shall be deemed to have approved such Tenant’s Preliminary Plans and Specifications, and if Landlord shall fail to approve or disapprove (along with the written reasons for any disapproval in reasonable detail) such Tenant’s Preliminary Plans and Specifications within such five (5) Business Day Period, Landlord shall be deemed to have approved such Preliminary Plans and Specifications. Upon approval or deemed approved by Landlord, the Preliminary Plans and Specifications shall constitute Approved Plans and Specifications. However, if during such twenty (20) day period, Tenant is so directed by Landlord, Tenant shall revise or cause the Architect to revise the Preliminary Plans and Specifications in accordance with the reasonable directions of

Landlord. Landlord shall set forth its directions in writing and in reasonable detail and identify those portions of the plans so disapproved and the reasons thereof. Landlord shall advise Tenant within ten (10) Business Days following receipt of Tenant's revised Preliminary Plans and Specifications, or portions thereof, or any further revised Preliminary Plans and Specifications, of Landlord's approval or disapproval (along with the written reasons for any disapproval in reasonable detail) of the revised Preliminary Plans and Specifications. If Landlord fails to approve or disapprove (along with the written reasons for any disapproval) the revised Preliminary Plans and Specifications within such ten (10) Business Day period following Landlord's receipt of Tenant's revised Preliminary Plans and Specifications, Tenant may give to Landlord a notice of such failure stating that if Landlord fails within two (2) Business Days after the giving of such notice to approve or disapprove such revised Preliminary Plans and Specifications, Landlord shall be deemed to have approved such revised Preliminary Plans and Specifications, and if Landlord shall fail to approve or disapprove (along with the written reasons for any disapproval in reasonable detail) such revised Preliminary Plans and Specifications within such two (2) Business Day Period, Landlord shall be deemed to have approved the Preliminary Plans and Specifications.

(d) Modification of Approved Plans and Specifications. If Tenant desires to materially modify the Approved Plans and Specifications, Tenant shall submit the proposed modifications to Landlord for its prior review and approval. Landlord shall review the proposed changes as if such plans were an original submission of Preliminary Plans and Specifications proposed under Section 16.03(b) and (c) hereof, and the provisions thereof governing such a submission shall apply.

(e) No Representations or Warranties. Except as set forth in this Lease, Tenant understands and agrees that Landlord shall not incur any liability to any Person for any act or omission in connection with its review and approval of the Preliminary Plans and Specifications, or failure to review or approve the foregoing. Landlord's approval of the Approved Plans and Specifications or any other document or Landlord's inspection of any construction on the Premises, shall not be, or shall not be construed or interpreted, or otherwise relied upon, by any Person as: (1) a representation, warranty or determination by Landlord that the Approved Plans and Specifications comply with applicable Requirements, or are structurally or architecturally sound or safe, or technically correct, (2) a waiver of any of Landlord's rights, or (3) a release of Tenant from any of its obligations under this Lease.

Section 16.04. Conditions Precedent to Tenant's Commencement of All Major Construction Work. Prior to the commencement of any Major Construction Work, Tenant shall comply with the following terms, covenants and conditions:

(a) Permits and Approvals. Tenant shall deliver to Landlord (i) copies of all permits, consents, certificates and approvals of all Governmental Authorities required for the performance of the Major Construction Work, certified by Tenant or the Architect, and (ii) the bonds or other form of security, if required by subsection (c) of this Section 16.04. At the request of Tenant, Landlord (acting in its proprietary capacity) shall reasonably cooperate with Tenant in obtaining from third parties the permits, consents, certificates and approvals required by this Section 16.04 and any reasonably necessary utility easements and shall not unreasonably withhold, delay, or condition its consent to any application required to obtain such permits, consents, certificates, approvals and easements made by Tenant. Within thirty (30) days after demand therefor (which

demand shall include reasonable backup therefor), Tenant shall reimburse Landlord for any out-of-pocket costs or expenses actually incurred by Landlord (acting in its proprietary capacity) in cooperating with Tenant to obtain the permits, consents, certificates and approvals required by this Section 16.04 and any necessary utility easements (which, for the avoidance of doubt, shall not be granted by Landlord or any of its affiliates), including the actual reasonable direct cost of Landlord's employees, but expressly excluding overtime pay and other overtime expenses in connection therewith unless specifically authorized in writing by Tenant. Such amounts payable to Landlord shall constitute Rental hereunder.

(b) Construction Contract. Tenant shall deliver to Landlord a form of contract that satisfies the requirements of Section 16.12 hereof and is in form assignable to Landlord, made with a reputable and responsible contractor or construction manager, who can make the representations set forth in Section 16.12 hereof ("**Contractor**") providing for the completion of the Major Construction Work in accordance with the Approved Plans and Specifications, applicable Requirements and this Lease.

(c) Bonds. Before proceeding with any Major Construction Work, Tenant shall furnish to Landlord one of the following (as selected by Tenant): (i) a performance bond and a labor and materials payment bond (issued by a corporate surety licensed to do business in New York reasonably satisfactory to Landlord), (ii) an irrevocable, unconditional, negotiable letter of credit, in form reasonably acceptable to Landlord, (iii) a completion guaranty from a Person acceptable to Landlord, in its sole discretion, or (iv) an alternative form of security which provides Landlord with comparable protection to the foregoing options which is reasonably satisfactory to Landlord; in each case to be equal to (or equivalent to) 100% of the cost of the Major Construction Work. With respect to clause (ii) above, any letter of credit shall be for one year and shall be renewed by Tenant each and every year until the Major Construction Work in question is completed and shall be delivered to Landlord not fewer than ten (10) days' prior to the expiration of the then current letter of credit, failing which Landlord may present the then current letter of credit for payment. Upon (A) the completion of the Major Construction Work and (B) the submission to Landlord of (x) proof evidencing the payment in full for said Major Construction Work and (y) written unconditional Lien waivers from all contractors performing work or supplying materials in connection with said Major Construction Work, the security deposited with Landlord (or the balance of the proceeds thereof, if Landlord has drawn on the same) shall be returned to Tenant. Upon Tenant's failure properly to perform, complete and fully pay for any Major Construction Work, Landlord may, upon notice to Tenant, avail itself of the security deposited under this Section 16.04(c) to the extent necessary in connection with completing said Major Construction Work, the restoration and/or protection of the Premises and the payment of any costs, damages or expenses resulting therefrom.

Section 16.05. Conditions Precedent to Tenant's Commencement of All Construction Work. Prior to the commencement of any Construction Work, Tenant shall comply with the following terms, covenants and conditions:

(a) Insurance. Tenant shall deliver to Landlord copies of the policies of insurance required in connection with the performance of Construction Work pursuant to the provisions of Section 10.01 hereof.



(b) Assignment of Construction Contract. Tenant shall deliver to Landlord an assignment of Construction Contract to Landlord (or in Landlord's discretion to Landlord) duly executed and acknowledged by Tenant (and consented to by the Contractor) effective by its terms upon any termination of this Lease, or upon Landlord's re-entry upon the Premises following an Event of Default before the complete performance of the Construction Contract required in connection with the Construction Work in question ("**Assignment of Construction Contract**"). The Assignment of Construction Contract shall also include the benefit of all payments made on account of the Construction Contract, including payments made before the effective date of the Assignment of Construction Contract. The Assignment of Construction Contract may include a provision that in order for it to become effective the assignee must assume Tenant's remaining obligations (other than accrued obligations) under the assigned Construction Contract.

Section 16.06. Performance of Construction Work.

(a) All Construction Work, including without limitation all Major Construction Work, shall be performed diligently and in good and workmanlike manner and substantially in accordance with the Approved Plans and Specifications, all applicable Requirements and this Lease. All materials and equipment utilized or furnished in connection with any and all Construction Work shall be new (unless otherwise specified in the Approved Plans and Specifications) and in good condition, fully operational, without patent or latent defects, suitable for its intended purpose and shall comply with the requirements of the Approved Plans and Specifications.

(b) At all times during the performance of any Construction Work, Tenant shall reasonably cooperate with Landlord and any additional parties, to coordinate and develop a plan for the construction of, permanent access to, and maintenance of any utility lines, anticipated to be located in, under or around the Premises, including any plans to construct an electricity transmission station in a vault beneath the Premises and lay a power cable beneath the Premises. Tenant shall reasonably coordinate its Construction Work as necessary, in a reasonable manner with any such utility provider.

Section 16.07. Supervision of Architect. All Major Construction Work shall be supervised by an Architect and all material changes to the Approved Plans and Specifications, shall be undertaken by an Architect.

Section 16.08. Rights of Inspection.

(a) Landlord and its representatives and agents shall have the right, at any time and from time to time upon reasonable notice, to visit the Premises to observe the performance of Major Construction Work by Tenant and attend Tenant's job and/or safety meetings solely for the purpose of ensuring that the Major Construction Work is undertaken substantially in accordance with the Approved Plans and Specifications, all Requirements and this Lease; provided, that Landlord and its representatives and agents use reasonable efforts not to interfere with Tenant's performance of such Major Construction Work. Nothing herein shall impose any liability upon Landlord for any failure by Tenant to comply with any Requirements or observe any safety practices in connection with such construction, or constitute an acceptance of any work that does not comply in all material respects with the Approved Plans and Specifications, applicable Requirements or the provisions of this Lease. Landlord, in its sole discretion, shall have the right to maintain field

personnel at the Premises, at Tenant's sole cost and expense, to the extent the necessity therefor is the result of Tenant's negligence or willful misconduct in connection with its performance of the Major Construction Work.

(b) Tenant shall keep Landlord fully informed of Tenant's progress in undertaking any Major Construction Work. In furtherance of the foregoing, upon Landlord's request, Tenant shall provide Landlord with copies of all documentation that are customarily provided to a construction lender (and other documentation reasonably requested by Landlord).

Section 16.09. Completion of Major Construction Work.

(a) Substantial Completion. Upon Substantial Completion of any Major Construction Work, Tenant shall deliver the following to Landlord: (i) a certification of the Architect (certified to Landlord) that the Major Construction Work in question has been Substantially Completed in accordance with the Approved Plans and Specifications therefor and that the Improvements constructed pursuant to such Major Construction Work comply with the Building Code of New York City and all other Requirements, and (ii) to the extent applicable, a copy of the temporary certificate of completion or certificate of occupancy for the entire Premises (or the relevant portion thereof).

(b) Final Completion. Upon Final Completion of any Major Construction Work, Tenant shall deliver the following to Landlord to the extent applicable: (i) within forty-five (45) days after a permanent certificate of occupancy or a certificate of completion is issued, a complete set of "as built" plans for the Improvements constructed pursuant to such Major Construction Work; and (ii) as soon as available, a copy of the permanent certificate of occupancy or certificate of completion for the entire Premises (or relevant portions thereof). Landlord and its agents and representatives shall have an unrestricted, non-exclusive, irrevocable license to use such "as built" plans and survey for any purpose related to Landlord's interest in the Premises without paying any additional cost or compensation therefor. Landlord and its agents and representatives shall, at all times during the Term, exercise good faith efforts to maintain the plans, specifications, and surveys at any time furnished by Tenant to Landlord or its agents and representatives in strict confidence, except as otherwise provided herein, subject, however, to any requirement of applicable law to disclose or make information available to the public.

Section 16.10. Compliance with Requirements. Tenant assumes sole responsibility for compliance with all applicable Requirements in the performance of Construction Work. Accordingly, Tenant shall ensure that the Approved Plans and Specifications of Major Construction Work and the plans and specifications of any other Construction Work undertaken at the Premises during the Term comply with all applicable Requirements.

Section 16.11. Costs and Expenses. Tenant understands and agrees that all Improvements constructed or required to be constructed by Tenant will be designed, constructed, maintained, secured and insured entirely at Tenant's sole cost and expense without reimbursement or contribution by Landlord, or any credit or offset of any kind for any costs or expenses incurred by Tenant (except as otherwise expressly provided in this Lease). Tenant further covenants and agrees to pay and discharge all Impositions, and all municipal fees, charges, assessments and impositions assessed, charged or imposed in connection with the construction of all such

Improvements. In the case of a Restoration, Tenant's obligations with respect to this Section 16.11 shall be qualified by and subject to the provisions of Articles 11 and 12, respectively.

Section 16.12. Construction Agreements.

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

(i) “[Contractor”]/[“Subcontractor”]/[“Materialman”] hereby agrees that immediately upon the purchase from [“contractor”]/[“subcontractor”]/[“materialman”] of any building materials to be incorporated in the Improvements (as such terms are defined in the lease pursuant to which the contract purchase hereunder acquired a leasehold interest in the property (the “Lease”)), such materials shall become the sole property of Landlord (as defined in the Lease), notwithstanding that such materials have not been incorporated in, or made a part of, such Improvements at the time of such purchase; provided, however, that Landlord shall not be liable in any manner for payment or otherwise to [“subcontractor”]/[“materialman”] in connection with the purchase of any such materials and neither Landlord nor Landlord shall have any obligation to pay any compensation to [“contractor”]/[“subcontractor”]/[“materialman”] by reason of such materials becoming the sole property of Landlord.”

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

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

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

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

(b) Definition. “**Construction Contracts**” means a written contract to do any Construction Work.

Section 16.13. Publicity. Within sixty (60) days after commencement of Major Construction Work or other Construction Work the cost of which exceeds \$5,000,000.00 or which Tenant reasonably expects to attract media coverage (a “**Significant Project**”), Tenant shall consult with Landlord, and if in the reasonable determination of Landlord deemed necessary, furnish and install a project sign, the wording, design and location of which shall be reasonably satisfactory to Landlord. Tenant shall invite Landlord and its designee(s) to participate in any groundbreaking and opening ceremonies to be held at such time and in such manner as Tenant shall reasonably determine after consulting with Landlord and not inconsistent with Landlord’s requests related thereto. In addition, Tenant shall use its reasonable efforts to consult with Landlord concerning any publicity announcements to any news media prior to or upon Substantial Completion of such Significant Project. Any such publicity announcements in connection with such Significant Project that refer to the location of the Intrepid or other Vessels shall comply with the terms of Section 37.01 hereof.

## ARTICLE 17

### REQUIREMENTS OF GOVERNMENTAL AUTHORITIES

Section 17.01. Obligation to Comply with Requirements. Subject to Tenant’s right to contest the same pursuant to Section 34.02 and subject to the provisions of Section 4.05, Tenant shall comply with all Requirements applicable to the maintenance, management, use and operation of the Premises and Improvements and Tenant’s performance of its obligations hereunder, including, without limitation, any Construction Work performed by Tenant, without regard to the nature of the work required to be done, whether extraordinary or ordinary, and whether requiring the removal of any encroachment, or affecting the maintenance, use or occupancy of the Premises, or involving or requiring any structural changes or additions in or to the Premises, and regardless of whether such changes or additions are required by reason of any particular use that may be made of the Premises, or any part thereof.

## ARTICLE 18

### DISCHARGE OF LIENS; BONDS

Section 18.01. No Liens Are Permitted. Tenant shall not create, cause to be created, nor suffer or permit to remain, (a) any Lien, upon (i) this Lease, the leasehold estate created hereby, or income therefrom, except that Tenant shall be permitted to enter into financing agreements that create or cause to be created a lien secured by income derived therefrom (provided that such lien is for the purpose of furthering one or more Permitted Uses), (ii) the Premises, or any part of the Premises, except that Tenant shall be permitted to enter into lease and/or financing agreements for Tenant’s Equipment (provided such lien on Tenant’s Equipment is for the purpose of furthering one or more Permitted Uses), or (iii) any assets of, or funds appropriated to, Landlord,

or (b) any other matter or thing whereby the estate, rights or interest of Landlord in and to the Premises, or any part thereof, might be impaired.

Section 18.02. Discharge of Liens.

(a) Subject to paragraph (b) below and Section 4.05 above, if in violation of Tenant's obligations under Section 18.01, any Lien is filed against the Premises, or any part thereof, or if any Lien created, or caused or suffered to be created, by Tenant shall be filed against any assets of, or funds appropriated to, Landlord, then Tenant shall, within thirty (30) days after receiving notice of the filing of such Lien, cause it to be vacated or discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise.

(b) Notwithstanding the foregoing but subject to Section 4.05 above, Tenant shall not be required to discharge any such Liens if (i) Tenant shall have brought an appropriate proceeding to discharge such Lien and is prosecuting such proceeding with diligence and continuity; except that, if despite Tenant's efforts to seek discharge of the Lien, Landlord reasonably believes such Lien is about to be foreclosed and so notifies Tenant, Tenant shall immediately cause such Lien to be discharged of record pursuant to Section 18.01, or (ii) such Liens were filed against the Premises or created or filed against the assets of, or funds appropriated to, Landlord as a result of any acts, omissions or work performed by or on behalf of Landlord.

Section 18.03. No Authority to Contract in Name of Landlord. Nothing contained in this Lease shall be deemed or construed to constitute the consent or request of Landlord, express or implied, by implication or otherwise, to any contractor, subcontractor, laborer or material provider for the performance of any labor, or the furnishing of any materials for any specific improvement of, alteration to, or repair of, the Premises, or any part thereof, nor as giving Tenant any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any Lien against the Premises, this Lease, the leasehold estate created hereby or any part of any of the foregoing, or any income therefrom, or against assets of, or funds appropriated to, Landlord. Notice is hereby given, and Tenant shall cause all agreements entered into by Tenant to provide, that to the extent enforceable under New York law, Landlord shall not be liable for any such work performed or to be performed at the Premises or any part thereof for Tenant or any subtenant or for any materials furnished or to be furnished to the Premises or any part thereof for any of the foregoing, and no Lien for such work or materials shall attach to or affect the Premises or any part thereof or any assets of, or funds appropriated to, Landlord.

**ARTICLE 19**

**CERTAIN REPRESENTATIONS AND WARRANTIES OF TENANT AND LANDLORD**

Tenant hereby represents, warrants and covenants to Landlord as follows:

Section 19.01. Incorporation, Good Standing and Due Qualification. Tenant is a not-for-profit education corporation duly organized, validly existing and in good standing under the laws of the State of New York and chartered by the Board of Regents of the University of the State of New York, is qualified as tax-exempt pursuant Section 501(c)(3) of the Internal Revenue

Code of 1986, as amended, and has all requisite power and authority to execute, deliver and perform its obligations under this Lease, to own its assets and to transact the business in which it is now engaged or proposed to be engaged, particularly the operation of the Premises for the purposes of a Museum, and is duly qualified as a foreign corporation and in good standing under the laws of each other jurisdiction in which such qualification is required, and Tenant hereby covenants that it shall, for the Term of this Lease, continue to maintain this corporate and tax-exempt status in all respects except to the extent that due to a change in law it is impossible for Tenant to do so.

Section 19.02. Corporate Power and Authority; No Conflicts. The execution, delivery and performance by Tenant of this Lease have been duly authorized by all necessary corporate action and do not and will not: (a) contravene its charter or by-laws; (b) to Tenant's knowledge, violate any provision of, or require any filing, registration, consent or approval under, any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Tenant; (c) to Tenant's knowledge, result in a breach of, or constitute a default or require any consent under any indenture or loan or credit agreement or any other agreement, lease or instrument to which Tenant is a party or by which it or its properties may be bound or affected; (d) to Tenant's knowledge, result in, or require, the creation or imposition of any Lien, upon or with respect to any of the properties now owned or hereafter acquired by Tenant; or (e) to the best of Tenant's knowledge after due inquiry, cause Tenant to be in default under any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award or any such indenture, agreement, lease or instrument.

Section 19.03. Legally Enforceable Agreements. This Lease is a legal, valid and binding obligation of Tenant enforceable against Tenant in accordance with its terms, except to the extent that such enforcement may be limited by bankruptcy, insolvency and other similar laws affecting creditors' rights generally.

Section 19.04. Litigation. To Tenant's knowledge, there are no actions, suits or proceedings pending or, threatened in writing against, or affecting Tenant before any court, Governmental Authority or arbitrator, which may, in any one case or in the aggregate, materially adversely affect the financial condition, operations, properties or business of Tenant, or the ability of Tenant to perform its obligations under this Lease.

Section 19.05. Taxes. Tenant has filed all tax (federal, state and local) returns required to be filed or has filed appropriate extensions, and has paid all taxes, assessments and governmental charges and levies thereon to be due, including interest and penalties. Tenant has no knowledge of any claims for taxes due and unpaid which might become a Lien upon any of its assets.

Section 19.06. Background Questionnaire.

(a) All information provided in the City's "VENDEX" background questionnaire regarding Tenant, Tenant's officers and principals, and officers and principals of any entity having an ownership interest in Tenant, is true and correct as of the date of this Lease.

(b) Neither Tenant, nor its board members, principals or officers, nor any Person that directly or indirectly controls or is controlled by or is under common control with Tenant:

(i) is in default or in breach, beyond any applicable grace, notice or cure period, of its obligations under any written agreement with the City or any instrumentality thereof unless such default or breach has been waived in writing by the City or such instrumentality;

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

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

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

(v) has received written notice of default in the payment to the City of any taxes, sewer rents or water charges that has not been cured or satisfied, unless such default is then being contested with due diligence in proceedings in a court or other appropriate forum; or

(vi) has owned, at any time in the preceding three (3) years, any property which, while in the ownership of such Person, was acquired by the City by in rem tax foreclosure, other than a property in which the City has released or is in the process of releasing its interest to such Person pursuant to the Administrative Code of the City.

Section 19.07. No Undue Influence. No officer, agent, employee or representative of Landlord has received any payment or other consideration in connection with this Lease, and no officer, agent, employee or representative of Landlord has any interest, direct or indirect in Tenant, this Lease, or the proceeds thereof. Tenant acknowledges that Landlord is relying on the warranty and representation contained in this Article 19 and that Landlord would not enter into this Agreement of Lease absent the same. It is specifically agreed that, in the event the facts hereby warranted and represented prove to be materially incorrect, Landlord shall have the right to terminate this Lease upon thirty (30) days' notice to Tenant and to rescind the transaction in all respects.

Section 19.08. No Other Representations. Tenant warrants and represents that, except as otherwise provided in this Lease: (a) no representations, statements, or warranties, express or implied, have been made by, or on behalf of, Landlord with respect to the Premises, the transactions contemplated by this Lease, the status of title to the Premises, the physical condition thereof, the Requirements applicable thereto, the use that may be made of the Premises, or the absence of "Hazardous Materials" on or under the Premises, and (b) Tenant has relied on no such representations, statements or warranties in its determination to enter into this Lease.

Section 19.09. No Brokers. Landlord and Tenant each represents and warrants to the other that it has neither consulted nor negotiated with any broker or finder nor was any broker or finder involved in this transaction. Tenant agrees to indemnify and save Landlord

harmless from and against any claims for fees or commissions (including reasonable legal fees and costs incurred in defending any action or claim) from any broker or finder claiming to have dealt with Tenant. Landlord agrees to indemnify and save Tenant harmless from and against any claims for fees or commissions (including reasonable legal fees and costs incurred in defending any action or claim) from any broker or finder claiming to have dealt with Landlord. This provision shall survive the expiration or earlier termination of this Lease.

Section 19.10. Due Execution and Delivery. Landlord hereby represents, warrants and covenants that the execution and delivery of this Lease by Landlord as of the Commencement Date has been duly authorized by all required municipal action and other governmental action and creates a legal, valid and binding obligation of Landlord enforceable against Landlord in accordance with its terms.

## **ARTICLE 20**

### **LIMITATION ON LIABILITY**

Section 20.01. Landlord not Liable for Injury or Damage, Etc. Except as expressly provided in this Lease:

(a) From and after the Commencement Date, none of Landlord, the City or the State shall be liable for any injury or damage to Tenant or to any Person happening on, in or about the Premises or its appurtenances, nor for any injury or damage to the Premises, or to any property belonging to Tenant or to any other Person, that may be caused by fire, by breakage, or by the use, misuse or abuse of any portion of the Premises, or that may arise from any other cause whatsoever, unless, and only to the extent that, such injury or damage is determined to be caused by the negligence or intentional misconduct of Landlord, the City or the State or their respective agents', employees' or contractors' breach of this Lease, or their respective violations of law or tortious acts or omissions;

(b) From and after the Commencement Date, neither Landlord, the City nor the State shall be liable to Tenant for any failure of water supply, gas or electric current, nor for any injury or damage to any property of Tenant caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storm or disturbance, or by or from water, rain or snow which may leak or flow from the street, sewer, gas mains or subsurface area or from any part of the Premises, or body of water under or adjacent to the Premises, or by or from leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein, or from any other place, nor for interference with light or other incorporeal hereditaments by any Person, or caused by any public or quasi-public work, unless, and only to the extent that such failure, injury or damage is caused by Landlord, the City or the State or their respective agents', employees' or contractors' negligence, or intentional tortious acts; and

(c) Neither Landlord, the City nor the State shall be liable for any latent or patent defect in the Premises.

Section 20.02. Landlord Exculpation. The liability of Landlord, the City or the State, for damages or otherwise, shall be limited to Landlord's interest in the Premises (including



the rents and proceeds therefrom), the proceeds payable to Landlord of any insurance policies covering or relating to the Premises, and any awards payable to Landlord in connection with any condemnation of part or all of the Premises. In no event, however, shall Landlord's interest in the Premises include: (i) any rights, claims, or interests of Landlord that at any time may arise from or be a result of Landlord's governmental powers or rights or Landlord's actions in its governmental capacity, or (ii) any proceeds resulting from a levy under execution or attachment against Landlord's fee interest in the Premises (it being understood and agreed that Tenant shall not seek to effect such a levy under execution or attachment). None of the elected officials, directors, officers, partners, employees, agents or servants of Landlord, the City or the State shall have any liability (personal or otherwise) hereunder or be subject to levy, execution or other enforcement procedure for the satisfaction of any remedies of Tenant available hereunder.

Section 20.03. Governs Lease. The provisions of this Article 20 shall govern every other provision of this Lease. The absence of explicit reference to this Article 20 in any particular provision of this Lease shall not be construed to diminish the application of this Article 20 to such provision. This Article 20 shall survive the expiration or earlier termination of this Lease.

Section 20.04. Other Remedies. Nothing in this Article 20 is intended to limit the remedies available to any party under this Lease other than by limiting the enforcement of those remedies to a party's interest in the Premises, in the manner and to the extent provided in this Article 20. Nothing in this Article 20 is intended to prevent or preclude any Person from obtaining injunctive or declaratory relief with respect to any claim arising under this Lease or in connection with the Premises.

## **ARTICLE 21**

### **INDEMNIFICATION**

Section 21.01. Obligation to Preserve Landlord against Liability. Tenant is solely responsible for the safety and security of the Premises (excluding the Southern Bulkhead except to the extent (i) Tenant is obligated to keep the area of the Southern Bulkhead Repair Work Safe in accordance with Section 4.05(b) or (ii) of any action or omission by any Tenant Party with respect thereto) and Tenant's operations on, above or within the Premises so as to avoid bodily injury and/or property damage. Tenant shall not perform any act, or do anything, or knowingly permit that any act be performed or thing done at the Premises, or any portion thereof that subjects Landlord to any liability for injury to any Person or damage to property for any reason whatsoever, including, without limitation, by reason of any violation of any Requirement, and Tenant shall exercise such reasonable control over the Premises (excluding the Southern Bulkhead) so as to fully defend, preserve and protect Landlord against any such liability.

Section 21.02. Obligation to Indemnify. Subject to Section 40.17 below, to the fullest extent permitted by applicable Requirements except to the extent resulting from the negligence or intentional acts of any of the Indemnitees (as hereinafter defined), Tenant shall defend, indemnify and save Landlord, the State of New York, the New York State Office of Parks, Recreation and Historic Preservation, the New York State Department of Environmental Conservation, the City of New York, the New York City Department of Parks and Recreation and

each of their respective commissioners directors, officers, employees, agents, servants, successors and assigns (collectively, the “**Indemnitees**”) harmless from and against any and all liabilities, suits, obligations, fines, actual damages (excluding consequential, special and punitive damages), penalties, claims, and reasonable out-of-pocket penalties, claims, costs, charges and expenses, including, without limitation, court costs and reasonable attorneys’ fees and disbursements, that may be actually imposed upon, actually incurred by, or actually asserted against (“**Indemnified Losses**”), any of the Indemnitees by reason of any of the following:

(a) Any Construction Work, including Alterations, or act done in, on, or about the Premises or any part thereof by or on behalf of Tenant;

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

(c) Any act or failure to act on the part of Tenant or any Tenant Party done in, on, or about the Premises or any part thereof or any such act that directly affects the Premises or Tenant’s use thereof;

(d) Any accident, injury (including death at any time resulting therefrom) or damage occurring during the Term to any Person or property (i) occurring in, on, or within (A) the Premises, the Licensed Water Area or the Vessels or (B) any part of the Premises, the Licensed Water Area or the Vessels or (C) any sidewalk immediately adjacent to the Premises, the Licensed Water Area or the Vessels (ii) which is the legal responsibility of Tenant or (iii) which, provided the same occurs in, on or within the Licensed Esplanade Area, the Frontage, or Tenant’s driveway entrance during Tenant’s use, possession, control or occupancy thereof; provided, however, that Tenant shall not be obligated to indemnify Landlord with respect to accidents, injury (including death at any time resulting therefrom) or damage occurring in or within the Licensed Water Area to the extent the same is caused by matters arising from the waters of the Hudson River, or from any vessels or objects floating in or otherwise traversing the Hudson River, whose origin is outside of the Premises, the Licensed Water Area and the Vessels provided the same is not caused by Tenant or any Tenant Party or any Person acting by or through Tenant; provided, further, that Tenant shall have no liability or obligation to indemnify Landlord under this Section 21.02(d) for any accident, injury or damage that relates to arises from, or in connection with Hazardous Materials;

(e) Any violations imposed by any Governmental Authority in respect of or arising out of any of the foregoing matters or occurrences set forth in subsections (a) through (d) of this Section 21.02;

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

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

(h) Tenant's non-payment when due of any recording fees or transfer tax, if any, attributable to the execution, delivery or recording of this Lease or the Memorandum;

(i) Subject to Section 4.05, any Lien, encumbrance or claim that may be alleged to have been imposed or arisen against or on the Premises, or any Lien created or permitted to be created by Tenant or any Tenant Party against any assets of, or funds appropriated to, Landlord, or any liability that may be asserted against Landlord with respect thereto;

(j) With respect to Landlord in its proprietary capacity, any contest or proceeding brought by Tenant, or permitted to be brought by Tenant pursuant to this Lease;

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

(l) The presence, storage, transportation, disposal, release or threatened release of any Hazardous Materials over, under, in, on, from or affecting the Premises, the Licensed Water Area and the Vessels, or any persons, real property, personal property, or natural substances thereon or affected thereby, including, without limitation, any such liability, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses imposed upon, incurred by or asserted against any of the Indemnitees under any applicable Requirement, but excluding each of the following:

(i) the presence, storage, transportation, disposal, release or threatened release of Hazardous Materials caused, directly or indirectly, by Landlord, any Indemnitee or any party claiming by, through or under Landlord or any Indemnitee;

(ii) the presence, storage, transportation, disposal, release or threatened release of Hazardous Materials arising from the waters of the Hudson River, or from any vessels or objects floating in or otherwise traversing the Hudson River, whose origin is outside of the Premises, the Licensed Water Area and the Vessels and which is not caused by Tenant or any Tenant Party or any Person acting by, through or under Tenant; and

(iii) the presence, storage, transportation, disposal, release or threatened release of Hazardous Materials which (x) are in the same amount, condition and location as they were on January 1, 1982 (it being acknowledged and agreed that it shall be Tenant's burden to demonstrate, by a preponderance of the evidence, that such Hazardous Materials were present on the Premises (or in the waters therein) on or prior to January 1, 1982), and (y) were not newly introduced to the Premises, moved, expanded or disturbed by Tenant or any Tenant Party claiming by, through or under Tenant; provided that, for purposes of clarity, if the amount has increased, the condition has worsened or the location has changed since January 1, 1982, then Tenant's indemnification obligations under this subpart (iii)

shall apply solely to the extent such increased amount or worsened condition or changed location has increased the Indemnified Losses as so demonstrated by Tenant).

Section 21.03. Contractual Liability. The obligations of Tenant under this Article 21 shall not be affected in any way by the absence of insurance coverage, or by the failure or refusal of any insurance carrier to perform an obligation on its part to be performed under insurance policies affecting the Premises.

Section 21.04. Defense of Claim, Etc. If any claim, action or proceeding is made or brought against any of the Indemnitees in connection with any event referred to in Section 21.02 hereof, then within ten (10) days of written demand from Landlord, Tenant shall either resist, defend or satisfy such claim, action or proceeding in such Indemnitee's name, by the attorneys for, or approved by, Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance), or by such other attorneys as Tenant may retain and that Landlord shall reasonably approve. The foregoing notwithstanding, any such Indemnitee may engage its own attorneys in addition to any counsel appointed by Tenant's insurance carrier or otherwise retained by Tenant to defend such Indemnitee, or to assist such Indemnitee in such Indemnitee's defense of such claim, action or proceeding, as the case may be, at such Indemnitee's sole cost and expense.

Section 21.05. Notification and Payment. Promptly, upon having actual knowledge thereof, an Indemnitee shall notify Tenant of any cost, liability or expense incurred by, asserted against, or imposed on, such Indemnitee, as to which cost, liability or expense Tenant has agreed to indemnify such Indemnitee pursuant to this Lease. Tenant agrees to pay such Indemnitee all amounts due under this Section 21.05 within thirty (30) days after Landlord's request therefor, if Tenant is obligated to make such payment pursuant to the terms of this Lease, provided, that in the case of a claim under clause (l) of Section 21.02 above, such thirty (30) days will be extended by up to ninety (90) days to the extent reasonably required by Tenant to recover under any applicable insurance policy.

Section 21.06. Survival Clause. The provisions of this Article 21 shall survive the expiration or earlier termination of this Lease.

## **ARTICLE 22**

### **LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS AND DISCHARGE LIENS**

Section 22.01. Landlord's Right to Perform. If at any time Tenant shall fail to pay for or maintain any of the insurance policies required to be provided by Tenant pursuant to Article 10 hereof, or shall fail to perform any other covenant or obligation under this Lease related to the repair or maintenance of the Premises (but for the avoidance of doubt excluding the Vessels), then, upon not less than thirty (30) days' prior notice to cure to Tenant (or, in case of any emergency, or any other circumstances that materially adversely affect Landlord or Landlord's interest in the Premises, on such notice as may be reasonable under the circumstances), and without either releasing Tenant from any obligation of Tenant hereunder, or waiving Landlord's right to terminate this Lease upon an Event of Default in accordance with the provisions hereof, or any

other right or remedy available to Landlord hereunder, at law or at equity, if Tenant has not taken such action within such thirty (30) day period or shorter period of time in case of any emergency, or any other circumstances that materially adversely affect Landlord or Landlord's interest in the Premises, or if such action cannot be completed within thirty (30) days and Tenant has not commenced such action and is not diligently pursuing it, Landlord may (but shall not be required to):

(a) pay for and maintain any of the insurance policies required to be furnished by Tenant pursuant to Article 10 hereof, or

(b) make any other payment or perform any other act on Tenant's part to be made or performed in accordance with this Lease related to the repair or maintenance of the Premises (for the avoidance of doubt, excluding the Vessels), provided that Landlord may undertake any maintenance or repair obligation imposed on Tenant pursuant to Article 14 hereof, or any other act that would require Landlord, its agents, employees, contractors, or any other Person acting on Landlord's behalf to enter upon the Premises, or any portion thereof, for any such purpose, in either case, only in the case of an emergency or an Event of Default.

Section 22.02. Amounts Paid by Landlord are Rental. All sums so paid by Landlord and all reasonable third-party costs and expenses actually incurred by Landlord in connection with the performance of any such act solely attributable to Tenant shall bear interest thereon at the Late Charge Rate from the respective dates of Landlord's making of each such payment, or incurring each such cost and expense. All such sums and interest thereon shall be paid by Tenant or caused to be paid by Tenant to Landlord, within thirty (30) Business Days following receipt of notice (which shall include a reasonably detailed invoice from Landlord) and shall be deemed to constitute Rental hereunder.

Section 22.03. Proof of Damages. Landlord shall not be limited in the proof of any damages that it may claim against Tenant arising out of, or by reason of, Tenant's failure to provide and keep insurance in force in accordance with the provisions of this Lease to the amount of the insurance premium or premiums not paid. Landlord shall be entitled to seek, and if successful, to recover, as damages for such default or Event of Default, the uninsured amount of any loss and damage actually sustained or incurred by it and the reasonable third-party costs and expenses of any suit in connection therewith, including, without limitation, reasonable outside attorneys' fees and disbursements actually incurred.

Section 22.04. Right to Use Deposited Funds. Upon Landlord's election to commence or complete any required Construction Work pursuant to Section 22.01 above, subject to Section 27.02(d), Tenant shall pay immediately, or cause to be paid immediately, to Landlord, all insurance proceeds that have been received by Tenant in connection with a Casualty (or proceeds of a condemnation award received in connection with a condemnation affecting part or all of the Premises), reduced by (i) the costs reasonably incurred by Tenant in the collection of such proceeds and (ii) those reasonable amounts that Tenant has applied to the Construction Work, and, if such sums are insufficient to complete the Construction Work, Tenant on Landlord's demand shall pay the deficiency to Landlord. In the case of a Casualty or Condemnation Restoration, Tenant's obligations with respect to this Section 22.04 shall be qualified by and subject to the provisions of Articles 11 and 12, respectively.

Section 22.05. Discharge of Liens. If Tenant shall fail to cause any Lien to be discharged in accordance with the provisions of Article 18 hereof (except for those Liens which are Landlord's responsibility to discharge in connection with any work performed by Landlord hereunder), Landlord may, but shall not be obligated to, discharge such Lien of record either by paying the amount claimed to be due or by procuring the discharge of such Lien by deposit or by bonding proceedings. Landlord may also compel the prosecution of an action for the foreclosure of such Lien by the lienor and the payment of the amount of the judgment in favor of the lienor with interest, costs and allowances. Any liability, cost or expense (including, without limitation, court costs and reasonable attorney's fees and disbursements) incurred by Landlord in connection with the discharge of any such Lien shall constitute Rental and shall be payable by Tenant within thirty (30) days of demand therefor by either Landlord.

Section 22.06. Waiver, Release and Assumption of Obligations. Landlord's payment or performance pursuant to the provisions of this Article shall not constitute, nor be deemed to constitute (a) a waiver or release of the Default or Event of Default with respect thereto (or any past or future Default or Event of Default) or of Landlord's right to terminate this Lease and/or to take such other action as may be permissible under law or hereunder, or (b) Landlord's assumption of Tenant's obligations to pay or perform any of Tenant's past, present or future obligations hereunder. Notwithstanding the foregoing, if Landlord pays an amount due or performs an obligation of Tenant and Tenant timely reimburses Landlord for sums billed by Landlord in connection with such payment or performance pursuant to Section 21.02, no Default or Event of Default shall exist with respect to such amount as has been paid.

## **ARTICLE 23**

### **NO SUBORDINATION**

This Lease and all the rights of Tenant hereunder shall be subordinate to the City Lease. Landlord's interest in the Premises and in this Lease, as the same may be modified, amended or renewed, shall not be subject or subordinate to (a) any other Liens or encumbrances hereafter affecting Tenant's interest in this Lease and the leasehold estate created hereby, or (b) any sublease, Liens or encumbrances now or hereafter placed on any subtenant's interest in the Premises.

## **ARTICLE 24**

### **REPORTS, BOOKS AND RECORDS, INSPECTION AND AUDIT**

Section 24.01. Financial Reports. To the extent required by the Requirements, at any time the Premises are used as an "income-producing property," as that term is used in City Administrative Code Section 11-208.1 (or successor thereto), Tenant shall furnish to the Department of Finance of the City (with a copy to Landlord furnished simultaneously therewith), income and expense statements of the type required by such code section (or successor thereto) as if Tenant owned fee title to the Premises, and such statements to be submitted within the time periods and to the address provided for in said Section 11-208.1 and such statements to be submitted notwithstanding that the State holds fee title to the Premises.

Section 24.02. Books and Records. Tenant shall establish and maintain adequate systems of internal controls, which it shall, upon reasonable request by Landlord (i) describe in writing to Landlord, at any time, (ii) make available for inspection by Landlord at reasonable times (but in no event more than one (1) time in any given Lease Year unless required or requested by any applicable Governmental Authority), and (iii) keep and maintain at the Premises complete and accurate adequate records, books of account and data relating to the preparation of Financial Statements and all disbursements in connection with the Pier Structural Repair Work and the Chiller Plant Platform Work, for a period of not less than six (6) years following the end of each Lease Year; provided, however, if, at the expiration of such six (6) year period with respect to any Lease Year, a Reviewing Party is seeking to contest or is contesting any matter relating to such records or any matter to which such records may be relevant, Tenant shall preserve such records with respect to the Lease Year(s) in question until one (1) year after the final adjudication, settlement or other disposition of any such contest. All such books and records maintained pursuant to this Lease shall be conveniently segregated from other business matters of Tenant. Notwithstanding anything to the contrary contained herein, Landlord shall (1) provide reasonably adequate notice sufficient for Tenant to assemble such information (reasonably taking into account Tenant's relevant operational obligations of which Landlord has actual knowledge) for Landlord review; (2) not request such information more than one (1) time in any calendar year unless the basis for such request is in connection with audit being undertaken by Landlord and the Comptroller of the City and/or the Comptroller of the State (collectively, the "**Reviewing Parties**" or, individually, a "**Reviewing Party**") and (3) upon the request of Tenant, treat such information as proprietary and confidential, provided that if disclosure requests are received by Landlord pursuant to the Freedom of Information Law, or any judicial or legislative subpoena, requesting same that Landlord shall, be permitted to make disclosures believed in good faith to be required under the Freedom of Information Law without notice to or consent of Tenant. Tenant understands and acknowledges that Landlord is a public authority of the State of New York and is subject to review and oversight by legislative and other regulatory bodies, and that Landlord is required by law and may be compelled or requested by such oversight bodies to make public disclosure of information regarding this Lease, and shall be fully entitled to do so without objection from Tenant.

Section 24.03. Audit. The Reviewing Parties and their accountants, agents and representatives shall have the right, at the Reviewing Party's sole cost and expense (except as otherwise provide herein), from time to time during regular business hours, upon at least thirty (30) days' prior written notice to Tenant, to inspect and/or audit Tenant's books, records, statements, papers and files relating solely to information required to be set forth in the Financial Statements, including, without limitation, the balance sheets and all disbursements in connection with the Pier Structural Repair Work and the Chiller Plant Platform Work. Tenant shall produce all such books, records, statements, papers and files promptly following Tenant's receipt of such notice for inspection at the Premises or at Tenant's principal place of business in the City. Subject to applicable law, all information obtained from Tenant's books, records, statements, papers and files, shall be held in strict confidence, except that Landlord may disclose such information to its attorneys, consulting professionals and accountants to the extent necessary for the enforcement of Landlord's rights under this Lease, provided that each of such recipients shall be bound to the same non-disclosure provisions as are imposed upon Landlord and each other Reviewing Party.

Section 24.04. Survival Clause. The obligations of each party under this Article 24 shall survive the expiration of this Lease.

## ARTICLE 25

### NON- DISCRIMINATION AND AFFIRMATIVE ACTION

Section 25.01. Nondiscrimination and Affirmative Action. Tenant shall be required to comply, and will cause all contractors and subcontractors working on the Premises to agree to comply, with the provisions of Article 15 of the New York State Executive Law which mandates that contractors and subcontractors will not engage in any unlawful discrimination against any employee or applicant for employment because of race, creed, color, national origin, sex, disability, marital status or sexual orientation with respect to all employment decisions. Contractors and subcontractors working on the Premises may also be subject to local provisions mandating a specified participation by trainees.

Section 25.02. Employment. Tenant shall comply with all Requirements relating to employment recruitment, referral or training assistance applicable to Tenant. If Tenant should sublease all or any portion of the Premises, Tenant shall take all appropriate measures, such as Landlord may direct, to insure that employee information with respect to any such subtenant is furnished to Landlord in a manner equivalent to that provided above.

Section 25.03. New York State Business Enterprises. Tenant shall make commercially reasonable efforts to encourage the participation of State business enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, and will retain the documentation of these efforts. Tenant agrees to make commercially reasonable efforts to provide notification to State residents of employment opportunities through listing any such positions with the Job Service Division of the State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements.

Section 25.04. Equal Opportunity Act. Tenant shall comply with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended.

Section 25.05. Material Inducement. Tenant acknowledges that accurate and complete information concerning employment opportunities generated at the Premises is of material concern to Landlord and agrees that Tenant's covenants in this Article 25 are a material inducement for Landlord to enter into this Lease.

## ARTICLE 26

### INVESTIGATIONS, REFUSAL TO TESTIFY

Section 26.01. Cooperation. Tenant shall cooperate fully with any investigation, audit, or inquiry with respect to this Lease conducted by Landlord, or a Governmental Authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by any Governmental Authority that is a party in interest to the transaction, submitted bid, submitted proposal, contract, permit, lease or license that is the subject of the investigation, audit or inquiry.

Section 26.02. Hearings. If any person:



(a) has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding and still refuses to testify before a grand jury or other Governmental Authority to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract or license entered into with Landlord, the State or any political subdivision or public Authority thereof, or any local development organization, or any public benefit corporation organized under the laws of the State; or

(b) refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a Governmental Authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by any Governmental Authority that is a party in interest in, and is seeking testimony concerning the award of, or the performance under, any transaction, agreement, lease, permit, contract or license entered into with the City, the State, or any political subdivision thereof, or any local development corporation;

Then Landlord or any representative of Landlord that Landlord deems appropriate (any such party being the “**Landlord Representative**”) may convene a hearing, upon not less than ten (10) days of prior written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

Section 26.03. Adjournments of Hearing, Etc. If any non-governmental party to the hearing requests an adjournment, the Landlord Representative may, upon granting the adjournment, suspend any contract, lease, permit or license pending the final determination pursuant to Section 26.05 below without Landlord incurring any penalty or damages for delay or otherwise.

Section 26.04. Penalties. The penalties that may attach after the final determination by the applicable Governmental Authority may include, but shall not exceed:

(a) The disqualification for a period not to exceed five (5) years from the date of any adverse determination for any person which such person was a member, shareholder, officer, director, employee or agent at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from Landlord; and/or

(b) The cancellation or termination of any and all existing contracts, leases, permits or licenses with Landlord that the refusal to testify concerns and that have not been assigned as permitted under this Lease, without Landlord incurring any penalty or damages on account of such cancellation or termination.

Section 26.05. Criteria for Determination.

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

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

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

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

(e) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in a party or entity subject to penalties under Section 26.04 above, provided that the party or entity has given actual notice to the Landlord Representative upon the acquisition of the interest, or at the hearing called for in Section 26.02 above gives notice and proves that such interest was previously acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the adverse impact such a penalty would have on such person or entity.

#### Section 26.06. Definitions.

(a) For the purposes of this Article 26, the following terms will have the meanings set forth below. Capitalized terms utilized, but not otherwise defined below, will have the meanings assigned to such terms elsewhere in this Lease.

(b) The term "**license**" or "**permit**" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

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

(d) The term "**entity**" as used herein shall be defined as any firm, partnership, corporation, association or person that receives monies, benefits, licenses, leases or permits from or through Landlord, the City or the State or otherwise transacts business with such governmental agencies.

(e) The term "**member**" as used herein shall be defined as any person associated with any other person or entity as a partner, director, officer, principal or employee.

Section 26.07. Failure to Report Solicitations. In addition to, and notwithstanding any other provision of this Lease, the Landlord Representative may, at his or her discretion, terminate this Lease upon three (3) days of prior written notice in the event Tenant fails to promptly report in writing to the Landlord Representative, any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee

of Landlord, or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Lease by Tenant, or affecting the performance of this Lease.

## ARTICLE 27

### EVENTS OF DEFAULT, REMEDIES, ETC.

Section 27.01. Events of Default. Each of the following events shall be an Event of Default hereunder:

(a) if Tenant shall fail to: (i) make any payment (or any part thereof) of Rental due under this Lease within ten (10) days or more after Landlord's written notice of such failure (a "**First Notice Period**"), and any such failure shall, after the First Notice Period, continue for ten (10) days or more after a second written notice thereof from Landlord; (ii) comply with or otherwise satisfy any of the monetary or financial requirements of Sections 4.02(a), 4.02(b) or 4.02(c) and such failure shall continue for a period of (30) days after Landlord's written notice of such failure; (iii) except for failures set forth in Section 27.1(b) below, observe or comply with one or more of the other terms, conditions, covenants or agreements Section 4.02 on Tenant's part to be performed or observed and such failure shall continue for a period of thirty (30) days after written notice thereof; or (iv) discharge any Liens pursuant to Article 18; or

(b) if Tenant shall fail to (i) maintain the Premises in the manner required under this Lease or (ii) undertake the Pier Structural Repair Work or the Chiller Plant Platform Work in accordance with Article 4 and Section 14.11 hereof and, in the event of a failure under subsection (b)(i) or (b)(ii) above, such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord, unless any such failure under subsection (b)(i) or (b)(ii) requires work to be performed, acts to be done or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed within such thirty (30) day period, in which case no Event of Default shall exist as long as Tenant shall commence to undertake the requisite maintenance of the Premises in accordance with those Sections within such thirty (30) day period and shall diligently and continuously prosecute the same to full completion within a reasonable period;

(c) if Tenant shall fail to observe or perform one or more of the other terms, conditions, covenants or agreements of this Lease on Tenant's part to be performed or observed and such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord specifying such failure (unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed within such thirty (30) day period, in which case no Event of Default shall be deemed to exist as long as Tenant shall commence the requisite performance or observance within such thirty (30) day period and shall diligently and continuously prosecute the same to full completion within a reasonable period);

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

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

(f) to the extent permitted by law, if Tenant shall file a voluntary petition under the present or any future Federal Bankruptcy Act or any other present or future Federal, state or other bankruptcy or insolvency statute or law or if such petition shall be filed against Tenant and an order for relief shall be entered, or if Tenant shall file a petition or an answer seeking, consenting to any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal Bankruptcy Act or any other present or future federal, state or other bankruptcy or insolvency statute or law, or shall seek, or consent to the appointment of any trustee, receiver, custodian, assignee, sequestrator, or liquidator, or any substantial part of the Premises or any interest of Tenant therein, or if Tenant shall take any partnership or corporate action in furtherance of any action described in Sections 27.01(d) or 27.01(e) hereof or this Section 27.01(f);

(g) to the extent permitted by law, if within ninety (90) days after the commencement of a proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal Bankruptcy Code or any other present or future applicable federal, state or other bankruptcy or insolvency statute or law, such proceeding shall not be dismissed, or if, within one hundred eighty (180) days after the appointment, without the consent of Tenant, of any trustee, receiver, custodian, assignee, sequestrator, or liquidator, or of all or any substantial part of the Premises or any interest of Tenant therein, such appointment shall not be vacated or stayed on appeal or otherwise, or if, within one hundred eighty (180) days after the expiration of any such stay, such appointment shall not be vacated;

(h) if any of the representations or warranties made by Tenant in Article 19 hereof or elsewhere in this Lease shall be false, incorrect or incomplete in any material respect as of the time when made or deemed made; provided, however, that if such misrepresentation was unintentionally made and the underlying condition is susceptible to being corrected, Tenant shall have a period of thirty (30) days after Landlord's written notice of such misrepresentation to correct the underlying condition (and the material adverse effect thereof on Landlord, if any) and thereby cure such default (unless such correction requires work to be performed, acts to be done, or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed within such thirty (30) day period, in which case no Event of Default shall be deemed to exist as long as Tenant shall commence the requisite performance or observance within such thirty (30) day period and shall diligently and continuously prosecute the same to full completion within a reasonable period);

(i) if, unless necessitated by a Casualty or taking by eminent domain, Tenant shall vacate or abandon the Premises, or any portion thereof (the fact that any of Tenant Property remains in the Premises shall not be evidence that Tenant has not abandoned the Premises) for a period exceeding sixty (60) consecutive days, or such shorter period as would cause the property or liability insurance coverage required to be maintained pursuant to Article 10 hereof to be subject to, or in jeopardy of, cancellation or unenforceability of coverage for breach of or default in the terms of such insurance coverage;

(j) if a levy under execution or attachment shall be made against the Premises or any part thereof, the income therefrom, this Lease or the leasehold estate created hereby and such

execution or attachment shall not be vacated or removed by court order, bonding or otherwise within a period of one hundred twenty (120) days; or

(k) if prior to Final Completion of any Major Construction Work and payment of all costs and expenses thereof, any bonds that may have been provided under Section 16.04(c) shall expire, or be cancelled or otherwise shall cease to be in full force and effect, or the rights of Landlord as obligee under either of the bonds shall be impaired in any way whatsoever and Tenant does not cause the same to be discharged within ten (10) business days after receipt by Tenant of written notice from Landlord (provided that Tenant shall only be allowed such ten (10) business day grace period once in any given Lease Year).

Section 27.02. Remedies.

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

(b) Expiration and Termination of Lease. If an Event of Default occurs and is continuing and Landlord, at any time thereafter, gives Tenant notice stating that this Lease and the Term shall terminate on the date specified in such notice, which date shall not be less than fifteen (15) Business Days after the giving of the notice, then this Lease and the Term and all rights of Tenant under this Lease shall expire and terminate as if the date specified in the notice were the Expiration Date, and Tenant shall quit and peacefully surrender the Premises to Landlord forthwith. If such termination is stayed by order of any court having jurisdiction over any case described in Sections 27.01(f) or (g) hereof, or by federal or state statute, then following the expiration of any such stay, or if the trustee appointed in any such case, Tenant or Tenant as debtor-in-possession fails to assume Tenant's obligations under this Lease within the period prescribed therefor by law, or within thirty (30) days after entry of the order for relief or as may be allowed by the court, or if the trustee, Tenant or Tenant as debtor-in-possession fails to provide adequate protection of Landlord's right, title and interest in and to the Premises and adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease as provided in Section 27.09 hereof, Landlord, to the extent permitted by law or by leave of the court having jurisdiction over such case, shall have the right, at its election, to terminate this Lease on fifteen (15) Business Days' notice to Tenant, Tenant as debtor-in-possession or the trustee. Upon the expiration of the fifteen (15) Business Day period this Lease shall cease and Tenant, Tenant as debtor-in-possession and the trustee immediately shall quit and surrender the Premises.

(c) Certain Consequences of Termination of Lease. If this Lease is terminated as provided in Section 27.02(b) hereof:

(i) Landlord may reenter and repossess the Premises and may dispossess Tenant and all other persons or property by summary proceedings or otherwise, as permitted by law.

(ii) Landlord may complete any Construction Work required by the terms of this Lease to be performed by Tenant hereunder and may repair and alter any

portion(s) of the Premises in such manner as Landlord may deem necessary or advisable without relieving Tenant of any liability under this Lease or otherwise affecting any such liability, and/or let or re-let the Premises or any portion thereof for the whole or any part of the remainder of the Term or for a longer, and Landlord shall retain any rent and other sums collected or received as a result of such re-letting as and apply the same as follows:

(1) first, Landlord shall pay to itself the cost and expense of terminating what would otherwise have constituted the unexpired portion of the Term, re-entering, retaking, repossessing, repairing, altering and/or completing construction of any portion(s) of the Premises and the cost and expense of removing all persons and property therefrom, including in such costs court costs and reasonable attorneys' fees and disbursements;

(2) second, Landlord shall pay to itself the cost and expense sustained in securing any new tenants and other occupants, including in such costs, brokerage commissions, and reasonable attorneys' fees and disbursements and other expenses of preparing any portion(s) of the Premises, and to the extent that Landlord shall maintain and operate any portion(s) of the Premises, the cost and expense of operating and maintaining same;

(3) third, Landlord shall pay to itself any balance remaining on account of the liability of Tenant to Landlord, under this Lease; and

(4) fourth, Landlord shall retain any balance.

(d) Limitation on Landlord's Damages. Notwithstanding the foregoing provisions of this Section 27.02 or anything in this Lease to the contrary, in no event shall Tenant be liable under this Lease (whether under this Article 27, under any indemnification provision of this Lease, or otherwise) for consequential, special, punitive or any measure of damages other than actual damages hereunder.

Section 27.03. Waiver of Rights of Tenant. To the extent not prohibited by law, Tenant hereby waives and releases all rights now or hereafter conferred by statute or otherwise that would have had the effect of limiting or modifying any of the provisions of this Article. Tenant shall execute, acknowledge and deliver within ten (10) days after written request by Landlord any instrument that Landlord may reasonably request evidencing such waiver or release.

Section 27.04. Receipt of Moneys after Notice or Termination. No receipt of moneys by Landlord from Tenant after the termination of this Lease, or after the giving of any notice of the termination of this Lease, shall reinstate, continue or extend the Term or affect any notice theretofore given to Tenant or operate as a waiver of the right of Landlord to recover possession of the Premises by proper remedy. After the service of notice to terminate this Lease or the commencement of any suit or summary proceedings or after a final order or judgment for the possession of the Premises, Landlord may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting the notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and occupation of the Premises, or at the election of Landlord, on account of Tenant's liability hereunder.

Section 27.05. Certain Waivers. To the extent not prohibited by law, Tenant expressly waives the service of any notice of intention to re-enter provided for in any statute or at the institution of legal proceedings in connection therewith, and Tenant for and on behalf of itself and all Persons claiming through or under Tenant, waives any and all rights (a) of redemption provided by any law or statute now in force or hereafter enacted or otherwise, or (b) of re-entry, or (c) of repossession or (d) to restore the operation of this Lease, if Tenant is dispossessed by a judgment or by warrant of a court of competent jurisdiction or in case of re-entry or repossession by Landlord, or in case of any expiration or termination of this Lease. The terms “**enter**”, “**re-enter**”, “**entry**” or “**re-entry**,” as used in this Lease, are not restricted to their technical legal meanings.

Section 27.06. Strict Performance. Subject to the last sentence of Section 22.06, no failure by either party hereunder to insist upon the other party’s strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy available to it hereunder, shall constitute a waiver of any Default or Event of Default or of the right to strict performance of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by either party, and no Default or Event of Default, shall be waived, altered or modified except by a written instrument executed by the other party. No waiver of any Default or Event of Default shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent Default or Event of Default.

Section 27.07. Right to Enjoin Defaults or Threatened Defaults; Remedies Cumulative. In the event of Tenant’s material Default or threatened material Default, Landlord shall be entitled to enjoin such material Default or threatened material Default by appropriate legal proceedings and shall have the right to invoke any rights and remedies allowed at law or in equity, or by statute, or otherwise, or other remedies that may be available to Landlord notwithstanding. Each right and remedy of Landlord provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease, or other documents executed between the parties prior hereto, simultaneously herewith or hereafter, or now or hereafter existing at law or in equity or by statute or otherwise, and the existence or the exercise or beginning of the exercise by Landlord, of any one or more of the rights or remedies provided for in this Lease, or any other such documents now or hereafter existing at law or in equity, or by statute, or otherwise shall not preclude the exercise by Landlord of any or all other rights or remedies provided for in this Lease or other such documents or now or hereafter existing at law or in equity or by statute or otherwise.

Section 27.08. Payment of All Costs and Expenses. Tenant shall pay Landlord all costs and expenses, including, without limitation, court costs and reasonable attorneys’ fees and disbursements, actually incurred by Landlord in connection with any action or proceeding to which Landlord may be made a party because or in connection with the occurrence of any Default or Event of Default, but only if Landlord shall prevail in such action or proceeding as determined by judicial decision beyond any right of appeal. If Tenant incurs costs or expenses by reason of any default of Landlord (acting in its proprietary interest as landlord hereunder) in violation of this Lease as determined by a judicial decision beyond any right of appeal, Landlord shall reimburse Tenant for such actual costs and expenses. Tenant shall also pay Landlord (or Landlord shall pay Tenant, as the case may be), all its actual costs and expenses, including, without limitation, court

costs and reasonable attorneys' fees and disbursements, incurred by Landlord (or Tenant, as the case may be) in enforcing any of the terms, covenants or conditions of this Lease (provided that it is ultimately determined or agreed that Tenant, or Landlord, as the case may be, was in fact not conforming with a covenant or provision hereof). Subject to the first sentence of Section 27.08, all of the sums paid or obligations incurred by Landlord in connection with the occurrence of any Default or Event of Default or the enforcement of the terms, covenants or conditions of this Lease shall be paid by Tenant to Landlord within thirty (30) days after demand, or they shall bear interest at the Late Charge Rate. Nothing herein shall obligate Tenant to pay an amount representing an expense previously paid or reimbursed by Tenant to Landlord. Neither Landlord nor Tenant shall have any liability to each other for any consequential damages arising from a breach under this Lease or otherwise under this Lease.

Section 27.09. Remedies Under Bankruptcy and Insolvency Codes. If an order for relief is entered or if any stay of proceeding or other act becomes effective against Tenant or Tenant's interest in this Lease in any proceeding which is commenced by or against Tenant under the present or any future Federal Bankruptcy Act or in a proceeding which is commenced by or against Tenant seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any other present or future applicable federal, state or other bankruptcy or insolvency statute or law, Landlord shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy or insolvency code, statute or law or this Lease, including, without limitation, such rights and remedies as may be necessary to adequately protect Landlord's right, title and interest in and to the Premises, or any part thereof, and adequately assure the complete and continuous future performance of Tenant's obligations under this Lease. Adequate protection of Landlord's right, title and interest in and to the Premises, and adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease, shall include, but shall not be limited to, each and every one of the following requirements:

- (a) that Tenant shall comply with all of its obligations under this Lease;
- (b) that Tenant shall provide such undertaking that a court of competent jurisdiction may deem appropriate to protect against waste and future diminution in value of the Premises due to Tenant's neglect;
- (c) that Tenant shall continue to use the Premises in the manner required by this Lease;
- (d) that Landlord shall be permitted to supervise the performance of Tenant's obligations under this Lease;
- (e) that Tenant shall hire such security personnel as may be necessary to insure the adequate protection and security of the Premises; and
- (f) that if Tenant's trustee, Tenant or Tenant as debtor-in-possession shall assume this Lease and propose to assign it (pursuant to Title 11 U.S.C. § 365, as it may be amended) to any Person who shall have made a bona fide offer therefor, the notice of such proposed assignment, giving (i) the name and address of such Person, (ii) all of the terms and conditions of such offer, and (iii) the adequate assurance to be provided Landlord to assure such Person's future



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

Section 27.10. Funds Held by Depositary. If this Lease shall terminate as a result of an Event of Default, any funds held by Depositary shall be paid to Landlord, or any Person claiming through Landlord. Notwithstanding the foregoing, any insurance proceeds or condemnation award then made available shall be retained by the Depositary and disbursed directly to Landlord for any Construction Work or other work to be performed by Landlord pursuant to Article 22 hereof.

Section 27.11. Funds Held by Tenant. From and after the date, if any, on which Tenant receives notice from Landlord that an Event of Default shall have occurred hereunder, Tenant shall not pay, disburse or distribute any rents, issues or profits of the Premises, or portion thereof, the proceeds received by Tenant of any insurance policies covering or relating to the Premises, or any portion thereof, or any awards payable in connection with the condemnation of the Premises or any portion thereof received by Tenant (except to the extent such insurance proceeds or condemnation awards are required in connection with any Restoration to be performed pursuant to Articles 11 or 12 hereof), any undistributed cash, certificates of deposit, United States Treasury bills or similar cash equivalents arising out of or in any way connected with the Premises or this Lease or any portion thereof or any other sums or receivables appurtenant to the Premises or this Lease or any portion thereof except to Landlord in payment of amounts due or payable under this Lease.

Section 27.12. Proof of Damages. Subject to Section 27.02(d) hereof, Landlord may look to any of the assets of Tenant for satisfaction of any obligation of Tenant under this Lease or for any damages for the breach hereof. Notwithstanding anything to the contrary contained herein, the obligations of Tenant under this Lease do not constitute personal obligations of the individual partners, directors, officers or shareholders of Tenant. Landlord shall not be limited in the proof of any damages that may be claimed against Tenant arising out of, or by reason of, Tenant's failure to provide and keep insurance in force in accordance with the provisions of this Lease to the amount of the insurance premium or premiums not paid. Landlord shall be entitled to recover as damages for such Event of Default, the uninsured amount of any loss and damage sustained or incurred by it and the costs and expenses of any suit in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements.

Section 27.13. Intentionally Omitted.

Section 27.14. Requirements and Contents of Notice. Notwithstanding anything herein to the contrary, no notice of default given by Landlord under this Article 27 shall be valid or effective unless it complies with the following requirements: (a) it shall specify in reasonable detail the claimed default and shall specify the Article, Section and subsection, if any, of this Lease under which a default is claimed to have occurred, and (b) it shall state if the claimed default is not cured or remedied within the applicable period, if any, specified in this Article 27, Landlord will have the right, under Section 27.02, to terminate this Lease and all rights of Tenant hereunder.

Section 27.15. Survival. The rights and remedies of the parties hereto and the other provisions of this Article 27 shall survive the expiration or earlier termination of this Lease.

## **ARTICLE 28**

### **TERMINATION AND SURRENDER**

Section 28.01. Surrender of Premises. Upon the Expiration Date: (i) ownership of the Buildings and Improvements (including, without limitation, any benches, tables or similar items in the Pier Open Space for use of the general public, but specifically excluding the Vessels and Trade Fixtures), shall automatically, without any further action of the parties, vest in Landlord, and any ownership interests of Tenant in any such items shall be extinguished, and (ii) Tenant, without any payment or allowance whatsoever by Landlord, shall surrender the Premises to Landlord in good order, condition and repair, reasonable wear and tear (and damage by Casualty and condemnation) excepted, free and clear of all Liens and encumbrances (other than the matters set forth on **Exhibit B-2**) and with all Vessels and Trade Fixtures removed in their entirety in accordance with all Requirements. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises on the expiration or earlier termination of this Lease. Notwithstanding the foregoing, Tenant's obligations with respect to this Section 28.01 shall be qualified by and subject to the provisions of Articles 11 and 12 dealing with Casualty and Condemnation, respectively, to the extent applicable. To the extent permitted by applicable law, if Tenant fails to remove Vessels and Trade Fixtures as required by this Section 28.01, Landlord may remove and dispose of the same and apply the proceeds thereof to any costs or damages which Landlord may be suffer or incur.

Section 28.02. Delivery of Contracts, etc. Upon expiration of the Term or upon a re-entry by Landlord upon the Premises pursuant to Section 27.05 hereof, Tenant shall deliver to Landlord, Tenant's executed counterparts of any service and maintenance contracts then affecting the Premises, true and complete maintenance records for the Premises for the three (3) immediately preceding years, all original licenses and permits then pertaining to the Premises, Certificates of Occupancy then in effect for the Improvements, and all warranties and guarantees then in effect which Tenant has received in connection with any work or services performed or fixtures installed at the Premises, together with, to the extent assignable by Tenant, a duly executed assignment of the above to Landlord (which assignment of contracts, licenses and permits shall become effective with regard to any of the same upon Landlord's acceptance of same), and copies of all financial reports, books and records required by Article 24 hereof and any and all other documents of every kind and nature whatsoever relating to the operation of the Premises and the condition of the Improvements which does not constitute Vessels or Trade Fixtures.

Section 28.03. Personal Property. Subject to Section 15.04 hereof, during the Term Tenant may remove Trade Fixtures from the Premises and, on or before the Expiration Date, Tenant shall remove its Trade Fixtures and Vessels that Tenant is required to remove under the terms of this Lease, but upon removal of any such items, Tenant shall immediately, and at its sole expense, repair and restore, or cause to be repaired and restored, the Premises to the condition existing prior to installation of such items and repair any damage to the Premises caused by such removal.

Section 28.04. Survival Clause. The provisions of this Article 28 shall survive the expiration or earlier termination of this Lease.

## ARTICLE 29

### CLAIMS, JURISDICTION, IMMUNITIES, PROCESS

Section 29.01. Waiver of Trial by Jury. Landlord and Tenant hereby waive, for the benefit of Landlord, trial by jury in any action, proceeding or counterclaim brought by any of the foregoing against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, and/or any claim for injury or damages. In the event that Landlord commences any proceeding for nonpayment of any rent or any other sums required to be paid by Tenant or caused to be paid by Tenant under the terms of this Lease, Tenant will not interpose any counterclaim of any nature whatever or description in any such proceedings except for mandatory counterclaims.

Section 29.02. Jurisdiction. Any and all claims asserted by or against Landlord or Tenant arising under this Lease or related thereto shall be heard and determined either in the courts of the United States located in New York City ("**Federal Courts**") or in the courts of the State of New York ("**New York State Courts**") located in the City and County of New York. To this effect Tenant and Landlord agree as follows:

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

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

(c) Tenant and Landlord agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

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

without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in the City, County and State of New York.

Section 29.03. Process. Tenant irrevocably consents to the service of any and all process in any action or proceeding instituted against Tenant by the mailing of copies of such process to Tenant to its address, and in the manner, set forth in Article 30 hereof. Landlord irrevocably consents to the services of any and all process in any action or proceeding instituted against Landlord by the mailing of copies of such process to Landlord to its address, and in the manner, set forth in Article 30 hereof. Nothing in this Section shall affect the right of Landlord to serve legal process in any other manner permitted by law.

## ARTICLE 30

### NOTICES

Section 30.01. Addresses for Notices. All notices and communication to the parties hereunder will be (i) delivered by hand or (ii) sent by registered or certified mail (postage prepaid), return receipt requested, or (iii) sent by Airborne Express, Federal Express, Express Mail or other national courier service that provides a receipt to the sender, or (iv) in connection with any notice or communication that may be sent by email to Landlord or Tenant, as the case may be, under Sections 4.02(d), 8.01(e), 9.01 and 15.02(b), sent by email. Either party may from time to time designate a different (or additional) address(es) for notices by at least five (5) days' prior notice to the other party. Notices from Landlord may be given by Landlord's attorney, and notices from Tenant may be given by Tenant's attorney. Each notice shall be deemed to have been given (x) with respect to notices sent in accordance with subsection (iv) above, on the day transmitted (unless such emailed notice is transmitted on or after 6:00 PM (New York time), in which case such emailed notice shall be deemed to have been given on the day after such emailed notice is transmitted) and (y) with respect to all other notices sent in accordance with subsections (i), (ii) or (iii) above, on the date such notice is actually received as evidenced by a written receipt therefor from the personal delivery service, United States Postal Service, or national courier service, as applicable, and (z) with respect to any notices sent hereunder, in the event of failure to deliver by reason of changed mailing or email address of which no notice was given or refusal to accept delivery, as of the date of such failure or refusal as evidenced by a written receipt therefor from the personal delivery service, United States Postal Service, national courier service or automated email reply, as applicable.

(a) All notices and correspondence to Landlord must be delivered to the following addresses and addressees or to such other addresses or addressees of which Landlord may notify Tenant from time to time:

Title: General Counsel  
Address: Hudson River Park Trust, Pier 40  
353 West Street, 2<sup>nd</sup> Floor  
New York, New York 10014  
Email: cfazio@hrpt.ny.gov

with copies to:

Title: Assistant Vice President, Property Management  
Address: Hudson River Park Trust, Pier 40  
353 West Street, 2<sup>nd</sup> Floor  
New York, New York 10014  
Email: rnguyen@hrpt.ny.gov

and

Title: Executive Vice President / CFP  
Address: Hudson River Park Trust, Pier 40  
353 West Street, 2<sup>nd</sup> Floor  
New York, New York 10014  
Email: dkurtz@hrpt.ny.gov

and

Name: Adam M. Endick, Esq.  
Address: Vinson & Elkins LLP  
1114 Avenue of the Americas, 32<sup>nd</sup> Floor  
New York, New York 10036  
Email: aendick@velaw.com

(b) All notices and correspondence to Tenant will be delivered to the following address(es) and addressee(s) or to such other address(es) or addressee(s) of which Tenant may notify Landlord from time to time:

Name: Susan Marenoff-Zausner  
Title: President  
Address: Intrepid Museum Foundation  
One Intrepid Square  
46th Street at 12th Avenue  
New York, New York 10036  
Email: smarenoff@Intrepidmuseum.org

with copies to:

Name: Robert J. Wertheimer, Esq.  
Address: Paul Hastings LLP  
200 Park Avenue  
New York, New York 10166  
Email: [RobertWertheimer@paulhastings.com](mailto:RobertWertheimer@paulhastings.com)

## ARTICLE 31

### CERTIFICATES BY LANDLORD AND TENANT

Section 31.01. Certificate of Tenant. Tenant shall, within ten (10) Business Days after request by Landlord, execute, acknowledge and deliver to Landlord, or any other Person specified by Landlord, a written statement (which may be relied upon by such Person) (a) certifying that this Lease is unmodified and in full force and effect (or if there are modifications, that this Lease, as modified, is in full force and effect and stating such modifications and providing a copy thereof if requested), and (b) stating (i) whether Tenant has given Landlord notice of any event that, with the giving of notice or the passage of time, or both, would constitute a default by Landlord in the performance of any covenant, agreement, obligation or condition contained in this Lease, and (ii) whether, to the best knowledge of Tenant, Landlord is in default in performance of any covenant, agreement, obligation or condition contained in this Lease, and, if so, specifying in detail each such default.

Section 31.02. Certificate of Landlord. Landlord shall, within ten (10) Business Days after request by Tenant, execute, acknowledge and deliver to Tenant or any other Person specified by Tenant, a written statement (which may be relied upon by such Person) (a) certifying (i) that this Lease is unmodified and in full force and effect (or if there are modifications, that this Lease, as modified, is in full force and effect and stating such modifications and providing a copy thereof if requested), and (ii) the date to which each item of Rental payable by Tenant hereunder has been paid, and (b) stating (i) whether an Event of Default has occurred or whether Landlord has given Tenant notice of any event that, with the giving of notice or the passage of time, or both, would constitute an Event of Default, and (ii) whether, to the best knowledge of Landlord, Tenant is in default in the performance of any covenant, agreement, obligation or condition contained in this Lease, and, if so, specifying, in detail, each such default or Event of Default.

Section 31.03. Failure to Deliver Certificate. If Tenant fails to deliver the certificate in accordance with Section 31.01 hereof within five (5) Business Days after Landlord's written notice thereof, then such failure by Tenant shall be considered a default hereunder subject to Landlord's remedies pursuant to Section 27. Landlord's failure to deliver the certificate required by Section 31.02 hereof within such ten (10) Business Day period shall be conclusive upon Landlord that (a) this Lease is in full force and effect, without modification except as may be represented by Tenant, (b) there are no uncured Defaults on the part of Tenant hereunder, (c) Rental has been paid to date, and (d) no notice has been sent to Tenant of any Default by Tenant which has not been cured.

Section 31.04. Authority of Party Executing Certificate. If the party delivering a certificate described in this Article 31 shall be other than an individual, the instrument shall be signed by a Person authorized to execute such instrument on behalf of said party, and the delivery of such instrument shall be a representation to such effect by such Person. Any such certificate may be relied upon by any prospective purchaser of the interest of Landlord or Tenant hereunder or by any prospective subtenant.

## ARTICLE 32

### QUIET ENJOYMENT

Landlord covenants that, so long as this Lease is in effect, Tenant shall and may (subject to the exceptions, reservations, terms and conditions of this Lease) peaceably and quietly have, hold and enjoy the Premises for the Term without molestation or disturbance by or from Landlord or any Person claiming through Landlord. This covenant shall run with the land and shall bind Landlord, its successors and assigns, and shall inure to the benefit of Tenant, its successors and assigns.

## ARTICLE 33

### RECORDING OF LEASE

Landlord and Tenant shall execute a memorandum of this Lease substantially in the form of **Exhibit D** attached hereto and made a part hereof (the “**Memorandum**”), and Tenant shall cause such Memorandum and any amendments thereto to be recorded in the Office of the Register of the City of New York (New York County) promptly after the execution and delivery of this Lease or any such amendments and shall pay and discharge all costs, fees and taxes in connection therewith.

## ARTICLE 34

### ADMINISTRATIVE AND JUDICIAL PROCEEDINGS, CONTESTS, ETC.

Section 34.01. Imposition Contest Proceedings. Tenant shall have the right to contest, at its sole cost and expense, the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith, in which event, notwithstanding the provisions of Section 5.03 hereof, payment of such Imposition may be postponed or deferred if, and only as long as:

(a) by reason of such postponement or deferment of such Imposition, in Landlord’s reasonable discretion, neither the Premises nor any part thereof, could be in danger of being forfeited, and Landlord is not in danger of being subjected to criminal liability or penalty or civil liability or penalty in excess of the amount for which Tenant has furnished security as provided in Section 34.01(b); and

(b) (i) Tenant shall have delivered to Landlord collateral security satisfactory to Landlord, in Landlord’s sole reasonable discretion, to secure Tenant’s obligation to pay any such postponed or deferred Imposition. Without limiting the generality of the foregoing, the value of any such collateral security shall be at least equal to the aggregate deferred or postponed amount of any and all Impositions contested by Tenant, together with all interest and penalties in connection therewith and all charges relating thereto that may, in Landlord’s reasonable discretion, be assessed against, or become a charge on, the Premises or any part thereof in or during the pendency of such proceedings. If upon the termination of such proceedings, Tenant is required to

pay the deferred or postponed amount of such contested Imposition, Tenant shall promptly pay the amount of such Imposition as determined in such proceedings, together with any interest, penalties, costs, fees (including, without limitation, reasonable attorneys' fees and disbursements) and other liabilities in connection therewith, and, upon such payment, Landlord shall return the collateral security to Tenant. If Tenant fails to pay the amount of such Impositions, then Landlord shall be entitled to apply the proceeds of the collateral security delivered to it by Tenant to the payment of such Imposition. Tenant shall remain liable for any unpaid balance of such Imposition remaining after payment by Landlord as aforesaid, and Tenant shall pay said balance to Landlord or the Person entitled to receive it within ten (10) days after Landlord's demand;

(ii) If at any time during the continuance of such proceedings Landlord, in its sole reasonable discretion, shall deem insufficient the amount or nature of any collateral security delivered by Tenant as security for Tenant's obligation to pay any such postponed or deferred Imposition, Tenant shall deliver to Landlord such additional collateral security, satisfactory to Landlord, in Landlord's sole reasonable discretion, as Landlord may request. If Tenant shall fail to deliver to Landlord such additional collateral security within ten (10) days after Landlord's demand therefor, Landlord may apply the proceeds of the collateral security held by Landlord to the payment, removal and discharge of any such deferred or postponed Imposition and the interest and penalties in connection therewith and any costs, fees (including, without limitation, court costs and reasonable attorney's fees and disbursements) or other liability accruing in any such proceedings, and the balance, if any, remaining after application by Landlord as aforesaid, together with the interest, if any, earned thereon, shall be returned to Tenant or to the Person entitled to receive it. Tenant shall remain liable for any unpaid balance of such Imposition remaining after payment by Landlord as aforesaid (such balance being deemed Rental hereunder), and Tenant shall pay said balance to Landlord or the Person entitled to receive it, within ten (10) days after Landlord's demand.

Section 34.02. Requirement Contest. Tenant shall have the right to contest the validity of any Requirement or the application thereof. During such contest, compliance with any such contested Requirement may be deferred by Tenant on the condition that before instituting any such proceeding, Tenant shall deliver to Landlord collateral security, satisfactory to Landlord in Landlord's sole reasonable discretion, securing compliance with the contested Requirement and payment of all interest, penalties, fines, civil liabilities, fees and expenses in connection therewith. Any such proceeding instituted by Tenant shall be commenced as soon as it is possible after the issuance of any such contested Requirement and shall be prosecuted with diligence to final adjudication, settlement, compliance or other mutually acceptable disposition of the Requirement so contested. Notwithstanding the delivery of any such collateral security, Tenant shall comply with any such Requirement in accordance with the provisions of Article 17 hereof, if by reason of noncompliance therewith, in Landlord's sole reasonable discretion, the Premises, or any part thereof, could be in danger of being forfeited or if Landlord is in danger of being subjected to criminal liability or penalty, or civil liability in excess of the amount for which Tenant shall have furnished collateral security as required hereby, or if failure to comply is hazardous to persons or property or would violate any insurance policy provisions.

Section 34.03. Landlord's Participation in Contest Proceedings. Landlord shall not be required to join in any action or proceeding referred to in this Article 34 brought by Tenant



or permit the action to be brought by Tenant in Landlord's name unless the provisions of any law, rule or regulation at the time in effect require that such action or proceeding be brought by and/or in the name of Landlord. If so required, Landlord shall join and cooperate in such proceedings or permit them to be brought by Tenant in Landlord's name, in which case Tenant shall pay all costs and expenses (including, without limitation, reasonable, out-of-pocket outside attorneys' fees and disbursements) incurred by Landlord in connection therewith. The provisions of this Article 34 shall survive termination of this Lease.

## ARTICLE 35

[INTENTIONALLY OMITTED]

## ARTICLE 36

### NOISE CONTROL; CODE PROVISIONS

Section 36.01. Compliance with Section 1403.3-2.25. Tenant shall comply with Section 1403.3-2.25 of the Administrative Code of the City of New York and any successor regulations thereto.

Section 36.02. Noise Control. Tenant shall not permit or cause to be permitted on the Premises devices and activities which are subject to the provisions of the New York Noise Control Code to be operated, conducted, constructed, or manufactured which cause a violation of the Noise Control Code.

Section 36.03. Amplified Sound. Tenant shall use commercially reasonable efforts to manage amplified sound such that noise emanating from the Premises does not interfere with or disturb the public's enjoyment of the Park or events which may be sponsored or conducted by Landlord at Pier 84.

## ARTICLE 37

### ADVERTISING, SIGNS & PUBLICITY

Section 37.01. Signage. Notwithstanding anything to the contrary set forth in this Section 37.01, Landlord hereby approves the Permanent Signage, temporary signage and Pier Open Space Signage existing at the Pier as of the Commencement Date, identified on Exhibit E-1.

(a) Permanent Signage. Tenant shall not install or display any Permanent Signage in, on, about or adjacent to the Premises, unless it conforms to the Requirements and the signage guidelines as listed in Exhibit E-2. "**Permanent Signage**" shall mean "Tenant Signage" as same is used in Exhibit E-2. Notwithstanding such requirement, Landlord agrees that such permanent Tenant signage existing at the Premises upon the Commencement Date previously approved by the Design Commission, are approved, and permanent Tenant signage placed on the Intrepid shall not be subject to this provision.

(b) Temporary Signage. Tenant shall not install or display any temporary 12th Avenue-facing signage in, on, about or adjacent to the Premises, including, without limitation, temporary public-facing banners and wraps placed in connection with temporary or permanent exhibitions, unless (i) such temporary signage includes Landlord’s logo with approved type-face as set forth in **Exhibit E-3**, (ii) such logo appears upon the signage at one of the locations set forth in the signage guidelines as listed in **Exhibit E-3**, and (iii) the placement of such Landlord logo upon the signage has been approved by Landlord in its sole but reasonable discretion. Notwithstanding the forgoing, in the event that Tenant submits a proposed Landlord logo placement upon the signage and Landlord fails to approve or deny such proposed placement within three (3) Business Days of Landlord’s receipt of such submission, then such Landlord logo placement upon the signage as proposed by Tenant shall be deemed approved by Landlord.

(c) Landlord Signs. Landlord shall provide and install at its sole cost and expense, and Tenant shall maintain at its sole cost and expense and in the same manner as its own signage, four (4) Landlord signs, including the Pier Open Signage set forth in Section 8.01(c), at the locations identified in **Exhibit E-3**. Should such signage require replacement, Landlord shall provide such replacement signage and install same at its sole cost and expense and Tenant shall maintain same in the same manner as its own signage at its sole cost and expense. Either Landlord or Tenant may propose, subject to the reasonable approval of the other party, to change the location of such Pier Open Signage.

(d) Tenant acknowledges and agrees that Landlord may provide and install up to two (2) additional signs or elements, such as the Landlord’s logo on the Premises identifying the Premises as part of Hudson River Park.

(e) Advertising and Compliance with Requirements. All advertisements, notices and Signage on the Premises shall comply with applicable laws, rules and regulations including, without limitation, the City Zoning Resolution and the requirements of the DOB, DSBS, and the Design Commission. Any Signage, publications, press releases or advertisements that refer to the Museum, the Intrepid or the Vessels shall, as reasonably practicable, include the specific language “at Pier 86 in Hudson River Park” or “in Hudson River Park” as part of such reference, unless Landlord shall provide otherwise.

(f) Landlord Marketing of Tenant Events. Provided Tenant gives Landlord reasonable prior written notice thereof, Landlord shall use commercially reasonable efforts to publicize any public events taking place at the Museum by including such events within Landlord’s printed and digital calendars, event schedules, and any press releases about events in the Park.

(g) Reciprocal Website Linkage. Both Landlord and Tenant shall provide prominent links to each other’s websites on their own websites, and shall, upon reasonable request, provide links on their websites to specific events offered by the other.

## ARTICLE 38

### HAZARDOUS MATERIALS

Section 38.01. Covenant. Tenant covenants that the Premises shall be kept free of Hazardous Materials, except in compliance with applicable environmental laws, and neither Tenant nor any occupant of the Premises shall use, transport, store, dispose of or in any manner deal with Hazardous Materials at the Premises, except in compliance with applicable environmental laws, and shall under no circumstances permit the release or discharge of any Hazardous Materials into the waters of the Hudson River. Tenant shall comply with, and ensure compliance by all occupants of the Premises, at all times during the Term, with all applicable environmental laws, ordinances, rules and regulations of federal, state and local governments (individually and collectively “**all applicable environmental laws**”). Tenant shall keep the Premises free and clear of any Liens imposed pursuant to such laws. In the event that Tenant receives any notice or advice from any governmental agency or any source whatsoever with respect to Hazardous Materials, at, under, on, from, adjacent to or affecting the Premises, or affecting the waters of the Hudson River adjacent to the Premises, Tenant shall promptly notify Landlord. Tenant shall conduct and complete, at its sole cost and expense, all investigations, studies, sampling and testing, and take all remedial actions required by all applicable environmental laws necessary to clean up and remove all Hazardous Materials from the Premises, including any portions of the Hudson River into which Hazardous Materials were discharged or released by Tenant or any occupant or customer of the Premises, or in connection with any activities at the Premises, except if brought onto the Premises by Landlord and subject to the exceptions set forth in Section 21.02(k). Notwithstanding anything to the contrary set forth in this Lease and subject to Section 4.05 above, Tenant shall not have any obligation or liability under this Section 38.01 in connection with the Southern Bulkhead, except to the extent such obligation or liability is a result of any act or omission of any Tenant Party.

## ARTICLE 39

### SECURITY; PEDESTRIAN, BICYCLE AND VEHICULAR TRAFFIC

Section 39.01. Security. Tenant acknowledges and agrees that it shall be solely responsible for security on the Vessels, within the Premises and the Licensed Water Area, and, as applicable, the Pedestrian Bridge and (if and when in use by Tenant) the Licensed Esplanade Area. Tenant shall develop and implement a security plan for the Premises and the Licensed Water Area and, as applicable, the Pedestrian Bridge and the Licensed Esplanade Area that provides for a sufficient number of security personnel on duty at all times during Museum operations at the Premises, and provides for the installation and maintenance of security cameras throughout the Premises. Such security plan shall also provide for additional security personnel for special events according to need size and nature of the event. Tenant shall make such security plan available to Landlord upon request, and make such revisions as Landlord may reasonably require to ensure compliance with this Article 39. Notwithstanding anything to the contrary contained herein, in no event shall Landlord have the right to review or request revisions to Tenant’s security plan (or such applicable part of Tenant’s larger security plan) to the extent same affects the on-Vessel areas. Notwithstanding anything to the contrary set forth in this Lease and subject to Section 4.05 above, in no event shall Tenant have any obligation or liability under this Section 39.01 in connection

with the Southern Bulkhead, except to the extent such obligation or liability is a result of any act or omission of any Tenant Party.

Section 39.02. Parks Enforcement Police or Successors. Tenant acknowledges that Landlord employs New York City Park Enforcement Patrol (“**PEP**”) officers to maintain public safety and security and enforce regulations, rules and law at the Premises and the Park, and agrees that it shall at all times abide by the directives of PEP officers acting in their official capacity (or officers, employees or agents of such successor security entity designated by Landlord) and, to the best of its ability, cause its customers, employees, vendors, contractors, patrons and invitees, including Tenant’s own security personnel, to obey such directives. Tenant agrees that Landlord’s employment of PEP (or successor entity) officers does not relieve, reduce or substitute for its own obligation to provide security services related to its operation at the Premises as set forth herein.

Section 39.03. Pier Vehicular Traffic Management. In addition to its obligations set forth in Section 39.01, Tenant shall (i) manage all vehicle traffic entering and exiting from the Premises such that operations are safe and orderly at all times, (ii) provide and pay for all traffic monitoring and traffic control to and from the Premises, including implementation of any traffic improvement measures deemed necessary in the sole but reasonable judgment of Landlord and (iii) provide for supervision services in connection therewith.

Section 39.04. Queuing on the Licensed Esplanade Area. Tenant shall manage the use of the Licensed Esplanade Area during Museum hours such that, if the Licensed Esplanade Area is being used to accommodate Tenant’s entering patrons and invitees because they cannot be situated entirely within the Premises, queuing is in single file, orderly, and does not block or otherwise interfere with pedestrian traffic on the Esplanade. In addition, Tenant shall (i) notify Landlord in advance should Tenant reasonably expect a significant number of queuing patrons and invitees in the Licensed Esplanade Area, (ii) use stanchions or other crowd control devices to ensure compliance with the requirement of this Section 39.04 and (iii) provide cooperation and obey the reasonable directives of Landlord to ensure pedestrian flow, crowd control and orderly queuing in the Licensed Esplanade Area.

Section 39.05. Bikeway/Pedestrian Safety. Tenant agrees, at its sole cost and expense, to implement and abide by a traffic management plan in substantially the form attached hereto as Exhibit C to address conflicts related to Tenant’s entering and exiting patrons and invitees, the queuing of Tenant’s patrons and invitees, and Tenant’s vehicular access, as each such activity affects non-Tenant pedestrian use of the Esplanade (other than the Licensed Esplanade Area) and bicyclists use of the Bikeway. Such plan shall require Tenant, at a minimum, to provide one or more pedestrian traffic manager(s) dedicated to directing Tenant’s entering and exiting patrons and invitees in a manner which does not conflict with the public’s use of the Esplanade (other than the Licensed Esplanade Area) and Bikeway. Tenant’s pedestrian traffic manager(s) shall be deployed at a minimum during the Primary Tour Season, Friday to Sunday, 10 am to 6 pm, during large Tenant events (*i.e.*, events attended by more than 1,000 individuals or that cause queuing on the Licensed Esplanade Area), and at such other times that Landlord, in its reasonable discretion or Tenant, in its reasonable discretion, deems necessary to manage Tenant’s entering and exiting patrons and invitees on the Esplanade (other than the Licensed Esplanade Area) and crossing the Bikeway. Landlord hereby grants Tenant permission to place such pedestrian traffic manager(s) off-Premises at locations within the Frontage identified in Exhibit C. Tenant and

Landlord shall provide reasonable cooperation to each other to accomplish the objectives set forth in this Section 39.05.

Section 39.06. Bicycle Storage. Tenant shall install and maintain on the Premises a sufficient number of bicycle storage/parking racks for use by Tenant's employees, patrons and invitees, and shall take such enforcement action as may be necessary to prohibit Tenant's employees, patrons and invitees from attaching bicycles to railings, posts, benches or other fixtures along the Bikeway or Esplanade.

Section 39.07. Events. Notice to Landlord. Tenant shall provide Landlord with written notice prior to any Permitted Use that is a public or private event occurring on the Premises that is reasonably anticipated to have attendance of more than 1,000 individuals or to cause queuing to extend beyond the Licensed Esplanade Area. Pursuant to Section 8.01(a) hereof and the limitations set forth therein, no Permitted Use (including but not limited to Functions) shall result in any closure, whether temporary or permanent or whether required by Tenant or any third party, of any portion of the Park (including without limitation the Esplanade and Bikeway), without the prior written consent of Landlord in Landlord's sole and absolute discretion.

Section 39.08. Elimination of Lay- By Lane; Use of Pedestrian Bridge and East Side Facilities. Tenant hereby acknowledges and agrees that, at such time that Landlord and/or New York State Department of Transportation determines that the Lay-By Lane should be eliminated so as to allow for a widening of the Esplanade and/or Bikeway, it shall provide reasonable cooperation to Landlord and/or New York State Department of Transportation to accomplish same. Tenant further covenants and agrees that, upon the Commencement Date and continuing thereafter throughout the Term for so long as the Pedestrian Bridge Agreement is in force and effect, it shall take such actions as are necessary to cause and direct tour and group travel buses dropping off and picking up patrons and invitees of Tenant to use the east side facilities (as such term is defined in the Pedestrian Bridge Agreement) rather than the Lay-By Lane and to direct tour group visitors arriving or departing by bus to use the Pedestrian Bridge rather than the at-grade highway crossing. Such actions by Tenant shall include, but not be limited to, the placement of prominent signage at appropriate locations and employment of Tenant's staff to give verbal direction to Museum visitors. Landlord shall undertake to keep Tenant informed as to plans regarding the elimination of the Lay-By-Lane and shall consult in good faith with Tenant regarding the timing, and means and methods for work in connection with same.

## **ARTICLE 40**

### **MISCELLANEOUS**

Section 40.01. Headings, Captions and Table of Contents. The descriptive headings and captions used in this Lease are for the purposes of convenience only and do not constitute a part of this Lease. The Table of Contents hereof is for the purpose of convenience of reference only, and is not to be deemed or construed in any way as part of this Lease.

Section 40.02. Governing Law. This Lease and its performance shall be governed by and construed in accordance with the laws of the State of New York, excluding New

York's rules regarding conflict of laws and any rule requiring construction against the party drafting this Lease.

Section 40.03. Amendments; Waiver. This Lease may not be amended except by an instrument in writing signed by both parties. The failure by either party to exercise in any respect any right provided for herein will not be deemed a waiver of any rights hereunder.

Section 40.04. Entire Agreement. This Lease, including the exhibits hereto, contains all of the promises, agreements, conditions, inducements and understandings between Landlord and Tenant concerning the Premises and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, expressed or implied, between them concerning the Premises other than as expressly set forth herein or as may be expressly contained in any enforceable written agreements or instruments executed simultaneously herewith or hereafter by the parties hereto.

Section 40.05. Invalidity of Certain Provisions. The provisions of this Lease are intended to be severable. If any term or provision of this Lease or the application thereof to any Person or circumstances shall, to any extent, be invalid and unenforceable, the remainder of this Lease, and the application of such term or provision to Persons or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 40.06. No Partnership or Joint Venture. Nothing herein contained shall be construed in any manner to create any relationship between Landlord and Tenant other than the relationship between landlord and tenant, and Landlord and Tenant will not be considered partners or co-ventures for any purpose.

Section 40.07. Governmental Benefits. Landlord shall reasonably cooperate, at Tenant's sole cost and expense, with Tenant's efforts to obtain any available governmental benefits, incentives or entitlements (including, without limitation, reasonably joining in and promptly executing any applications or providing documentation to an applicable Governmental Authority to the extent that the applicable program requires Landlord to join in any such application or documentation). Tenant agrees to promptly reimburse Landlord, to the extent that Landlord has incurred any actual, out-of-pocket costs paid to an unrelated third party in connection with such cooperation, but in no event later than thirty (30) days after rendition of a reasonably detailed invoice therefor. Landlord shall pass through to Tenant the amount of any such benefit, incentive or entitlement sought by Tenant for which Tenant qualifies to the extent the same is received by Landlord.

Section 40.08. Consents and Approvals.

(a) Effect of Granting or Failure to Grant Approvals or Consents. All consents and approvals which may be given under this Lease shall, as a condition of their effectiveness, be in writing. The granting of any consent or approval by a party to perform any act requiring consent or approval under the terms of this Lease, or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not, except where expressly stated otherwise, be deemed a waiver by the party whose consent was required of its right to require such

consent or approval for any further similar act. The foregoing shall not limit the effect of any provision of this Lease by which consent is deemed granted, if objection is not made within a specified period.

(b) No Unreasonable Delay; Reasonable Satisfaction; Discretion. Wherever this Lease provides that Landlord's or Tenant's consent or approval is not to be unreasonably withheld, such consent or approval also shall not be unreasonably delayed or conditioned. Any matter required to be done satisfactorily or to the satisfaction of a party need only be done reasonably satisfactorily or to the reasonable satisfaction of that party.

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

Section 40.09. "Including". The term "**including**" as used in this Lease, shall be deemed to mean "including, without limitation."

Section 40.10. Remedies Not Exclusive. No right or remedy conferred upon Landlord in this Lease is intended to be exclusive of any other right or remedy contained in this Lease. Every such right or remedy shall be cumulative and shall be in addition to each other right and remedy contained in this Lease or now or hereafter available to Landlord at law, in equity, by statute or otherwise.

Section 40.11. Required Provisions of Law Controlling. It is the intention and understanding of the parties hereto that each and every provision of law required to be inserted in this Lease should be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is deemed to be inserted and if, through mistake or otherwise, any such provision is not inserted herein or is not inserted in correct form, then this Lease shall forthwith, upon the application of either party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party.

Section 40.12. Successors and Assigns. The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of, Landlord and Tenant and, except as otherwise provided herein, their respective successors and assigns.

Section 40.13. Landlord's Liability. The liability of Landlord hereunder for damages or otherwise shall be limited to Landlord's interest in the Premises, the proceeds of any insurance policies relating to the Premises, any awards payable in connection with any condemnation of the Premises or any part thereof. Neither Landlord nor any of the directors, officers, employees, shareholders, agents or servants of Landlord shall have any liability (personal or otherwise) hereunder beyond Landlord's interest in the Premises and this Lease. No other property or assets of Landlord or any property of the directors, officers, employees, shareholders, agents or servants of Landlord shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies hereunder. Notwithstanding anything herein contained to the contrary, Landlord's interest in the Premises and this Lease shall not be deemed to include (i)

any rights, claims or interests of Landlord that may exist at any time pursuant to any loan document or any note or mortgage to which Landlord is a party or given to Landlord in connection with the Premises, (ii) any rights, claims or interests of Landlord that may arise at any time from, or be a result of, its acting in its governmental capacity, or (iii) any rents, issues or proceeds from, or in connection with, the Premises which have been distributed by Landlord. The provisions of this Section 40.13 shall survive the Expiration Date.

Section 40.14. Tenant's Liability. Except to the extent of any Rental due under this Lease accruing prior to the date on which Tenant has surrendered possession and control of the Premises in accordance with this Lease, the liability of Tenant hereunder for damages or otherwise shall not be limited to Tenant's interest in the Premises, but Landlord shall be entitled to recover any damages from the proceeds of any insurance policies covering or relating to the Premises and any property or assets of Tenant. Notwithstanding anything contained to the contrary contained herein, (a) except as set forth in Section 4.05 above, this Lease does not grant Tenant any right to access or use, or exclude other Persons from accessing or using, the Southern Bulkhead, and (b) except for Tenant's obligations expressly set forth in Section 4.05 above or to the extent arising from the act or omission of any Tenant Party, Tenant shall have no liability, responsibility or obligation to Landlord or any Indemnitees for any damage or injury to any Person or property resulting from or arising as a result of access to or use of the Southern Bulkhead by any Person other than the Tenant Parties. The provisions of this Section 40.14 shall survive the expiration of the Term.

Section 40.15. Construction of Terms and Words. All terms and words used in this Lease regardless of the number and gender in which they are used shall be deemed and construed to include any other gender, masculine, feminine or neuter, as the context or sense may require, with the same effect as if such numbers and words had been fully and properly written in the required number and gender.

Section 40.16. Landlord Events. Landlord shall have the right to use a portion of the Premises on an exclusive basis for events, at no cost or expense to Landlord or Friends of Hudson River Park other than for reimbursement to Tenant for its direct and actual out-of-pocket costs in connection therewith (including the actual cost of Tenant's employees in connection with such event), up to two (2) times during each calendar year during the Term, for up to four (4) hours per event, for Landlord's or Friends of Hudson River Park's (or their affiliates') fundraisers, events or meetings (each, a "**Landlord Event**"). Landlord shall notify Tenant in writing of its intent to use a portion of the Premises for such Landlord Event as soon as reasonably practicable, which notice shall set forth the proposed date of such Landlord Event. Tenant and Landlord shall thereafter in good faith consult and cooperate such that such date may be finalized based on the availability of requested facilities and mutual convenience.

Section 40.17. Reserved Rights of Landlord for "Pick and Lift" Operations. Landlord hereby reserves unto itself the right to conduct, and allow others to conduct pursuant to permit or license agreements, "pick and lift" operations in the water area within the Premises south of the Intrepid and adjacent to the Southern Bulkhead. Such "pick and lift" operations shall allow a spudded equipment barge and/or spudded derrick barge to use and occupy a portion of the water area south of the Intrepid for the purpose of loading or unloading equipment from such barge to or from a flatbed trailer located on Route 9a. Such "pick and lift" operations may occur without



permission or consent of Tenant, provided that (i) Tenant is notified in advance of any such operation, (ii) such operation is subject to Requirements, (iii) such operation occurs only during hours that the Museum is closed, (iv) such operation is subject to the security requirements of Tenant, as applicable and (v) if conducted pursuant to a permit or license with a third party, such permit or license provides that Tenant is an additional insured and indemnitee. Further, Tenant shall have no liability with respect to any damage to the Bulkhead caused by Landlord's or any third party's undertaking such "pick and lift" operation, and, should any damage occur, Landlord shall have the obligation to make such repairs as may be necessary.

Section 40.18. Smoking Prohibited. Tenant shall not permit any Tenant Party to smoke on the Premises or in any portion of the Park, nor shall it maintain receptacles for cigarettes or other tobacco products on the Premises or in any portion of the Park.

Section 40.19. Counterparts. This Lease may be executed in one or more counterparts each of which shall be deemed an original and which, when taken together, shall constitute one and the same. The exchange of counterparts by facsimile or by other electronic transmission (including, but not limited to, .pdf sent via email) shall constitute effective delivery of such counterparts and may be used in lieu of the original counterparts for all purposes. Signatures of the parties hereto transmitted by facsimile or other electronic transmission shall be deemed to be their original signatures for all purposes.

[NO FURTHER TEXT ON THIS PAGE]

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

**LANDLORD**

HUDSON RIVER PARK TRUST, a  
New York public benefit corporation

By: \_\_\_\_\_  
Name:  
Title:

**TENANT**

INTREPID MUSEUM FOUNDATION, a  
New York not-for-profit corporation

By: \_\_\_\_\_  
Name:  
Title:

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

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

\_\_\_\_\_  
Notary Public

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

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

\_\_\_\_\_  
Notary Public

**EXHIBIT A**

**LEGAL DESCRIPTION & MAP**

[attached hereto]

## **EXHIBIT B-1**

### **EXISTING TITLE MATTERS**

1. Any Liens, encumbrances, exceptions, reservations, covenants, restrictions, easements, conditions of title and other matters (recorded or otherwise) affecting the Premises on or before January 1, 1982.
2. Notice of Appropriation recorded March 15, 1999 in Reel 2836 at Page 378.
3. Acquisition Map recorded March 15, 1999 in Reel 2836 at Page 381.
4. Superseding Notice of Appropriation recorded March 15, 1999 in Reel 2836 at Page 471.
5. Acquisition Map recorded March 15, 1999 in Reel 2836 at Page 474.
6. Acquisition Maps recorded July 2, 1999 in Reel 2906 at Page 594.
7. Access and Utility Easement reserved by The City of New York to permit development of the north side of the Pier.
8. Memorandum of lease recorded July 18, 1982 in Reel 600 at Page 1828, re-recorded and modified April 1, 1982 in Reel 616 at Page 1023.
9. The rights of the United States of America, in the exercise of its constitutional powers to regulate interstate commerce and the use of navigable waterways, to alter existing U.S. Bulkhead and Pierhead Lines, and to compel the removal (without compensation) of fill and other improvements (including buildings, piers and other structures) from land now or formerly lying below the high water mark of the Hudson River.
10. The rights of the State of New York in and to any land now or formerly under the waters of the Hudson River not effectively granted to the City of New York by Letters Patent dated September 28, 1871 and recorded March 9, 1872 in Liber 1194 at Page 651.
11. Rights of the United States government, the State of New York and the City of New York or any of their departments or agencies to regulate and control the use of piers, bulkheads, land under water and land adjacent thereto.
12. The rights of the People of the City and State of New York to use and have access to the waters of the Hudson River adjoining the Pier.
13. A portion of the Premises lies in the bed of Marginal Street Wharf or Place as the same is laid out on the official map of the City of New York. This portion of the Premises is subject to the restricted use and limitations imposed by the provisions of Section 35 of the General City Law.
14. Possible interests deriving from deed made by The City of New York, dated July 18, 1850 and recorded July 27, 1850 in Liber 549 at Page 135.

15. Revocability or lack of right to maintain vaults, excavations or sub-surface equipment beyond the line of the Premises.
16. Any state of facts an accurate survey or physical inspection of the Premises may show as of the date of this Lease.
17. Excluded Utility Matters.

## **EXHIBIT B-2**

### **PERMITTED TITLE MATTERS**

1. Any Liens, encumbrances, exceptions, reservations, covenants, restrictions, easements, conditions of title and other matters (recorded or otherwise) affecting the Premises on or before January 1, 1982.
2. Notice of Appropriation recorded March 15, 1999 in Reel 2836 at Page 378.
3. Acquisition Map recorded March 15, 1999 in Reel 2836 at Page 381.
4. Superseding Notice of Appropriation recorded March 15, 1999 in Reel 2836 at Page 471.
5. Acquisition Map recorded March 15, 1999 in Reel 2836 at Page 474.
6. Acquisition Maps recorded July 2, 1999 in Reel 2906 at Page 594.
7. Access and Utility Easement reserved by The City of New York to permit development of the north side of the Pier.
8. Memorandum of lease recorded July 18, 1982 in Reel 600 at Page 1828, re-recorded and modified April 1, 1982 in Reel 616 at Page 1023.
9. The rights of the United States of America, in the exercise of its constitutional powers to regulate interstate commerce and the use of navigable waterways, to alter existing U.S. Bulkhead and Pierhead Lines, and to compel the removal (without compensation) of fill and other improvements (including buildings, piers and other structures) from land now or formerly lying below the high water mark of the Hudson River.
10. The rights of the State of New York in and to any land now or formerly under the waters of the Hudson River not effectively granted to the City of New York by Letters Patent dated September 28, 1871 and recorded March 9, 1872 in Liber 1194 at Page 651.
11. Rights of the United States government, the State of New York and the City of New York or any of their departments or agencies to regulate and control the use of piers, bulkheads, land under water and land adjacent thereto.
12. The rights of the People of the City and State of New York to use and have access to the waters of the Hudson River adjoining the Pier.
13. A portion of the Premises lies in the bed of Marginal Street Wharf or Place as the same is laid out on the official map of the City of New York. This portion of the Premises is subject to the restricted use and limitations imposed by the provisions of Section 35 of the General City Law.
14. Possible interests deriving from deed made by The City of New York, dated July 18, 1850 and recorded July 27, 1850 in Liber 549 at Page 135.

15. Revocability or lack of right to maintain vaults, excavations or sub-surface equipment beyond the line of the Premises.
16. Any state of facts an accurate survey or physical inspection of the Premises may show as of the date of this Lease.
17. Any Liens, encumbrances, exceptions, reservations, covenants, restrictions, easements, conditions of title and other matters (recorded or otherwise) affecting the Premises and either caused by Landlord or otherwise approved in writing by Landlord.
18. Excluded Utility Matters.



**EXHIBIT C**

**BIKEWAY SAFETY PLAN**

[attached hereto]

**EXHIBIT D**

**FORM OF MEMO OF LEASE**

HUDSON RIVER PARK TRUST  
(Landlord)

- and -

INTREPID MUSEUM FOUNDATION  
(Tenant)

**MEMORANDUM OF LEASE**

Dated: [\_\_\_\_\_], 2021

Location: [\_\_\_\_\_], New York, NY  
Section: [\_\_\_\_\_]   
Block: [\_\_\_\_\_]   
Lot: [\_\_\_\_\_]   
County: New York

PREPARED BY AND UPON RECORDATION RETURN TO:

Vinson & Elkins LLP  
1114 Avenue of the Americas, 32<sup>nd</sup> Floor  
New York, New York 10036  
Attention: Adam M. Endick, Esq.

MEMORANDUM OF LEASE

Name and Address of  
Landlord:

Hudson River Park Trust  
Pier 40  
353 West Street, 2nd Floor  
New York, New York 10014  
Attention: General Counsel

Name and Address of Tenant:

Intrepid Museum Foundation  
One Intrepid Square  
46th Street at 12th Avenue  
New York, New York 10036  
Attention: Susan Marenoff-Zausner, President

Execution Date of Lease:

[\_\_\_\_\_], 2021

Description of the Premises:

The adjacent upland area to the east of Pier 86, Borough of Manhattan, City and State of New York (the "Pier"); the Pier, including, but not limited to, the deck, under-deck and pilings; the bulkhead for the Premises, all as shown on Exhibit A; any and all other buildings, structures or other improvements and appurtenances of every kind and description now existing on the Pier or any other portion of the Premises, or hereafter erected, constructed or placed upon the Pier or any other portion of the Premises or any portion thereof, and any and all alterations, replacements and substitutions thereto, landscaping, and all fixtures now or hereafter incorporated in or attached to and used or usable in the operation of the Premises and land-under-water associated waters and underwater lands, each within that certain area set forth in Exhibit A attached hereto. The Demised Premises shall not include any Trade Fixtures or the Vessels.

Term of the Lease:

Thirty (30) years, commencing on [\_\_\_\_\_], 2021 and expiring on [\_\_\_\_\_], 2051.

Memorandum of Lease:

This instrument, executed in connection with the Lease, is intended to be and is entered into as a memorandum thereof for the purpose of recordation and the giving of notice of the Lease, and shall not, in any event, be construed to change, vary, modify or interpret the Lease or any of the terms, covenants or conditions thereof, which are set forth, described or summarized herein and reference is hereby made to the Lease for any and all purposes. All of the terms, covenants and conditions contained in the Lease are hereby incorporated

herein by reference with like effect as if set forth herein verbatim. This Memorandum of Lease may be executed in counterparts.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Lease as of this day of [\_\_\_], 2020.

**LANDLORD**

HUDSON RIVER PARK TRUST, a  
New York public benefit corporation

By: \_\_\_\_\_  
Name:  
Title:

**TENANT**

INTREPID MUSEUM FOUNDATION, a  
New York not-for-profit corporation

By: \_\_\_\_\_  
Name:  
Title:

**ACKNOWLEDGMENT**

STATE OF NEW YORK

} SS.:

COUNTY OF NEW YORK

On the \_\_\_ day of \_\_\_\_\_ in the year 2021, before me, the undersigned, a Notary Public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF

} SS.:

COUNTY OF

On the \_\_\_ day of \_\_\_\_\_ in the year 2021, before me, the undersigned, a Notary Public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

Schedule 1

Legal Description

**[see attached]**

**EXHIBIT E-1**

**EXISTING SIGNAGE**

[attached hereto]



**EXHIBIT E-2**

**SIGNAGE GUIDELINES**

[attached hereto]

**EXHIBIT E-3**

**LANDLORD REQUIRED SIGNAGE LOCATIONS**

[attached hereto]

**EXHIBIT F**

**TEMPORARY EXHIBITION AREA**

[attached hereto]

**EXHIBIT G**  
**PEDESTRIAN BRIDGE AGREEMENT**

[attached hereto]

**EXHIBIT H**  
**DESIGN CRITERIA AND LOADS**

[attached hereto]

**EXHIBIT I(1)**

**INITIAL APPROVED STRUCTURAL REPAIR PLAN DATED [ ]**

[attached hereto]

**EXHIBIT I(2)**

**INITIAL APPROVED STRUCTURAL REPAIR PLAN DATED [ ]**

[attached hereto]

**EXHIBIT I(3)**

**“AS-BUILT” PLANS FOR THE WELCOME CENTER**

[attached hereto]



**EXHIBIT J**  
**TENANT'S CHARTER**

[attached hereto]

**EXHIBIT K**

**INTENTIONLY OMITTED**

## EXHIBIT L

### FORM OF INDEMNIFICATION FOR OCCUPANCY AGREEMENTS

\*\*[TENANT]\*\* hereby indemnifies the State of New York, the New York State Office of Parks, Recreation and Historic Preservation, the New York State Department of Environmental Conservation, the City of New York, the New York City Department of Parks and Recreation, Hudson River Park Trust (and Hudson River Park Trust's successors in interest to that certain Lease Agreement dated as of \*\*[\_\_\_\_\_, 2021]\*\* by and between Hudson River Park Trust and \*\*[LANDLORD]\*\*), and their respective commissioners, agents, servants, employees, officers, directors, shareholders, partners and principals (disclosed or undisclosed) (collectively, the "**Indemnitees**") from and against any loss (excluding lost profits), reasonable out-of-pocket cost, liability, claim, actual damage (excluding consequential, special, exemplary and punitive damages), reasonable out-of-pocket expense (including reasonable out-of-pocket attorneys' fees and disbursements), penalty or fine actually incurred in connection with or actually arising from any one or more of the following, unless, in each such case, due to the negligence or willful misconduct of an Indemnitee: (a) any default by \*\*[TENANT]\*\* in the performance or observance of any of the terms of this \*\*[LEASE]\*\* on \*\*[TENANT]\*\*'s part to be performed or observed; (b) the use or occupancy or manner of use or occupancy of the \*\*[PREMISES]\*\* by \*\*[TENANT]\*\* or any concessionaires, licensees, franchisees or any other occupants of the \*\*[PREMISES]\*\* (excluding \*\*[LANDLORD]\*\*'s third party vendors solely in their capacity as \*\*[LANDLORD]\*\*'s contractors and subcontractors during the performance of work in the \*\*[PREMISES]\*\* and, for the avoidance of doubt, without diminishing \*\*[TENANT]\*\*'s responsibilities and obligations under this Lease; and/or (c) any acts, omissions (where \*\*[TENANT]\*\* has a duty to act) or gross negligence of \*\*[TENANT]\*\* or any of \*\*[TENANT]\*\*'s agents, employees, contractors, invitees, concessionaires, licensees, franchisees or any other permitted occupants of the \*\*[PREMISES]\*\* in the \*\*[PREMISES]\*\* either prior to, during or after the expiration of, the \*\*[TERM]\*\*.

*\*\*Note: bracketed terms are to be adjusted by Tenant based upon the definitions/terms used in the applicable Occupancy Agreement*